

Esketemc First Nation
Forest and/or Range Agreement
(the "Agreement")

Between:
Esketemc First Nation

As represented by
Chief Dave Belleau and Council

And

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

As represented by the Minister of Forests
(the "Government of British Columbia")

(collectively the "Parties")

Whereas:

- **The Esketemc First Nation has Aboriginal Interests within their Traditional Territory;**
- **The Parties wish to enter into an interim measures agreement in relation to forest and range resource development and related economic benefits arising from this development within the Traditional Territory.**
- **The Government of British Columbia has a responsibility to participate in consultation and/or to seek workable accommodation with the *Esketemc First Nation* on forest and/or range resource development activities proposed within the *Esketemc First Nation* Traditional Territory that may lead to the potential infringement of the *Esketemc First Nation's* Aboriginal Interests.**
- ***Esketemc First Nation* has a responsibility to participate in any consultation initiated by the Government of British Columbia or the holder of an agreement under the *Forest Act* or the *Range Act***

("licensee"), in relation to forest [range] resource development activities proposed within the *Esketemc First Nation* Traditional Territory, that may lead to an infringement of *Esketemc First Nation* Aboriginal Interests.

- *Esketemc First Nation* has separate understandings with licensees to consult.
- The Parties have an interest in seeking workable interim accommodation of *Esketemc First Nation's* Aboriginal Interests where forest development activities are proposed within the *Esketemc First Nation* Traditional Territory that may lead to the potential infringement of *Esketemc First Nation's* Aboriginal Interests.
- The Government of British Columbia and the *Esketemc First Nation* wish to resolve issues relating to forest resource development where possible through negotiation as opposed to litigation.
- The *Esketemc First Nation* and the Government of British Columbia understand that while the *Esketemc First Nation* has a responsibility to participate in consultation, the *Esketemc First Nation* realizes significant costs associated with consultation.

Therefore the Parties agree as follows:

1.0 Definitions:

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

"Aboriginal interests" means asserted aboriginal rights and/or aboriginal title as recognized and affirmed under section 35 of the *Constitution Act, 1982* and pertinent and applicable legal decisions describing the nature of such recognition and affirmation.

"Administrative Decision" means a decision made by a Ministry of Forests statutory decision-maker related to forest and/or range resource development and/or forest or range tenure administration and includes but is not limited to:

- decisions that set or vary Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;
- advertising, award and issuance of new volume based tenure opportunities, such as non-replaceable forest licences;
- the consolidation or subdivision of Forest and Range Tenures;
- Animal Unit Month adjustments to range tenures;
- the replacement of forest and/or range tenures;

- the transfer or change of control of forest and/or range tenures, including any associated reductions in AAC with respect to forest tenures, and exchange of rights between or among tenure holders;
- the advertisement and the disposition of timber volumes arising from undercut decisions on a Forest Tenure;
- AAC apportionment and reallocation decisions;
- Timber Sale Licence and Timber Licence conversion to other forms of tenure and Timber Licence term extensions; and
- the reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*.

“Consultation” means those processes outlined in sections 4 and 5 of this Agreement.

“Forest Tenure” means an agreement issued under the *Forest Act*.

“Operational Plan” means a Forest Development Plan, Forest Stewardship Plan, or a Range Use Plan, as defined in provincial legislation respecting forest or range practices and includes forest or range development activities that are carried out pursuant to those plans.

“Range Tenure” means an agreement issued under the *Range Act*.

“Response Period” means a period of 60 days from initiation of the processes set out in Sections 4 and 5 of this Agreement, where the initiation date is the date on which *Esketemc First Nation* is notified of an Administrative decision or a stage in the Timber Supply Review process, or in the case of Operation Plan reviews, the date on which *Esketemc First Nation* 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.

“Traditional Territory” means the *Esketemc First Nation* asserted traditional territory as shown on bold black on the map attached in Appendix A

“Licensee” means a holder of a Forest Tenure under the *Forest Act* or a Range Tenure under the *Range Act*.

2.0 Purpose:

The purposes of this Agreement are to:

- 2.1 increase the *Esketemc First Nation's* participation in the forest sector and for the *Esketemc First Nation* to have an opportunity to

put forth meaningful concerns to the decision makers;

- 2.2 provide economic benefits to the *Esketemc First Nation* through a Forest Tenure opportunity and the sharing of revenues received by the Government of British Columbia from forest resource and range development;
- 2.3 address consultation and to provide an interim workable accommodation in respect of the economic component of *Esketemc First Nation's* Aboriginal Interests or proven aboriginal rights with regard to any infringements of those Interests or rights that result from Administrative Decisions and/or Operational Plan decisions relating to forest or range resource development within the *Esketemc First Nation's* Traditional Territory, 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 *Esketemc First Nation* Traditional Territory during the term of this Agreement, while longer term interests are addressed through other agreements or processes.

3.0 Economic Benefits to Esketemc First Nation

During the term of this Agreement, the Government of British Columbia will adopt the consultation processes set out in this Agreement and will provide the following economic benefits to *Esketemc First Nation* to address consultation and to provide an interim workable accommodation in respect of the economic component of *Esketemc First Nation's* Aboriginal Interests or proven aboriginal rights with regard to any infringements of those Interests or rights that result from Administrative Decisions and/or Operational decisions relating to forest or range resource development within the *Esketemc First Nation's* Traditional Territory.

3.1 Forest Tenure

- 3.1.1 After the execution of this Agreement by the Parties, the Minister will invite the *Esketemc First Nation* to apply for a non-replaceable forest licence (the "licence") for up to 38,263 cubic meters annually in the Williams Lake Timber Supply Area under the Forest Act.
- 3.1.2 An invitation to apply for a licence and any licence entered into as a result of the invitation to apply under this Agreement will be subject to the policies, regulations and statutes of British Columbia as amended from time to time.

3.1.3 An invitation to apply under this Agreement will contain terms and conditions that are normally included in any licences or tenures issued by the Minister or regional manager and which are authorized by law.

3.1.4 A licence entered into as a result of an 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 not be transferable or divisible except as prescribed by regulation;**
- (c) will not be replaceable, but a further licence may be issued upon expiry of the original licence at the discretion of the statutory decision-maker, provided that the terms of the original licence have been complied with by *Esketemc First Nation* and provided that sufficient timber volume is available;**
- (d) will contain other terms and conditions required by law, including the condition that the *Esketemc First Nation* must comply with this Agreement; and**
- (e) will include other terms and conditions as may be required by the regional manager**

3.1.5 If the term of the licence entered into as a result of an invitation to apply under this Agreement exceeds the term of this Agreement, then that licence may be referenced in and considered to be an economic benefit for the purposes described in Section 3.0.

3.1.6 Prior to the *Esketemc First Nation* making an application for a Forest Tenure under Section 3.1, the Ministry of Forests in consultation with *Esketemc First Nation* will identify the operating area(s) for the Licence.

3.1.7 Provided this Agreement remains in place, a subsequent Forest Tenure opportunity may be invited under *the Forest Act* upon the expiry of the Forest Tenure(s) entered into pursuant to this Agreement, as set out in Section 10.0 of this Agreement, provided that sufficient timber volume is available.

3.2 Revenue Sharing

3.2.1 During the term of this Agreement, the Government of British Columbia will pay to *Esketemc First Nation* approximately \$354,291 annually for purposes described in Section 3.0.

- 3.2.1** The funding commitment set out in section 3.2.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia. If the annual appropriations are not available, *Esketemc First Nation* would like 90 days notice.
- 3.2.2** For the purposes of determining amounts for partial years, one-fourth (i.e. 1/4) of the annual amount will be used for each fiscal quarter or part thereof that the Agreement is in effect. Where possible, the Government of British Columbia will provide 90 days notice to the *Esketemc First Nation* if the annual appropriations are not available.
- 3.2.3** Upon signing of this Agreement, the *Esketemc First Nation* 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 *Esketemc First Nation* would receive payment for that entire quarter), with subsequent payments being made at the end of each quarter.
- 3.2.4** *Esketemc First Nation* will maintain financial records and prepare financial statements in accordance with generally accepted accounting principles for each year of this Agreement.
- 3.2.5** Upon request, *Esketemc First Nation* will conduct an audit of the revenue sharing expenditures and will provide a copy of the audit to the Government of British Columbia.

3.3 Range Tenure

- 3.3.1** The Government of British Columbia *recognizes Esketemc First Nation's* interests in acquiring rights to Crown range if they become available for disposition (vacancies).
- 3.3.2** If a Range Tenure is provided pursuant to section 3.3.1 of this Agreement, it will be considered to be an economic benefit for the purposes of section 3.0 of this Agreement.

4.0 Consultation and Accommodation Respecting Operational Plans

- 4.1** The Government of British Columbia agrees to consult with *Esketemc First Nation* on Operational Plans that may potentially infringe *Esketemc First Nation's* Aboriginal Interests or proven aboriginal rights within the Traditional Territory, except for any economic component of those interests or rights provided for under Section 3.0 of this Agreement.

- 4.2 During the term of this Agreement, *Esketemc First Nation* agrees that the Government of British Columbia has fulfilled its duties to consult and seek interim workable accommodation with respect to the economic component of potential infringements of *Esketemc First Nation's* Aboriginal Interests or proven aboriginal rights in the context of Operational Plan decisions that the Government of British Columbia will make and the development activities that occur as a result of those decisions.
- 4.3 *Esketemc First Nation* agrees to fully participate, as set out in this section, in the review of all Operational Plans within the Traditional Territory provided to them by the Government of British Columbia, and by Licensees.
- 4.4 In reviewing and responding to an Operational Plan submitted to them, *Esketemc First Nation* will, within the Response Period, provide the Party that supplied the plan to them with all reasonably available information that will identify any potential impacts to their Aboriginal Interests or proven aboriginal rights that may result from the forestry development activities within the Traditional Territory, other than the economic component of those Interests or rights addressed under Section 3.0.
- 4.5 Upon receiving the response from *Esketemc First Nation* as specified in Section 4.4, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with *Esketemc First Nation* any site specific operational impacts on *Esketemc First Nation's* Aboriginal Interests or proven aboriginal rights that may occur as a result of proposed forest and/or range development activities within the Traditional Territory, other than the economic component of those Aboriginal Interests addressed in Section 3.0.
- 4.6 If no response is received from *Esketemc First Nation* within the Response Period, then the Government of British Columbia may assume that *Esketemc First Nation* does not intend to respond or participate in the consultation process in respect of the Operational Plan. The Government of British Columbia will notify *Esketemc First Nation* that a decision on the Operational Plan may proceed.
- 4.7 In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from *Esketemc First Nation*, whether received directly or through a Licensee, and will consider whether concerns identified by *Esketemc First Nation* have been addressed.

5.0 Consultation and Accommodation Respecting Administrative Decisions

- 5.1** The Government of British Columbia will provide to *Esketemc First Nation* on an annual basis a list of all proposed Administrative Decisions anticipated within the year, and either upon the request of *Esketemc First Nation* or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to *Esketemc First Nation* an updated list.
- 5.2** The Government of British Columbia will meet with *Esketemc First Nation* at mutually agreed times throughout the year to provide an opportunity for *Esketemc First Nation* to make known to representatives of the Government of British Columbia their concerns and comments relative to the effect of the Administrative Decision(s) on their Aboriginal Interests or proven aboriginal rights.
- 5.3** The Government of British Columbia will include *Esketemc First Nation* in public Timber Supply Review processes that will lead to AAC determinations made pursuant to Section 8 of the *Forest Act* for the Williams Lake, 100 Mile House and Lillooet Timber Supply Areas.
- 5.4** *Esketemc First Nation* agrees to fully participate, within the Response Period, in public Timber Supply Review processes by providing all reasonably available information about their Aboriginal Interests or proven aboriginal rights within the Traditional Territory potentially affected by AAC determinations to be made pursuant to Section 8 of the *Forest Act*.
- 5.5** If after considering the concerns and comments of *Esketemc First Nation*, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of *Esketemc First Nation's* Aboriginal Interests or proven aboriginal rights that is not adequately addressed by the economic benefits provided by the Government of British Columbia in Section 3.0, the statutory decision maker will seek to address the concerns and comments in the Administrative Decision or through the process in Section 4.0 of this Agreement.
- 5.6** The Government of British Columbia will provide a response to *Esketemc First Nation* as to how their concerns raised in Section 5.2 have been addressed.
- 5.7** *Esketemc First Nation* agrees that in consideration of the economic benefits provided by the Government of British Columbia in Section

3.0 and the consultation processes in Sections 4.0 and 5.0 of this Agreement, that the Government of British Columbia has fulfilled its duties to seek interim workable accommodation with respect to the economic component of potential infringements of *Esketemc First Nation's* Aboriginal Interests or proven aboriginal rights resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement.

- 5.8 *Esketemc First Nation* further agrees that, in consideration of Sections 5.1 to 5.6 of this Agreement, the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation and interim workable accommodation process with respect to potential infringements of their Aboriginal Interests or proven aboriginal rights resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement that may go beyond the economic component of *Esketemc First Nation's* Aboriginal Interests or proven aboriginal rights.**

6.0 Stability for Land and Resource Use

***Esketemc First Nation* will respond immediately to any discussions initiated by the Government of British Columbia and will work co-operatively to assist in resolving any issues that may arise where acts of intentional interference by *Esketemc First Nation* members (in agreeing to assist in resolving these issues, *Esketemc First Nation* states that Chief and Council do not have absolute control over their members), with provincially authorized activities related to forestry and/or range resource development including timber harvesting or other forestry economic activities occur.**

7.0 Dispute Resolution

- 7.1 If a dispute arises between the Government of British Columbia and *Esketemc First Nation* 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.**
- 7.2 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 *Esketemc First Nation*.**
- 7.3 The Parties may choose other appropriate approaches to assist in reaching resolution of the issue in dispute.**

8.0 Term

- 8.1 This Agreement will take effect on the date on which the last Party has executed it.
- 8.2 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 coming into effect of an interim agreement or an incremental agreement relating to forestry and range resource development between the Parties negotiated under the BC Treaty Process or otherwise or,
 - (c) the mutual agreement of the Parties; or
 - (d) after having exhausted options thoroughly under section 7, written notice of withdrawal to the Agreement by either party which will take effect 90 days following receipt of the notice by the other party; or
 - (e) the date on which the Government of British Columbia cancels the economic benefit(s) under this Agreement pursuant to Section 9.0.

9.0 Suspension or Cancellation of Economic Benefits by the Minister

- 9.1 Without limiting the actions that may be taken by the Minister of Forests 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 Forest and Range Tenure(s) entered into as a result of the invitation to apply under this Agreement, if the Minister or a person authorized by the Minister determines that *Esketemc First Nation* is not in substantial compliance with this Agreement.
- 9.2 Prior to taking any action referred to in Section 9.1, the Government of British Columbia will provide notice to *Esketemc First Nation* and give *Esketemc First Nation* an opportunity to respond to any alleged contravention of this Agreement that may lead *Esketemc First Nation* to not being in compliance with this Agreement.
- 9.3 If during the term of this Agreement, *Esketemc First Nation* challenges or supports a challenge to, an Administrative Decision and/or Operational Plan, by way of legal proceedings or otherwise, on the basis that the economic benefits set out in Section 3.0, and

the consultation processes set out in Sections 4.0 and 5.0 of this Agreement are not adequate or sufficient to:

- (a) substantially address *Esketemc First Nation's* concerns and to provide an interim workable accommodation in respect of any potential infringements of *Esketemc First Nation's* Aboriginal Interests or proven aboriginal rights with regard to Administrative Decisions relating to forest and/or range resource development within the Traditional Territory; or
- (b) substantially address the economic component of *Esketemc First Nation's* Aboriginal Interests or proven aboriginal rights with regard to Operational Plans relating to forest and/or range resource development within the Traditional Territory;

then, without limiting any other remedies that may be available to the Government of British Columbia, the Government of British Columbia may suspend or cancel the economic benefits set out in Section 3.0.

- 9.4 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. The Government of British Columbia agrees to pay up to the point of termination of this Agreement at a pro-rated quarterly payment.

10.0 Renewal of the Agreement

- 10.1 Prior to this Agreement terminating and no later than the mid point of the 4th year of this Agreement in accordance with Section 8.2(a), and subject to Section 10.3, if the terms and conditions of this Agreement are being met, the Government of British Columbia and *Esketemc First Nation* will seek the necessary authorities and approvals to renew this Agreement.
- 10.2 Any subsequent forestry and range agreement between the Government of British Columbia and *Esketemc First Nation* may provide for an opportunity to acquire a Forest or Range Tenure, and/or other economic benefits and other terms and conditions that are agreed to by the Parties.
- 10.3 The revenue sharing set out in this Agreement reflects an amount that the Government of British Columbia is willing to pay, subject to available appropriations, as an interim measure and *Esketemc First*

Nation has agreed to accept as an interim measure for the term of this Agreement.

11.0 Amendment of Agreement

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

12.0 Entire Agreement

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

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 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.**
- 13.2 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.**
- 13.3 The address of either Party may be changed by notice in the manner set out in this section of the Agreement.**

**British Columbia
Regional Manager
Ministry of Forests
Southern Interior Forest Region
515 Columbia Street
Kamloops, B.C. V2C 2T7
Telephone (250) 828-4131
Facsimile (250) 828-4154**

**Economic Development Director
Esketemc First Nation
PO Box 4479
Williams Lake, BC**

V2G 2V5

Telephone: (250) 440-5611

Facsimile: (250) 440-5721

14.0 Miscellaneous

- 14.1 Nothing in this Agreement shall be interpreted in a manner that requires the Government of British Columbia to act in a manner inconsistent with provincial or federal law, or that fetters the statutory discretion of any government decision-maker.**
- 14.2 This Agreement is not a treaty or a lands claims agreement within the meaning of section 25 and 35 of the *Constitution Act, 1982* and does not recognise, define, amend, affirm, deny or limit any priorities afforded to aboriginal rights, including aboriginal title, or treaty rights, other than as provided in this Agreement.**
- 14.3 Nothing in this Agreement shall be interpreted in a manner that precludes the Esketemc First Nation from seeking to prove any Aboriginal Interest in court.**
- 14.4 Subject to Section 9.3, this Agreement and any record created pursuant to it will not limit the positions that a Party may take in future negotiations or court actions.**
- 14.5 This Agreement shall not be interpreted as addressing any potential infringements other than potential infringements that may result from decisions contemplated by this Agreement during the term of this Agreement. Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement.**
- 14.6 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.**
- 14.7 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.**
- 14.8 The applicable laws of British Columbia and Canada shall govern this Agreement.**
- 14.9 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:

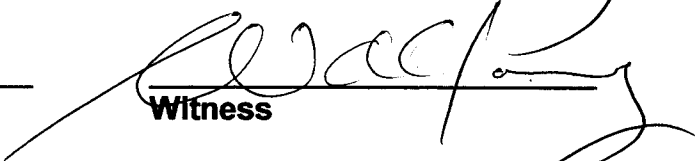
ESKETEMC FIRST NATION

Date: March 29, 2004

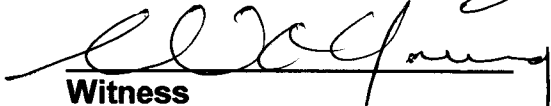

Chief Dave Belleau



Witness

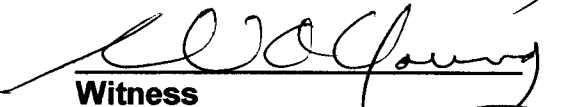

Councillor


Witness

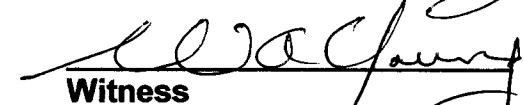

Councillor


Witness

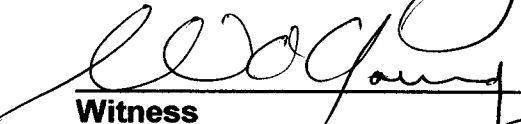

Councillor

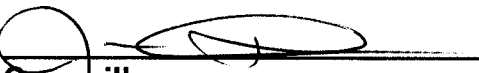

Witness

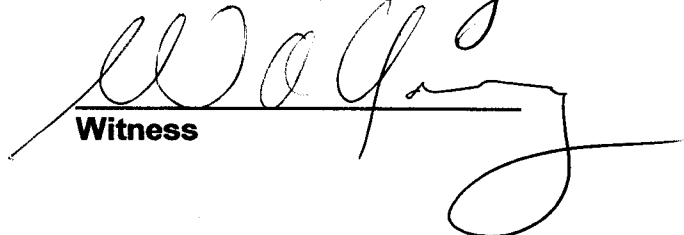

Councillor


Witness


Councillor


Witness

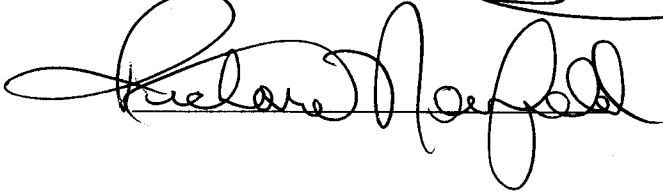

Councillor


Witness

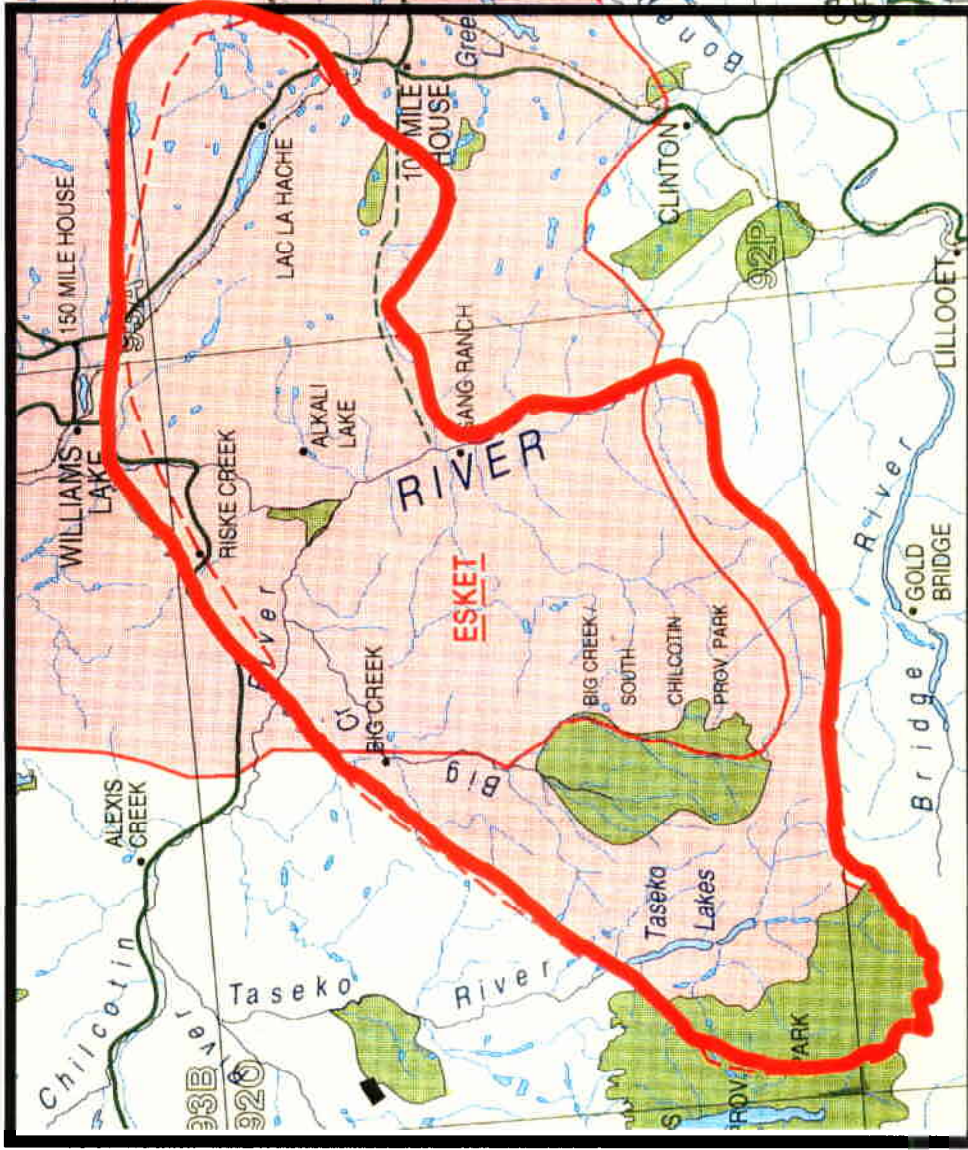
Signed on behalf of:

Government of British Columbia Date: April 14, 2004


Michael de Jong
Minister of Forests



Witness



Esketemc First Nation Traditional Territory