THIS AGREEMENT made ____ day of _____, 2017

REVENUE SHARING AGREEMENT

BETWEEN:

HER MAJESTY IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
as represented by the Minister of Aboriginal Relations and Reconciliation

(the "**Province**")

AND:

PETERS FIRST NATION, as represented by Chief and Council,

(the "**Peters First Nation**")

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

RECITALS:

A. The Peters First Nation has Aboriginal Interests within its Traditional Territory.

B. The Province supports the development of clean energy and the sharing with first nations of revenue from clean energy projects, and respects the importance of government to government relationships as contemplated in the New Relationship and the principles of the Transformative Change Accord.

C. Part 6 of the *Clean Energy Act* enabled the creation of a fund known as the First Nations Clean Energy Business Fund which allows for the sharing of specified revenues with first nations.

D. The Peters First Nation is a band as defined by the *Indian Act*.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1.0 DEFINITIONS

1.1 In this Agreement:

"Agreement" means this Revenue Sharing Agreement, including its Schedules which is made pursuant to the *Clean Energy Act*;

"Aboriginal Interests" means

(a) asserted aboriginal rights including Aboriginal title; or

(b) determined aboriginal rights including aboriginal title, which are recognized and affirmed under section 35(1) of the *Constitution Act, 1982*;

"Available Revenue" means the Project Revenue multiplied by the percentage prescribed for the purposes of section 20(4)(b) of the *Clean Energy Act* (50% as of the effective date of this agreement) and the percentage prescribed for the purposes of section 20(5)(a) of the Act (75% as of the effective date of this agreement), as those percentages are amended from time to time;

"*Clean Energy Act*" means the *Clean Energy Act* [SBC 2010], c. 22, as amended from time to time;

"Designated Percentage" means 20.95 percent or such other amount of the Available Revenue specified by the Province in accordance with section 9.2;

"Financial Administration Act" means the *Financial Administration Act* [RSBC 1996] c. 138, as amended from time to time;

"Fiscal Year" means April 1 of a calendar year to March 31 of the following calendar year;

"*Indian Act*" means the *Indian Act* [RSC 1985], c. I-5, as amended from time to time;

"*Land Act*" means the *Land Act* [RSBC 1996], c. 245, as amended from time to time;

"Lifetime" in relation to the Local Project, means the period during which the Local Project continues as a power project for the purposes of section 20 of the *Clean Energy Act*;

"Local Project" means the Power Project described in Schedule 1;

"*Ministry of Lands, Parks and Housing Act*" means the *Ministry of Lands Parks and Housing Act* [RSBC 1996] c. 307, as amended from time to time;

"Overpayment" means both an amount paid mistakenly by the Province under this Agreement that is not due under section 3.1, and if the Province refunds Project Revenue under section 16 of the *Financial Administration Act*, means a percentage of the refunded amount equal to the product of multiplying the Designated Percentage, the percentage prescribed for the purposes of section 20(4)(b) of the *Clean Energy Act* and the percentage prescribed for the purposes of section 20(5)(a) of the Act;

"Prescribed Land and Water Revenues" means revenue prescribed for the purposes of section 20(4)(b) of the *Clean Energy Act*, which the Province derives from Power Projects, but is subject to any changes to the revenue prescribed for those purposes made during the Term of this Agreement;

"Power Project" means a power project as defined by section 20(1) of the *Clean Energy Act*;

"Project Revenue" means Prescribed Land and Water Revenues received by the Province in a Fiscal Year during the Term that are derived from the Local Power Project;

"Project Tenure" means a tenure for the Local Project, the revenue from which is prescribed for the purposes of section 20(4)(b) of the Clean Energy Act;

"Project Works" means works authorized by a Project Tenures or water licence for the Local Project, the revenue from which is prescribed for the purposes of section 20(4)(b)

"Sharing First Nation" means a First Nation, other than the Peters First Nation, that has asserted Aboriginal Interests on the land where the Local Project is located in whole or in part;

"Term" means the term as defined by section 8.1;

"Traditional Territory" means the traditional territory claimed by the Peters First Nation located within British Columbia as shown on the map attached at Schedule 2;

"Treasury Board" means Treasury Board as defined by the *Financial Administration Act*; and

"*Water Sustainability Regulation*" means BC Reg. 36/2016, as amended from time to time.

2.0 PURPOSE

2.1 The purpose of this Agreement is to share Project Revenue received by the Province with the Peters First Nation.

3.0 PAYMENT

3.1 The Province will, within the later of 150 days of the end of a Fiscal Year or the execution of this Agreement, and annually thereafter during the Term of this Agreement, pay to the Peters First Nation a share of Available Revenue for that year equal to the product of multiplying Available Revenue by the Designated Percentage.

3.2 If at any time the Province makes an Overpayment, the Province may deduct the Overpayment from amounts payable under section 3.1.

3.3 The Peters First Nation will establish and maintain throughout the Term a bank account in the name of the Peters First Nation at a Canadian financial institution into which direct deposits may be made by British Columbia for the purpose of receiving monies payable by British Columbia pursuant to this Agreement. The Peters First Nation will provide such address and account information respecting this account to enable British Columbia to make direct deposits.

3.4 If the Local Project is located on land that is not subject to assertions of Aboriginal Interests of a First Nation other than the Peters First Nation, then 100% of the Available Revenue will be shared with the Peters First Nation.

3.5 Any payment made by the Province to the Peters First Nation under this Agreement:

(a) does not abrogate or derogate from any legal consultation and/or accommodation obligations of the Province in respect to the Local Project, which may apply to the Local Project, and may result in further measures being implemented, where appropriate, in addition to any revenue sharing payments made under this Agreement;

(b) shall not be interpreted or relied upon as an admission or acknowledgement by the Peters First Nation of Provincial jurisdiction over, or ownership of, lands and resources within the Peters First Nation's Territory.

3.6 In each Fiscal Year that this Agreement is in effect, and subsequent to the release by the Minister of Finance of the previous Fiscal Year's public account of British Columbia, a summary document will be prepared and made available to the Peters First Nation, a recipient of the Project Revenue, for that Fiscal Year, as follows:

a) Project Revenue from tenures granted under

i) sections 11 or 14 of the *Land Act*, or

ii) section 9 of the *Ministry of Lands, Parks and Housing Act*; and

b) Project Revenue from water rentals under Parts 2 and 3 of Schedule A of the *Water Sustainability Regulation*; and

c) if there are any changes to the Prescribed Land and Water Revenue, an accounting for those changes to Project Revenue;

d) any deductions made under section 3.2 or adjustments for amounts owing that were not paid.

4.0 THE PETERS FIRST NATION'S REPRESENTATIONS AND WARRANTIES

4.1 The Peters First Nation represents and warrants to the Province, with the intent and understanding that the Province will rely thereon in entering into this Agreement, that:

(a) it has the legal power, right, capacity and authority to accept, execute and deliver this Agreement and to carry out its obligations under this Agreement;

(b) this Agreement is binding upon, and enforceable against, the Peters First Nation in accordance with its terms;

(c) the undersigned representative of the Peters First Nation is duly authorized to enter into this Agreement;

(d) it has obtained or had the opportunity to obtain the advice of their own financial, legal, tax, and other professional advisors with respect to this Agreement; and

(f) it is an band under the *Indian Act* and entering into this Agreement has been approved by a majority of the councilors of the Peters First Nation present at a duly convened meeting of the Peters First Nation's Band Council.

5.0 PROVINICAL REPRESENTATIONS AND WARRANTIES

5.1 The Province represents and warrants to the Peters First Nation that is has the legal authority to enter into this Agreement and carry out its obligations in accordance with it.

6.0 RELATIONSHIP

6.1 No partnership, joint venture, agency, fiduciary or employment relationship is created by this Agreement or by any actions of the Parties under this Agreement.

7.0 INDEMNITY

7.1 The Peters First Nation will indemnify and save harmless the Province and Provincial Officials, from and against any and all losses, claims, damages, actions, causes of action, cost and expenses that the Province may sustain, incur, suffer or be put to by reason of any act or omission of the Peters First Nation or by any servant, employee, or agent of the Peters First Nation in relation to the performance or non-performance of the Peters First Nation's obligations under this Agreement or breaches of the Warranties and Representations of the Peters First Nation under Article 4. This term will survive the expiry or termination of this Agreement.

8.0 TERM AND TERMINATION

8.1 This Agreement takes effect on April 1, 2016, and continues for the Lifetime of the Local Project unless terminated under section 8.2 or 8.3.

8.2 The Province may terminate this Agreement:

(a) immediately by written notice to the Peters First Nation, if:

(i) any representation or warranty made by the Peters First Nation in this Agreement is untrue or incorrect;

(ii) the Local Project is no longer located wholly or partially on land that is subject to Aboriginal Interests of the Peters First Nation; or

(b) on six months written notice to the Peters First Nation if,

(i) an amendment or repeal of the *First Nations Clean Energy Business Fund Regulation* or section 20 of the *Clean Energy Act* comes into force,

(ii) the Province provides notice of its intention to terminate within 90 days of coming into force of that amendment or repeal, and

(iii) the Province provides the Peters First Nation with an opportunity to consult regarding termination prior to providing notice of termination.

8.3 Peters First Nation may terminate this Agreement:

(a) immediately by written notice to the Province if any representation or warranty made by the Province in this Agreement is untrue or incorrect; or

(b) upon six months written notice.

9.0 AMENDMENTS & CHANGES TO DESIGNATED PERCENTAGE

9.1 Any amendments to this Agreement must be in writing and executed by the Parties.

9.2 Subject to section 9.4, if in the sole opinion of the Province, acting reasonably,:

(a) there is a change in either

(i) the areas covered by Project Tenures, including by means of amendment to the tenures, issuance of new Project Tenures, or expiry or termination of Project Tenures,

(ii) the location of Project Works; or

(b) a First Nation other than a Sharing First Nation that is receiving a share of revenue from the Local Project, asserts Aboriginal Interests on the land on which the Local Project is located in whole or part;

the Province may, at its sole discretion, after consultation with the Peters First Nation and six months written notice to the Peters First Nation, change the Designated Percentage.

9.3 For the purposes of section 9.2, consultation with the Peters First Nation shall refer to good faith discussions between the Peters First Nation, the Sharing First Nation(s) and the Province, regarding the factors to be considered in setting the Designated Percentage and sharing information related to those factors.

9.4 The Designated Percentage together with the percentage of Available Revenue received by other Indian Bands or aboriginal governing bodies with whom the Province has entered into a revenue sharing agreement applicable to the Local Project must equal one hundred percent.

10.0 APPROPRIATION

10.1 Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Peters First Nation pursuant to this Agreement is subject to:

(a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, in any fiscal year or part thereof when any payment of money by the

Province to the Peters First Nation falls due pursuant to this Agreement, to make that payment;

(b) the payment being in accordance with an approved Treasury Board spending plan for the First Nations Clean Energy Business Fund special account; and

(c) Treasury Board not having controlled or limited expenditure, pursuant to the *Financial Administration Act*, under any appropriation referred to in the preceding paragraphs.

11.0 DISPUTE RESOLUTION

11.1 If a dispute arises between the Peters First Nation and the Province regarding any aspect of this Agreement, the individuals identified under section 13.3 will meet as soon as is practicable to resolve the dispute.

11.2 If the Parties are unable to resolve differences under section 11.1, the issue will be raised to, for the Province, the Assistant Deputy Minister responsible for the First Nations Clean Energy Business Fund, and for the Peters First Nation, Band Council. The Assistant Deputy Minister may authorize a special designate to act in his place. The Assistant Deputy Minister or his designate and Band Council will meet as soon as is practicable to resolve the dispute.

12.0 GENERAL PROVISIONS

12.1 In this Agreement:

(a) all headings are for convenience only and do not form part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions;

(b) words in the singular include the plural and words in the plural include the singular unless the context or a specific definition otherwise requires;

(c) the use of the word "including" is to be read as not limiting the generality of the preceding term or phrase;

(d) all references to a designated "section", "subsection" or other subdivision or to a Schedule are to the designated section, subsection or subdivision of, or Schedule to, this Agreement;

(e) any reference to a corporate entity or an Indian Band includes and is also a reference to any entity that was a predecessor to, or that is a successor to, such entity or band; and

(f) any reference made to a statute includes all regulations made under that statute and any amendments or replacements for that statute or regulations made under that statute.

12.2 This Agreement shall be governed by the applicable laws of British Columbia and Canada.

12.3 This Agreement and any amendments to it, made in accordance with Article 9, constitute the entire agreement between the Parties with respect to the subject matter of the Agreement, unless otherwise agreed in writing by the Parties.

12.4 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.

12.5 If any part of this Agreement is void or unenforceable at law, it shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.

12.6 No term, condition, covenant or other provision of this Agreement and no breach by one Party of any term or condition of this Agreement may be waived unless such waiver is in writing and signed by the other Party.

12.7 Time is of the essence.

12.8 This Agreement will enure to the benefit of and be binding upon the Parties and their respective permitted assigns.

12.9 Unless otherwise agreed by the Parties, this Agreement may not be assigned, either in whole or in part, by either Party.

12.10 *Schedule 1, Clean Energy Project Description*, and *Schedule 2, Map of the Peters First Nation's Traditional Territory* is attached and forms part of this Agreement.

12.11 This Agreement may be entered into by each Party signing a separate copy of the Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile or other electronic means of transmission.

12.12 This Agreement is without prejudice to the Peters First Nation's Aboriginal Interests. Nothing in this Agreement is intended to create, define, diminish, abrogate, derogate from or extinguish the Peters First Nation's Aboriginal rights, including Aboriginal title.

12.13 This Agreement will not limit the positions that a Party may take in future negotiations or court actions.

12.14 This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding their respective jurisdictions and authorities.

12.15 This Agreement does not exclude the Peters First Nation from accessing clean energy economic opportunities and benefits, which may be available to the Peters First Nation, other than those expressly set out in this Agreement.

12.16 The Parties acknowledge and agree that the geographic extent of the Peters First Nation's claimed traditional territory and the exercise of its Aboriginal Interests thereon is not reduced

to, or limited or defined by, the area of its Traditional Territory as shown on the map attached at Schedule B.

12.17 This Agreement, and any act in connection with this Agreement, or the Province's sharing of Project Revenue for the Local Project with any Sharing First Nation or any other First Nation, is not to be used, construed, or relied on in any way as evidence, acceptance or admission by Peters First Nation of any Aboriginal Interests or asserted Traditional Territory of any Sharing First Nation or any other First Nation.

13.0 NOTICE

13.1 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. It will be effectively given:

(a) by personal delivery to the address of the Party set out in section 13.3;
(b) by pre-paid registered mail to the address of the Party set out in section 13.3; or
(c) by facsimile, to the facsimile number of the Party set out in section 13.3.

13.2 Any notice or communication given in accordance with section 13.1 will be deemed to have been given on the date it is actually received, if received by 4:00 pm. If received after 4:00 pm, it will be deemed to have been received on the next business day.

13.3 A notice or communication must be delivered, mailed or sent by facsimile to the Peters First Nation at the address below:

The Province
Attention: Michael Matsubuchi, Director, Fiscal Arrangements and Climate Change
Ministry of Aboriginal Relations and Reconciliation
PO Box 9100
Stn Prov Govt
Victoria, BC V8W 9B1
Fax Number: (250) 356-5312

The Peters First Nation
Attention: Chief Norma Webb
Peters First Nation
16870 Peters Road
Hope, BC V0X 1L2
Fax Number: 604-794-7885

13.4 The address for delivery of notice to either Party may be changed by notice as set out in section 13.3.

THIS AGREEMENT HAS BEEN EXECUTED as of the day and year first above written.

EXECUTED in the presence of:	)	**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Aboriginal Relations and Reconciliation**
_____	)	_____
As to the signature of Honourable John Rustad, Minister	)	Honourable John Rustad, Minister

EXECUTED in the presence of:	)	**Peters First Nation**
_____	)	_____
As to the signature of Chief Norma Webb Peters First Nation	)	**Chief Norma Webb**

Schedule: 1 – Clean Energy Project Description

Project Overview:

Hunter Creek Hydroelectric Project

Water License:
C132271
Land Tenure:
2408242

Project Overview:

The Hunter Creek Hydro Project is located near Hope BC and is currently under construction. The 12MW project is scheduled to reach commercial operation date in early to mid-2018 and will be selling electricity to BC Hydro under a 40 year Electricity Purchase Agreement. The proponents of the project are Connor, Clark and Lunn (CC&L) Infrastructure and WindRiver Power Corporation.

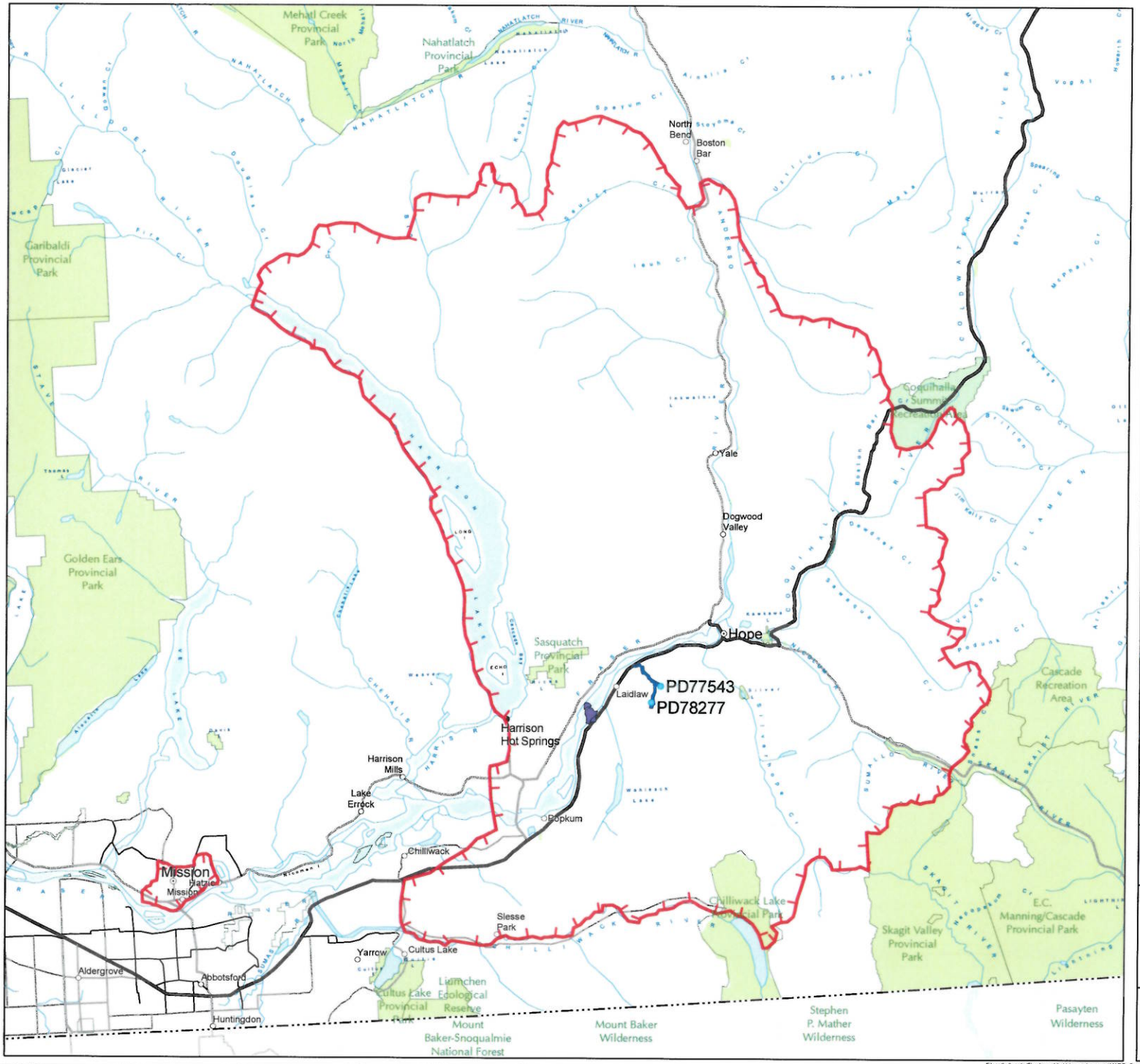
Schedule 2:
Map of Peters First Nation's Traditional Territory

Confidential
For consultation purposes only. Do not distribute.

Date: November 26, 2015

Peters First Nation Consultative Area

Hunter Creek Independent Power Project



Peters First Nation Consultative Area

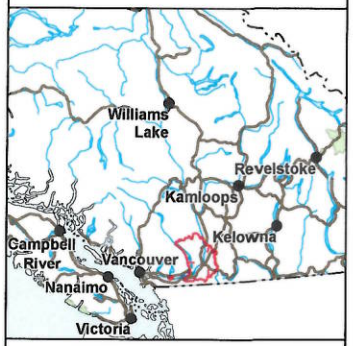
Point of Diversion

Land Tenure #2408242
Water License C132271

Peters First Nation Indian Reserve

1:300,000

0 2.5 5 7.5 10
Kilometers
Ratio scale correct at 22"x17" page size.



Produced by: GeoBC under the Canada - BC Information Sharing Protocol
Created by: Natural Resources Sector Decision Support Services, GeoBC, JY
Projection/Datum: BC Albers Equal Area Conic/NAD 83
Datestamp: November 26, 2015 15:29

BRITISH COLUMBIA
Ministry of Aboriginal Relations and Reconciliation

Filepath: \\spatialfiles.bcgov\ilmb\dss_gis\projects\MARR_General_Request\IPP_in_BC\Arcgisprojects\2015-11 Hunter Creek IPP\Hunter_Creek_Peters_IPP.mxd