

First Nations Wildfires Agreement
(the "Agreement")

Between:
Spallumcheen Indian Band

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 Spallumcheen Indian Band have aboriginal interests within the interest area map attached in Appendix A.
- This agreement applies to the Spallumcheen Indian Band's asserted traditional territory of interest within the wildfire areas outlined in Appendix B.
- The Okanagan Timber Supply Area (TSA) Fire Timber Recovery Process (TRP) will manage the salvage of fire-killed timber in the Cedar Hills fire (fire number K40300), the Cambie fire (fire number K30236), the Queest fire (fire number K30607), 692 Road fire (fire number K30333), Mount English fire (fire number K30378), West Seymour fire (fire number K30464), Ledgerwood fire (fire number K30551), 54 Gorge Road fire (fire number K30592), East Perry fire (fire number K30605), Queest Mountain fire (fire number K30607), Derry Creek fire (fire number K40469), Currie Creek fire (fire number K40358) as depicted on the map attached in Appendix B.
- This agreement covers only the lands identified as part of the Okanagan TSA Fire Timber Recovery Process.

- The Government of British Columbia is responding to an economic interest expressed by the Spallumcheen Indian Band by providing access to wildfire damaged timber and silviculture for economic purposes as part of the fire TRP in the Okanagan TSA.
- The Spallumcheen Indian Band is prepared to review the Forest/Range Agreement information (i.e. Forest Revitalization Plan).

Therefore the Parties agree as follows:

1.0 Definitions:

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

- 1.1 "Aboriginal interests" means asserted but not yet proven aboriginal rights and/or aboriginal title.
- 1.2 "Forest Tenure" means an agreement issued under the *Forest Act*.
- 1.3 "Operational Plan" means a Forest Development Plan, Forest Stewardship Plan, Tree Farm Licence Management Plan and 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.

2.0 Purpose:

- 2.1 **The purposes of this Agreement are to:**
 - (a) Respond to the Spallumcheen Indian Band's economic interest for access to tenures created as part of the fire TRP in the Okanagan TSA.
 - (b) Agree to jointly create an expedited consultation process by which the Ministry of Forests will consult

with the Spallumcheen Indian Band regarding their aboriginal interests on the harvesting and rehabilitation activities within the wildfire areas in a manner that will allow for the timely removal of timber and rehabilitation of wildfire areas .

- (c) To confirm that the Spallumcheen Indian Band will participate in the development and implementation of the fire TRP for the Okanagan TSA. The Spallumcheen Indian Band's capacity to harvest and /or mill and market will be considered as a factor in this planning.

3.0 Invitation to apply for a licence(s)

- 3.1 After the execution of this agreement by the parties, the Minister or Regional Manager will invite an application for one or more non-replaceable licence(s) (the "license") under the Forest Act (either non-replaceable forest licence, or timber sale licence) for volumes specified, and not to exceed, in section 4(b), within the Okanagan TSA - in an area agreed to by the District Manager. The Spallumcheen Indian Band will copy this application to the Regional Manager of the Southern Interior Forest Region who will advise the Minister in the determination.

3.2

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. This agreement will be in accordance with Section 71 of the *Forest Practices Code of BC Act*, which provides an option to the authority to transfer silviculture liability away from the license. There is also an option for the district manager to direct award of up to \$50,000 of silviculture work on the fires to a First Nation per year.

- 3.3** An invitation to apply under this agreement will contain terms and conditions required by the Minister and the Regional Manager.
- 3.4** Where possible, tenures offered to the participating First Nations will be within their traditional territories.
- 3.5** 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 3 years, as determined by the Minister;
 - (b) will only apply to fire-damaged timber and associated fireguard timber
 - (c) will not be transferable or divisible without the consent of the Minister;
 - (d) will not be replaceable;
 - (e) will not guarantee timber rights to a particular species or grade of timber;
 - (f) will contain other terms and conditions required by law, including the condition that the Spallumcheen Indian Band must comply with this agreement;
 - (g) will include other terms and conditions as may be required by the regional manager

4.0 Requests for Wood for Economic Purposes

- (a) Upon signing this agreement LBL Logging (2001) Ltd. Agent of the Spallumcheen Indian Band will make a request for tenure to the Minister who will make a determination and may then make an invitation for tenure in accordance with the *Forest Act*;

- (b) The anticipated volume of fire salvage timber which will be eligible for invitation is outlined below by fire name:

Fire	Up to volumes (m3)
Cedar Hills (K40300)	60,000 m3
Cambie (K30236)	20,000 m3
Queest (K30607)	Volume unknown at this time
692 Road (K30333)	Volume unknown at this time
Mount English (K30378)	Volume unknown at this time
West Seymour (K30464)	Volume unknown at this time
Ledgerwood (K30551)	Volume unknown at this time
54 Gorge Road (K30592)	Volume unknown at this time
East Perry (K30605)	Volume unknown at this time
Derry Creek (K40469)	Volume unknown at this time
Currie Creek (K40469)	0

- (c) The Spallumcheen Indian Band acknowledges that the Ministry of Forests will also be awarding additional wildfire salvage tenures to other licensees (other than First Nations) as part of the fire TRP.

5.0 Dispute Resolution

5.1

In the event of a dispute arising under this agreement, the Parties will endeavour to define the dispute and resolve it within fifteen working (15) days.

5.2

If the dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable mediator to resolve the dispute within 60 days, or such period as may be otherwise agreed upon.

5.3

Nothing in Section 5 will prevent either party from resorting to legal remedies at any time to resolve disputes. However the parties agree the preference is to complete section 5.1 and section 5.2 before resorting to other remedies.

5.4

The cost of mediation will be equally shared by both parties.

6.0 Amendment

Any alteration or amendment to the terms and conditions of this Agreement must be in writing and duly executed by both parties.

7.0 Entire Agreement

This Agreement and any amendments to it constitute the entire agreement between the parties with respect to the subject matter of this agreement.

8.0 Term

This Agreement will take effect on the date that it has been executed by the Parties.

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

- (a) November 13th 2006; or
- (b) the date on which this Agreement is superceded by a broader agreement addressing the reconciliation of the Spallumcheen Indian Band's interests with forest development and/or other Crown authorized land or resource activity.

9.0 Suspension or Cancellation of Licence

Without limiting the actions that may be taken by the Minister or by the Government of British Columbia, and in accordance with Sections 76 and 77 of the Forest Act, the Regional Manager or District Manager may suspend or cancel the licence entered into as a result of the invitation to apply under this agreement if it is determined that the Spallumcheen Indian Band is not in compliance with this Agreement or if this Agreement is terminated under section 8.0. The Minister will provide the Spallumcheen Indian Band 30 days prior written notice of the intent to cancel. The notice will include a description of the perceived breach and a proposed remedy.

10.0 Notice

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 set out in this paragraph of the agreement.

British Columbia

Deputy Minister
Minister of Forests
P.O. Box 9525 STN PROV GOVT
Victoria B.C. V8W 9C3
Facsimile (250) 387-7065

Spallumcheen Indian Band

Chief Gloria Morgan
P.O. Box 460
Enderby B.C.
V0E 1V0
Facsimile: (250) 838-2131

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.

11.0 Counterpart

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.

12.0 Miscellaneous

13 November 2003

- 12.1 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.
- 12.2 This Agreement is not a treaty or a land claim agreement within the meaning of section 25 and 35 of the *Constitution Act*, 1982 and does not recognise, affirm, or deny the existence of aboriginal rights including aboriginal title, or treaty rights.
- 12.3 This Agreement will not limit the positions that the parties may take in future negotiations or court actions, other than with respect to the matters addressed in this Agreement.
- 12.4 Any reference to a statute in this agreement includes all regulations made under that statute and any amendments or replacement of that statute.
- 12.5 There will be no presumption that any ambiguity in any of the terms of this agreement should be interpreted in favour of any party.
- 12.6 This agreement shall be governed by the applicable laws of British Columbia and Canada.

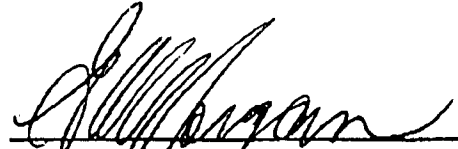
13.0 WITHOUT PREJUDICE

Nothing in the agreement is intended to define, create, or cause the extinguishment of any title or rights of the Spallumcheen Indian Band.

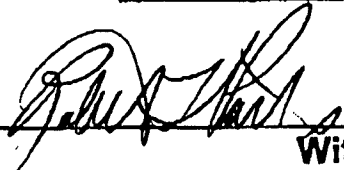
This agreement is dated for reference November 13, 2003

Signed on behalf of the Spallumcheen Indian Band


Date: November 13, 2003



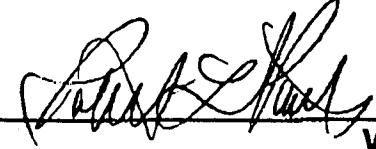
Chief Gloria Morgan



Witness



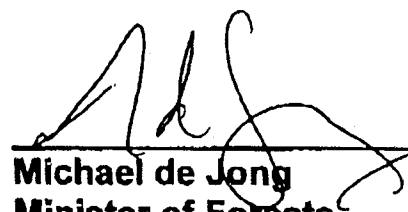
Councillor Daniel Joe



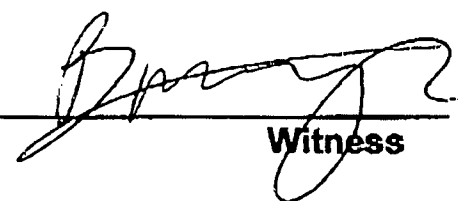
Witness

Signed on behalf of the Government of British Columbia

Date: December 2, 2003



Michael de Jong
Minister of Forests



Witness

APPENDIX "A"

**THE ASSERTED Traditional Territory OF THE
Spallumcheen Indian Band**

APPENDIX "B"
Okanagan Timber Supply Area (TSA)
Fire Timber Recovery Plan (TRP)
Wildfire Areas

13 November 2003

12

First Nations Wildfires Amendment Agreement
("Amendment Agreement")

THIS AMENDMENT AGREEMENT made the 17 day of FEBRUARY, 2004.

BETWEEN:

Her Majesty the Queen in Right of the Province of British Columbia
As represented by the Minister of Forests
(the "Government of British Columbia")

AND:

Spallumcheen Indian Band

WHEREAS:

- A. The Parties signed a "First Nations Wildfires Agreement" (the "Agreement") on November 13, 2003.
- B. The Agreement allows the parties to amend the Agreement as per section 6.
- C. The Parties want to amend section 4.0(b) of the Agreement.

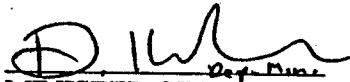
NOWHEREFORE, the Parties agree as follows:

- 1.0 Section 4.0(b) of the Agreement is amended to read:
 - (a) the volume associated with the Currie Creek fire (K40469) is 15,000 m³.
- 2.0 All other provisions remain in force as per the Agreement.
- 3.0 LBL Logging (2001) Ltd., as legal representative of Spallumcheen Indian Band, is authorized to apply to the Ministry of Forests Regional Manager, Southern Interior Forest Region (regional manager), to amend non-replaceable forest licence A73238, consistent with the necessary terms and conditions, specified by the regional manager.

IN WITNESS whereof Spallumcheen Indian Band and Government of British Columbia have executed this Amendment Agreement on the 17 day of FEBRUARY, 2004.

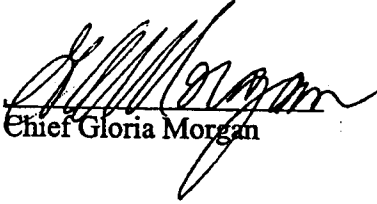
SIGNED:



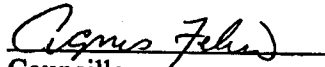


MINISTER OF FORESTS
Her Majesty the Queen in the right
of the Province of British Columbia


Witness


Chief Gloria Morgan


Witness


Councillor


Witness



Attachment

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