

MACKENZIE RIVER BASIN TRANSBOUNDARY WATERS MASTER AGREEMENT

BETWEEN:

THE GOVERNMENT OF CANADA as represented by the Minister of the Environment and the Minister of Indian Affairs and Northern Development (hereinafter referred to as "Canada")

AND

THE GOVERNMENT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Environment, Lands and Parks (hereinafter referred to as "British Columbia")

AND

THE GOVERNMENT OF THE PROVINCE OF ALBERTA as represented by the Minister of Environmental Protection (hereinafter referred to as "Alberta")

AND

THE GOVERNMENT OF THE PROVINCE OF SASKATCHEWAN as represented by the Minister responsible for the Saskatchewan Water Corporation (hereinafter referred to as "Saskatchewan")

AND

THE GOVERNMENT OF THE NORTHWEST TERRITORIES as represented by the Minister of Renewable Resources and the Commissioner of the Northwest Territories (hereinafter referred to as the "Northwest Territories")

AND

THE GOVERNMENT OF THE YUKON as represented by the Minister of Renewable Resources (hereinafter referred to as the "Yukon")

Hereinafter referred to collectively as "the Parties".

WHEREAS the waters of the Mackenzie River Basin arise in or flow through British Columbia, Alberta, Saskatchewan, the Northwest Territories and the Yukon and are a precious resource;

AND WHEREAS the waters of the Mackenzie River Basin should be managed to preserve the Ecological Integrity of the Aquatic Ecosystem; and to facilitate reasonable, equitable and sustainable use of this resource for present and future generations;

AND WHEREAS cooperative management of the waters of the Mackenzie River Basin requires the application of consistent guiding principles;

AND WHEREAS the Parties have been exchanging information on water-related issues, developments and research, and have been undertaking cooperative studies and programs of mutual interest;

AND WHEREAS a cooperative water management mechanism will encourage the assessment of water issues and promote sustainable water resource use and management;

AND WHEREAS cooperative water management agreements are the most appropriate means of addressing interjurisdictional water quality, quantity and related issues at boundary crossing points;

AND WHEREAS the Governor in Council has, pursuant to Order in Council No. 1995-3/293 dated February 21, 1995, authorized the Minister of the Environment and the Minister of Indian Affairs and Northern Development to execute this Agreement on behalf of Canada;

AND WHEREAS the Lieutenant-Governor in Council has, pursuant to Order in Council No. 0612 dated May 26, 1997, authorized the Minister of Environment, Lands and Parks to execute this Agreement on behalf of British Columbia;

AND WHEREAS the Minister of Environmental Protection is authorized by s. 20 of the *Environmental Protection and Enhancement Act* and s. 8.1 of the *Department of the Environment Act* to execute this Agreement on behalf of Alberta;

AND WHEREAS the Lieutenant-Governor in Council has, pursuant to Order in Council No. 817/96 dated December 18, 1996, authorized the Minister responsible for the Saskatchewan Water Corporation to execute this agreement on behalf of Saskatchewan;

AND WHEREAS the Northwest Territories Legislative Assembly, through the authority of the *Water Resources Agreements Act*, SNWT 1983, c. 9, has authorized the Minister of Renewable Resources and the Commissioner of the Northwest Territories to execute this Agreement on behalf of the Northwest Territories;

AND WHEREAS the Minister of Renewable Resources is authorized by s. 52 of the *Yukon Environment Act* to execute this Agreement on behalf of the Yukon.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Part A Purpose

The purpose of this Agreement is to establish common principles for the cooperative management of the Aquatic Ecosystem of the Mackenzie River Basin, to establish an administrative mechanism to facilitate application of these principles, and to make provisions for Bilateral Water Management Agreements.

Part B Definitions

"Aquatic Ecosystem" means the interacting components of air, land, water and living organisms including humans, that relate to the Water Resources of the Mackenzie River Basin.

"Basin" means the Mackenzie River Basin as outlined in Schedule "A".

"Bilateral Water Management Agreements" means those agreements between the provinces and the territories (including the Department of Indian Affairs and Northern Development, where the territories are parties to this Agreement) as listed below, which, when signed by the Parties, will be attached to this Agreement as Schedules B, C, D, E, F, G, and H, respectively, and as may be amended from time to time:

British Columbia-Alberta
British Columbia-Northwest Territories
British Columbia-Yukon
Alberta-Northwest Territories
Alberta-Saskatchewan
Saskatchewan-Northwest Territories
Northwest Territories-Yukon

"Board" means the Mackenzie River Basin Board established under Part D, section 1.

"Ecological Integrity" means the conditions that the Parties to any of the Bilateral Water Management Agreements determine are necessary to maintain a healthy and diverse Aquatic Ecosystem.

"Fiscal Year" means a period commencing April 1 and ending March 31 of the following year.

"Ministers" means

- a. for Canada, the Minister of the Environment and the Minister of Indian Affairs and Northern Development;
- b. for British Columbia, the Minister of Environment, Lands and Parks;
- c. for Alberta, the Minister of Environmental Protection;
- d. for Saskatchewan, the Minister responsible for the Saskatchewan Water Corporation;
- e. for the Northwest Territories, the Minister of Renewable Resources; and
- f. for the Yukon, the Minister of Renewable Resources.

"Secretariat" means the Mackenzie River Basin Secretariat established pursuant to this Agreement.

"Water Resources" means the Mackenzie River and any order tributary to the Mackenzie River including deltas, tributaries of deltas, wetlands and lakes which contribute water to the Mackenzie River, whether in a liquid or frozen state, excluding groundwater except where the Parties to a Bilateral Water Management Agreement agree to its inclusion.

Part C Principles

The Parties are committed to:

1. Managing the Water Resources in a manner consistent with the maintenance of the Ecological Integrity of the Aquatic Ecosystem;
2. Managing the use of the Water Resources in a sustainable manner for present and future generations.
3. The right of each to use or manage the use of the Water Resources within its jurisdiction provided such use does not unreasonably harm the Ecological Integrity of the Aquatic Ecosystem in any other jurisdiction;

4. Providing for early and effective consultation, notification and sharing of information on developments and activities that might affect the Ecological Integrity of the Aquatic Ecosystem in another jurisdiction; and
5. Resolving issues in a cooperative and harmonious manner.

Part D Administration

1. Mackenzie River Basin Board:

- a. There shall be established a Mackenzie River Basin Board consisting of no more than thirteen members, eight of which Board members shall be appointed at the pleasure of each Party hereto as follows:

Canada	up to three members
British Columbia	one member
Alberta	one member
Saskatchewan	one member
Northwest Territories	one member
Yukon	one member

- b. There shall be a total of five Board members representing Aboriginal organizations, one for Aboriginal organizations in each of British Columbia, Alberta, Saskatchewan, the Northwest Territories and the Yukon to be nominated and appointed as follows:
 - i. the Aboriginal organizations in each such jurisdiction shall nominate one person for appointment to the Board; and
 - ii. each such nominee shall be appointed by and serve at the pleasure of the Minister representing the jurisdiction from which the nominee was selected.
- c. Each member including the chairperson may designate an alternate and shall register that designation with the Board. The alternate may act on behalf of the appointed member during his or her absence whereupon the alternate shall enjoy all the rights conferred upon the member.
- d. The chairperson shall be selected from Board members by the full Board membership, at least every two years.
- e. A quorum of the Board shall be seven members or their alternates.
- f. A two-thirds majority of the members present shall constitute approval of the Board on any question.
- g. The expenses of the members representing Aboriginal organizations shall be borne by the Parties in accordance with the costing formula outlined in Part D, section 3, and the Parties will bear the costs of their own members.

2. Duties of the Board:

The Board shall act to carry out the purposes of this Agreement in accordance with the principles stated herein by:

- a. providing a forum for communication, coordination, information exchange, notification and consultation;
- b. identifying, recommending and implementing such studies, investigations, programs and activities as are required to carry out this Agreement;
- c. considering the needs and concerns of Aboriginal people through,
 - i. the provision of culturally appropriate communication, and
 - ii. the incorporation of their traditional knowledge and values;
- d. establishing and directing the activities of the Secretariat, which shall carry out the programs approved by the Board and shall comprise such personnel as the Board may direct;
- e. recommending uniform objectives or guidelines for the quality and quantity of the Water Resources;
- f. establishing and directing technical committees which may be required to support the work of the Board;
- g. encouraging consistent monitoring programs;
- h. monitoring the progress of implementing the Bilateral Water Management Agreements;
- i. administering the dispute resolution process set out in Part E;
- j. meeting at least annually;
- k. reviewing this Agreement at least once every three years and proposing amendments to the Parties;
- l. creating a budget which shall include,
 - i. within two years of the signing of this Agreement, developing a five-year expenditure plan,
 - ii. establishing the annual Board budget within the limits approved by the Parties, and
 - iii. authorizing expenditures within the limits of approved budgets including, inter alia, expenditures for the staffing and operation of the Secretariat;
- m. as required, engaging agencies of the Parties, Aboriginal organizations, or consultants, to undertake such assignments as the Board requires;
- n. submitting to the Ministers an annual report, within six months after the end of the Fiscal Year;
- o. submitting to the Ministers a report on the state of the Aquatic Ecosystem within 5 years after the end of the first Fiscal Year and every 5 years thereafter;

- p. keeping complete records of all expenditures made pursuant to this Agreement, supporting such expenditures with proper documentation, and making these records and documents available to auditors appointed by the Board or any Party hereto requesting the same;
- q. enacting, amending or repealing by-laws for the conduct of the Board and the Secretariat;
- r. establishing standards and procedures required for maintenance of order at its meetings; and
- s. carrying out such other related duties as all the Parties may request in writing.

3. Cost Sharing:

- a. Canada, as represented by the Department of the Environment, shall be responsible for managing the expenditures, in the first instance;
- b. the total annual costs eligible to be shared by the Parties pursuant to this Agreement shall not exceed \$280,000 or such other amount the Ministers may agree from time to time;
- c. eligible expenditures authorized by the Board may include, inter alia, expenditures for the staffing and operation of the Secretariat, and the expenses of the members representing Aboriginal organizations, but shall not include the expenses of the members of the Parties;
- d. total annual eligible costs shall be shared in accordance with the following formula:
 - i. 1/7 of the total, contributed by each of the following:
 - The Government of Saskatchewan;
 - The Government of Alberta;
 - The Government of British Columbia;
 - The Government of the Northwest Territories;
 - ii. 2/7 of the total, contributed by the Government of Canada, shared equally by the Department of the Environment and the Department of Indian Affairs and Northern Development; and
 - iii. the remaining 1/7 of the total, which is attributable to the Government of the Yukon, will be shared by the Department of Indian Affairs and Northern Development and the Government of Yukon on an 80:20 basis.
- e. the provinces and the territories shall pay to Canada, as represented by the Department of the Environment, their share of expenditures made by Canada under this Agreement as follows:
 - i. commencing April 1st of each year, each party shall remit in advance, on a quarterly basis, their respective shares of monies for financing the operations pursuant to this Agreement;
 - ii. annual statements shall be audited and certified by senior officials of Canada and submitted to the Parties within ninety days after the end of the fiscal year; and

- iii. any funds remaining undisbursed at year-end will be returned to the Parties based on their respective shares, or applied against the following fiscal year's expenditures.
- f. Canada shall reimburse each of the provinces and each of the territories for expenditures made pursuant to this Agreement by any province or territory. Payment for such expenditures will be made by Canada within 60 days after receipt of a claim in a mutually agreed manner and form, any such payments to be then deemed an approved expenditure, which shall be borne by the Parties on the basis provided above, and
- g. the Board members shall keep complete records of all expenditures made pursuant to this Agreement, shall support such expenditures with proper documentation, and shall make these records and documents available to auditors appointed by the Board.

Part E Dispute Resolution

1. Any Board member may refer a dispute or question under this Agreement, excluding the Bilateral Water Management Agreements, directly to the Board, and the Board, before recommending terms of settlement to the Parties, may, where appropriate, undertake the following actions, as it deems necessary:
 - a. studies and investigations;
 - b. preparation of a report on the facts and circumstances of the dispute or question;
 - c. establish and instruct a panel to prepare the report referred to in b. above, and which may recommend terms of settlement. The panel shall consist of one person designated by each party to the dispute or question together with a chairperson designated by the Board.
2. Where a dispute or question related to a Bilateral Water Management Agreement has not been resolved, it may be referred to the Board by any of the Parties to that Bilateral Water Management Agreement, whereupon the Board shall follow the provisions of section 1 above, insofar as they are applicable.
3. Disputes or questions which have not been resolved in accordance with sections 1 and 2 above, may be referred to the Ministers for the affected jurisdictions by the chairperson of the Board acting on the directions of the Board.

Part F Aboriginal and Treaty Rights

Nothing in this Agreement shall be interpreted in a manner inconsistent with the exercise of any existing Aboriginal and Treaty rights as recognized and affirmed in s. 35 of the *Constitution Act, 1982*, which include rights now existing by way of land claims agreements or which may be acquired under land claims agreements.

Part G Proprietary Rights or Interests

This Agreement and any activity conducted under it shall not derogate from any proprietary rights or interests of the Parties.

Part H Appropriation

Notwithstanding any other provision of this Agreement, the payment of money by the Parties pursuant to this Agreement is subject to:

- a. there being sufficient monies available in an appropriation made in accordance with their respective *Financial Administration Acts*, to enable the Parties, in any fiscal year or part thereof when any payment of money by the Parties falls due pursuant to this Agreement, to make that payment;
- b. Treasury Board, as defined in those Acts, not having controlled or limited, pursuant thereto, expenditure under any appropriation referred to in subsection a. of this section.

Part I Amendment

This Agreement, excluding the Bilateral Water Management Agreements, may be amended with the consent of all the Parties to this Agreement.

Part J Duration

This Agreement takes effect when signed by all of the Parties, notwithstanding that one or other of the Bilateral Water Management Agreements hereto may not have been executed, and may be terminated by any Party upon one year's written notice to the other Parties, where upon expiry of the notice period, this Agreement and all Bilateral Water Management Agreements scheduled hereto shall terminate, subject to compliance with the cost-sharing provisions set out in Part D, Section 3.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the Parties by the Ministers and Commissioner on the latest date indicated below.