

TE'MEXW TREATY ASSOCIATION TRIPARTITE NEGOTIATIONS
AGREEMENT-IN-PRINCIPLE
WATER CHAPTER
MAY 2010

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CHAPTER 13 – WATER

DEFINITIONS

“Available Flow” means the volume of flow of water determined by British Columbia to be above that required:

- a) to ensure conservation of Fish and Stream habitats;
- b) to continue navigability; and
- c) under water licences issued before _____ (date) and water licences issued under applications made before _____ (date);

and taking into account any applicable requirement under Federal Law and Provincial Law.

“Groundwater” means water below the surface of the ground.

“Stream” means a natural watercourse or source of water supply, whether usually containing water or not, and a lake, river, creek, spring, ravine, swamp and gulch but does not include Groundwater.

“Te'mexw Member First Nation Water Reservation” means any water reservation established pursuant to Chapter 13, paragraph 6.

GENERAL

- 1. Nothing in the Final Agreement will be construed to confer any proprietary rights respecting water.
- 2. Subject to the provisions of the Final Agreement, storage, diversion, extraction or use of water will be in accordance with Federal and Provincial Law and Te'mexw Member First Nation Law made pursuant to paragraphs 23 to 26.
- 3. The Final Agreement will not alter Federal or Provincial Laws in respect of proprietary interests in water.

TE'MEXW MEMBER FIRST NATION WATER RESERVATION

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4. Subject to there being sufficient Available Flows, the Final Agreement will provide the Te'mexw Member First Nations with water reservations for all purposes under the *Water Act*, including domestic, agricultural, and industrial uses of water, but excluding hydro power purposes, on Treaty Settlement Lands.
5. After the Streams that are to be subject to the water reserve are identified, British Columbia will recommend the establishment of a water reserve under the *Water Act* in favour of the Te'mexw Member First Nations to achieve the purpose of paragraph 6.
6. On the Effective Date, British Columbia will establish a Te'mexw Member First Nation Water Reservation under the *Water Act* that specifies a volume of unrecorded water, the Streams that are subject to the water reserves, and the extent to which the water reserve applies to Streams.
7. The Te'mexw Member First Nation Water Reservation will have priority over all water licences on that Stream other than existing water licences on that Stream, and water licences applied for on that Stream prior to a date that will be agreed to by the Parties.

WATER LICENSES APPLIED AGAINST THE TE'MEXW MEMBER
FIRST NATION WATER RESERVATION

8. Any person seeking a water licence for volumes of water to be applied against the Te'mexw Member First Nation Water Reservation, must gain consent from the Te'mexw Member First Nation Government before submitting that application to British Columbia.
9. If any person applies for a water licence to be applied against the Te'mexw Member First Nation Water Reservation and:
 - a) the Te'mexw Member First Nation Government has consented to the application;
 - b) the application conforms to provincial regulatory requirements, including safety standards;

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- c) there is sufficient unrecorded volume of flow in the Te'mexw Member First Nation Water Reservation;
- d) where required, the application will include provision for storage where the Available Flow during periods of low flow is insufficient to meet proposed demand, and;
- e) the application contains terms and conditions that will ensure that the total volume of water extracted in a month does not exceed the percentage of Available Flow available in that month,

British Columbia will approve the application and issue the water licence.

- 10. A water licence issued to a Te'mexw Member First Nation Government, a Te'mexw Member First Nation Citizen, or other person designated by the Te'mexw Member First Nation Government for use on Treaty Settlement Lands under paragraph 9 will not be subject to any rentals, fees, or other charges by British Columbia.
- 11. For greater certainty, a person may apply for water licences under paragraph 9 for use of water off of Treaty Settlement Lands.
- 12. The volume approved in a water licence issued under paragraph 9 will be deducted from the unrecorded volume of flow in the Te'mexw Member First Nation Water Reservation.
- 13. If a water licence issued from the water reservation referred to in paragraph 9 is cancelled, expires or otherwise terminated, the volume of flow in that water licence will be added back to the unrecorded volume of flow in the Te'mexw Member First Nation Water Reservation.
- 14. If a person other than a Te'mexw Member First Nation or Te'mexw Member First Nation Citizen has a water license and reasonably requires access across, or an interest in, that Te'mexw Members First Nation's

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- Treaty Settlement Lands for the construction, maintenance, improvement, or operation of works authorized under that license, that Te'mexw Member First Nation may not unreasonably withhold consent to, and will take reasonable steps to ensure, that access or the granting of that interest, if the license holder pays fair compensation to the owner of the estate or interest affected and there is no other reasonable means of carrying out the work in question.
15. British Columbia will Consult with a Te'mexw Member First Nation prior to granting any water licence after the Effective Date where the applicant may exercise powers under paragraph 14.
 16. British Columbia or the Te'mexw Member First Nation Government may refer a dispute arising under paragraph 14 to be finally determined by arbitration under the Dispute Resolution Chapter.
 17. For greater certainty, sections 27, 28, 29 and 30 of the Water Act respecting a licensee's right to expropriate land do not apply on Treaty Settlement Lands.
 18. If a person has a water licence approved under paragraph 9 and reasonably requires access across, or an interest in, provincial Crown land for the construction, maintenance, improvement or operation of work authorized under the licence, British Columbia will grant the access or interest on reasonable terms.

GROUNDWATER

19. If British Columbia brings into force Provincial Law regulating the volume of Groundwater under Treaty Settlement Lands which may be extracted and used, British Columbia will, if Groundwater is reasonably available, negotiate and attempt to reach agreement with the Te'mexw Member First Nation on the volume of Groundwater which may be extracted and used for domestic, agricultural, waterworks, irrigation, and industrial purposes or other purposes as agreed to by British Columbia and the relevant Te'mexw Member First Nation on Treaty Settlement Lands for as long as such Provincial Laws are in effect.
20. For the purposes of paragraph 19, British Columbia and the Te'mexw

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Member First Nation will:

- a) determine the volume of flow of Groundwater which can reasonably be withdrawn from the Groundwater aquifer under consideration while maintaining the sustainability and quality of the Groundwater aquifer;
- b) determine the existing and reasonable future needs for Groundwater of the

Te'mexw Member First Nation on Treaty Settlement Lands, as well as the existing and future needs of other users in the area, and take into account any applicable requirement under Federal Law and Provincial Law.

21. If British Columbia and the Te'mexw Member First Nation fail to agree on the volume of Groundwater which may be extracted and used by the Te'mexw Member First Nation in negotiations under paragraphs 19 and 20, British Columbia or the Te'mexw Member First Nation may refer the matter for final determination by an arbitrator in accordance with the Dispute Resolution chapter.
22. Access to extract Groundwater on Treaty Settlement Lands will require the consent of the Te'mexw Member First Nation.

TE'MEXW MEMBER FIRST NATION GOVERNMENT LAW MAKING
AUTHORITY

23. The Te'mexw Member First Nation Government may make laws in respect of the consent of the Te'mexw Member First Nation Government under subparagraph 9a) to applications for water licences to be applied against the water reserve.
24. In the event of a Conflict between a Federal or Provincial Law and a Te'mexw Member First Nation Government Law made under paragraph 23, the Te'mexw Member First Nation Government Law will prevail to the extent of the Conflict.
25. The Te'mexw Member First Nation Government may make laws in

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respect of the supply to, and the use of water from a water licence issued to the Te'mexw Member First Nation in accordance with paragraph 9.

26. In the event of a Conflict between a Federal or Provincial Law and a Te'mexw Member First Nation Government Law made under paragraph 25, the Federal or Provincial Law will prevail to the extent of the Conflict.

SALE OF WATER

27. If Federal and Provincial Laws permit the sale of water, the Te'mexw Member First Nation may sell water in accordance with those laws.

FLOOD PROTECTION

28. The Te'mexw Member First Nation Government will have exclusive ownership and responsibility for maintenance of all diking systems or other flood protection works situated entirely on Treaty Settlement Lands owned by the Te'mexw Member First Nation.
29. Where a diking system or other flood protection works extend beyond Treaty Settlement Land or provide protection for other lands, the Te'mexw Member First Nation Government may enter into agreements for joint management and responsibility for such systems or works with other jurisdictions and owners.
30. The Te'mexw Member First Nation Government may make laws regulating the development and use of Treaty Settlement Lands which is vulnerable to flooding and will require that any development on such land is subject to flood-proofing standards equal to or greater than provincial standards.
31. In the event of a Conflict between a Federal or Provincial Law and a Te'mexw Member First Nation Law made under paragraph 30, the Federal or Provincial Law will prevail to the extent of the Conflict.
32. The Te'mexw Member First Nation Government will identify risks

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associated with the failure of any dam, dike or other protective works for which the Te'mexw Member First Nation Government has responsibility, and develop plans for:

- a) immediate local response in the event of a potential emergency;
- b) quick notice to all other jurisdictions which may be threatened by the uncontrolled release of water; and
- c) coordination with provincial authorities for disaster assistance when local capacity is exceeded.

WATER MANAGEMENT

- 33. The Te'mexw Member First Nation Government may participate in water planning processes in the Te'mexw Member First Nation Area in the same manner as local governments and other First Nations.
- 34. In respect of the management of water within the Te'mexw Member First Nation Area, the Te'mexw Member First Nation Government and Canada or British Columbia may negotiate agreements to:
 - a) define respective roles and responsibilities and coordinate activities related to:
 - i. flood response and public safety;
 - ii. protection of water quality;
 - iii. ground water management and regulation;
 - iv. resource inventory;
 - v. monitoring of water quality and quantity;
 - vi. management of and access to information
 - vii. water conservation;

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- viii. any other matters as agreed to by the Parties; and
 - ix. water management objectives and planning; and
- b) identify watershed that require water management planning.
35. Where a watershed includes both the land of the Te'mexw Member First Nation and other provincial Crown land in British Columbia, and if the Te'mexw Member First Nation or British Columbia considers that the watershed is an important source of drinking water, British Columbia and the Te'mexw Member First Nation Government may negotiate agreements on promoting the protection of drinking water in the area.