

THE COLUMBIA RIVER TREATY NEGOTIATIONS FRAMEWORK AGREEMENT AND THE *UN DECLARATION*

Presentation to the Columbia Basin Regional Advisory Committee

by Tim Howard, lawyer

May 2022

The information in this presentation reflects the opinion of the author. The author does not speak on behalf of, or represent, the Ktunaxa Nation for purposes of this presentation, and does not speak on behalf of or represent the Secwepemc or Syilx-Okanagan Nations in any capacity.

This presentation examines how the CRT Negotiation Framework Agreement was drafted to reflect aspects of the *UN Declaration*. It does not endorse the Negotiation Framework Agreement, or the CRT negotiations generally, as meeting Canada's and BC's duties to the Indigenous Nations.



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CANADA – BC – COLUMBIA BASIN INDIGENOUS NATIONS CRT NEGOTIATIONS FRAMEWORK AGREEMENT (NFA)

Five government agreement

3 INDIGENOUS NATIONS

Ktunaxa Nation Council
Okanagan Nation Alliance
Shuswap Nation Tribal
Council

CANADA

Global Affairs Canada
(ECCC)
(NRCan)
(DFO)

BRITISH COLUMBIA

EMLI
(BC Hydro)

Establishes processes and principles to guide Crown – Indigenous
Nation engagement re. CRT negotiations

In effect since June 2019



REFLECTING THE *UN DECLARATION* IN THE NEGOTIATION FRAMEWORK AGREEMENT

**RECOGNITION
OF INDIGENOUS
RIGHTS AND
TITLE**

**ADOPTION
OF
DECLARATION
RIGHTS**

**INTEGRATION
OF INDIGENOUS
GOVERNANCE
AUTHORITY**

**FUNDING
TO SUPPORT
INDIGENOUS
INTERNAL AND
EXTERNAL
ENGAGEMENT**

**ENABLING
SEPARATE
NEGOTIATION
PATHWAYS**



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RECOGNITION OF INDIGENOUS TITLE AND RIGHTS

The NFA is recognition-based

The Indigenous Nations hold Aboriginal rights and title within their respective traditional territories, each of which include portions of the Columbia River Basin (Recital A)

The Parties recognize and acknowledge that the CRT was negotiated without the participation or consent of the Indigenous Nations and without taking into account impacts to the title, rights, culture, economies and ways of life of the Indigenous Nations (Recital C)

The Parties further recognize and acknowledge that the Indigenous Nations assert that they have suffered, and continue to suffer, profound and long-lasting impacts from the CRT and the construction and operation of hydroelectric facilities governed by its terms (Recital D)

Focus on the substance, rather than debating rights issues or historic facts

Supports collaboration between 5 Governments and between Indigenous Nations



ADOPTION OF UN DECLARATION PRINCIPLES

The NFA endorses the *UN Declaration* as guiding the process

*Canada and B.C. have fully endorsed the United Nations Declaration on the Rights of Indigenous Peoples (the “U.N. Declaration”) without qualification and committed to **implement the U.N. Declaration in partnership with Indigenous peoples**, and in accordance with Canada’s constitution (Recital E)*

*The Parties agree that the meaningful participation of the Indigenous Nations in relation to CRT Negotiation processes is necessary to seek to obtain their free, prior and informed consent and to advance reconciliation, fulfill the constitutional and legal duties owed by Canada and B.C. to the Indigenous Nations, **implement the U.N. Declaration** and respect and uphold the laws, customs and governance authorities of the Indigenous Nations (Recital I)*

Canada has fully endorsed the U.N. Declaration without qualification .The Province of B.C. has committed to fully adopting and implementing the U.N. Declaration ... and is **committed to bringing the principles of the U.N. Declaration into action** (clause 3.5)



ADOPTION OF UN DECLARATION PRINCIPLES – FPIC ARTICLES 19, 32(2)

The NFA adopts free, prior and informed consent as the goal

The purposes of this Negotiation Framework are to establish the means **whereby Canada and B.C. will seek to obtain the free, prior and informed consent of the Indigenous Nations** regarding the CRT Negotiations (clause 2.1(b))

Through this Negotiation Framework, Canada and BC will work and cooperate with the Indigenous Nations to aim to advance those commitments **and, in particular, seek to obtain the free, prior and informed consent of the Indigenous Nations** in relation to the modernization of the CRT (clause 3.5)

Supported by process steps

- Any points of agreement/disagreement must be recorded in writing
- Senior Leadership Table with representatives from all five governments must confirm any points on which consent has been achieved.

INTEGRATION OF INDIGENOUS GOVERNANCE PROCESSES

ARTICLES 5, 18, 19, 20

The NFA integrates Indigenous governance authority into the CRT modernization negotiations

Negotiations Advisory Team (NAT) – 4.3

- Each Government (plus BC Hydro) has representatives to the NAT
- NAT collaboratively develops consensus on the Canadian negotiation position
- Very detailed, time intensive

Indigenous Nations Observer Group – 4.5

- Each Indigenous Nation appoints representatives
- Sits as part of the Canadian negotiating team
- Participate in negotiations at request of Canadian Chief Negotiator

Leadership Table – 4.2

- Senior representatives of each Government
- Provides direction to NAT
- Resolves disputes
- Confirms agreements

- Supported by information-sharing terms that support Indigenous Nations' technical participation, as well as internal governance and decision-making processes – Part 6



SUPPORT FOR INDIGENOUS GOVERNANCE - FUNDING

The NFA commits BC and Canada to provide capacity funding – Schedule B

Core Funding

Supports both Crown – Indigenous technical and negotiation engagement, as well as internal Indigenous engagement with leadership, communities and members. Also includes legal advice.

Annual treaty renewal workplan funding

Supports Indigenous Nation participation in research and analysis that supports CRT negotiations. Indigenous Nations are taking lead role on several aspects of the technical work – for e.g. research and modeling for ecosystem function and cultural values.

- Core funding supports Indigenous Nations' capacity for internal and external engagement
- Workplan funding enables Indigenous Nations to lead technical work that would otherwise be done by Crown
- Adequacy of funding is a concern to Indigenous Nations

ENABLING SUPPLEMENTAL AGREEMENTS

ARTICLES 26(2), 28(1), 32(3)

The NFA:

- reflects a shared acknowledgment that there are important issues that are broader in scope than the CAN-US negotiations, and
- enables the parties to develop additional agreements to address those issues, including agreements regarding “past and ongoing impacts” (clause 2.1(c))

The NAT is responsible for collaboratively developing a list of issues to be addressed (clause 4.3(b)). Initial list developed August 2019.

Negotiation of supplemental agreements can be multi-lateral or bilateral between CAN/BC and one Indigenous Nation (clause 4.7)



HOW IS THE NFA WORKING?

Implementation of the NFA remains a work in progress:

- Indigenous Nations gaining voice and role in developing Canadian negotiation position
- Indigenous Nations making important contributions to negotiations
- Five governments building collaborative relationship based on mutual respect
- Slow progress on addressing infringements to title and rights
- Risk that lack of progress will generate future conflict and impede FPIC



THANK YOU FOR YOUR
TIME AND ATTENTION

QUESTIONS?



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