

THIS AGREEMENT made *2nd* day of *September*, 2019

REVENUE SHARING AGREEMENT

BETWEEN:

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

(the "Province")

AND:

WEST MOBERLY FIRST NATIONS, as represented by Chief and Council

(the "West Moberly First Nations")

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

RECITALS:

- A. The West Moberly First Nations is a Treaty 8 First Nation that has and asserts Section 35(1) Rights within the Project Location;
- B. The Province supports the development of clean energy and the sharing with first nations of revenue from clean energy projects, and is renewing its relationship with Indigenous peoples in BC, and affirms its desire to achieve government-to-government relationships based on respect and reconciliation. To assist in guiding its relationship with Indigenous peoples, the Province has released 10 principles to Guide the Province's Relationship with Indigenous Peoples as a starting point for dialogue and to help inform upcoming and ongoing reconciliation initiatives.
- 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 land revenues with First Nations.
- D. The West Moberly First Nations 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*;

“Available Revenue” means the Project Revenue multiplied by the percentage prescribed for the purposes of section 20(5)(a) of the *Clean Energy Act* as those percentages are amended from time to time;

“*Clean Energy Act*” means the *Clean Energy Act*, S.B.C. 2010, c. 22, as amended from time to time;

“Council” means the duly elected council of the West Moberly First Nations;

“Designated Percentage” means 16.19 percent or such other amount of the Available Revenue specified by the Province in accordance with section 9.2;

“*Financial Administration Act*” mean the *Financial Administration Act*, R.S.B.C. 1996, c. 138, as amended from time to time;

“*First Nations Clean Energy Business Fund Regulation*” means the *First Nations Clean Energy Business Fund Regulation*, B.C. Regulation 377/2010, 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*, R.S.C. 1985, c. I-5, as amended from time to time;

“*Land Act*” means the *Land Act*, R.S.B.C. 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*, R.S.B.C. 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 *Clean Energy 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, as amended from time to time;

“Project Location” means the location of the Local Project to which this Agreement applies to as shown on the map attached as Schedule 2;

“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 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 Project Tenures for the Local Project, the revenue from which is prescribed for the purposes of section 20(4)(b);

“Section 35(1) Rights” means asserted and proven rights of a First Nation, as recognized and affirmed under section 35(1) of the *Constitution Act, 1982*;

“Sharing First Nation” means a First Nation that has exercised or exercises Section 35(1) Rights over or whose traditional territory includes the Project Location, and that has entered a Revenue Sharing Agreement through which it is receiving a portion of Available Revenues for the Local Project;

“Term” means the term as defined by section 8.1;

“Treasury Board” means Treasury Board as defined by the *Financial Administration Act*;

“Treaty Rights” means the rights held by a First Nation under Treaty 8;

“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 West Moberly First Nations.

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

3.4 This Agreement and any payment made by the Province to the West Moberly First Nations under this Agreement shall not be interpreted or relied upon as an admission of acknowledgement by the West Moberly First Nations of Provincial jurisdiction over, or ownership of, lands and resources within the Project Location.

3.5 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 the Province, a summary document will be prepared and made available to the West Moberly First Nations, a recipient of the Project Revenue, for that Fiscal Year, with such information and detail as is required to verify the accuracy of the amounts paid or payable under this Agreement, which includes 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) if there are any changes to the Prescribed Land and Water Revenues, an accounting for those changes to Project Revenue; and
- c) any deductions made under section 3.2 or adjustments for amounts owing that were not paid.

4.0 THE WEST MOBERLY FIRST NATIONS' REPRESENTATIONS AND WARRANTIES

4.1 The West Moberly First Nations 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 West Moberly First Nations in accordance with its terms;
- (c) the undersigned representative of the West Moberly First Nations is duly authorized to enter into this Agreement;
- (d) it has obtained or had the opportunity to obtain the advice of its own financial, legal, tax, and other professional advisors with respect to this Agreement; and
- (e) it is an Indian Band under the *Indian Act* and entering into this Agreement has been approved by a quorum of the Council of the West Moberly First Nations present at a duly convened Council meeting of the West Moberly First Nations.

5.0 PROVINCIAL REPRESENTATIONS AND WARRANTIES

- 5.1 The Province represents and warrants to the West Moberly First Nations, with the understanding that West Moberly First Nations 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 Province in accordance with its terms; and
 - (c) the undersigned representative of the Province is duly authorized to enter into this Agreement.

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 West Moberly First Nations 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 West Moberly First Nations or by any servant, employee, or agent of the West Moberly First Nations in relation to breaches of the Warranties and Representations of the West Moberly First Nations 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, 2013, and continues for the Lifetime of the Local Project unless terminated under section 8.2.
- 8.2 The Province may terminate this Agreement:
- (a) immediately by written notice to the West Moberly First Nations, if:
 - (i) any representation or warranty made by the West Moberly First Nations in this Agreement is untrue or incorrect; or
 - (ii) the Local Project is no longer located wholly or partially on land that is subject to Section 35(1) Rights of the West Moberly First Nations; or
 - (b) on six months written notice to the West Moberly First Nations 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 West Moberly First Nations with an opportunity to consult regarding termination prior to providing notice of termination.
- 8.3 West Moberly 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 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;
 - (b) a First Nation, other than a Sharing First Nation, exercises or has exercised Section 35(1) Rights at or near the Project Location and wishes to become a Sharing First Nation; or,
 - (c) the traditional territory of a Sharing First Nation, other than West Moberly First Nations, does not, or no longer includes, land on which the Local Project is located, in whole or in part.
 - (d) there is a change in the distance of the Local Project to the nearest reserve lands of a Sharing First Nation; or
 - (e) there has been a significant change in the membership size of one or more Sharing First Nations in relation to that of one or more other Sharing First Nations
- the Province may, at its sole discretion after consultation with the appropriate Sharing First Nations and six months' written notice to the West Moberly First Nations, change the Designated Percentage.

- 9.3 For the purposes of section 9.2, consultation shall refer to good faith discussions between the Province and West Moberly First Nations, other Sharing First Nations, and, where applicable, the

First Nation(s) referred to in section 9.2(b), regarding the factors to be considered in setting the Designated Percentage.

- 9.4 The Designated Percentage together with the percentage of Available Revenue received by the other Sharing First Nations with whom the Province has entered into a revenue sharing agreement applicable to the Local Project must equal one hundred percent of Available Revenue.

10.0 APPROPRIATION

- 10.1 Notwithstanding any other provision of this Agreement, the payment of money by the Province to the West Moberly First Nations 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 West Moberly First Nations 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 paragraph.

11.0 DISPUTE RESOLUTION

- 11.1 If a dispute arises between the West Moberly First Nations and the Province regarding any aspect of this Agreement, the Director of Operations or a Senior Manager of the West Moberly First Nation and the Director of Fiscal Arrangements and Climate Action 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 West Moberly First Nations, the Chief of West Moberly First Nations. The Assistant Deputy Minister and the Chief 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 section 9.1, 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 Location of the Project* are attached and form 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 West Moberly First Nations' Section 35(1) Rights. For greater certainty:

- (a) Nothing in this Agreement is intended to create, define, diminish, abrogate or extinguish the West Moberly First Nations' Section 35(1) Rights or Treaty Rights; and
- (b) Any payments under this Agreement are not intended to be accommodations or compensation for any impacts to West Moberly First Nations' Section 35(1) Rights or Treaty Rights, nor do they offset or derogate from any obligation the Crown may have to consult, accommodate, or to avoid or justify any infringement of any asserted or established Section 35(1) Rights or Treaty Rights of West Moberly First Nations.

12.13 Subject to section 12.12, 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 West Moberly First Nations from accessing clean energy economic opportunities and benefits, which may be available to the West Moberly First Nations, other than those expressly set out in 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. 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 Parties at the address below:

The Province

Attention: Director, Fiscal Arrangements and Climate Action
Ministry of Indigenous Relations and Reconciliation
PO Box 9100
Stn Prov Govt
Victoria, BC V8W 9B1
Fax Number: (250) 356-5312

The West Moberly First Nations
Attention: Chief Roland Willson
West Moberly First Nations
Box 90
Moberly Lake, BC V0C 1X0
Fax Number: (250) 788-9792

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.

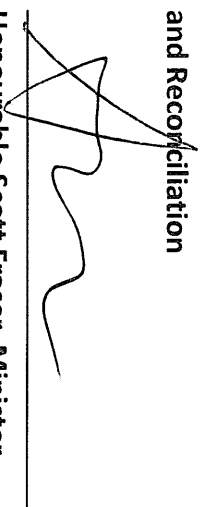
EXECUTED in the presence of:

)
) HER MAJESTY THE QUEEN IN RIGHT OF
) THE PROVINCE OF BRITISH COLUMBIA, as
) represented by the Minister of
) Indigenous Relations
) and Reconciliation
)
)
)

As to the signature of Honourable Scott
Fraser, Minister



Honourable Scott Fraser, Minister



EXECUTED in the presence of:

)
) West Moberly First Nations
)
)
)
)
)
)

As to the signature of
Chief Roland Willson
West Moberly First Nations



Chief Roland Willson



Schedule: 1 – Clean Energy Project Description

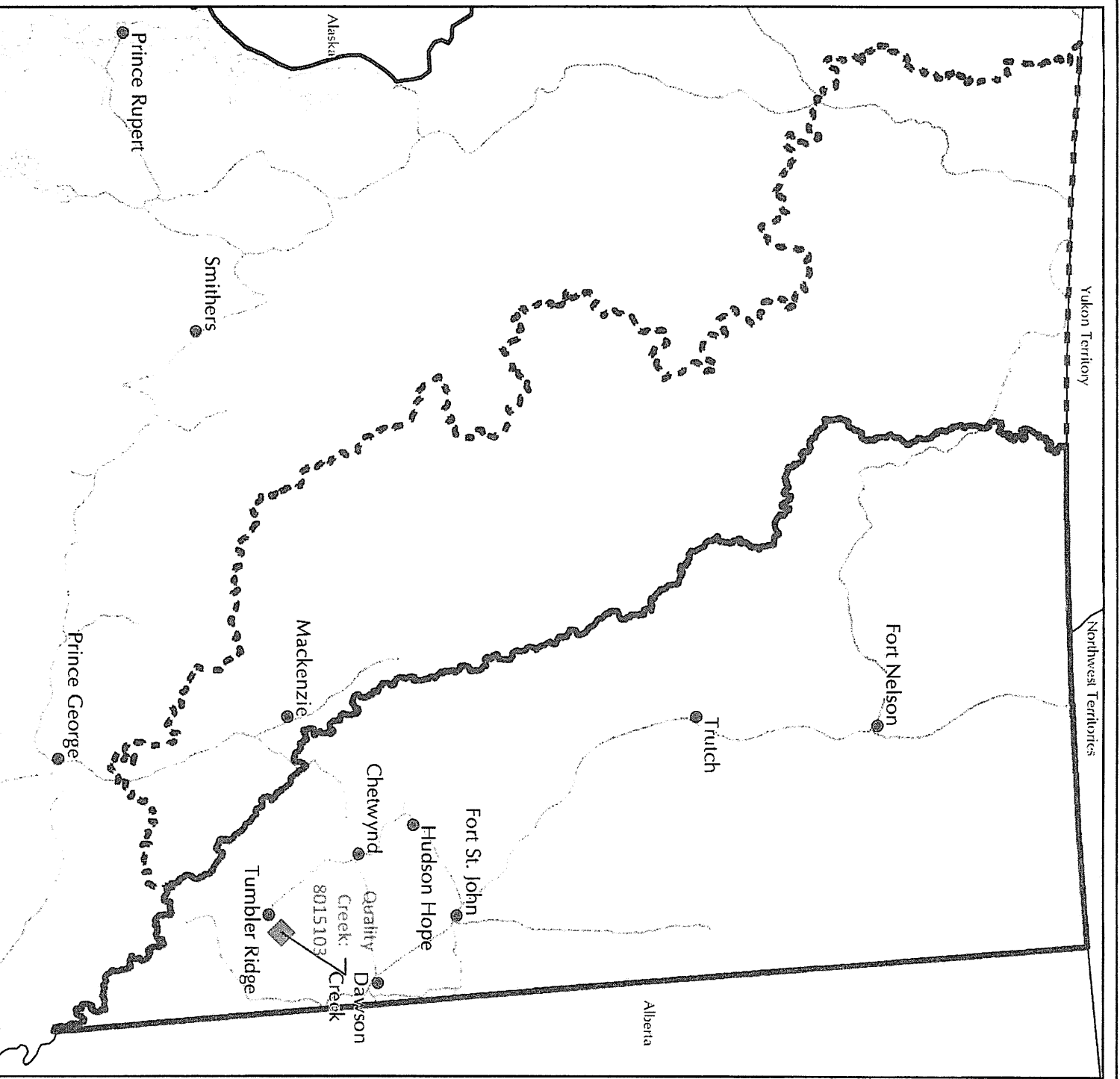
Quality Creek Wind Power Project

Land Tenure:

8015103

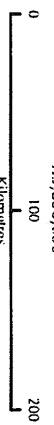
Project Overview:

The Quality Creek Wind Project is located near Tumbler Ridge B.C. and has an anticipated power capacity of 142 megawatts. The project will include 79 1.8 megawatt turbines and produce enough power for approximately 40,000 homes. The developer for the project is Capital Power Holdings Inc.



Schedule 2
Clean Energy Project
Quality Creek Wind Power Project
8015103

- ◆ Renewable Energy Wind Project
- ▭ Treaty 8 boundary as recognized by BC prior to September 2017
- ▬ Treaty 8 western boundary as recognized by BC following the September 2017 BSCS declaration (currently under appeal)



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