

**Nicola Watershed Pilot
Memorandum of Understanding
(the "MOU")**

BETWEEN:

The Upper Nicola Band of the Okanagan (Syilx) Nation and the Lower Nicola, Coldwater, Nooaitch and Shackan Bands of the Nlaka'pamux Nation, (collectively the "**Nicola Bands**") as represented by their Chiefs and Councils ("**Nicola Chiefs**").

AND:

Her Majesty the Queen in right of the Province of British Columbia (the "**Province**"), as represented by the Minister of Indigenous Relations and Reconciliation.

(Each "the Party" and collectively "the Parties")

PREAMBLE:

- A. Whereas the Nlaka'pamux and Syilx peoples have never ceded or surrendered their Aboriginal rights and title within their traditional territories, as affirmed by their Nlaka'pamux and Syilx laws and customs and dictated through their oral histories;
- B. Whereas both Parties are committed to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples;

- C. Whereas the Nlaka'pamux and Syilx peoples have inherent rights to self-government and self-determination;
- D. Whereas the Nicola Chiefs are the elected representatives of the Nicola Bands of Nlaka'pamux and Syilx peoples of the Nicola Valley;
- E. Whereas the Aboriginal title and rights of the Nlaka'pamux and Syilx peoples are protected through the *Constitution Act*, 1982, section 35 (1) which states, "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed";
- F. The Province has an ongoing duty to consult with the Nicola Bands in a manner consistent with the honour of the Crown and where appropriate, to accommodate the Nlaka'pamux and Syilx peoples and when contemplating conduct that could adversely impact their Aboriginal title or rights; UNDRIP also addresses the question of consultation and consent; and
- G. The Parties wish to work together in a government to government partnership to develop and pilot a governance structure to sustainably manage water resources within the Nicola Watershed.

Therefore the Parties' mutual intentions are as follows:

1.0 VISION

1.1 Recognizing the importance and interconnection of water to the health of human communities, ecosystems and the economy, the Province and the Nicola Chiefs will work in partnership, and through engagement of stakeholders, to sustainably govern water resources in the Nicola Watershed using collaboration, innovation, and creativity for the benefit of future generations.

1.2 In doing so, the Parties acknowledge the distinct perspectives each brings to the partnership, arising from their respective legal traditions and governance systems, including as follows:

Nlaka’pamux and Syilx peoples of the Nicola Valley

The relationship and responsibility of the Nlaka’pamux and Syilx peoples to lands, territories and water is the fundamental physical, cultural, and spiritual basis for our existence. Our peoples recognize water as a sacred entity and relative that connects all life.

We thus have a duty and responsibility to ensure that the water can maintain all of its relationships, known and unknown, by using and stewarding the water according to Nlaka’pamux and Syilx law as dictated through our oral histories and creation stories. These stories are embedded in our culture and language, and play a vital role in teachings about Nlaka’pamux and Syilx laws, customs, values, governance structures and principles that, together, define and inform Nlaka’pamux and Syilx rights and responsibilities to the land and to our culture.

Our laws include Nlaka’pamux and Syilx principles regarding the relationship of humans to the non-human world, procedural requirements, and substantive legal rights and responsibilities.

Province of British Columbia

The *Water Sustainability Act* is British Columbia’s principal law for protecting, managing and using water efficiently throughout the province. Given the pressures of a growing population, a changing climate and expanding development, we must take steps to ensure our supply of fresh, clean water is sustainable – not just to meet our needs today, but for generations to come.

The *Water Sustainability Act* was brought into effect on February 29, 2016 to help ensure that British Columbia’s water stays healthy and secure for future generations. It legislatively enables the development of unique, area-based approaches to managing watersheds, expanding the potential for new leadership and approaches to watershed governance in BC. Key provisions in the act focus on protecting environmental flows; enabling objective setting to protect water quality, water quantity and aquatic ecosystems; planning at the watershed level; and managing during water shortage.

Just as water connects all life, Nlaka'pamux and Syilx rights and responsibilities extend to all aspects of our territories and peoples. New water collaborative governance approaches in the Nicola Valley are intended by the Nicola Chiefs to be a first step toward broader recognition of Nlaka'pamux and Syilx jurisdiction and legal authority.

The *Water Sustainability Act* is intended to work in concert with other provincial and federal statutes, including natural resource and local government statutes, to help ensure the effective management of watersheds in the province.

1.3 The Parties' shared vision of collaborative water governance is one that embodies a government-to-government relationship between them, supports the implementation of UNDRIP, and draws on the strengths of their respective laws and governance systems and respects both Indigenous knowledge and best available science in planning and decision-making about water.

2.0 PRINCIPLES

2.1 In seeking to achieve the goals and objectives expressed in the MOU, the Parties agree to be guided by the following principles:

- a) The Parties will act in an open, good faith and transparent manner;
- b) The Parties are committed to a respectful relationship that is focused on collaboration and negotiation as the preferable path to reconciliation;
- c) The Parties will apply a joint solution-building approach that is cooperative, collaborative and strive for consensus-based decisions;

- d) The Parties will to prioritize the goals and objectives expressed in the MOU and dedicate time, expertise, key decision makers and technical support to achieve them; and
- e) The Parties will explore decision-making processes and water sustainability measures that are consistent with the Parties' shared vision.

3.0 GOALS AND OBJECTIVES

3.1 The goal of this MOU is to establish a government to government partnership to develop and recommend a governance approach to sustainably manage water resources within the Nicola Watershed, informed by Nlaka'pamux and Syilx law, and the relevant legislative framework, including the *Water Sustainability Act*. Legislative tools under the *Water Sustainability Act* that may inform the development and recommendation of a governance approach for the Nicola Watershed include, but are not limited to:

- a. Regulation under s. 126 of the *Water Sustainability Act* to recognizing the decision-making authority of a governance body developed through this partnership in relation to specified powers and duties;
- b. The development of a comprehensive Water Sustainability Plan under the *Water Sustainability Act* for the Nicola Watershed; and
- c. Establishment of mutually agreed-to water objectives for the Nicola Watershed under s. 43 of the *Water Sustainability Act*, including factors and criteria for evaluating the impacts of a land use or resource use proposal on objectives, and measures to address impacts of proposals on the objectives.

3.2 The Parties wish to establish a steering committee to inform the development and recommendation of a governance structure for the Nicola Watershed. The Parties, through the steering committee as appropriate, may:

- a. identify issues and develop solutions that address specific water management concerns in the Nicola Watershed;
- b. develop a work plan, including timelines, for the development of relevant elements including, but not limited to:
 - i. Indigenous law and knowledge research and analysis by the Nicola Bands to inform their participation in the government to government partnership and the steering committee, and
 - ii. processes for engagement of Nlaka'pamux and Syilx communities and individuals, the public and stakeholders;
- c. identify the gaps, challenges and capacity development requirements with respect to the management water sources for all users;
- d. establish a process for internal and external communications;
- e. identify and recommend the implementation of appropriate *Water Sustainability Act* and other legislative measures, informed by Nlaka'pamux and Syilx laws for managing water resources;
- f. develop recommendations for new provincial policy, legislation and regulations and changes as it relates to the management of water resources;
- g. establish a process for the use of technical committees or experts, and provision for joint development of their terms of reference; and
- h. oversee and provide guidance to technical working groups.

3.3 The steering committee will consist of representatives designated by Nicola Chiefs and representatives designated by the Province. Third party members of the steering committee will be added with the consent of both Parties.

4.0 FUNDING

4.1 The Parties recognize that the Nicola Chiefs will require funding to fulfill their obligations under this MOU and that their participation is contingent on the adequacy of available funding.

4.2 The Parties will seek funding to support and implement the strategies developed under this MOU, including by agreement, funding to support the continuation of any governance structures developed under this MOU.

5.0 GENERAL PROVISIONS

5.1 This MOU:

- a) Does not constitute a treaty or land claim agreement within the meaning of section 25 or section 35 of the *Constitution Act, 1982*;
- b) Does not create, define, limit, amend, abrogate, or derogate from the Aboriginal title or rights or other rights or interests of the Nlaka'pamux and Syilx peoples or the Nicola Bands;
- c) Does not limit the Parties' participation in other discussions, negotiations or settlements;
- d) Does not interfere with, or fetter, the exercise of any authority of either Party;
- e) May not be construed as consultation or consent for any provincial statutory decision beyond the scope of this MOU;

- f) May be amended in writing by mutual agreement of the Parties; and
- g) May be executed in two or more counterparts, each of which will be deemed to be an original and all of which will constitute one MOU.

6.0 TERM

6.1 The MOU will take effect on the last date it is signed by all of the Parties.

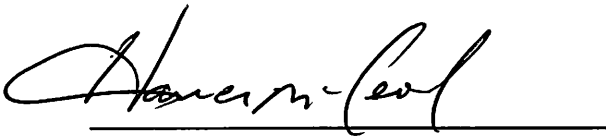
6.2 The initial term of the MOU is two years. The Parties may extend the term of the MOU in writing no less than 60 days before the end of the initial term.

6.3 The Parties may terminate the MOU with 30 days' notice where either Party believes the goals and objectives are not being met in a satisfactory matter.

6.4 Prior to exercising their right to terminate the MOU, the Parties will make good faith efforts to resolve any concern or dispute and may develop a dispute resolution procedure, by agreement, for this purpose.

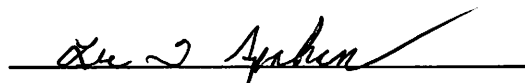
SIGNED BY THE PARTIES:

Nicola Bands



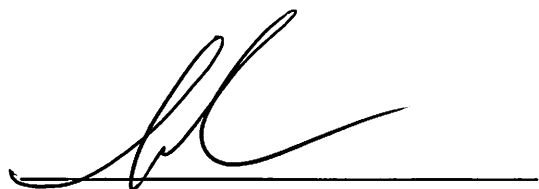
Chief Harvey McLeod, Upper Nicola Band

Signed this 23 day of March, 2018



Chief Lee Spahan, Coldwater Indian Band

Signed this 23 day of March, 2018



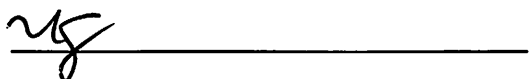
Signed this 23 day of March, 2018

Chief Aaron Sumexheltza, Lower Nicola Indian Band



Signed this 23 day of March 2018

Chief Jordan Joe, Shackan Indian Band



Signed this 23 day of March, 2018

Chief Marcel Shackelly, Nooaitch Indian Band

**The Minister of Indigenous Relations and Reconciliation, on behalf of the
Province of British Columbia**



Signed this 23 day of March 2018

Honourable Scott Fraser, Minister