

**MINISTRY OF ENERGY AND MINES– COLUMBIA BASIN TRUST**

**MEMORANDUM OF UNDERSTANDING**

**COLUMBIA RIVER TREATY PUBLIC ENGAGEMENT**

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This Memorandum of Understanding (“**MOU**”) executed this 1 day of JUNE, 2012.

Between:

**MINISTRY OF ENERGY AND MINES (“Ministry”)**

and

**COLUMBIA BASIN TRUST (“CBT”)**

**I. COLUMBIA RIVER TREATY BACKGROUND**

1. The Columbia River Treaty (Treaty) was ratified in 1964 in order to:
  - a. Coordinate flood control in the US and Canada;
  - b. Optimize hydroelectric energy production in the United States (U.S.) and Canada; and,
  - c. Share the flood control and enhanced electricity production benefits between both countries.
  
2. Key elements of the Treaty include:
  - a. Canada was required to build and operate three dams in the higher-elevation reaches of the Columbia River Basin and also allowed the U.S. to construct Libby Dam in Montana with a reservoir extending into Canada.
  - b. The Treaty prescribes two primary types of flood control provisions: Assured Annual Flood Control and On Call Flood Control.
  - c. The Assured Annual Flood Control provision of the Treaty expires automatically in 2024 and flood control specified under the Treaty changes to a Called Upon operation.
  - d. The On Call Flood Control provision remains in effect as long as the Treaty dams exist, even if the Treaty is terminated. After 2024, the On Call Flood Control provision will be referred to as Called Upon Flood Control.
  - e. As a result of the flow regulation provided by storage in Canada under the Treaty, additional power can be generated in the U.S. This is referred to as downstream power benefits. Canada’s half share of the downstream power benefits is called the Canadian Entitlement. Under the 1963 Canada-British Columbia Agreement, these benefits are owned by the Province of British Columbia (Province).
  - f. When the Treaty was ratified in 1964, the Province sold the first 30 years of its Canadian Entitlement to a consortium of utilities in the U.S. for \$254 million. That agreement expired in phases and the Province now receives a Canadian Entitlement worth approximately \$120 - \$300 million annually, depending on power market prices
  - g. The Canadian Entitlement is energy and capacity; not money. Over the last ten years (2000-2010) the annual Canadian Entitlement energy averaged approximately 1,300 megawatts of capacity (about 11% of BC Hydro’s total capacity) and approximately 4,540 gigawatt hours of energy, delivered to the British Columbia border.

3. Under the 1963 Canada-BC Agreement, Canada transferred most Treaty rights, obligations and benefits to British Columbia and the Province recommended that BC Hydro be designated as the Canadian Entity.
4. The year 2024 is the earliest date either Canada or the U.S. may unilaterally terminate most provisions of the Treaty, provided a minimum of 10 years' advance notice is given (2014).

The Ministry and CBT have distinct mandates and roles in regard to education, engagement and consultation on the Columbia River Treaty 2014 Review (Treaty 2014 Review) (See Section II)

The Ministry and CBT (hereinafter collectively referred to as "the Parties") agree to collaborate in the development of public engagement initiatives associated with the Columbia River Treaty and the Treaty 2014 Review.

## **II. ORGANIZATIONAL MANDATES:**

### **Columbia Basin Trust (CBT):**

CBT was created in 1995 by an act of provincial legislation in recognition of the impacts to the region from the construction and operation of the Treaty dams and associated reservoirs. A binding agreement was established in which a \$321 million endowment and \$2 million per year from 1996 to 2010 for operations was provided by the Province in order to deliver long-term benefits to the residents of the Columbia River Basin (Basin) through Columbia Basin Trust.

CBT has a unique mandate to support the efforts of the people of the Basin to create a legacy of social, economic, and environmental well being, and to achieve greater self-sufficiency for present and future generations in the region most affected by the Treaty.

CBT's primary role with respect to the Treaty is to act as an information resource for Basin residents and local governments. CBT is not a decision maker on the future of the Treaty and CBT's role is not to "consult" with Basin residents on the future of the Treaty - consultation is a Provincial responsibility. CBT has three objectives for Treaty education and engagement activities:

1. To raise awareness and understanding of the Treaty past, present and future among Basin residents.
2. To develop the capacity of residents to engage in discussions related to any potential operational and other changes to the Treaty.
3. To provide advice on meaningful consultation to the Provincial government as well as communicate provincial information on the Treaty to Basin residents.

### **Ministry:**

The mandate of the CRT 2014 Review Team is to make recommendations to the provincial government by September 2013 on potential decision options regarding the future of the Treaty. As part of its implementation strategy, the CRT 2014 Review Team will:

1. Conduct a series of analyses on the implications of continuing, amending or terminating the Treaty on values and interests in Canada and the U.S.;
2. Consult with Basin residents on decision options, and identify regional concerns, interests, and expectations, ensuring all voices are heard and views are respected; and

3. Consult with First Nations potentially impacted by any decision on the Treaty, ensuring that the Province's legal duties are met and aboriginal interests are considered.

### **III. PURPOSE & SCOPE**

Over the past several years, CBT has undertaken extensive Treaty education and engagement activities in the Basin to implement CBT's Columbia River Treaty mandate (Section II) and will complete most of these efforts in spring 2012. CBT's future education and engagement activities will be determined as required in response to residents' CRT education needs. In 2011, the CRT 2014 Review Team was formalized and has committed to conduct a Treaty 2014 Review process (which includes education, engagement and consultation) in the Basin. With the formation of the CRT 2014 Review Team, and the completion of CBT's extensive education and engagement process, the purposes of this MOU are to:

- a. clearly describe the roles and responsibilities of each party as they relate to engaging Basin residents in Canada around the Treaty
- b. ensure a shared understanding and smooth transition from CBT's education and engagement activities in the Basin to the CRT 2014 Review Team leading and implementing their Treaty 2014 Review Process.

The Parties wish to establish a process whereby they will work cooperatively to coordinate activities to facilitate the effective education and engagement of Basin residents that enables Basin residents to assess and consider the implications of potential decisions regarding the future of the Treaty after 2024.

In particular, this MOU will encourage cooperation that will:

- a. support an effective public engagement process;
- b. facilitate coordination of the activities of the Parties related to engaging Basin residents; and
- c. prevent misunderstanding and confusion regarding the roles of the Parties in engaging Basin residents around the Treaty and the Treaty 2014 Review.

### **IV. GUIDING PRINCIPLES:**

The Parties agree to a core set of guiding principles to support the successful implementation of the MOU which include:

- a. Working collaboratively, where appropriate, to benefit Basin residents and the Province;
- b. Seeking opportunities to cooperate on initiatives, activities or projects that meet both Parties' mandates;
- c. Respecting the differences between the mandates of the Parties; and
- d. Where possible, make efforts to avoid duplication of initiatives, activities or projects intended to facilitate the education and engagement of Basin residents.

### **V. ROLES AND RESPONSIBILITIES OF THE PARTIES UNDER THIS MOU:**

The Ministry will undertake the following roles and responsibilities under this MOU:

- a. Lead a public consultation and engagement process that enables Basin residents to understand and consider the implications of potential future decisions regarding the future of the Treaty after

2024. This process will be designed and implemented in keeping with best practices in public consultation and engagement (Appendix 1);

- b. Work cooperatively with CBT in the public engagement process and capitalize on the education and awareness building work that CBT has already delivered in the region;
- c. Seek the advice of CBT in the design of the public consultation and engagement process;
- d. Implement a coordinated and efficient Treaty 2014 Review process in a manner that minimizes consultation fatigue.

CBT will undertake the following roles and responsibilities under this MOU:

- a. Continue CRT education and awareness building activities and where appropriate coordinate these activities with the Province's public consultation and engagement process;
- b. Provide advice and any feedback CBT receives to the CRT 2014 Review Team on how best to conduct the public consultation and engagement process given CBT's knowledge of the region and the interests of Basin residents;
- c. Raise awareness of the Province's Treaty 2014 Review process with Basin residents; and
- d. Encourage Basin residents to engage in the Treaty 2014 Review process.

## **VI. EXECUTIVE ENGAGEMENT:**

In order to prevent disputes or issues arising in the implementation of this MOU both Parties are committed to cultivating a collaborative approach amongst all relevant staff, based on open communication, mutual respect and interest based problem solving. Parties agree to engage their management and executive as required to ensure the successful implementation of the MOU.

## **VII. MODIFICATION, TERMINATION AND EXPIRY:**

The Parties may amend or waive any provision of this MOU by written agreement at any time.

Either Party may terminate this MOU after providing 30 days written notice to the other Party.

This MOU is expected to expire after the closing of the Treaty 2014 Review public consultation and engagement process.

## **VIII. NO LEGAL OR FINANCIAL OBLIGATIONS CREATED:**

This MOU does not create legally binding obligations or any kind of legal relationship between the Parties.

Nothing in this MOU shall be construed so as to affect the jurisdiction or mandate of any of the Parties. Nothing within this MOU shall preclude either Party from undertaking activities or partnerships related to the Treaty that fall within their mandate.

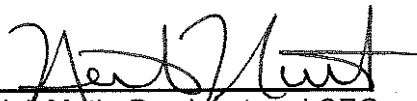
**IX. EFFECTIVE DATE AND SIGNATURE:**

This MOU shall be effective upon the signature of the Parties.

This MOU may be signed in counterparts.

The Ministry and CBT indicate agreement with this MOU by their signatures.

On Behalf of Columbia Basin Trust

  
Neil Muth, President and CEO

June 1, 2012  
Date

On Behalf of the Ministry

  
Les McLaren, Assistant Deputy Minister

May 8, 2012  
Date

**Appendix 1**  
CRT 2014 Review Team Engagement Principles

The Columbia River Treaty 2014 Review public engagement is intended to be a meaningful and constructive process informed by the following principles:

1. Inclusive, Transparent and Honest
  - a. Consult on the design of the public engagement process in consideration of participants' needs, local methods of participation and representation, and logistical constraints.
  - b. Encourage open sharing of all relevant perspectives and respect all related viewpoints, information, experiences, interests, values and contributions.
  - c. Include as many individuals as wish to participate in the process, and provide various ways to participate and be heard, including face-to-face meetings, by mail and online.
  - d. Be clear with participants about their roles, constraints and opportunities to provide input into the decision process.
2. Create Capacity to Participate
  - a. Provide participants with as much information as possible to ensure they have the knowledge and confidence to participate in the consultation process.
3. Constructive Engagement
  - a. Build on previous or existing processes.
  - b. Listen, learn, provide clarity and address misunderstandings.
  - c. Encourage high quality dialogue that recognizes all related interests, deepens understanding and builds relationships.
  - d. Use diverse methods to ensure participants are engaged, share information, and provide feedback.
  - e. Ensure an authentic process where public input will be considered by decision makers.
4. Close the Loop
  - a. Inform participants how their input was used.