

**Penticton Indian Band of the Okanagan Nation  
Interim Agreement on Forest and Range Opportunities  
(the "Agreement")**

**BETWEEN:**

**The Penticton Indian Band of the Okanagan Nation  
As Represented By  
Chief Jonathan Kruger and Band Council  
(the "PIB")**

**AND:**

**Her Majesty the Queen in Right of the Province of British Columbia  
As Represented By the Minister of Forests and Range  
("British Columbia")**

**(Collectively, the "Parties")**

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**INTERIM AGREEMENT ON FOREST AND RANGE OPPORTUNITIES**

**WHEREAS:**

- A. The Okanagan Nation, of which the PIB is a member, affirms its unextinguished Aboriginal title and rights within its traditional territory, and their unique responsibility, bestowed by the Creator, and in accordance with Okanagan laws, to serve for all times as the primary stewards and protectors of Okanagan lands, waters and resources in and around the Penticton area ("PIB Stewardship Lands");**
- B. The PIB, as represented by Chief and Council, acts on behalf of the present and future members of the PIB. PIB has the approval of the Okanagan Nation Alliance ("ONA") to enter into this Agreement;**
- C. The *Constitution Act, 1982*, and court decisions, including *Delgamuukw*, *Haida*, *Taku River Tlingit*, *Gray and Sappier*, *Huu-ay-aht* and *Tsilhqot'in*, define Crown obligations, to recognize and respect unextinguished Aboriginal title and rights including the negotiation of agreements leading to reconciliation;**
- D. British Columbia and First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and Union of BC Indian Chiefs ("Leadership Council") has entered into a New**

Relationship based on respect, recognition and accommodation of Aboriginal title and rights and to achieve the reconciliation of Aboriginal and Crown titles through agreements about shared decision making and revenue and benefit sharing;

- E. Work is underway regarding the implementation of the New Relationship including recognition and reconciliation legislation, and the Parties acknowledge that this Agreement will need to reflect the outcomes of that work;
- F. The Parties wish to enter into an interim measures agreement in relation to forest and/or range resource development and related economic benefits arising from this proposed development within the PIB Stewardship Lands.
- G. British Columbia and the PIB wish to resolve issues relating to forest and/or range resource development where possible through negotiation as opposed to litigation.

**THEREFORE THE PARTIES AGREE AS FOLLOWS:**

#### **1.0 Definitions**

For the purposes of this Agreement, the following definitions apply:

- 1.1. "Operational Decision" means a decision that is made by a person with respect to the statutory approval of an Operational Plan that has potential effect in the PIB Stewardship Lands.
- 1.2. "Operational Plan" means a Forest Development Plan, Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan, that has a potential effect on the PIB Stewardship Lands.
- 1.3. "Administrative Decision" means one or more of the following decisions made by a person under forestry legislation.
  - The decision setting or varying Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;
  - The issuance, consolidation, subdivision, amendment or boundary adjustment of a Forest Tenure or a Range Tenure;
  - The adjustment of Animal Unit Months in a Range Tenure;
  - The replacement or extension adjustment of a Forest and/or Range Tenure;

- The disposition of volumes of timber arising from undercut decisions on a Forest Tenure;
- Timber Sale Licence and Timber Licence conversion to other forms of Forest Tenure and Timber Licence term extensions;
- The reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*;
- The issuance of a Special Use Permit;
- The decision regarding a Tree Farm Licence Management Plan, Community Forest Management Plan and/or Woodlot Licence Management Plan;
- The deletion of provincial forest;
- The transfer of AAC between Timber Supply Areas.

- 1.4. "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 1.5. "Range Tenure" means an agreement granting rights over Crown range as defined in the *Range Act*.
- 1.6. "PIB Stewardship Lands" means the lands as shown on bold black on the map attached in Appendix A.
- 1.7. "Licensee" means a holder of a Forest Tenure or a Range Tenure.
- 1.8. "Cultural Component", as used in this Agreement, means the integral cultural values and traditional practices of the Okanagan Nation, captured by the word in the Okanagan language, "Nxilscyen".
- 1.9. "Interim Accommodation" means an interim accommodation provided in this Agreement, for the potential infringements of the economic component of unextinguished Aboriginal title and rights arising from or as a result of forest and range development on PIB Stewardship Lands, prior to full reconciliation that may be determined through other processes.
- 1.10. "Response Period" means a period of up to 60 days from initiation of the processes set out in Sections 5 to 7 of this agreement, where the initiation date is the date on which the PIB is notified of an Administrative Decision or Timber Supply Review process, or in case of Operational Plan reviews, the date on which PIB receives the plan

to be reviewed. Where an emergency operation arises and/or expedited salvage has to occur, the response period will be shortened accordingly, but will not be less than the time period for advertising Operational Plans for those operations.

## **2.0 Purposes and Objectives**

The purposes and objectives of this Agreement are to:

- 2.1. Increase the PIB's opportunity for participation in the forest sector and create viable economic opportunities and to assist in the improvement of social conditions of the PIB through economic diversification.**
- 2.2. Provide interim payment and other economic benefits to the PIB through forest tenure opportunities, a potential range tenure opportunity and the sharing of revenues and other economic benefits received by the Government of British Columbia from forest resource development activities.**
- 2.3. Address consultation and provide an interim accommodation, as set out in this agreement with regard to infringements of unextinguished Aboriginal title and rights that result from Administrative Decisions and/or Operational Decisions and Plans relating to forestry and/or Range Resource development activities within the PIB Stewardship Lands during the term of this agreement.**
- 2.4. Provide a period of stability to forest and/or range resource development on Crown lands within the PIB Stewardship Lands during the term of this Agreement, while longer term interests of the Okanagan Nation are addressed through other agreements or processes.**

## **3.0 Economic Benefits to the PIB**

During the term of this Agreement, British Columbia will provide one or more of the following economic benefits to the PIB:

### **3.1. Forest Tenure**

After the execution of this Agreement, the Minister will invite the PIB, or such legal entity as the PIB has appointed as its representative to hold the licence to apply under the *Forest Act* for a non-replaceable forest licence (the "Licence") on a non-competitive basis for up to

26,285 *cubic meters* annually in the Okanagan Timber Supply Area. The Licence is to also include a further component from Mountain Pine Beetle (MPB) impacted stands in the Okanagan Timber Supply Area for up to 21,028 cubic meters annually for five years.

If the intended holder of the licence is a legal entity other than the PIB, this Agreement must include supporting documentation, as specified in Appendix B, stating that the intended holder has been validly appointed by the PIB as its representative.

- 3.1.1. For greater certainty, the maximum volume that may be available under the Licence referred to in Section 3.1 will be up to 236,565 cubic meters over five (5) years.
- 3.1.2 The Province will strive to ensure that the assigned operating area for the Licence in the Okanagan Timber Supply Area has a representative timber profile and logging opportunity relative to other licensees and BC Timber Sales, taking into account the quality of timber, access and commercial viability. Prior to the PIB making an application for the Licence, the Parties will work together to identify the location(s) of an operating area for the Licence, which will be within the Traditional Territory of the Okanagan Nation.
- 3.1.3 A Licence entered into as a result of an invitation under Section 3.1 will be for a term of 5 years.
- 3.1.4 If the Licence remains in effect beyond the term of this Agreement, the Licence will continue to be considered by the Parties to be an Interim Accommodation until the Licence expires or is terminated.
- 3.1.5 The Minister may invite the PIB to apply for a subsequent Licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

### 3.2. Range Tenure

The Parties will meet to review new range vacancies that become available in the PIB Stewardship Lands and that may be available for disposition to the PIB through direct award of a range licence(s) or permit(s) under the Range Act.

### 3.3. Revenue Sharing

- 3.3.1 During the term of this Agreement, the Government of British Columbia will pay to the PIB approximately \$436,128 annually.

- 3.3.2 The funding commitment set out in Section 3.3.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.
- 3.3.3 For the purposes of determining amounts for partial years, one-fourth (i.e.  $\frac{1}{4}$ ) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.
- 3.3.4 Upon signing of this Agreement, the PIB will be paid the full revenues for the quarter in which the Agreement is signed (e.g. if this Agreement is signed at the end of the quarter, the FN would receive payment for that entire quarter), and payment for the following quarter, with subsequent payments being made at the end of each quarter.
- 3.3.5 British Columbia will not seek to direct or influence the expenditure of the funds provided to the PIB.

#### **4.0 Economic Benefits to the PIB: General Provisions**

- 4.1. The economic benefits provided for in this Agreement have not been calculated to represent a sharing of resources and benefits within the PIB Stewardship Lands. The revenue sharing set out in the Agreement reflects an amount that the Government of British Columbia is willing to pay, subject to available appropriations, and the PIB has agreed to accept as an interim measure for the term of this Agreement.
- 4.2. During the term of this Agreement, the PIB agrees that the economic benefits provided under this Agreement constitute an interim accommodation with respect to the economic component of potential infringements of unextinguished Aboriginal title and rights for forestry activity within PIB Stewardship Lands.
- 4.3. Nothing in this Agreement restricts the ability of the PIB to seek additional economic or non-economic accommodation for impacts from forest resource development to unextinguished Okanagan Aboriginal title and rights within PIB Stewardship Lands during the term of this Agreement.

#### **5.0 Consultation and Accommodation Regarding Administrative and Operational Decisions and Plans**

- 5.1. The Government of British Columbia agrees to fulfill its honour of the

Crown obligations including to consult PIB with respect to all potential infringements of Okanagan Nation unextinguished Aboriginal title and rights arising from any Administrative or Operational Decisions or Operational Plans affecting the PIB Stewardship Lands.

- 5.2. The Parties agree to develop a process under this agreement to engage in consultation and accommodation, which, in collaboration with other government agencies and consistent with section 12 of this Agreement, could include processes for shared decision making about Administrative and Operational Decisions and Operational Plans which may affect unextinguished Aboriginal title and rights within the PIB Stewardship lands.
- 5.3. Until such a process is developed, the following terms will apply when Administrative Decisions, Operational Decisions and Plans are contemplated.

#### **6.0 Consultation about Administrative Decisions**

- 6.1. The Parties will share with each other, baseline data affecting PIB Stewardship Lands.
- 6.2. The Government of British Columbia will provide to the PIB on an annual basis a list of proposed Administrative Decisions anticipated within the year that will have an effect on PIB Stewardship Lands, and either upon the request of the PIB or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to the PIB an updated list.
- 6.3. The Province acknowledges that in making administrative decisions the Crown must act honourably in keeping with relevant case law, and that consultation needs to occur as early as possible at the strategic planning stage.
- 6.4. The Government of British Columbia will meet with the PIB at mutually agreed times throughout the year to provide an opportunity for the PIB to make known to representatives of the Government of British Columbia their concerns and comments relative to the Administrative Decision(s) and the effect of such decisions on the PIB Stewardship Lands, and the Government will work with the PIB to honourably address these concerns.
- 6.5. The PIB agrees, consistent with its capacity to do so, to fully participate, within the Response Period, in consultation about Timber Supply Processes by providing all reasonably available information

about unextinguished Aboriginal title and rights, Okanagan laws, and environmental concerns affected by the AAC determinations to be made pursuant to section 8 of the *Forest Act*.

- 6.6. The Government of British Columbia will collaboratively involve the PIB in Timber Supply Review processes that will lead to AAC (Annual Allowable Cut) determinations made pursuant to section 8 of the *Forest Act* for the Okanagan Timber Supply Area.
- 6.7. If after considering the concerns and comments of the PIB, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of the Okanagan Nation's unextinguished title and rights that is not addressed by the economic benefits provided for in this Agreement, or at all, the statutory decision maker will discuss and attempt to resolve these concerns and comments through negotiations with PIB.

#### **7.0 Consultation Regarding Operational Decisions and Plans**

- 7.1. The PIB intends to fully participate, (as set out in this agreement) in the review of all Operational Plans dealing with forest and range resource development activities within PIB Stewardship Lands provided to them by the Government of British Columbia, and by Licensees.
- 7.2. In reviewing and responding to an Operational Plan, the PIB will, within the Response Period, and consistent with its capacity, provide a response to the plan with all relevant information which will identify any potential impacts to Okanagan Nation unextinguished Aboriginal title and rights that may occur as a result of the proposed forest and/or range resource development activity within PIB Stewardship Lands.
- 7.3. Upon receiving the response from the PIB, the Government of British Columbia and/or Licensee will discuss and attempt to resolve with the PIB any operational impacts on PIB Stewardship Lands that may occur as a result of a proposed forest and/or range resource development.
- 7.4. If no written response is received from the PIB within the Response Period, then the Government of British Columbia may conclude that the PIB does not intend to respond or participate in the consultation process in respect of the Operational Plan and that a decision on the Operational Plan may proceed.
- 7.5. In making an Operational Decision, the Ministry of Forests and Range will use reasonable efforts to provide PIB with all relevant and available information and fully consider concerns and comments it



receives from the PIB, whether received directly or through a Licensee, and in consultation with PIB will consider whether those concerns identified by the PIB have been addressed.

7.6. If after considering the concerns and comments of the PIB, the statutory decision maker is of the opinion that an Operational Decision creates a potential infringement of the Okanagan Nation's unextinguished title and rights that is not addressed by the economic benefits provided for in this Agreement, or at all, the statutory decision maker will discuss and attempt to resolve these concerns and comments through negotiations with PIB .

7.7. The Government of British Columbia will encourage licensees to enter into mutually-beneficial arrangements with the PIB.

## 8.0 Dispute Resolution

8.1. If a dispute arises between the Government of British Columbia and the PIB 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.

8.2. If the Parties are unable to resolve differences at the appropriate level, the issue will be raised to more senior levels of the Government of British Columbia and the PIB.

8.3. If the dispute cannot be resolved by the Parties, the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

## 9.0 Term and Termination

9.1. This Agreement will take effect on the date on which the last Party has executed it.

9.2. This Agreement will terminate on the occurrence of the earliest of any of the following events:

9.2.1 five years from the date this Agreement is executed; or

9.2.2 the coming into effect of a comprehensive and final land claim resolution between the Parties; or

9.2.3 the mutual agreement of the Parties; or

9.2.4 the date on which the Government of British Columbia cancels the economic benefit(s) under this Agreement pursuant to Section 10.0 or,

- 9.2.5** upon written notice of withdrawal from this Agreement by either Party which will take effect 90 days following receipt of the notice by the other Party.
- 9.3.** If this Agreement is terminated in accordance with Section 9.2.2 or 9.2.3 or 9.2.5, then the Minister may terminate the economic opportunities under this Agreement.

#### **10.0 Suspension or Cancellation of Economic Benefits by the Minister**

- 10.1.** Without limiting the actions that may be taken by the Minister of Forests and Range or by the Government of British Columbia, the Minister or a person authorized by the Minister may suspend or cancel revenue sharing payments and the licence(s) entered into as a result of the invitation under this Agreement, if the Minister or a person authorized by the Minister determines that the PIB is not in compliance with this Agreement.
- 10.2.** Prior to taking any action referred to in Section 10.1, the Government of British Columbia will provide notice to the PIB of any alleged contravention of this Agreement that may lead the PIB being determined to not be in compliance with this Agreement.
- 10.3.** Prior to termination, the Parties agree to meet and endeavour to resolve the dispute.
- 10.4.** If the Minister or a person authorized by the Minister cancels any economic benefits as a result of this Agreement, then this Agreement may be terminated.

## **11.0 Renewal of the Agreement**

- 11.1. Prior to this Agreement terminating in accordance with Section 10 and subject to Section 8, if the terms and conditions of this Agreement are being met, the Government of British Columbia and the PIB will seek the necessary authorities and approvals to renew this Agreement.**
- 11.2. Any subsequent forestry agreement between the Government of British Columbia and the PIB may provide PIB an opportunity to acquire a licence, and/or other economic benefits, as well as other terms and conditions that are agreed to by the Parties.**

## **12.0 Policy and Legislative Changes**

- 12.1. The Parties understand that the New Relationship is being implemented as a priority and that new approaches for consultation and accommodation, including benefit and revenue sharing, will be developed as a priority under the New Relationship by British Columbia and the Leadership Council. The PIB may choose to opt into such approaches as they become available, through amendment of this Agreement or other mutually agreeable methods.**
- 12.2. Notwithstanding this agreement, the Parties will, at the request of the PIB, enter into discussions and may negotiate interim agreements in relation to forestry, range and related planning that give effect to the New Relationship, which may include, but are not limited to the following components:**
  - (a) a process for shared decision making about the land and resources;**
  - (b) new mechanisms for land and resource protection;**
  - (c) a process for the PIB's land use planning at all spatial scales and for reconciliation of Crown and Okanagan plans;**
  - (d) dispute resolution processes which are mutually determined for resolving conflicts rather than adversarial approaches to resolving conflicts;**
  - (e) financial capacity for the PIB and resourcing for the Government of British Columbia to develop and implement new frameworks for shared land and resource decision making and other components listed above;**
  - (f) on a priority basis, interim protection for landscapes, watersheds and/or sites identified by the PIB to be reserved**

**from resource development pending the outcome of negotiation of agreements referred to in the above; and**

**(g) revenue and benefit sharing.**

- 12.3. The Parties acknowledge that PIB and the Province have a different interpretation of Okanagan Nation Aboriginal title and rights.
- 12.4. Notwithstanding the Parties different interpretation of Okanagan Nation Aboriginal title and rights referred to in section 12.3, the Parties agree to set aside these differences on a non-admission basis and acknowledge that the benefits provided in this agreement will represent an interim accommodation of Okanagan Nation's Aboriginal title and rights within the PIB Stewardship Area for the term of this Agreement, and that the Parties will work closely together to resolve their differences and to determine how to better recognize and reconcile Okanagan Nation's Aboriginal title and rights with Crown sovereignty.
- 12.5. The Parties acknowledge that there are broader processes underway with respect to the New Relationship which will benefit and, at times assist, the Parties in negotiating with respect to the issues set out in section 12.2, 12.3 and 12.4.
- 12.6. The Government of British Columbia agrees to inform the PIB of any relevant policy or legislative change, or agreement with any province wide body, including the First Nations Forestry Council, as soon as they are publicly available with the intention of discussing the amendment of the Agreement to address such changes.

### **13.0 Miscellaneous**

- 13.1. This Agreement shall be interpreted in a manner consistent with provincial, federal and constitutional law.
- 13.2. This Agreement is not a treaty or lands 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.
- 13.3. Nothing in this Agreement constitutes an admission or shall be interpreted as acknowledgment by the PIB that the Province has any jurisdiction over, or ownership of, lands and resources within Okanagan Territory.
- 13.4. Nothing in this Agreement shall be interpreted or relied on as an admission by the PIB of provincial jurisdiction over, or ownership of, lands and resources within Okanagan Territory.
- 13.5. 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, rights and authorities.

- 13.6. This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 13.7. This Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 13.8. Nothing in this Agreement, including the recitals, defines or confirms the specific nature, scope, location or geographic extent of unextinguished Aboriginal title and rights of the Okanagan Nation.
- 13.9. This Agreement shall not be interpreted as addressing any infringement other than potential infringements that may result from decisions contemplated by this Agreement during the term of this Agreement. For greater certainty, nothing in this Agreement shall be interpreted to address or authorize any infringement that may occur following the termination of this Agreement. Nor does this Agreement address or affect any claims regarding infringement of unextinguished Aboriginal title and rights arising from past Operational or Administrative Decisions made previous to the signing of this Agreement.
- 13.10. 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.
- 13.11. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 13.12. The applicable laws of British Columbia, Canada and the Okanagan Nation shall govern this Agreement.
- 13.13. This Agreement does not exclude the PIB from accessing forest and other economic opportunities and benefits, which may be available, other than those expressly set out in this Agreement.

#### **14.0 Amendment of the Agreement**

- 14.1. Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 14.2. Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

**15.0 Entire Agreement**

- 15.1. This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement.**

**16.0 Notice**

- 16.1. 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 Party as in this Section of the Agreement.**
- 16.2. 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.**
- 16.3. 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) 356-5012  
Facsimile: (250) 953-3687**

**PIB:**

**Chief Jonathan Kruger  
Penticton Indian Band  
R.R. #2, Site 80, Comp. 19  
Penticton, B.C. V2A 6J7**

**Telephone: (250) 493-0048  
Facsimile: (250) 493-2882**

- 16.4. 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 by fax. 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:

PENTICTON INDIAN BAND

Date:

Feb 3/09

  
CHIEF JONATHAN KRUGER

Councillor Kerri Gehl

Councillor Joan C. Phillips

Councillor Chit John


Councillor Joseph Pierre

Councillor Laurie Wibaux

Councillor Naomi Gabriel

Councillor \_\_\_\_\_

Councillor DD

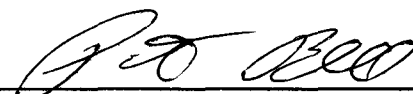
  
Witness of PIB signatures

Signed on behalf of:

Government of British Columbia

Date:

MARCH 2/09

  
HON. PAT BELL,  
Minister of Forests and Range



# Okanagan Nation Territory

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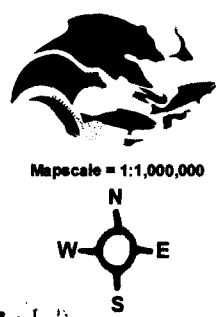
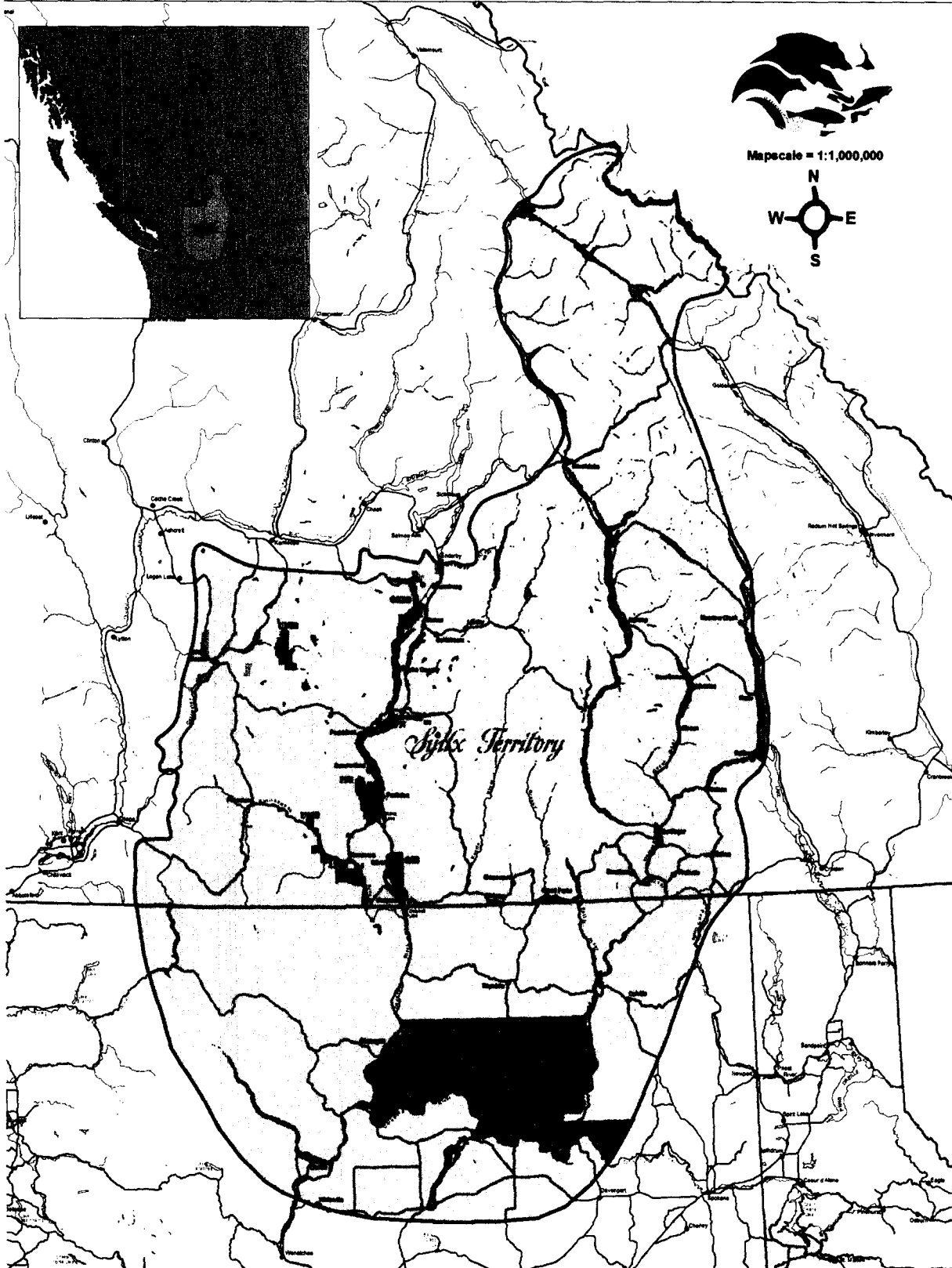
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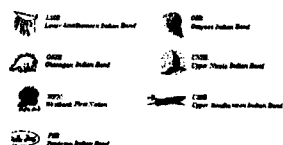
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## Member Bands:



"Nx'elx'eltantet" "That which gives us life."

## Table of Contents:



## **APPENDIX A**

### **Map of the PIB Stewardship Lands**

**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:

Applicant for the license:

**PENTICTON INDIAN BAND**

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**OR**

- ☒ Copy attached of the band council resolution appointing that legal entity or person to be their representative; and
- ☒ Copy of documentation verifying that the legal entity is validly registered to do business in the Province of British Columbia (copies of the corporate seal, shareholder listings, and listings of directors/ officers).