

Xwulqw'selu (Koksilah) Watershed Water Sustainability Plan Terms of Reference

Dated for reference November 6, 2023

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1.0 Background

On January 13, 2022, the Minister of Forests, Lands, and Natural Resource Operations signed Ministerial Order No. M8 designating the area of the Xwulqw'selu (Koksilah) Watershed for the purpose of developing a water sustainability plan under Part 3, Division 4 of the *Water Sustainability Act*, SBC 2014, c.15 (the “**Act**”). The recommendation for the area designation was the culmination of a scoping process by the Province and Cowichan Tribes under an Interim Letter of Agreement. Ministerial Order No. M8 defines for the purposes of a water sustainability plan:

- the watershed area designated, and
- the reasons for which the area was designated.

On May 12, 2023 the Xwulqw'selu Watershed Planning Agreement (*S-xats-thut tst*) (the “**Watershed Planning Agreement**”) was signed between Cowichan Tribes and the Government of British Columbia (the “**Province**”, and together, the “**Parties**”), which confirms the Parties’ commitment to develop a water sustainability plan under the Act for the designated area of the Xwulqw'selu Watershed (the “**Water Sustainability Plan**”).

This Terms of Reference has been prepared to meet the content requirements for the Water Sustainability Plan under section 68(1) of the Act. The Parties will implement these Terms of Reference in accordance with the requirements of the Act.

The Watershed Planning Agreement also includes a commitment to develop actions and recommendations for matters that fall outside of the scope of the Water Sustainability Plan, and other stewardship tools and initiatives as may be agreed by the Parties, subject to any required mandates and approvals from Cowichan Tribes’ Leadership and/or the Province.

Capitalized terms used in this Terms of Reference that are not otherwise defined herein shall have the meanings given to them in the Watershed Planning Agreement.

2.0 Issues

Issues to be addressed in the development of a Water Sustainability Plan for the Xwulqw'selu (Koksilah) Watershed include:

- Declining summertime river flows, including in relation to cumulative water demand, land use, drought and climate change;
- Impacts from winter river flow levels, and river and tidal flooding;
- Issues of timing of water flows, water quality, and water availability for cultural, spiritual, social, and economic uses;
- Low stream flows and degrading water quality that threaten the survival of resident and migrating salmonid species;
- Conflicts between water users and conflicting demands between water users and environmental flow needs, which complicate efforts to manage water quality and aquatic ecosystem health; and
- Impacts to Cowichan Tribes’ Title and Rights resulting from the above.

3.0 Purposes of Water Sustainability Plan

The purposes of the proposed Water Sustainability Plan are to:

- Assist in preventing or addressing conflicts between water users, conflicts between the needs of water users and environmental flow needs, risks to water quality, and risks to aquatic ecosystem health, as provided in Ministerial Order No. M8;
- Make sustained progress towards Cowichan Tribes’ vision for a healthy Xwulqw'selu Watershed, as outlined in section 4.1 of the Watershed Planning Agreement; and
- Develop objectives and recommended actions that will address the issues summarized in section 2.0.

4.0 Scope

4.1. Geographic Scope

The geographic boundaries for the Water Sustainability Plan are as depicted in the map in Ministerial Order No. M8 designating the area of the Xwulqw'selu (Koksilah) Watershed for the purpose of developing a Water Sustainability Plan (Appendix A).

4.2. Legal Scope

The Parties may agree to propose any applicable area-based provisions and regulations available under the Act in the Water Sustainability Plan. The Parties will seek consensus through the government-to-government structure described in section 5.0 if any recommendations will be made to the Minister of Water, Land and Resource Stewardship (the "**Minister**") regarding limits on the plan development process or plan recommendations under section 67 of the Act. Additional policy or non-regulatory tools from Cowichan Tribes and/or the Province may also be recommended as part of the Water Sustainability Plan.

For greater certainty, nothing in this Terms of Reference or any recommendations regarding area-based provisions and regulations that may be proposed for implementation of the Water Sustainability Plan are intended to interfere with the law-making and decision-making authority or jurisdiction of Cowichan Tribes or the Province, including the inherent right to self-government of Cowichan Tribes, or fetters the discretion of any law-making or decision-making authority.

In developing the Water Sustainability Plan, the Parties will actively explore ways to apply Cowichan Tribes' *snuw'uy'ulh* (teachings), laws, and *syuw'entst* (proper ways of being), principles of UNDRIP, DRIPA, the Tsilhqot'in decision and other relevant case law, as set out in section 7.1 of the Watershed Planning Agreement.

5.0 Organizational Structure

The Parties' mutual intent, as committed to in the Watershed Planning Agreement, is to develop the Water Sustainability Plan through a government-to-government process using the organizational structure described in this Terms of Reference.

5.1 Responsible Person

By Ministerial Order, Cowichan Tribes is designated as the person responsible for carrying out the water sustainability planning process in accordance with the Act (the "**Responsible Person**").

As the Responsible Person, Cowichan Tribes is responsible for preparing and proposing the Water Sustainability Plan based on the outcome of the planning process.

As the Responsible Person, Cowichan Tribes has prepared these Terms of Reference, in collaboration with the Province, to submit to the Minister for the Minister's approval and acceptance under section 75(1) of the Act.

5.2 Sharing of Responsibilities

As the Responsible Person, Cowichan Tribes will be responsible for the financial management aspects of the water sustainability planning process (section 66(2)(d) of the Act). For greater certainty, the funding for such remuneration and reimbursements will come from the funds allocated to the planning process, as further described in section 8.0.

The Province will support Cowichan Tribes in its role as the Responsible Person by preparing and issuing notices to persons whose rights or land would likely be detrimentally affected by any recommendations in a proposed Water Sustainability Plan if implemented under section 71 of the Act.

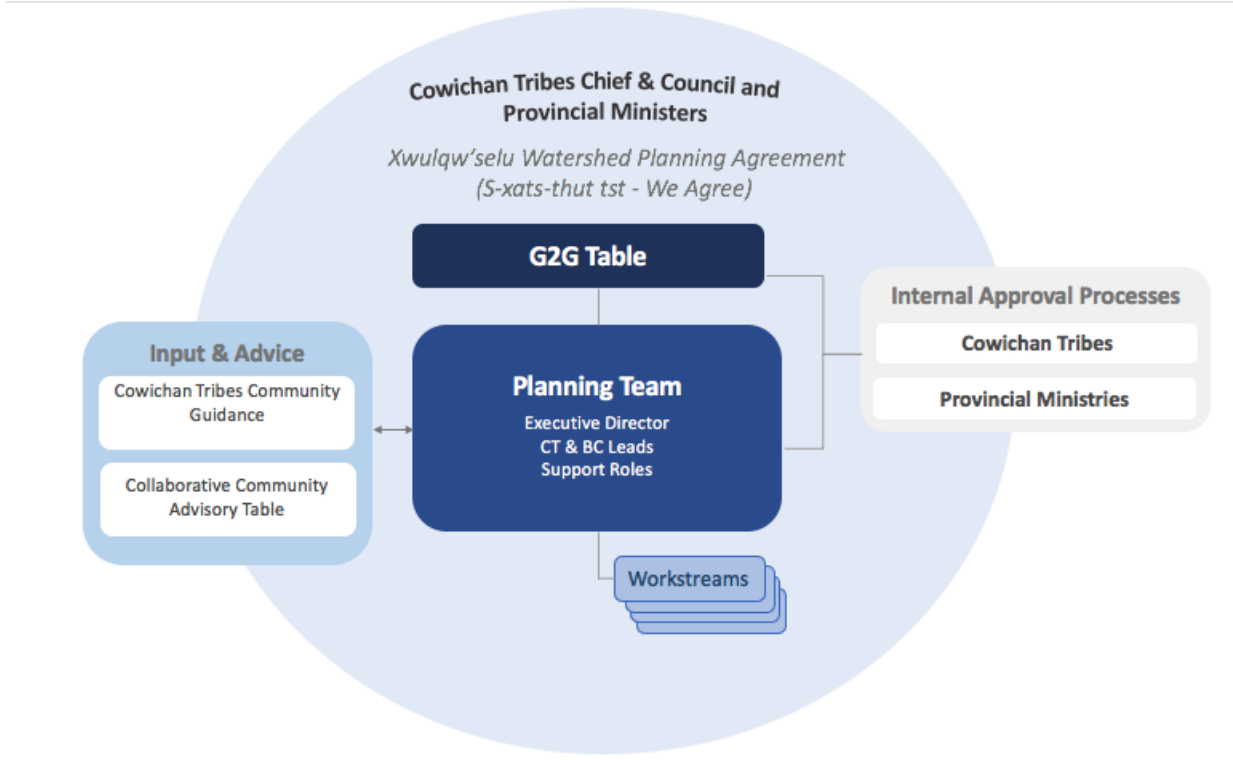
The Province will further support Cowichan Tribes in its role as the Responsible Person by sharing and jointly carrying out the following responsibilities with Cowichan Tribes:

1. Preparing these Terms of Reference (section 66 of the Act);
2. Preparing the proposed Water Sustainability Plan (including all items under section 68 of the Act);
3. Submitting the proposed Water Sustainability Plan to the Minister (section 74 of the Act);

4. Ensuring that consideration is given to any prescribed information or prescribed records (section 70 of the Act);
5. Carrying out powers for developing the proposed Water Sustainability Act, as ordered by the Minister, if applicable (section 72 of the Act); and
6. Seeking and providing funding to carry out the plan development process, as set out in the Watershed Planning Agreement.

5.3 Organizational Chart

This structure reflects the collaborative process that will be followed in carrying out water sustainability planning and in developing and proposing the Water Sustainability Plan in accordance with the Act and section 7 of the Watershed Planning Agreement. Supporting documents provide details on roles and responsibilities and operational procedures.



5.4 Organizational Roles and Responsibilities

The Parties will work together in an enduring government-to-government relationship to develop the proposed Water Sustainability Plan, including in accordance with their commitments to relationship building, consensus decision-making, and dispute resolution under the Watershed Planning Agreement.

Table 1. provides an overview of roles identified in the organizational structure to support the planning process and the development of a proposed Water Sustainability Plan.

Table 1.

Role	Description
Government-to-Government Table	<p>Strategic Leadership and Decision Making 2 Cowichan Tribes representatives accountable to Cowichan Tribes Chief and Council, 2 representatives from the Province accountable to provincial executives and Ministers</p> <ul style="list-style-type: none"> • Provide strategic direction to guide the planning process. • Approve workplans, budgets, and financial procedures. • Ensure that <i>Water Sustainability Act</i> requirements related to the planning process are addressed. • Develop and make consensus recommendations to Cowichan Tribes as the Responsible Person regarding the content and recommendations of a proposed Water Sustainability Plan to be submitted to the Minister for acceptance. • Appoint and oversee Joint Executive Director. • Serve as the forum for consultation between the Province and Cowichan Tribes (Responsible Person) during the planning and plan development process.

<p>Joint Executive Director</p>	<p>Project management and executive leadership for the planning process <i>Single individual, appointed by and accountable to the Government-to-Government Table</i></p> <ul style="list-style-type: none"> • Lead the project and budget planning, in coordination with Cowichan Tribes as the Responsible Person. • Manage and make decisions about the planning process, taking into account strategic direction provided by the Government-to-Government Table and with input from the Planning Team (including Cowichan Tribes Lead and BC Lead). • Provide facilitation and decision support to the Government-to-Government Table. • Coordinate workplans for technical workstreams through the Planning Team. • Oversee development and delivery of community and stakeholder communications and engagement.
<p>Cowichan Tribes and the Province Planning Leads</p>	<p>Support the Joint Executive Director in the planning process and in developing a proposed Water Sustainability Plan <i>Two individuals, one from Cowichan Tribes and one from the Province, appointed by their respective Government-to-Government members and/or internal leadership. Accountable to the Joint Executive Director and respective internal leadership.</i></p> <ul style="list-style-type: none"> • Manage the work of their respective Cowichan Tribes/Province workstream contributors. • Manage internal communications, consultation, approval processes and issues. • Share responsibilities for design and implementation of the planning process in accordance with the Act, including developing and managing workplans, completing and reporting on deliverables and decisions to the Joint Executive Director. • Represent their government/organization in outreach and engagement activities.
<p>Planning Team (a technical advisory committee)</p>	<p>Manage the planning process and gather and interpret data, knowledge, and engagement input, conduct analysis, and develop materials to inform engagement and to make recommendations in developing a proposed Water Sustainability Plan <i>Comprised of Cowichan Tribes and Province Planning Leads and supporting roles, and led by the Joint Executive Director. Supporting roles include a Cowichan Tribes Cultural Advisor and Liaison, Community and Communications Liaison, Technical and Planning Facilitator, and Administrator.</i></p>

6.0 Process for Public and Stakeholder Communications and Consultation

The process for public and stakeholder communications and consultations will consist of four parallel streams of engagement, under the direction of the Government-to-Government Table and through the Joint Executive Director:

- 1) **Cowichan Tribes Community Guidance** – dedicated spaces will be created for Cowichan members to reflect, discuss, and provide direction and guidance to the Water Sustainability Plan process. This will include a Guidance Group, regular guidance from Elders and knowledge holders as well as from the broader community, and other internal approval processes.
- 2) **Collaborative Community Advisory Table** – a standing table, established by the Government-to-Government Table, supported by terms of reference, which represents a diverse range of watershed interests and rights holders (approximately 15-20 members). This table will participate in a series of workshops throughout the planning process to provide advice for the development of the proposed Water Sustainability Plan. This table will meet a minimum of five times throughout development process.
- 3) **Community Solutions Forums** – topic-specific forums designed to elicit Cowichan Tribes, public and stakeholder input on issues. The format will be tailored to the issue to be discussed.
- 4) **General Communications** – this includes a combination of communication tools, such as requests for written comments and public events. Cowichan Tribes will have an internal communications plan.

7.0 Timeframe

The proposed Water Sustainability Plan will be submitted by Cowichan Tribes (as Responsible Person) for review and acceptance by the Minister by September 2026. Key milestones are identified in Table 2.

Table 2. Xwulqw'selu Water Sustainability Plan Milestones

Milestones	Target Date
Appointments and decisions to fill governance structure	May 2023
Planning process underway, including community engagement	Ongoing until completion of Draft Water Sustainability Plan
Approved Workplans, Detailed 2024-2025 Budget, Financial Procedures, and Community & Stakeholder Outreach and Engagement Plan	October 2023
Preliminary Option Assessment Reports	March 2024
Completion of Draft of proposed Water Sustainability Plan	September 2025
Seek interim feedback and approval of draft of proposed Water Sustainability Plan from Minister and Cowichan Tribes Chief and Council	October 2025
Completion of final draft of proposed Water Sustainability Plan	December 2025
Recommendation to the Minister regarding acceptance of the proposed Water Sustainability Plan	September 2026

7.1 Review and Amendments to the Terms of Reference

This Terms of Reference will be reviewed by the Government-to-Government Table annually. Amendments to this Terms of Reference may be recommended to the Cowichan Tribes, as the Responsible Person, and submitted to the Minister for approval.

8.0 Estimated financial, human, and other resources

The estimated budget to complete the planning process and development of a proposed Water Sustainability Plan between 2023 and 2026 is \$2,350,000. The process will be supported by an estimated five full time equivalents from the Province and four full time equivalents from Cowichan Tribes (Table 3).

In accordance with the Watershed Planning Agreement, the Parties will work cooperatively to identify and seek to obtain multi-year funding to support the planning process, and the Province will seriously consider any requests from Cowichan Tribes for additional and sustainable funding to support this work.

Table 3.

Purpose	General Description	Estimated Annual Amount	Total over 3 years
Cowichan Tribes' Human Resources, and legal and technical support*	Remuneration for all Cowichan Tribes' positions involved in the project; professional fees for advisors and consultants (including legal and technical), facilitation support.	\$433,000	\$1,300,000
Technical	Fees and remuneration for, data gathering and policy analysis, Indigenous knowledge research, report analysis and options generation. Costs will vary year-by-year and could be supplemented with additional grant funding, or in-kind contributions.	\$300,000	\$900,000
Engagement and Communications	Engagement planning, workshop hosting, materials, community and stakeholder honoraria, art, design, website, printed materials.	\$50,000	\$150,000
Total		983,000	\$2,350,000

* excluding the Province participants, whose participation is an in-kind contribution.

Appendix A

Water Sustainability Plan Designated Area

As depicted in Ministerial Order No. M8

