

Xwulqw'selu Watershed Planning Agreement (*S-xats-thut tst - We Agree*)

*S-xats-thut, stheyta' tst 'utu xutsmín, shtes kws S'a'lhstuhw tst, tu
Tumuhw 'i' tu mukw' qa' ni tutus 'utu Xwulqw'sclu sta'lo'*

Agreement with each other to plan how we are going to take good
care of all the Waters and the Earth connected to the Koksilah River



Photo: Bryant DeRoy



BRITISH
COLUMBIA



***S-xats-thut, stheyta' tst 'utu xutsmín, shtes kws S'a'lhstuhw tst, tu
Tumuhw 'i' tu mukw' qa' ni tutus 'utu Xwulqw'selu sta'lo'***^{1 2}

**Xwulqw'selu Watershed Planning Agreement (*S-xats-thut tst*)
(this "Agreement")**

This Agreement is dated for reference the 12th day of May, 2023.

Between

Cowichan Tribes, as represented by Chief X'tli'li'ye Lydia Hwitsum ("**Cowichan Tribes**")

and

The Government of British Columbia as represented by the Minister of Water, Land and Resource Stewardship, the Minister of Forests, and the Minister of Agriculture and Food (the "**Province**")

(Each, a "**Party**" and collectively, the "**Parties**")

WHEREAS:

- A. Cowichan Tribes, as part of the Quw'utsun Nation, have their own *snuw'uy'ulh* (teachings), laws and *syuw'entst* (proper ways of being) that were given by the Creator and laid out in their *syuth* (true stories/oral histories) relating to Quw'utsun ways of life and responsibilities to below, on and above Quw'utsun territory including all its water, skies, earth, fires, and cultural and spiritual heritage.
- B. Section 35(1) of the *Constitution Act, 1982* states, "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed".
- C. The Province has a duty to consult and, where appropriate, to accommodate Cowichan Tribes in a manner that is consistent with the honour of the Crown, prior to approving proposed activities that could adversely impact Cowichan Tribes' Title and Rights.
- D. The Province has committed to fully adopting and implementing the *United Nations Declaration on the Rights of Indigenous Peoples* ("**UNDRIP**"), supported by the *Declaration on the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44 ("**DRIPA**"), and

¹ Translation: "Agreement with each other to plan how we are going to take good care of all the Waters and the Earth connected to the Koksilah River".

² All Hul'q'umi'num language used herein is based upon the best available translation from Cowichan Tribes as of the Effective Date.

³ Translation: "We agree".

the Truth and Reconciliation Commission's Calls to Action ("**Calls to Action**"), and is committed to working with First Nations in a collaborative and respectful manner to develop a shared vision of reconciliation to guide the adoption and implementation of UNDRIP, the Calls to Action, Section 35(1) of the *Constitution Act, 1982* and the Supreme Court of Canada's decision in *Tsilhqot'in* and other case law.

- E. UNDRIP recognizes the right to self-determination and self-government, and to the preservation, practice and revitalization of Indigenous cultures and traditions.
- F. UNDRIP provides, among other things, that states shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploration of mineral, water or other resources.
- G. The Province is committed to advancing reconciliation with Cowichan Tribes through recognition of Cowichan Tribes' Title and Rights. Such recognition will be based on principles of respect, co-operation, and partnership as the foundation for transformative change. The Province's commitment in this regard is demonstrated in part by the *Cowichan Nation – British Columbia Government-to-Government Agreement* dated September 14, 2021, and through the development with Cowichan Tribes of an agreement to establish ongoing shared decision-making and sustainable co-management of the Xwulqw'selu Watershed.
- H. Without prejudice to their differing views regarding sovereignty, jurisdiction, title, laws, and ownership, the Parties intend to work collaboratively and are committed to jointly overseeing and participating in a long-term planning process for the ongoing collaborative governance and sustainable co-management of the Xwulqw'selu Watershed.
- I. On February 7, 2020, Cowichan Tribes and the Province signed an *Interim Letter of Agreement* (the "**ILOA**") acknowledging the need for timely and effective actions on the Xwulqw'selu Watershed and agreeing to develop consensus decisions regarding planning in the Xwulqw'selu Watershed (the "**Scoping Process**") and to work towards a long-term agreement to establish ongoing shared decision-making and sustainable co-management of the Xwulqw'selu Watershed.
- J. On May 11, 2021, Cowichan Tribes Chief and Council passed a motion in favour of moving forward with a water sustainability plan for the Xwulqw'selu Watershed, either supported, or not supported, by other tools.
- K. In July 2021, as an outcome of the Scoping Process, the Parties recommended that a Water Sustainability Plan be developed and implemented for the Xwulqw'selu Watershed under the *Water Sustainability Act, SBC 2014, c 15* (the "**WSA**"), and

recognizing that other stewardship tools and initiatives may be used in conjunction with the Water Sustainability Plan to achieve the vision and planning objectives.

- L. On January 13, 2022, the Minister of Forests, Lands, and Natural Resource Operations signed Ministerial Order No. M8, attached as Schedule “A”, designating the Xwulqw’selu Watershed area for the purpose of developing a water sustainability plan under the WSA for the designated area.

NOW THEREFORE the Parties, as equal authorities with distinct legal traditions and responsibilities, agree as follows:

1. Definitions and Interpretation

1.1 In this Agreement:

- a) **“Core Priorities”** has the meaning given to it in section 4.3.
- b) **“Effective Date”** means the date first written above.
- c) **“Government of British Columbia”** has the same meaning as in section 29 of the *Interpretation Act*, RSBC 1996, c 238.
- d) **“Government-to-Government Table”** has the meaning given to it in section 7.1(f)i.
- e) **“Planning Governance Structure”** means the bodies that will develop the Watershed Plan through consensus and in accordance with applicable laws, including the supporting bodies described in section 7.1(f).
- f) **“Planning Process Guidance”** means a living document explaining how the planning process for the Watershed Plan will work, including an approach to community engagement.
- g) **“Responsible Person”** means the person responsible for preparing the WSP.
- h) **“Terms of Reference”** means the terms of reference for the Watershed Plan, as described in section 7.1(g).
- i) **“Quw’utsun Nation”**, also known as the Cowichan Nation, means the Indigenous Nation comprised of the present-day members of each of the Cowichan Tribes, Stz’uminus First Nation, Penelakut Tribe, Halalt First Nation, and Lyackson First Nation.
- j) **“Title and Rights”** means:
 - a. asserted Aboriginal rights, including Aboriginal title; or
 - b. determined Aboriginal rights, including Aboriginal title,which are or may be recognized and affirmed under section 35 of the *Constitution Act, 1982*.
- k) **“Transition Steering Committee”** means the committee co-chaired by Cowichan Tribes and the Province, and having equal representatives, that was established to complete the Terms of Reference and Planning Process Guidance.

- l) “Watershed Plan” has the meaning given to it in section 5.1.
- m) “WSP” means a Water Sustainability Plan created in accordance with the *Water Sustainability Act*.
- n) “Xwulqw’selu Watershed”, also known as the “Koksilah Watershed”, means the watershed area (recognizing the boundary-crossing nature of groundwater flow and aquifers) generally depicted in Ministerial Order No. M8 attached as Schedule “A” hereto.

2. Acknowledgement and Clarification of Authorities

- 2.1 The Parties acknowledge the following Cowichan Tribes Statement on Inherent Rights, as contained in the Cowichan Watershed Board Governance Manual:

[Stated in Hul’q’umi’num]

Quw’utsun Mustimuhw, ni’ ‘o’ ni’ tthu sht’esulh kws ‘i’ tst ‘u’ tun’a Tumuhw, ‘i’ ‘o’ hwun st’e. Nilh ‘o’ thu-’it syuw’entst, tun ni’ ‘u’ kwthu hwun’a Mustimuhw ‘i’ wutl’uts’ ‘i’ ‘u’ tun’a Tumuhw tst. Ni’ yuxtsus-talum ‘utu Xwulqw’selu, ‘i-tu Tumuhw, qa’, kw’atl’kwa, tuni’ spupin’ ‘u’ tthu Tumuhw, ttho’ mukw’ stem ni’ hakw ni’ ‘u’ tthu stl’ulnuptst. Kwuthu shtun-ni’ ‘iws’ tst ni’ yuxtse’tum ‘u’ ttho’ mukw’ stem ni’ ha’kw kws sthuthi’s kws huli-s. O’ nilh tthu Quw’utsun Mustimuhw, ni’ lemuxutun stum ‘u’ tthu ni’ snuwuntewut ‘u’ tthu shtunaalh, tst. Uwu tumtem-us ‘i’ ni’ tst tsmem’t ‘aanlh kws kwun-etewut, hwayum tun’a s’aalh stl’ulnup. Quw’utsun Mustimuhw, ha’kwush tst kw’ stutul’na’mut sxetsul’s kw’ shtuhims tthu stl’ulnuptst. Mukw’ stem ‘o’ shilukw’tul ‘i’ nilh ni’ shkw’akw’ums tthu sulsuli’tst.

[English translation]

The Cowichan people have existing inherent rights. Cowichan as the original people of this territory within which the Xwulqw’selu Watershed is included continue the right and responsibility to make informed decisions and manage based on our history and continued connections. As told through time by our ancestors; the lands, waters, seas, minerals and all resources interconnected within the territories provided for and can provide a good sustainable life for the Cowichan people. Cowichan Tribes has never given away this right and continue to govern and make decisions to support the well-being and sustainability of our peoples and territories.

- 2.2 The Minister of Water, Land and Resource Stewardship has the mandate and jurisdiction to advance watershed security and modernized approaches to land and water planning, including Water Sustainability Plans and other critical sustainability provisions in the WSA. The Ministry of Water, Land and Resource Stewardship is directly responsible for the effective development of water, land and marine use policy and planning as well as biodiversity and ecosystem health.

- 2.3 The Minister of Forests is responsible for establishing the policy and conditions for access to, and use of, British Columbia's forests, land, water and natural resources, and provides integrated decision-making that ensures effective stewardship and sustainable management of British Columbia's land and water base for a variety of uses, including the jurisdiction to issue licenses to use and divert water under the provisions in the WSA. The Ministry of Forests is responsible for natural resource management services that support resilient forests, landscapes, watersheds and fish and wildlife.
- 2.4 The Minister of Agriculture and Food has the mandate and jurisdiction to build and strengthen a resilient food system and increase food security in British Columbia. The Ministry of Agriculture and Food has a priority objective to work with Indigenous peoples to meet their food security, food sovereignty and economic development goals as a vital component of strengthening community food security in British Columbia.

3. Purposes

- 3.1 The purposes of this Agreement are to:
- a) advance reconciliation between Cowichan Tribes and the Province based on the minimum standards in UNDRIP with respect to Indigenous rights and the recognition and respect of Cowichan Tribes' Title and Rights;
 - b) identify the vision for the health of the Xwulqw'selu Watershed;
 - c) provide an opportunity for Cowichan Tribes to exercise, in accordance with its own internal governance system, its inherent decision-making jurisdiction, as the original and continual stewards of, the lands and waters within its territory;
 - d) establish a planning process and mechanisms for the development of a Watershed Plan;
 - e) identify the core priorities for the Xwulqw'selu Watershed and the Watershed Plan;
 - f) establish the principles to guide the government-to-government relationship, including the recognition and application of Cowichan Tribes' *snuw'uy'ulh* (teachings), laws and *syuw'entst* (proper ways of being); and
 - g) work together in an enduring government-to-government relationship to develop the Watershed Plan.

4. Xwulqw'selu Watershed Vision and Core Priorities

- 4.1 Cowichan Tribes' vision for success and for a healthy Xwulqw'selu Watershed includes, but is not limited to:
- a) its members feeling safe using the Xwulqw'selu Watershed for cultural and other purposes during all seasons;
 - b) increased summer water levels, and decreased winter flows and impacts from flooding;

- c) improved water quality;
- d) a return to healthy and abundant *stseelhtun* (fish) populations;
- e) its members' connection to the Xwulqw'selu Watershed area based on continual and improved access and use of a biodiverse watershed;
- f) addressing climate change impacts;
- g) supporting the habitat for the many species that were historically able to use the Xwulqw'selu Watershed in their life cycles;
- h) the restoration of ecological balance within the Xwulqw'selu Watershed; and
- i) recognition, priority protection, and restoration of, culturally important species, including *Xpey'* (Western redcedar) and *Tth'qw'ulhp* (Sitka spruce).

4.2 Through the Scoping Process, the government-to-government steering committee expressed alignment on the following issues and concerns regarding the Xwulqw'selu Watershed:

- a) summer water flows have been low enough at times that the survival of resident and migrating salmonid species is threatened;
- b) links between groundwater and surface water use are poorly understood;
- c) summer water use has exceeded, and will likely continue to exceed, summer water availability;
- d) climate change is creating more extreme hydrological events of flooding and drought, which have consequences for this socio-ecological system;
- e) land use activities have significant impacts on the health of the Xwulqw'selu Watershed, including contributing to more extreme seasonal impacts (high and low flow volumes);
- f) activities in the Xwulqw'selu Watershed affect Cowichan Tribes' operations, infrastructure, land management, and the safety and well-being of its members;
- g) Cowichan Tribes has not had a meaningful role in Crown (or Provincial) water management and decisions in their territory; and
- h) a healthy watershed includes healthy communities and a sustainable economy.

4.3 The Parties have identified the following priorities for the Xwulqw'selu Watershed and the Watershed Plan (the "Core Priorities"):

- a) protection and restoration of ecological communities;
- b) sustainability of environmental flows and water extraction;
- c) protection and restoration of fish populations;
- d) protection of cultural resources and Cowichan Tribes' ways of being;

- e) protection of Cowichan Tribes' Title and Rights and Indigenous rights recognized in UNDRIP;
- f) supporting the well-being of Cowichan Tribes members and the Xwulqw'selu Watershed;
- g) supporting the well-being of other groups and communities who use and rely on the Xwulqw'selu Watershed; and
- h) protecting Indigenous and local food security.

5. Watershed Plan

- 5.1 To support sustained progress towards the Cowichan Tribes' vision described in section 4.1, to seek to address the issues and concerns described in section 4.2, and to advance the Core Priorities set out in section 4.3, the Parties will jointly develop a plan for the Xwulqw'selu Watershed which will include:
- a) the development and recommendation of a WSP;
 - b) developing actions and recommendations for matters that fall outside the scope of the WSP; and
 - c) other stewardship tools and initiatives as may be agreed to by the Parties, (collectively, the "**Watershed Plan**").
- 5.2 In developing and implementing the Watershed Plan, the Parties may agree to explore strategies, actions and options related, but not limited, to:
- a) linkages between land use and watershed health;
 - b) development of guidance and recommendations for more sustainable land use practices that support watershed health;
 - c) strategies to reduce seasonal water use and adapt land use practices;
 - d) knowledge gathering with regard to fish, ecosystems, and environmental flows;
 - e) identification of priority sites and locations for environmental protection and restoration that support watershed health;
 - f) development of a watershed model based on both western science and Indigenous knowledge, and taking into account climate change projections for the region, to inform decision making and ongoing adaptive planning;
 - g) pooling collective knowledge, science, and understandings of the Xwulqw'selu Watershed and ecosystem health;
 - h) shared decision-making and sustainable co-management of the Xwulqw'selu Watershed in accordance with Part 7 (*Xutsmintst*); and
 - i) actions to address winter river flow levels and river and tidal flooding impacts.

6. *They'tal'* (Relationship Building)

- 6.1 To support the commitments set out in this Agreement, the Parties agree to work together in an enduring government-to-government relationship to develop the Watershed Plan, including developing and making recommendations for the WSP. Cowichan Tribes' vision, principles, and laws as described herein will inform the relationship between the Parties, and the Watershed Plan.
- 6.2 The Parties will seek to build a shared understanding of, and apply, the following Cowichan Tribes' *snuw'uy'ulh* (teachings) and *syuw'entst* (proper ways of being) in the government-to-government relationship and development and implementation of the Watershed Plan:
- a) *Nuts'amat kws yaay'us 'utu qa'* – We come together as a whole to work together to be stronger as partners for the watershed.
 - b) *Hwialasmut tu Tumuhw* – Take care of the Earth (this includes the watershed).
 - c) *Mukw' stem 'i 'utunu Tumuhw, 'o' huliitun tst, mukw' stem 'i 'utunu Tumuhw 'o' shiilhukw 'tul'*. – Everything on this Earth is what sustains us; everything on this Earth is connected together.
 - d) *St'atl'um stuhw tun kwunmun* – Take only what you need.
 - e) *Stsielhstuhw tu mukw stem ('i 'u tuna Tumuhw)* – Respect for all things; Respect for all beings; Respect for what is around you.
 - f) *'Uw-wu ha'kwush 'uhw, 'i 'o' shtes ch 'ul'* – Leave it the way we found it.
 - g) *Hulitun ts-t tu qa'* – Water is life.
 - h) *Stsielh stum tu Sqwutsun'a'lh sh-saay' 'i' tu sniw's kwa 'e' 'luhwutss* – Cowichan rights and laws are respected.
 - i) *Yaay'usme't kws mukwe' stem 'itunnu Tumuhw 'o' sul'iq'tul, 'Uw-wute'kw'u suhiim* – Work to bring everything in our environment into balance.
 - j) *Hiiye'yutul tst'u to' mukw' stem 'i 'u tun'a Tumuhw 'i' tu qa'* – Everything in the natural world is connected as part of our family; we are all relatives.
 - k) *Ts'i'ts'uwatul' eluhwut tu Xwulqw'selu qa' Tumuhw, 'i' Mukw'stem 'ukw'o' yath* – Work together for the health and wellbeing of the Xwulqw'selu Watershed from generation to generation.
- 6.3 The Parties agree to:
- a) build trust and an ongoing long-term relationship;
 - b) build a shared understanding of Cowichan Tribes' traditional governance, laws, and protocols, and identify processes to support Cowichan Tribes' governance and capacity building as it relates to management of the Xwulqw'selu Watershed;

- c) seek to assess and meaningfully address any potential adverse impacts to Cowichan Tribes' Title and Rights arising from their decisions, actions, and recommendations affecting the Xwulqw'selu Watershed;
- d) take a balanced approach to watershed planning that supports ecosystem health and considers the needs, including economic and social well-being, of a diversity of groups and communities who use and rely on the Xwulqw'selu Watershed; and
- e) without limiting the application of Part 9 (Funding), substantively work together to seek reasonable funding to support the Watershed Plan.

7. Xutsmintst (What We Have Figured Out)

7.1 In developing the Watershed Plan, the Parties will:

- a) apply a contemporary shared decision-making model that reflects and includes:
 - i. the terms of this section 7.1;
 - ii. principles of consensus decision-making, as described in section 7.2; and
 - iii. the dispute resolution processes in Part 10.
- b) 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.
- c) respect each other's decision-making structures and authorities, and work in good faith to seek to obtain necessary approvals for the Watershed Plan and its components in accordance with the Parties' respective approval processes, which:
 - i. in the case of Cowichan Tribes, may include approval from Cowichan Tribes' leadership following internal staff review and community engagement, as well as other community decision-making processes; and
 - ii. in the case of the Province, includes seeking all required mandates and approvals, including statutory decisions or other policy requirements for Watershed Plan and WSP development and implementation.
- d) apply and incorporate Cowichan Tribes' Indigenous knowledge in respect of the Xwulqw'selu Watershed where appropriate, and in a manner consistent with any Cowichan Tribes' laws, principles, or protocols regarding the sharing of Indigenous knowledge, including any confidentiality requirements and any applicable principles of ownership, control, access and possession.
- e) remain flexible to innovative approaches based on Indigenous ways of being and Indigenous governance principles.

- f) assign and maintain representatives with the appropriate authority to the Planning Governance Structure, developed through consensus by the Transition Steering Committee, which structure will include the following supporting bodies:
 - i. a senior government-to-government table with an equal number of representatives from each of the Province and Cowichan Tribes that will make consensus recommendations with respect to the Watershed Plan process and any other stewardship initiative as agreed to by the Parties (the “**Government-to-Government Table**”);
 - ii. a supporting planning team with assigned staff from the Province and Cowichan Tribes that works at the direction of the Government-to-Government Table, oversees the planning process and workstreams, and prepares information for decision by the Government-to Government Table; and
 - iii. such other roles and structures as may be needed and directed by the Parties to undertake the necessary planning activities and support consensus decision-making by the Government-to-Government Table.
- g) refer to and apply the guidance of the Terms of Reference as developed through consensus by the Transition Steering Committee, which will, at minimum:
 - i. include recommended terms of reference for a WSP that meet the statutory requirements under the WSA;
 - ii. include the decision-making principles and models outlined in this Agreement; and
 - iii. be updated as appropriate throughout the planning process as directed and approved by the Government-to-Government table, subject to any necessary approvals.
- h) establish and follow a regular schedule to brief the Parties’ respective decision-makers, including through annual briefings during the three-year planning process to summarize the Parties’ progress and identify outstanding issues.

7.2 In implementing this Agreement, the Parties will approach consensus decision-making in accordance with the following principles:

- a) The Parties will work collaboratively in implementing this Agreement and will strive to make decisions and determine appropriate actions by consensus.
- b) The Parties acknowledge that consensus decision-making is a process whereby issues are raised, discussed, and resolved cooperatively.
- c) Reaching consensus includes having respect for each Party’s unique principles and governance structures. It may include consideration of various opinions, knowledge and perspectives, and it may take time to arrive at a consensus.

- d) Reaching a decision by consensus does not mean that the Parties will always be fully satisfied with the decision or outcome, but that the Parties have worked towards a suitable and achievable solution in the circumstances.
- e) Where there is a lack of consensus on a technical issue concerning the Xwulqw'selu Watershed, the Parties agree that their primary objective will be to prevent further environmental degradation.
- f) Where consensus on a decision or action cannot reasonably be achieved by the Parties, they will follow the dispute resolution process set out in Part 10 of this Agreement.

7.3 The Parties will take the following immediate actions within ninety (90) days of the Effective Date:

- a) seek potential sources of ongoing provincial funding for Watershed Plan development and implementation, in addition to the funding provided under Part 9 of this Agreement;
- b) make sustained progress to develop interim co-management approaches for decisions and short-term actions related to the Xwulqw'selu Watershed prior to Watershed Plan completion, in accordance with Part 8; and
- c) make sustained progress in developing recommendations for closure or access restrictions to water sources pursuant to section 135 of the WSA.

7.4 The Parties acknowledge that developing the Watershed Plan will be a dynamic, iterative process and that actions and recommendations may need to be revisited and adjusted along the way.

8. Interim Co-Management

- 8.1 The Parties will work cooperatively and seek to complete the Watershed Plan, including to complete and recommend the WSP, within a 3-year time period, beginning in April 2023 and ending in April 2026.
- 8.2 Recognizing that the Province may need to make decisions affecting the Xwulqw'selu Watershed prior to Watershed Plan completion, the Parties will develop interim co-management and decision-making processes that respect and consider the ongoing development of the Watershed Plan and the Core Priorities identified in this Agreement and that ensure Cowichan Tribes and the Province engage collaboratively in such decisions, as appropriate.

9. Funding

- 9.1 The Parties acknowledge that adequate financial and human resource capacity is essential to enable Cowichan Tribes' effective implementation of this Agreement, and that Cowichan Tribes will require financial support from the Province in order to fulfill its obligations under this Agreement and to participate in the Watershed Plan.
- 9.2 The Province has provided the following initial capacity funding to Cowichan Tribes to support the implementation of this Agreement and the development of the Watershed Plan:
- a) \$75,000 from the Forests, Lands and Natural Resource Operations ministry program budget (March 2020);
 - b) \$50,000 from the Forests, Lands and Natural Resource Operations Indigenous Funding Program (formerly Indigenous Funding Envelope) (November 2021);
 - c) \$155,000 from the Water, Land and Resource Stewardship ministry program budget (March 2023); and
 - d) \$46,000 from the Ministry of Forests Land Based Investment Strategy funding (March 2023).
- 9.3 The Parties acknowledge that Cowichan Tribes will require additional capacity funding to support the ongoing and sustainable implementation of the Watershed Plan, and agree to explore Cowichan Tribes' related funding needs during the Watershed Plan development process.
- 9.4 The Province will seek multi-year funding for Cowichan Tribes to support the work under this Agreement, and will seriously consider any requests from Cowichan Tribes for additional and sustainable funding.
- 9.5 The Parties agree to work cooperatively to identify and seek to obtain funding from other sources, if necessary, to support the implementation of this Agreement.
- 9.6 Nothing in this Agreement is intended to affect Cowichan Tribes' ability to apply for, or eligibility to obtain, funding from other provincial programs or sources, or from federal or private sources.
- 9.7 Despite any other provisions of this Agreement, the payment of money by the Province to Cowichan Tribes pursuant to this Agreement is subject to:
- a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any BC Fiscal Year or part thereof when any such payment may be required, to make that payment; and
 - b) Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in section 9.7(a).

10. *Qwiqwuxtul' Sthuytal* (Dispute Resolution)

10.1 Principles

- a) The Parties will adopt a collaborative and interest-based approach to disagreements on the interpretation and implementation of this Agreement.
- b) If any dispute arises regarding the interpretation or implementation of this Agreement, the Parties will endeavour to resolve them in a manner that fosters an improved, ongoing and respectful government-to-government relationship between the Province and Cowichan Tribes.

10.2 Process

- a) If a dispute arises regarding the interpretation or implementation of this Agreement, or where consensus on a decision or action cannot reasonably be achieved by the Parties under section 7.2(f), they may refer the dispute to the senior representatives of the Parties for resolution.
- b) If the senior representatives of the Parties are unable to resolve the dispute, the Parties may agree to engage a mutually agreed-upon mediator, or may attempt to resolve the dispute by another process that the Parties may mutually determine and agree upon.
- c) If the Parties agree to appoint an independent mediator but cannot agree on the mediator within thirty (30) business days, the Parties will request the appointment to be made by an independent third party such as the BC International Commercial Arbitration Centre or MediateBC.
- d) In the event of mediation, each Party will bear its own costs of mediation and the Parties will each pay one-half of the costs of the mediator.
- e) For clarity, nothing in this Part 10 prevents or limits the ability of any Party to seek relief in court or boards and tribunals relating to a dispute.

11. Notice

- 11.1 Any notice, communication, document or amendment required or permitted under this Agreement must be in writing, and will be deemed validly given to and received by the other Party, if served personally, on the date of personal service or, if delivered by mail or e-mail, when received as follows:

If to Cowichan Tribes:

Director, Lands and Self-Governance
Cowichan Tribes
5760 Allenby Road
Duncan, British Columbia V9L 5J1

Email: Larry.George@cowichantribes.com

If to the Province:

Director, Resource Stewardship Operations, West Region
Ministry of Water, Land and Resource Stewardship
2080A Labieux Road
Nanaimo, British Columbia V9T 6J9

Email: Arlette.Malcolm@gov.bc.ca

12. General Provisions

12.1 Additional Approvals

- a) The Parties acknowledge that the WSP will require the approval of the Minister of Water, Land and Resource Stewardship and, if applicable, the Lieutenant Governor in Council, and the WSP planning process and terms of the WSP, including the designation of the Responsible Person, are subject to these approvals.
- b) The Parties acknowledge that in addition to WSP approvals, further approvals and mandates may be required to fully or partially achieve the priorities described in this Agreement. Any negotiation mandates or any further agreements reached between the Parties as a result of those negotiations are subject to each Party obtaining all required approvals, including in the case of the Province, any Cabinet and Treasury Board approvals.

12.2 Other First Nations and Interested Parties

- a) Cowichan Tribes recognizes that the Province may owe separate duties to consult with other First Nations or Indigenous groups, including other bands comprising the Quw'utsun Nation, that also assert Aboriginal rights or title within the Xwulqw'selu Watershed on any decisions or actions which may potentially impact those rights.
- b) The Parties acknowledge that there are benefits to working collaboratively with other parties in order to achieve the outcomes contemplated in this Agreement.
- c) The Parties acknowledge that they are required to communicate and consult with stakeholders with respect to the WSP in accordance with the process established under section 68(1)(f) of the WSA and, in addition to these requirements, may engage other interested parties where appropriate. The Province will advise Cowichan Tribes of its engagement or consultation with any other First Nations, Indigenous groups or other interested parties in respect of the implementation of this Agreement and the development and implementation of the WSP.
- d) The Parties will engage with each other in respect of any issues arising that may affect the obligations or implementation of this Agreement.
- e) Any engagement or consultation with other First Nations, Indigenous groups or other interested parties under this section 12.2 or otherwise in connection with this

Agreement does not constitute an acknowledgement on the part of Cowichan Tribes of the legitimacy of any legal or equitable interest of any other interested party in the lands and waters comprising the Xwulqw'selu Watershed.

12.3 Involvement of other Governments, Ministries and Agencies

- a) This Agreement applies to each of the provincial Ministries responsible for water, land, and resource management and decision-making in the designated area set out in Ministerial Order No. M8.
- b) In the interests of an effective government-to-government relationship, and to fulfill the purposes of this Agreement, other provincial or federal ministries and agencies or local government bodies may become participants in the processes described in this Agreement, where mutually agreed to by the Parties.

12.4 Term and Termination

- a) This Agreement will commence on the Effective Date and will be in place until it is expressly replaced by a further written agreement, unless terminated earlier in accordance with this section 12.4.
- b) This Agreement may be terminated:
 - i. by mutual agreement of the Parties in writing; or
 - ii. by either Party upon ninety (90) days written notice to the other Party of intention to terminate, which notice must outline in reasonable detail the Party's concerns and reasons for termination, provided that the Parties will meet within thirty (30) days of delivery of the notice of termination and will use good faith efforts to first try to resolve the issue and avoid termination.
- c) If this Agreement is terminated by a Party under section 12.4(b)(ii), only unspent funds advanced to Cowichan Tribes up to the effective date of termination are repayable to the Province, unless otherwise agreed to by the Parties.

12.5 Sections 12.4(c), 12.7, 12.8, 12.9, 12.10, 12.11 and 12.12, will survive any termination of this Agreement.

12.6 The Parties consider this Agreement to be a living document and may amend this Agreement from time to time by mutual agreement of the Parties in writing.

12.7 This Agreement does not create, amend, define, affirm, recognize, abrogate, or derogate from Cowichan Tribes' Title and Rights which are recognized and affirmed by Section 35(1) of the *Constitution Act, 1982*.

12.8 This Agreement is not a treaty or land claims agreement within the meaning of Sections 25 or 35 of the *Constitution Act, 1982*.

- 12.9 This Agreement does not limit the positions any Party may take in any legal or administrative proceedings or in any discussions, negotiations or other forum, or constitute any admission of fact or liability.
- 12.10 Nothing in this Agreement is intended to limit any of the rights or obligations either of the Parties may have under any other agreement.
- 12.11 Nothing in this Agreement interferes with the law-making and decision-making authority or jurisdiction of any Party, including the inherent right to self-government of Cowichan Tribes, or fetters the discretion of any law-making or decision-making authority.
- 12.12 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and Canada.
- 12.13 If any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable, the remainder of this Agreement and the application of it to any person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.
- 12.14 The Parties acknowledge that English cannot capture all of the nuances in meaning and interpretation of the Hul'q'umi'num words and phrases in this Agreement. In the event of an inconsistency between the meaning of a Hul'q'umi'num word or phrase and its English translation, the Parties will seek to reach a common understanding. In the event of a dispute regarding the meaning of a translated word or phrase in this Agreement that cannot be resolved by consensus, the English translation will be relied upon.
- 12.15 Cowichan Tribes represents and warrants to the Province that it enters into this Agreement for and on behalf of itself and its members and that it has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement.
- 12.16 The Province represents and warrants to Cowichan Tribes that it has the legal power, capacity and authority to enter into and carry out its obligations under this Agreement and that all necessary actions have been taken by the Province to authorize the execution and delivery of this Agreement.
- 12.17 This Agreement may be entered into by each Party signing a separate copy of this Agreement and delivering it to the other Parties by electronic transmission.

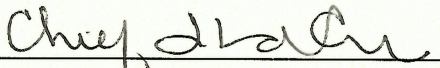
13. *S-xuxitsstuhw* (Keeping Track of Something)

- 13.1 The Parties will agree upon an appropriate means (such as a gathering and/or physical commemoration structure) to mark their commitments under this Agreement to the health of the Xwulqw'selu Watershed through collaborative management and shared decision-making.

13.2 The Parties will consult with each other prior to making any public announcements regarding this Agreement.

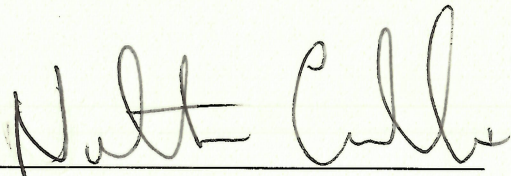
IN WITNESS WHEREOF, the Parties have executed this Agreement or have caused this Agreement to be executed in their respective names by their respective authorized representatives.

COWICHAN TRIBES



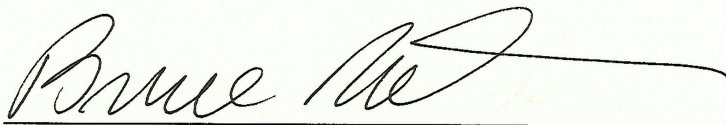
Chief X'tli'li'ye Lydia Hwitsum
Chief of Cowichan Tribes

MINISTRY OF WATER, LAND AND RESOURCE STEWARDSHIP



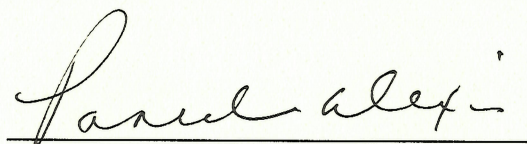
Honourable Nathan Cullen
Minister of Water, Land and Resource Stewardship

MINISTRY OF FORESTS



Honourable Bruce Ralston
Minister of Forests

MINISTRY OF AGRICULTURE AND FOOD



Honourable Pam Alexis
Minister of Agriculture and Food

Schedule "A" - Ministerial Order No. M8

PROVINCE OF BRITISH COLUMBIA

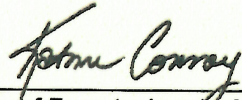
ORDER OF THE MINISTER OF FORESTS, LANDS, NATURAL
RESOURCE OPERATIONS AND RURAL DEVELOPMENT

Water Sustainability Act

Ministerial Order No. M8

I, Katrine Conroy, Minister of Forests, Lands, Natural Resource Operations and Rural Development, order that the attached 2021 Xwulqw'selu – Koksilah River Watershed Order is made.

January 13th, 2022
Date


Minister of Forests, Lands, Natural Resource
Operations and Rural Development
(or authorized signatory)

Katrine Conroy
Printed Name and Title (if authorized
signatory)

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: Water Sustainability Act, s. 65

Other: _____

2021 XWULQW'SELU – KOKSILAH RIVER WATERSHED ORDER

WHEREAS the Minister of Forests, Lands, Natural Resource Operations and Rural Development may, by order pursuant to section 65 of the Water Sustainability Act, designate an area of the Province for the purpose of developing a water sustainability plan, if the Minister considers that a plan will assist in preventing or addressing conflicts between water users, conflicts between the needs of water users and environmental flow needs, risks to water quality or risks to aquatic ecosystem health.

And WHEREAS the Minister of Forests, Lands, Natural Resource Operations and Rural Development, in considering the designation of an area for the purpose of developing a water sustainability plan, may also consider identifying restoration measures in relation to a damaged aquatic ecosystem.

And WHEREAS the Minister of Forests, Lands, Natural Resource Operations and Rural Development considers that, for the reasons outlined in this Order, a plan will assist in preventing or addressing conflicts between water users, conflicts between the needs of water users and environmental flow needs, risks to water quality or risks to aquatic ecosystem health within the boundaries of the Koksilah (Xwulqw'selu) River watershed (“the watershed”).

NOW THEREFORE, I, Katrine Conroy, Minister of Forests, Lands, Natural Resource Operations and Rural Development order that:

1. The watershed area described in Schedule A of this Order is hereby designated pursuant to section 65 of the Water Sustainability Act (the “Act”) as the area for the purpose of developing a water sustainability plan under Part 3, Division 4 of the Act (the “designated area”).
2. The reasons for making this Order to designate the watershed area, described in Schedule A, for the purpose of developing a water sustainability plan for the designated area, are as follows:
 - a. The watershed is the spiritual birthplace of the Quw'utsun (Cowichan) peoples and essential to their cultural identity and well-being.
 - b. The watershed, which comprises the designated area, has a drainage area of 312 square kilometers, consisting of underlying aquifers, the Koksilah River (“the River”) and three major sub-tributaries of the River: Patrolas, Glenora, and Kelvin Creeks (the “streams”). An estimated 1,100 distinct water users are dependent on stream water and groundwater in the watershed for a cumulative daily demand of more than 32,000 cubic meters. Agricultural, industrial, and residential uses are the primary uses of water.
 - c. The watershed also supports the streams' regionally significant aquatic ecosystems and their fish species, including steelhead, coho salmon, and resident trout. Serious threats to salmon production due to water use pressures in the watershed has been documented since the 1980s.

- d. In November 1980 a water allocation notation was placed on the “Koksilah River and tributaries” stating those streams have fully recorded status in recognition of water availability constraints for further stream water allocation (except for domestic purpose). Following placement of this notation, groundwater development accelerated, which also corresponded with continued declines in stream flows and fisheries stocks in those streams.
- e. Recent hydrological analysis confirms a declining trend of summertime streamflows in the watershed’s streams which is attributed to water demand, drought and climate change. This has led to impacts on the streams’ aquatic ecosystem habitats with consequent extreme conservation concerns for salmon populations in those streams. This has also elevated conflict and concern between water users over water availability.
- f. Long-term trends in groundwater levels in aquifers and their hydraulic connection to streams throughout the watershed are not well understood. However, recent studies indicate that within the watershed the aquifers are generally well-connected to the streams and those studies also suggest that groundwater pumping from aquifers hydraulically connected to the streams is contributing to low flows. Demand for groundwater continues to grow as new applications for groundwater licences are received.
- g. Short-term measures, such as the development of an irrigation schedule and issuance of Temporary Fish Protection Orders during 2019 and 2021, to respond to low flows in the watershed’s streams and corresponding elevated stream temperatures that threatened the survival of salmonid fish populations, have been taken. Considerable public outreach preceded curtailment of water use and is ongoing. These are not sustainable solutions in the long term.
- h. Opportunities for stream or off-stream water storage that might otherwise supplement baseflow are limited; however, a recent study identified several options of various scales to increase storage. The main constraints identified for the most feasible options include overall cost and undefined community interest. In the face of climate change more work needs to be done on adaptative solutions.
- i. Work under a 2020 Interim Agreement between the Province and Cowichan Tribes recommended the development and eventual implementation of a water sustainability plan for the watershed to prevent or address 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 present in the watershed.
- j. The designation of the watershed as a water sustainability plan area is consistent with many of the Province’s service goals, including forming partnerships that support reconciliation with Indigenous peoples, sustainable resource management, and building resilient rural communities.

SCHEDULE A

1. For the purposes of section 1 of the Order, the area designated under the Order for the purpose of developing a water sustainability plan (the “designated area”) is the Xwulqw’selu – Koksilah River watershed, the boundaries of which are shown in Figure 1. The location of the designated area is shown in the “Area of Detail” inset map of Figure 1.
2. For clarity, the designated area, described in section 1 of the Order and having the boundaries shown in Figure 1 of this Schedule, includes all aquifers or other subsurface geological formations, or parts of those aquifers or other subsurface geological formations, that are within the boundaries of the designated area.
3. For clarity, the designated area, described in section 1 of the Order and having the boundaries shown in Figure 1 of this Schedule, includes all watershed areas, or parts of them, that are within the boundaries of the designated area.

