

**THIS AGREEMENT AMONG:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by The Minister of Indian Affairs and Northern Development,  
(hereinafter referred to as "Canada"),

**OF THE FIRST PART,**

**-and-**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA**, as represented by The Minister of Northern Affairs,  
(hereinafter referred to as "Manitoba"),

**OF THE SECOND PART,**

**-and-**

**THE SPLIT LAKE CREE FIRST NATION**, as represented by Chief and Council,  
(hereinafter referred to as "Split Lake Cree"),

**OF THE THIRD PART,**

**-and-**

**THE MANITOBA HYDRO-ELECTRIC BOARD**,  
(hereinafter referred to as "Hydro"),

**OF THE FOURTH PART**

**1992**

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THIS AGREEMENT made as of the            day of            , 19 .

AMONG:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
as represented by The Minister of Indian  
Affairs and Northern Development,

(hereinafter referred to as "Canada"),

OF THE FIRST PART,

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF MANITOBA, as represented by  
The Minister of Northern Affairs,

(hereinafter referred to as "Manitoba"),

OF THE SECOND PART,

- and -

THE SPLIT LAKE CREE FIRST NATION, as  
represented by Chief and Council,

(hereinafter referred to as "Split Lake  
Cree"),

OF THE THIRD PART,

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD,

(hereinafter referred to as "Hydro"),

OF THE FOURTH PART.

WHEREAS the Parties to this Agreement were and continue to be parties to the NFA, with Split Lake Cree formerly represented with respect to the NFA by NFC, as its agent, and now acting on its own behalf;

AND WHEREAS pursuant to the NFA there are obligations on each of the Parties which the Parties wish to resolve on a comprehensive basis;

AND WHEREAS the Parties have arrived at a method of implementing, resolving and settling their respective obligations under the NFA, pursuant to and consistent with the terms, provisions, conditions and mutual covenants contained in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the terms, provisions, conditions and mutual covenants contained in this Agreement, the Parties to this Agreement agree, each with the other, as set forth in this Agreement.

ARTICLE 1

1.0 AGREEMENT AND DEFINITIONS

1.1 PREAMBLE

1.1.1 Preamble Excluded. The preamble sets forth certain undisputed historical facts as a reference for this Agreement, but is not intended to and does not form part of this Agreement. The preamble should not be used or referred to in interpreting any part of this Agreement.

1.2 AGREEMENT

1.2.1 Contents. This Agreement shall consist of this document comprised of Articles 1 to 18, both inclusive, and the following schedules which are attached and form part of this Agreement:

| <u>Schedule No.</u> | <u>Title</u>                              |
|---------------------|---|
| Schedule 1.1        | Financial Schedule and form of Hydro Bond |
| Schedule 2.1        | Trust Indenture                           |
| Schedule 3.1        | Boundaries of Compensation Lands          |
| Schedule 3.2        | Legal Survey Instructions                 |

|               |  |
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| Schedule 3.3  | Exclusions for Public Purposes within Compensation Lands |
| Schedule 3.4  | Easement   |
| Schedule 4.1  | Permit Lands and Fee Simple Lands                        |
| Schedule 4.2  | Declaration and Acceptance of Trust                      |
| Schedule 4.3  | Pledge Agreement   |
| Schedule 5.1  | The Split Lake Resource Management Area                  |
| Schedule 8.1  | List of NFA Claims to be Released                        |
| Schedule 18.1 | Community Consultation Report                            |
| Schedule 18.2 | List of federal departments consulted                    |
| Schedule 18.3 | List of provincial departments consulted                 |
| Schedule 18.4 | Release and Certificate of Independent Legal Advice      |

### 1.3 INTERPRETATION

1.3.1 Definitions. For all purposes within this Agreement, unless otherwise specifically provided, the following words and phrases, when capitalized and printed in bold type, whether in the plural or the singular, shall have the meaning ascribed to them in this Article:

Account shall mean an account established under Section 2.1 of the Indenture and under Articles 6, 7, 8, 9 and 10 of this Agreement.

**Acting Chief** shall mean a Member who has been appointed by Council Resolution to perform the duties of the Chief, in the absence or incapacity of the Chief to perform said duties.

**Adverse Effects** shall mean the negative consequences of the Project, either direct or indirect, which impact or change the physical, chemical or biological quality of the environment of any part of the Resource Area, and includes, without limitation, risks or injuries to the health, safety, well-being, comfort or enjoyment of Split Lake Cree or Members, and impacts on interests in lands, pursuits, activities, opportunities, lifestyles and assets of Split Lake Cree and Members.

**Agreement** shall mean this agreement as more particularly described in section 1.2 of this Agreement.

**Appropriate Uses** shall mean those uses of Trust Funds which are set out in the Articles 6, 7, 8, 9 and 10 of this Agreement, for which the Trustees are permitted to make disbursements from the Tataskweyak Trust to Eligible Beneficiaries and Eligible Compensation Beneficiaries, subject to applicable tests and terms and conditions, as set out in the Indenture and in this Agreement.

**ASL** shall mean above sea level.

**Asset Damage Compensation** shall mean compensation payable to any Member in accordance with Article 9 of this Agreement with respect to damage caused by Adverse Effects to Split Lake Cree Assets in which such Member has an individual interest.

**Asset Damage Reserve** shall mean a reserve of funds equal to fifty thousand dollars (\$50,000.00) which shall be funded initially from Settlement Proceeds and thereafter maintained from money allocated annually from the Income earned on the Remedial Works and Measures Account, excluding that Income earned on the O & M Reserve or the Asset Replacement Reserve.

**Asset Replacement Reserve** shall mean a reserve of funds to be accumulated from Income generated by the O & M Reserve for the purpose of funding Replacement Remedial Works.

**Basic Planning Statement** shall mean a basic planning statement as defined in The Planning Act (Manitoba).

Canada shall mean Her Majesty the Queen in Right of Canada who, for the purposes of this Agreement, is represented by the Minister of Indian Affairs and Northern Development.

Capital shall mean, subject to section 11.10 of the Indenture, the amount settled upon the Trustees by the Settlor from time to time, plus any unallocated, unpaid or unappropriated Income of the Tataskweyak Trust which has not been appropriated, allocated or paid by the Trustees within six (6) months, next following the conclusion of the fiscal year, and is not then the subject of a dispute between the Trustees and Chief and Council, plus the principal portion of the Settlement Proceeds, if any, paid or delivered to and held by Canada in trust for the use and benefit of Split Lake Cree.

Chief shall mean the Chief of Split Lake Cree elected and in office, pursuant to the Indian Act (Canada).

Chief and Council shall mean the Chief and Council of Split Lake Cree elected and in office, pursuant to the Indian Act (Canada).

Commercial Fisherman shall mean any Member who is, or has been, and who continues to be or, in the absence of Adverse Effects, would have continued to be, or who, in the future, becomes engaged in the vocation of fishing primarily for the purpose of financial gain or for wages.

Community shall mean and include an incorporated community and shall have the same meaning as the meaning ascribed to those terms in The Northern Affairs Act (Manitoba).

Compensation Lands shall mean the provincial Crown lands within the boundaries described in Schedule 3.1 of this Agreement to be transferred by Manitoba to Canada for designation as Reserve Lands, excluding those lands required for public purposes described in Schedule 3.3 of this Agreement.

Continuing Nominal Capital Amounts shall mean, subject to Article 11 of this Agreement, the minimum Net Value of the Accounts, as set out in the Financial Schedule, that must be achieved in the sixth year, upon receipt of Settlement Proceeds, and that must be maintained thereafter during the life of the Trust.

Controlled Institution shall mean any entity, association or

group, a majority of whose board of directors or other governing body is directly or indirectly chosen by any of

- Members,
- Elders or other leaders chosen in accordance with Split Lake Cree custom,
- the Chief in his capacity as Chief, or
- Chief and Council.

Controlling Bench Marks shall mean any and all of

B.M. #8 ----- Water Survey of Canada brass cap in rock approximately 150m north and east of the Water Survey of Canada recording shelter. Near the waters edge. Marked by a short metal flag on rebar.

Elevation: 167.257 m (548.74 ft.) ASL Local Datum

MB8037 ----- Lag bolt in east side of nursing station foundation. Near the south east corner.

Elevation: 174.587 m (572.79 ft.) ASL Local Datum

MB8038 ----- Water Survey of Canada brass cap in rock approximately 80 m east of B.M. #8. Marked by a short metal flag of rebar.

Elevation: 168.175 m (551.75 ft.) ASL Local Datum

78R129 ----- Surveys and mapping Manitoba aluminum cap in rock. Located on a small island just east of the community of Split Lake on the highest point of bedrock.

Elevation: 168.172 m (551.74 ft.) ASL Local Datum

which have been established as provided in subsection 2.2.1 of this Agreement or any similarly located replacement markers established in the same manner.

Corporate Trustee shall mean the trustee in office in accordance with Article 8 of the Indenture.

**Council Resolution** shall mean a resolution of Chief and Council.

**Daily Average Water Level** shall mean the average of all water levels, measured hourly, in a 24 hour period (midnight to midnight), at each respective gauge referred to in Article 2 of this Agreement and, if required, converted to Local Datum.

**Date of this Agreement** shall mean the date of execution of this Agreement by the last Party to execute this Agreement following ratification.

**Development Plan** shall mean a development plan as defined in The Planning Act (Manitoba).

**Dispute Resolution Mechanism** shall mean the appropriate arbitration provisions set out in Article 16 of this Agreement.

**Distribution Company** shall mean the corporation to be incorporated under the laws of Manitoba by Split Lake Cree to acquire Hydro's electrical distribution system assets on the Reserve, and to own and operate the electrical distribution system on Reserve, as contemplated in Article 14 of this Agreement.

**Distribution Date** shall mean such date as the Trustees shall select as the Distribution Date, consistent with the provisions of Article 16 and section 17.2 of the Indenture.

**Domestic User** shall mean any Member who uses Resources for his personal or family use.

**Easement** shall mean an interest in land and other provisions of an easement agreement in the form and content set out in Schedule 3.4 of this Agreement, when granted by Canada to Hydro and Manitoba as contemplated by this Agreement.

**Easement Lands** shall mean the lands which are the subject of the Easements to be described in section 2.1 of the Easements.

**Economic and Social Development Account** shall mean that Account established by section 2.2 of the Indenture, and under Article 7 of this Agreement.

**Elder** shall mean any Member who is fifty (50) years of age or older as of the Date of this Agreement.



**Eligible Beneficiary** shall mean Split Lake Cree and all Members, in the capacity of income beneficiary, capital beneficiary and residual capital beneficiary.

**Eligible Compensation Beneficiary** shall mean any individual Member receiving compensation for Adverse Effects pursuant to Articles 7, 8, and(or) 9, respectively, of this Agreement.

**Environmental Monitoring Account** shall mean that Account established by section 2.2 of the Indenture, and under Article 6 of this Agreement.

**Executive Implementation Committee** shall mean that committee established pursuant to section 10.8 of this Agreement.

**Existing Development** shall mean all those physical works related to the Project which have been fully or partially constructed, by or on behalf of Hydro to the Date of this Agreement; and, without limitation to the generality of the foregoing, will include specifically all dams, dikes, channels, control structures, excavations, generating stations, roads, transmission lines and other works forming part of, or related to, all aspects of the Project including

- Lake Winnipeg Regulation,
- Churchill River Diversion,
- Grand Rapids Generating Station,
- Laurie River Generating Station,
- Kelsey Generating Station,
- Kettle Generating Station,
- Long Spruce Generating Station,
- Limestone Generating Station,

and the access road and other physical construction with respect to the proposed Conawapa Generating Station.

**Fee Simple Land** shall mean any tract of land, the legal and beneficial title to which is acquired by the Land Corporation in accordance with Article 4 of this Agreement.

**Fee Simple Title** shall mean title to land issued in accordance with the provisions of The Real Property Act (Manitoba).

**Financial Schedule** shall mean Schedule 1.1 annexed to this Agreement, setting forth all payments, and the dates of all payments made and to be made pursuant to this Agreement.

**Fish** shall mean fish as defined in the Fisheries Act (Canada).

**Funding and Programming** shall mean the moneys or services provided, by the Government of Canada or the Government of Manitoba, on a discretionary basis pursuant to appropriation acts of the Parliament of Canada or of the Legislative Assembly of Manitoba, to persons, entities or groups in Canada, and which are at the relevant time available or potentially or conditionally available to Split Lake Cree, Chief and Council, Members, or a Controlled Institution.

**Future Development** shall mean the construction of any portion or portions of the Project that have not been physically constructed to the Date of this Agreement, and all major redevelopment or reconstruction of any Existing Development.

**Generally Accepted Accounting Principles** shall mean the principles of accounting established by the Canadian Institute of Chartered Accountants in their publication known as the "CICA Handbook" as amended from time to time, applied on a consistent basis.

**Hourly Average Water Level** shall mean the average of all water levels measured, in reasonably uniform intervals, in a one (1) hour period at each respective gauge referred to in Article 2 of this Agreement and, if required, converted to Local Datum.

**Hydro** shall mean the Manitoba Hydro-Electric Board.

**Impacting Future Development** shall mean any Future Development which would, or could, physically or biophysically affect the Reserve or the waters within or adjacent to the Reserve or the waters within the Resource Area.

**Implementation Account** shall mean that Account established by section 2.2 of the Indenture, and under Article 10 of this Agreement.

**Income** shall mean all of the income derived from the Trust Funds, including any income from reinvested Capital and income arising from the reinvestment of Income, which has fallen into, and become part of, the Capital of the Tataskweyak Trust, less the aggregate of:

- (a) any and all expenses incurred or payable in respect of, or to protect, the Trust Funds, or incurred, or payable in connection with, the management and administration of the Trusts subject to subsection 15.1.9 of the Indenture, and as determined by the Corporate Trustee to be chargeable to income;
- (b) such further or other sums in each year or other period as the Corporate Trustee considers to be proper allowances, reserves, deductions, disbursements and(or) outgoings in accordance with Generally Accepted Accounting Principles; and,
- (c) without limiting the generality of the foregoing, but without hereby conferring on the Corporate Trustee any authority to make expenditures without the approval of the Split Lake Cree Trustees or otherwise not in accordance with the Indenture, such sum in each year or other period as the Corporate Trustee shall consider necessary and advisable, from time to time, to reflect depletion, or depreciation of any of the assets of the Tataskweyak Trust.

Indenture shall mean the Tataskweyak Trust Agreement annexed as Schedule 2.1 of this Agreement.

Indian Moneys shall mean those moneys identified as such in Article 11 of this Agreement.

Integrated Land Use and Resource Management shall mean the joint management of lands and resources in the Resource Management Area under provincial authority and powers and the authority and powers of Split Lake Cree, in their respective jurisdictions.

Land Corporation shall mean a corporation, incorporated pursuant to Article 4 of this Agreement.

Land Use Permit shall mean any permit issued under the authority of The Crown Lands Act (Manitoba) for the purposes of this Agreement.

Local Datum shall mean the elevation established for all purposes of this Agreement based upon and referenced to the Controlling Bench Marks.

Manitoba shall mean Her Majesty the Queen in Right of the Province of Manitoba who, for the purposes of this Agreement, is represented by the Minister of Northern Affairs.

Member shall mean any individual person who is, from time to time, a member of Split Lake Cree pursuant to the Indian Act (Canada).

Minimum Nominal Capital Amounts shall mean, subject to Article 11 of this Agreement, the minimum Net Value of each of the Accounts, as set out in the Financial Schedules, that must be achieved in the year specified upon receipt of Settlement Proceeds in that year, and that must be maintained during each of the first five (5) years of this Agreement.

Minister shall mean the Minister, federal or provincial, charged by legislation with the responsibility of the exercise of powers in relation to the matter in question.

Municipality shall mean a city, town, village, rural municipality, local government district or other like municipal organization.

Net Value shall mean the realizable value, being the lower of cost or market value, of the assets of the Accounts, or any one of them, at valuation date, less the aggregate of liabilities, all in accordance with Generally Accepted Accounting Principles. Notwithstanding this valuation methodology, when determining Net Value for the purpose of establishing Income, pursuant to subsection 11.6.1 of the Indenture, those bonds that are issued by Hydro in satisfaction of financial obligations pursuant to this Agreement, shall be valued at their face value but, for the purposes of valuations in accordance with sections 9.5, 10.5 and 11.12 and subsection 15.1.7 of the Indenture, such bonds will be valued at the lower of face and market value.

NFA shall mean the agreement dated December 16, 1977, between Manitoba, Hydro, NFC and Canada, including all schedules annexed thereto, and for the purposes of this definition in this Agreement, shall include the Economic Development Agreement between the same parties and dated the 1st day of September, 1977.

NFC shall mean the Northern Flood Committee, Inc.

Non-Impacting Future Development shall mean any Future Development which would not, or could not, physically or

biophysically affect the Reserve or the waters within or adjacent to the Reserve or the waters within the Resource Area.

O & M Reserve shall mean that Reserve Account established under Section 2.2 of the Indenture and Article 9 of this Agreement, being that portion of the Capital of the Remedial Works and Measures Account required to be allocated and reserved to cover all Operation and Maintenance costs with respect to each Remedial Work funded by the Remedial Works and Measures Account.

Operations and Maintenance shall mean works, administration, management and activities reasonably necessary for the on-going operation, preservation and repair of Remedial Works for the benefit of Split Lake Cree.

Ordinary High Water Mark (OHWM) shall mean a line defined by the normal high water mark determined by plant growth and soil conditions observed in the field.

Party shall mean any of Canada, Manitoba, Split Lake Cree and Hydro.

Permit Land shall mean any tract of land under Land Use Permit.

Post-Project Water Regime shall mean, subject to amendment pursuant to paragraph 2.8.1 (h) of this Agreement, the levels and flows, including the fluctuations and the timing thereof, with respect to the Project Influenced Waterways (excepting the Aiken River) as such levels and flows occur within the Resource Area and have been observed since September 1, 1977 to the Date of this Agreement, or based thereon are reasonably anticipated to occur in the future, in accordance with the detailed considerations set forth in sections 2.3 and 2.4 of this Agreement.

Prerequisite Training shall mean instruction and preparation of Members, including employability support measures related thereto, to provide opportunities for Members

- to participate in training with respect to the Project,
- to obtain employment with respect to the Project, and
- to take advantage of business opportunities with

respect to the Project through Split Lake Cree Based Businesses.

**Program Initiative** shall mean a defined set of activities, managed by Chief and Council, or its agents as set out in subsection 10.5.2 of this Agreement, to accomplish specified goals consistent with the Appropriate Uses, which activities will include the planning, financing, and implementation of Specific Projects, and(or) the creation and delivery of services.

**Project Influenced Waterways** shall mean and include all rivers, streams, creeks, lakes and other waterways and bodies of water within, or flowing through or into the Reserve or the Resource Area, the natural regime of which has been affected by the Project.

**Project** shall mean and include all Existing Development and all past, present and future hydro-electric development or redevelopment on the Churchill, Burntwood and Nelson River Systems, and shall include all development or redevelopment of the Lake Winnipeg Regulation System north of the 53rd parallel, and shall also include the operation thereof by Hydro.

**Remedial Works** shall mean all remedial and mitigatory measures and works which are required, advisable or desirable, in the judgment of Split Lake Cree, as expressed through the approvals required under the Indenture, as a result of the Project, for the protection, restoration, or adjustment, in relation to the Post Project Water Regime, of Split Lake Cree community infrastructure, shorelines and(or) property of Members within the Reserve and the Resource Area, and all engineering, and project management advice and assistance required by Split Lake Cree for the effective planning, development, management and control of such Remedial Works.

**Remedial Works and Measures Account** shall mean that portion of the Trust Fund allocated for the purposes of Remedial Works and Asset Damage Compensation pursuant to Article 9 of this Agreement, including the related Reserve Accounts.

**Replacement Remedial Work** shall mean a Remedial Work being constructed or erected to replace a Remedial Work previously provided, at the end of the functional life of such Remedial Work previously provided and now being replaced.

**Reserve Accounts** shall mean those reserves established by section 2.2 of the Indenture, and under Articles 8 and 9 of this Agreement.

**Reserve** shall mean and have the same meaning as contained in the Indian Act, (Canada) but shall be restricted in this Agreement to that reserve or those reserves set apart for the use and benefit of Split Lake Cree.

**Reserve Land** shall mean the land contained within a Reserve.

**Resolution Process for Deviations** shall mean the process set forth in Article 2 of this Agreement.

**Resolution Process to Amend Easements** shall mean the process set forth in Article 2 of this Agreement.

**Resource Area** shall mean the **Resource Management Area** and the rivers and lakes which are traditionally available to and used by Split Lake Cree as a source of food supply, income-in-kind and income.

**Resource Beneficiary** shall mean any Member, who has suffered loss or damages up to the Date of this Agreement, or at any future time, related to Adverse Effects on Resources.

**Resource Compensation Fund** shall mean collectively, the commercial fishing compensation Account, the domestic resource compensation Account, the fur trapping compensation Account and the related Reserve Accounts, being that portion of the Tataskweyak Trust allocated for the purposes of Resource compensation pursuant to Article 8 of this Agreement.

**Resource Management Area** shall mean the area described in and shown on Schedule 5.1 of this Agreement, and includes the rivers and lakes therein, and the Reserve Lands which, from time to time, may be included in the area.

**Resources** shall mean Fish, Wildlife, forests, plant and forest products, within the Resource Area.

**Selected Lands** shall mean those parcels of land chosen as Permit Lands and(or) Fee Simple Lands as identified more precisely in Schedule 4.1 of this Agreement.

**Setback Lines** shall mean the Severance Line on I.R. Nos. 171, 171A and 171B, shown on plans filed in the Portage la Prairie

Land Titles Office as Nos. 24689 to 24706 inclusive, and the lines to be established on those portions of the Compensation Lands described as Parcels B and C on Schedules 3.1 and 3.2 to this Agreement, which have been and are to be established based on the process and methodology employed for geotechnical studies pursuant to the Canada-Manitoba Northland Agreement (1976 - 1981), and reflect the margin of the effect of flooding, erosion, ice conditions, wind set-up, and wave up-rush above the static inundation level, as that term is defined in the Easements.

Settlement Proceeds shall mean the principal amounts paid pursuant to this Agreement, and shall include any Income or Capital appreciation derived therefrom.

Settlor shall mean Split Lake Cree in its capacity as settlor of the Tataskweyak Trust.

Specific Project shall mean a planned undertaking, consistent with an Appropriate Use, by Split Lake Cree, any Member, Split Lake Cree Based Business, or Controlled Institution, whether directly or indirectly as set out in subsections 10.5.2 and 10.5.3 of this Agreement, which will be designed and implemented in a manner that will produce a set of intended results, using a separate and distinct allocation of financial and human resources, and will be undertaken within a specific time frame.

Split Lake Cree shall mean Split Lake Cree First Nation, a "band" within the meaning of the Indian Act (Canada);

Split Lake Cree Arbitrator shall mean the arbitrator selected pursuant to section 16.6 of this Agreement.

Split Lake Cree Assets shall mean all property, including both real and personal property, and all assets and all interests therein of every kind and nature including usufructuary interests, held or enjoyed by Split Lake Cree, any Member, Split Lake Cree Based Business, or Controlled Institution, and also including rights existing at law to use water for navigation and transportation.

Split Lake Cree Based Business shall mean any business owned and controlled directly or indirectly by any Member, or business owned, in part only, by any Member, but which is controlled by aboriginal people whose normal place of residence is north of the 53rd parallel in Manitoba.



**Split Lake Cree Trustees** shall mean the trustees in office in accordance with Article 7 of the Indenture.

**Split Lake Gauging Station** shall mean the Government of Canada Measuring Station No. 05UF003 used for measuring water levels at Split Lake, or any replacement gauge installed and operated in accordance with Article 2 of this Agreement.

**Static Water Level** shall mean the wind eliminated water level approximated by a five (5) day moving mean of the Daily Average Water Level, with the five (5) days being the day in question and the two (2) days immediately prior and immediately after the day in question.

**Tataskweyak Trust** shall mean the trust created by and embodied in Schedule 2.1 of this Agreement.

**Third Party** shall mean any person or entity not a Party to this Agreement.

**Trapper** shall mean any Member who is, or has been, and who continues to be or, in the absence of Adverse Effects, would have continued to be, or who, in the future, becomes engaged in the vocation of trapping for the purpose of financial gain.

**Tribunal** shall mean a tribunal of not less than three (3) or more than five (5) independent, unbiased Members who are, in accordance with Split Lake Cree custom, considered to be elders and who are not members of Chief and Council, established pursuant to Article 8 of this Agreement.

**Trust** shall mean the Tataskweyak Trust.

**Trust Funds** shall mean all property and assets of any nature or kind whatsoever, of which the Trustees in their capacities as Trustees may from time to time become possessed; all of which, including the books and records, are to be held upon the trusts and with, and subject to, the powers and provisions of this Agreement.

**Trustees** shall mean, collectively, the Split Lake Cree Trustees and the Corporate Trustee.

**Water Power Licence** shall mean a licence issued under The Water Power Act (Manitoba).

Water Power Reserve shall mean a reserve established under The Water Power Act (Manitoba).

Wildlife shall mean wildlife, as defined in The Wildlife Act (Manitoba), within the jurisdiction of Manitoba.

1.3.2 Purposes. These definitions are intended only for the purposes of this Agreement and are not to be used for any other purpose. Except when used in this Agreement these definitions are without prejudice to and are not binding upon any of the Parties. In certain Articles additional defined terms may be initially identified by brackets and subsequently capitalized. Such definition shall only be applicable when the word is used in that Article and is capitalized.

1.3.3 Gerunds. Where the defined word is a gerund and it is used as a verb, if it is capitalized and set out in bold type as a defined word, the definition outlined in this Article will be applicable, but with such modification as necessary to reflect its use as a verb.

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## ARTICLE 2

### 2.0 PROJECT OPERATIONS AND OPERATING WATER REGIME

#### 2.1 INTRODUCTION

2.1.1 Introduction. This Article identifies and describes, as the case may be, relevant records of the Post Project Water Regime, standards for deviations from that regime, and processes to resolve issues related to the water regime and Project operation.

#### 2.2 RECORDS

2.2.1 Controlling Bench Marks. For all purposes of this Agreement the Parties agree that the Controlling Bench Marks have been established by Manitoba by reference to B.M. No. 7, which, for the purposes of this Agreement, is at an elevation of 168.682 m (553.42 ft.) ASL. Manitoba certifies that all of the Controlling Bench Marks, including the referencing B.M. No. 7, are established to a third-order accuracy in accordance with a recognized Canadian standard on vertical control levelling. Manitoba, Split Lake Cree and Hydro release Canada from all liability with respect to the definition, selection or determination of the Controlling Bench Marks, or Local Datum, for the purposes of this Agreement.

2.2.2 Data. At present, Canada is operating the Split Lake Gauging Station in accordance with the terms of the memorandum of agreement on water quantity surveys between Canada and Manitoba dated April 1, 1975. Prior to any decision by Canada or Manitoba to redesignate the Split Lake Gauging Station, in accordance with the above memorandum or any successor agreement, or to relocate or cease operating the Split Lake Gauging Station, Canada or Manitoba shall give both Hydro and Split Lake Cree one (1) year written notice. Other than the express requirement for Canada or Manitoba to give a one (1) year notice prior to redesignation, relocation or ceasing operation of the Split Lake Gauging Station, subsection 2.2.2 of this Article is not intended to impose upon Canada or Manitoba any liability that either does not have in the absence of subsection 2.2.2 of this Article.

2.2.3 Records. From and after the Date of this Agreement, for so long as either Canada or Manitoba operates the Split Lake Gauging Station, Canada and Manitoba agree, during their respective operation thereof, to maintain a record of the recorded water levels at the Split Lake Gauging Station, and, when required for the purposes of this Agreement, to provide such records to any of the Parties requesting same. Nothing in subsection 2.2.3 of this Article shall be interpreted to impose upon Canada or Manitoba any liability

with respect to such data and records, that Canada and Manitoba do not have in the absence of subsection 2.2.3 of this Article.

2.2.4 Continuance of Gauging Station. Hydro and Split Lake Cree agree that if, for any reason, Canada and Manitoba cease to operate the Split Lake Gauging Station, then Hydro shall forthwith re-activate, restore or replace the Split Lake Gauging Station and operate or cause same to be operated as required for the purposes of this Article and this Agreement.

2.2.5 Post Project Water Regime. The Post-Project Water Regime has been monitored at certain locations and the data obtained from that monitoring, to the Date of this Agreement, has been used to establish guidelines for determining and measuring deviations from the Post Project Water Regime. The monitored data is recorded in a document entitled "Post Project Water Regime Data", which document is dated the same date as this Agreement and is identified by the signatures of the appropriate representatives of Split Lake Cree and Hydro. The "Post Project Water Regime Data" document, and its use by Hydro and Split Lake Cree, are without prejudice to Canada and Manitoba. The data contained in the document entitled "Post Project Water Regime Data" has been obtained by Hydro from its own records and from Water Survey of Canada records,

and is generally accurate, but may contain occasional errors, arising from both the collecting and recording of such data. If Split Lake Cree and Hydro agree, or, failing to agree, it is determined by the Dispute Resolution Mechanism, that an error exists, the erroneous data shall be deleted from the "Post Project Water Regime Data" document. Neither the existence of such errors nor the deletion of such erroneous data shall in any way affect the validity or enforceability of this Agreement.

2.2.6 Hydro Obligations. From and after the Date of this Agreement, Hydro shall continue to monitor, obtain and record raw data in substantially the same manner, and with substantially the same degree of exactitude, as recorded in the document entitled "Post Project Water Regime Data", and shall, when required for the purposes of this Agreement, provide such data, within a reasonable time, to any of the Parties requesting same.

## 2.3 POST PROJECT WATER REGIME

2.3.1 Effects of the Project. The most significant effect of the Project on the water regime at Split Lake has been a reversal of the high water levels on Split Lake from summer to winter. The predominant characteristic of the Post Project Water Regime and related Hydro operations is a sea-



sonal cycle with maximum water levels and flows generally in the winter and minimum water levels and flows generally in the summer. From time to time, summer levels higher than the winter levels have occurred as the result of factors beyond the control of Hydro.

2.3.2 Flood and Drought Conditions. Infrequent events such as the high summer water levels experienced in 1979 and 1986 are anticipated to recur from time to time in the future. Such events, although resulting in conditions at variance with the predominant, recorded characteristics of the Post Project Water Regime, nonetheless were, and shall be, part of the Post Project Water Regime. In addition, it is anticipated that floods and droughts similar in severity to the flood of 1966 and the drought of 1940-41 will recur, and other floods and droughts of varying severity will occur, from time to time, in the future. Notwithstanding that such floods or droughts are likely to result in conditions at variance with the predominant, recorded characteristics of the Post Project Water Regime, they shall nonetheless be part of the Post Project Water Regime.

2.3.3 Update of Water Regime. The "Post Project Water Regime Data" document may, as more information becomes available, be updated and amended by agreement between Split

Lake Cree and Hydro, without prejudice to Canada and Manitoba.

#### 2.4 DEVIATIONS

2.4.1 Levels and Flows. It is acknowledged that in the future, the levels and flows, including fluctuations and timing thereof, of the Project Influenced Waterways within the Resource Area shall, from time to time, exceed the maximum and fall below the minimum levels and flows, and shall vary from the fluctuation and timing experienced or anticipated in the Post Project Water Regime. To the extent such occurrences are caused by, or attributable to the Project, they shall be considered to be deviations from the Post Project Water Regime.

2.4.2 Operation Causing Deviation. Subject to the provisions of the Easements to be granted by Split Lake Cree and Canada to Hydro and Manitoba with respect to Reserve Lands, nothing in this Agreement is intended to prohibit or prevent the Project from causing or resulting in deviations from the Post Project Water Regime. Nonetheless, to the extent such deviations are caused by, or attributable to the Project, and result in Adverse Effects to Split Lake Cree, any Member, or Controlled Institution, Hydro shall have a continuing

liability under the NFA with respect to such Adverse Effects.

2.4.3 Continuing Right. Until, but only until, the Easements are granted pursuant to this Agreement, Hydro shall, notwithstanding any release granted by the Agreement, be subject to the easement provisions of Article 3 of the NFA with respect to the Reserve.

2.4.4 Non-Deviation Operations. Without limiting the scope of the Post Project Water Regime, it is agreed that Hydro shall not have deviated from the Post Project Water Regime if, at the relevant time, the parameters set out below apply.

- (a) The Daily Average Water Levels on Split Lake, measured at the Split Lake Gauging Station, do not exceed the maximum monthly levels, or fall below the minimum monthly levels set out below in both metres and feet ASL Local Datum:

| MONTH     | MAXIMUM              | MINIMUM              |
|-----------|----------------------|----------------------|
| January   | 168.20 m (551.8 ft.) | 166.70 m (546.9 ft.) |
| February  | 168.20 m (551.8 ft.) | 166.40 m (545.9 ft.) |
| March     | 167.90 m (550.9 ft.) | 166.20 m (545.3 ft.) |
| April     | 167.70 m (550.2 ft.) | 165.90 m (544.3 ft.) |
| May       | 167.50 m (549.5 ft.) | 165.80 m (544.0 ft.) |
| June      | 167.40 m (549.2 ft.) | 165.70 m (543.6 ft.) |
| July      | 167.30 m (548.9 ft.) | 165.70 m (543.6 ft.) |
| August    | 167.40 m (549.2 ft.) | 165.70 m (543.6 ft.) |
| September | 167.50 m (549.5 ft.) | 165.70 m (543.6 ft.) |

|          |                      |                      |
|----------|----------------------|----------------------|
| October  | 167.70 m (550.2 ft.) | 165.80 m (544.0 ft.) |
| November | 168.00 m (551.2 ft.) | 166.10 m (545.0 ft.) |
| December | 168.20 m (551.8 ft.) | 166.30 m (545.6 ft.) |

- (b) The maximum change in the Daily Average Water Level on Split Lake, measured at the Split Lake Gauging Station, does not exceed on a daily basis or on a weekly basis:

|        | UPWARD           | DOWNWARD         |
|--------|------------------|------------------|
| DAILY  | 0.20 m (0.7 ft.) | 0.20 m (0.7 ft.) |
| WEEKLY | 0.65 m (2.1 ft.) | 0.50 m (1.6 ft.) |

- (c) For the relevant year (which for these purposes shall be a year running from March 1 of one calendar year to February 28 or 29 of the next following calendar year) the mean water levels at Split Lake during the period of November 1 to February 28 are higher than the mean water levels at Split Lake during the period June 1 to August 31 of the same year.
- (d) The sum of the absolute values of the Daily Average Water Level fluctuations on Split Lake, measured at the Split Lake Gauging Station, for any calendar month do not exceed 1.83 m (6.0 ft.). To determine the sum, the difference in the Daily Average Water

Level between succeeding days, whether up or down, shall be added for each day in the calendar month being considered. In doing the addition, the downward movement shall be a positive, not a negative number.

- (e) The Daily Average Water Level on the Burntwood River, measured at the gauging station at the Thompson Pumphouse, located in the City of Thompson, does not exceed 189.89 m (623.0 ft.) ASL Local Datum or fall below 185.94 m (610.0 ft.) ASL Local Datum.
- (f) The Daily Average Water Level on the Kelsey forebay does not fall below 182.0 m (597.1 ft.) ASL Local Datum.
- (g) The Daily Average Water Level on the Kettle forebay does not fall below 137.50 m (451.1 ft.) ASL Local Datum.
- (h) The flow releases from the Missi Control Structure do not fall below 42.5 m<sup>3</sup>/s (1500 cfs) in the months of January, November and December, and below 14.2 m<sup>3</sup>/s (500 cfs) in the balance of the year.

2.5           **LIMITATION**

2.5.1       Limitation on Liability. Subject to the provisions of the Easements, Hydro shall not be liable to Split Lake Cree for deviations from the Post Project Water Regime if such deviations are beyond Hydro's control, or are not caused by, or attributable, in whole or in part, to the Project. In any event, Hydro shall only be liable to Split Lake Cree for such part of the deviation caused by, or attributable to the Project.

2.6           **FORECASTS**

2.6.1       Anticipated Water Levels. Once every calendar month, Hydro shall give a written forecast to Split Lake Cree of the anticipated Static Water Level at the Split Lake Gauging Station, the Kettle Generating Station, and the Kelsey Generating Station, for that month and the next succeeding month. The daily Static Water Levels mentioned in such forecast shall be based on Local Datum. The written forecast shall include:

- (a) a narrative indicating whether or not the Static Water Level is expected to change during the relevant period and the estimated amount of such change; and,

- (b) a graph depicting the anticipated Static Water Level for the month in which the forecast is made and the next succeeding month.

2.6.2 Revised Forecasts. If Hydro concludes that the Static Water Level, during the period in respect of which a forecast was made, will at any time be more than 0.20 m (0.7 ft.) higher or 0.20 m (0.7 ft.) lower than forecast, then Hydro shall forthwith revise its forecast and give notice to Split Lake Cree of its revised forecast for the balance of the relevant forecast period.

2.6.3 Notification. In an effort to notify Members, Hydro agrees to make reasonable efforts to broadcast the narrative portion of such monthly forecasts, or any revised forecast, over a radio station providing service in the area of Split Lake, or by some other reasonable alternative method, if no such station exists at any given time.

2.6.4 Limitation of Forecasts. It is acknowledged that:

- (a) the information supplied by Hydro, in its forecasts pursuant to this section, is based on Hydro's best estimation, using due diligence, of anticipated daily Static Water Levels;

- (b) in the absence of negligence or deliberate misconduct on the part of Hydro, or those for whom it is at law responsible, Hydro shall not be liable if any estimate is incorrect;
- (c) Hydro's ability to determine when a revised forecast is warranted is limited to detecting unanticipated changes in the data that Hydro collects and monitors as part of its operations; and,
- (d) in the absence of negligence or deliberate misconduct on the part of Hydro, or those for whom it is at law responsible, Hydro shall not be liable if a forecast, or a revised forecast, is delayed.

## 2.7 FUTURE DEVELOPMENTS

2.7.1 Notice. Hydro shall give reasonable written notice to Split Lake Cree and to Canada respecting any Future Development, which written notice shall in no event be less than at least six (6) weeks prior to each of:

- (a) Hydro's arranging or tendering for any on the ground exploratory work related to such Future



Development, including, without limitation, drilling or surveying within the Resource Area;

(b) Hydro's finalizing the terms of reference necessary to commission any environmental impact study relating to such Future Development;

(c) Hydro's making application for any federal or provincial, environmental licence or other required governmental authorization (including any approval required from the Public Utilities Board of Manitoba or the National Energy Board)

(i) to dam, divert, impound or channel water,

(ii) to construct a high voltage transmission line,

(iii) to construct a road or rail line,

(iv) to construct booms or any other structure which would interfere with navigation,

related to such Future Development;

(d) Hydro's retaining a consultant to undertake an environmental impact study related to such Future Development; and,

- (e) Hydro's making application for any federal or provincial authorization to alter or amend the operating conditions governing the Project at the time of the application, where the alteration or amendment could reasonably be expected to result in a material change to the Post Project Water Regime.

2.7.2 Conawapa. For greater certainty, it is acknowledged that Hydro has made application for licences and has commenced an environmental impact study with respect to the proposed Conawapa generating station. In addition, Hydro has commenced work to obtain base line data and other geological and hydrological data with respect to Future Development of numerous sites, including but not limited to:

- (a) First Rapids;
- (b) Birthday Rapids; and,
- (c) Gull Rapids.

2.7.3 Covenant as to Levels. Manitoba and Hydro covenant that, prior to the proclamation of such legislation as may be required to permit the transfer of Parcels B and C of the Compensation Lands contemplated in subsection 3.3.3 of this Agreement, Hydro shall not develop, and Manitoba shall not permit Future Development that would have the effect of raising the Daily Average Water Levels on Split Lake,

adjacent to the Reserve, above the relevant maximum level permitted in paragraph 2.4.4(a) without the express written approval and consent of both Canada and Split Lake Cree.

2.7.4 No Implied Approval. Nothing in this Agreement is intended to mean that Split Lake Cree, Canada, or Manitoba has agreed or consented to any Future Development in any respect.

2.7.5 Dispute. In the event of a dispute as to whether or not a Future Development is an Impacting Future Development or Non-Impacting Future Development, such dispute shall be resolved in accordance with the Dispute Resolution Mechanism.

## 2.8 RESOLUTION OF DEVIATIONS

2.8.1 Resolution Process. If a deviation from the Post Project Water Regime occurs or is anticipated, Hydro and Split Lake Cree shall enter into the Resolution Process for Deviations in connection with any anticipated, apprehended, or actual Adverse Effect incurred, or anticipated to be incurred, by Split Lake Cree and(or) any Member as a consequence of such deviation or anticipated deviation. The Resolution Process for Deviations shall be as set out below.

- (a) Hydro, directly or upon request of Split Lake Cree, shall provide details with respect to the actual, alleged or anticipated deviation from the Post Project Water Regime including
- (i) the extent of the deviation,
  - (ii) the time period during which the deviation occurred, or is anticipated to occur,
  - (iii) whether the deviation is a permanent or recurring deviation, or is anticipated to be a permanent or recurring deviation, and
  - (iv) if such deviation is permanent or recurring, the purpose or reason for such deviation.
- (b) If the deviation has occurred, Hydro and Split Lake Cree shall endeavour to identify or forecast all actual or apprehended Adverse Effects, if any, arising from such deviation.
- (c) Such studies as may reasonably be required to assess fully the actual, anticipated and apprehended Adverse Effects of such deviation on Split Lake Cree and Members shall be undertaken by Hydro, and, if possible, jointly, by both Hydro and Split Lake Cree.
- (d) Mitigatory and remedial works required to eliminate, or alleviate, actual or anticipated Adverse

Effects of the deviation shall be identified, designed and costed. In the event of a dispute as to what mitigatory and remedial works are required to eliminate or alleviate the Adverse Effects, that dispute may, with the agreement of Split Lake Cree and Hydro, be resolved in accordance with the Dispute Resolution Mechanism or, failing such agreement, shall be left for determination under the NFA.

- (e) To the extent Adverse Effects from such deviation cannot be eliminated or alleviated, they shall be assessed, and a good faith effort shall be made to determine reasonable compensation or compensatory programs for all such foreseeable Adverse Effects.
- (f) If compensation or a compensatory program is agreed upon, Hydro shall carry out such compensatory program or pay such compensation, and Split Lake Cree shall provide all appropriate releases and indemnifications, with respect to all foreseen and reasonably foreseeable Adverse Effects, from such deviations which have been compensated.
- (g) If compensation or a compensatory program cannot be agreed upon, the issue may, with the agreement of

Split Lake Cree and Hydro, be referred for resolution to the Dispute Resolution Mechanism or, failing such agreement, shall be left for determination under the NFA.

(h) Following completion of the process set out in paragraphs 2.8.1 (a) to (g) of this Article, the Post Project Water Regime shall be amended to reflect the change in the compensated portion of the water regime. In addition, the guidelines set forth in subsection 2.4.4 of this Article shall similarly be amended. If there is a dispute between Split Lake Cree and Hydro as to the amendment of the guidelines set forth in subsection 2.4.4 of this Article, required to accurately reflect the additional portion of the water regime that has been compensated, such dispute shall be resolved by reference to the Dispute Resolution Mechanism.

(i) Reasonable costs for studies and for negotiations shall be borne by Hydro provided that

(1) prior to incurring any such cost, Split Lake Cree shall provide to Hydro a budget, or a revised budget, for such costs, outlining in detail the unit fee or hourly rate for such work, a total estimated cost, a description of the work to be done, and a brief indication of the purpose of such work,

- (ii) the actual invoice reflects the budget, and
- (iii) the work done accords with the work outlined to be done in the budget.

(j) If Hydro disputes the reasonableness of any budget, or any revised budget, submitted by Split Lake Cree pursuant to paragraph 2.8.1(i) of this Article, Hydro shall advise Split Lake Cree of such dispute, within thirty (30) days of the submission of the budget, or revised budget, and unless such dispute is resolved by agreement, such dispute with respect to the budget, or the revised budget, or payment of any costs for consultants, reports or legal advice, shall be resolved pursuant to the Dispute Resolution Mechanism.

2.8.2 NFA Liability. Nothing in subsection 2.8.1 of this Article is intended to vary Hydro's continuing liability under the NFA, as such continuing liability is set out in subsection 15.4.1 of this Agreement, except as specifically provided as a result of the amendments to the Post Project Water Regime contemplated in paragraph 2.8.1(h) of this Article in relation to paragraph 15.4.1(b) of this Agreement.

2.8.3 Resolution Process to Amend Easements. If Hydro anticipates that, to accommodate a proposed Impacting Future

Development, it will be necessary to amend any Easement, then as soon as reasonably practicable following the first notice of such Impacting Future Development given pursuant to section 2.7 of this Article, Hydro and Split Lake Cree shall enter into the Resolution Process to Amend Easements as set out below.

- (a) Hydro shall provide to Split Lake Cree details, including plans, water levels and preliminary surveys indicating the extent of such anticipated condition not permitted pursuant to the Easements.
- (b) Hydro, at its own expense, and with the cooperation of Split Lake Cree, shall implement, jointly with Split Lake Cree if possible, a review of the existing environment including the impacts of that part of Existing Development which impact on the Resource Area, and of future environmental impacts on Split Lake Cree anticipated to result from such Future Development, as such relates to Split Lake Cree.
- (c) Split Lake Cree agrees to review such proposed encroachment beyond the Setback Lines, and(or) the static inundation level of 169.47 m (556.0 ft.) ASL Local Datum permitted by the Easements and, to



accommodate Hydro subject to compensation acceptable to Split Lake Cree for such encroachment and, subject to the implementation of remedial, mitigatory and compensatory programs acceptable to Split Lake Cree for such Adverse Effects, if any, which may arise.

- (d) Subject to agreement between Split Lake Cree and Hydro as to relocation of the Setback Lines and(or) modification of the static inundation level of 169.47 m (556.0 ft.) ASL Local Datum permitted by the Easements and, if required, the concurrence of Canada to the granting of such further easement(s) by virtue of an order of the Governor in Council, pursuant to Section 35 of the Indian Act (Canada) or otherwise, the Resolution Process For Deviations, excluding the reference to the NFA, may, with the agreement of Split Lake Cree and Hydro, be adopted and followed with respect to any Adverse Effects anticipated from the amendment in the Setback Lines and(or) the static inundation level.

- (e) Hydro, Split Lake Cree and, if required, Canada, shall endeavour to conclude an agreement as to

- (i) compensation,
- (ii) the implementation of compensatory programs,
- (iii) the construction of Remedial Works relating to Adverse Effects, and
- (iv) the amendment of the Easements, or granting of a new easement(s) necessary to permit development of the Impacting Future Development.

2.8.4 Immediate Concern. Notwithstanding the foregoing, Hydro is currently reviewing the development potential and associated options along the waterway between the Kelsey Generating Station and the Kettle Generating Station. Initial studies indicate that full development cannot be accomplished without an upward adjustment of the Setback Lines and the static inundation level of 169.47 m (556.0 ft.) ASL Local Datum permitted by the Easements. As a consequence, Hydro and Split Lake Cree agree, after the Date of this Agreement, to commence the environmental review and the negotiation contemplated in the Resolution Process to Amend Easements set forth in subsection 2.8.3 of this Article, at the earliest possible date.

2.8.5 Without Prejudice. Any resolution process which may be conducted pursuant to this Article is without prejudice to Canada, except to the extent of Canada's specific concurrence therewith.

2.8.6 No Compulsion. Nothing in this Agreement shall compel Split Lake Cree to relocate as part of the Resolution Process to Amend Easements.

2.9 **END OF PROJECT**

2.9.1 Maintenance of Water Regime. If, in the future, the Project is no longer utilized for the production of hydro-electric power, then Hydro covenants and agrees to continue to operate and maintain all such works, structures and improvements, within its legal authority and control, as may be necessary to avoid, to the extent reasonably possible, deviations from the Post Project Water Regime.

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## ARTICLE 3

### 3 COMPENSATION LANDS AND EASEMENTS

#### 3.1 INTRODUCTION

3.1.1 Introduction. This Article provides for the identification, survey and transfer of the Compensation Lands by Manitoba to Canada for designation as Reserve Lands, and for the establishment of Setback Lines and the Easements to be granted in favour of Hydro and Manitoba.

#### 3.2 COMPENSATION LANDS

3.2.1 Description. The lands within the boundaries described in Schedule 3.1 of this Agreement, excluding the lands required for public purposes as described in Schedule 3.3 of this Agreement, are the Compensation Lands to be transferred by Manitoba to Canada to be set aside by Canada as Reserve Lands for Split Lake Cree.

3.2.2 Conditions of Transfer. The Parties acknowledge that Hydro and Split Lake Cree are requesting consideration of hydro-electric transmission and transformer site arrangements which would, as proposed, be located in part on Compensation Lands, and subject to a subsequent agreement among the Parties, if any, with respect to such hydro-

electric transmission and transformer site arrangements, the Compensation Lands shall be transferred by Manitoba to Canada free and clear of all encumbrances, reservations, caveats, estates, rights and interests in favour of any person other than Canada, or whose interest is claimed through Canada. For greater certainty, rights in mines and minerals, both precious and base, rights in Crown timber and other user rights shall be transferred with the Compensation Lands. No reservations to the Crown in right of Manitoba under subsection 4(1) of The Crown Lands Act (Manitoba) shall apply to the Compensation Lands. Easements in the form and content set forth in Schedule 3.4 of this Agreement, shall be granted in accordance with this Agreement.

3.2.3 Access to Split Lake. It is acknowledged, based on the provisions of Article 2 of this Agreement, that in the absence of the agreement of Split Lake Cree and Canada to an amendment, and the amendment of the Easements to be granted upon the Reserve Lands, water levels on Split Lake will usually remain below elevation 169.47 m (556.0 ft.) ASL Local Datum. Manitoba hereby covenants and agrees that Split Lake Cree and Members will have such exclusive and permanent right of use on and to any provincial Crown lands lying between the Compensation Lands and Split Lake, as may be required to ensure unhindered access without fee, charge or taxation, to the water's edge, and the use thereof as though the

Compensation Lands did in fact extend to the water's edge, subject only to the conditions set out in subsection 3.2.5 of this Article. The rights so conferred will be recorded and maintained in the Crown Lands Registry of Manitoba, and no other interest or right will be granted except as provided in subsection 3.2.5 of this Article.

3.2.4 Agents of Canada. Agents and servants of Canada, in connection with their official duties, may have access to any such provincial Crown lands lying between the Compensation Lands and Split Lake, without obstruction, interruption, hindrance, fee or charge of any kind. Manitoba does not in any way warrant, control, guarantee or assume any liability of any kind whatsoever with respect to any action of Split Lake Cree, Chief and Council or any Member in connection with the access granted to Canada.

3.2.5 Conditions of Use. Upon request of Split Lake Cree by Council Resolution, Manitoba will permit Split Lake Cree and any Member, without fee, charge or taxation, of any kind, to develop, improve, construct or place any temporary or permanent structure or improvement on any such provincial Crown lands lying between the Compensation Lands and Split Lake; provided, however, Manitoba will not permit any such structure or improvement that would materially interfere with or adversely affect Hydro's rights under this Agreement,



Hydro's right to inundate and store water on such provincial Crown lands, the right of access to provincial Crown lands and the Easement Lands, or the right to provide bank protection, maintenance and shoreline work necessary for Hydro operations. Any such permit or permission shall be conditional upon, and subject to, the provision to Manitoba of an indemnity given by Split Lake Cree and any Member granted such permit or permission, indemnifying Manitoba for any claims, loss or damage suffered by any Third Party as a result of or arising out of the existence or use of such structure or improvement.

3.2.6 Domestic Water Requirement. Where Split Lake Cree or Canada requests permission for facilities on or across the provincial Crown lands lying between the Compensation Lands and Split Lake, for the purpose of withdrawing water from the adjacent waters for on Reserve uses, such permission shall not be unreasonably withheld by Manitoba.

3.2.7 Liability for Damage. Subject to the provisions of Article 2 of this Agreement, neither Manitoba nor Hydro shall be liable for any damage to, or loss of, any structure or improvement erected, constructed or placed on any provincial Crown lands lying between the Compensation Lands and Split Lake, except for such damage or loss as may result from, or be caused by, their own wilful act or negligence, or the

wilful act or negligence of their agents, employees, contractors or subcontractors.

3.2.8 Releases - CANADA. Split Lake Cree releases and discharges Canada, of and from any duty or obligation of a fiduciary or other character with respect to the arrangements set out in subsections 3.2.3, 3.2.5, 3.2.6 and 3.2.7 of this Article.

### 3.3 SURVEYS

3.3.1 Surveys. Legal surveys of the boundaries of the Compensation Lands, Setback Lines thereon, and the boundaries of exclusions required for public purposes, will be completed by, and at the expense of Manitoba, in accordance with the survey instructions in Schedule 3.2 of this Agreement.

3.3.2 Legislation. Pursuant to subsection 6(2) of The Water Power Act (Manitoba), the approval of the Legislature of the Province of Manitoba may be required with respect to a disposition which could impact upon potential water power, dependent upon the capacity of such water power. Accordingly, the survey instructions attached as Schedule 3.2 to this Agreement, provide for the Compensation Lands to be surveyed in separate parcels, dependent upon whether the disposition of such lands could impact upon potential water

power. The disposition of Parcel A of the Compensation Lands would not impact on potential water power, while the disposition of both Parcels B and C could have such impact and therefore require legislative approval.

3.3.3 Approvals - The Water Power Act (Manitoba).

Manitoba shall recommend to the Legislative Assembly of Manitoba approval of the disposition of Parcels B and C of the Compensation Lands pursuant to subsection 6(2) of The Water Power Act (Manitoba), or such other legislation as may be necessary to permit the disposition of Parcels B and C of the Compensation Lands.

3.3.4 Completion of Surveys by Manitoba. Manitoba shall:

- (a) within sixty (60) days following the Date of this Agreement, or as soon thereafter as is reasonably possible having regard to field conditions, commence, or cause to be commenced, legal surveys of the lands described and shown in Schedules 3.1 and 3.3 of this Agreement, except for the Setback Lines and the boundaries of the said lands which are adjacent to Project Influenced Waterways;
- (b) following the Date of this Agreement and within sixty (60) days of receipt by Manitoba of

(i) notice from Hydro that the boundaries of the Compensation Lands adjacent to Project Influenced Waterways and the Setback Lines on Parcels B and C of the Compensation Lands are described and set out in accordance with Schedule 3.2 of this Article, and

(ii) a Council Resolution confirming acceptance by Split Lake Cree of the Setback Lines,

commence, or cause to be commenced, the necessary legal surveys to describe the Setback Lines, and the boundaries of the Compensation Lands adjacent to Project Influenced Waterways, and to tie same to the legal boundaries and Setback Lines on I.R. 171; and,

(c) subject only to any delay which may be caused by

(i) receipt of notice and(or) confirmation under paragraph 3.3.4(b) of this Article,

- (ii) a change in survey instructions under subsection 3.3.5 of this Article, or
- (iii) any dispute which may arise with respect to the provisions of this Article,

make reasonable efforts to complete, or cause to be completed, all legal surveys to be done by Manitoba, within twelve (12) months of the receipt of notice and(or) confirmation under paragraph 3.3.4(b) of this Article, the approval of a change in survey instructions or the date of the final resolution of disputes arising under this Article.

3.3.5 Change in Survey Instructions. The survey instructions in Schedule 3.2 of this Agreement may only be changed with the approval of each of Split Lake Cree, Manitoba and Canada, and any consequent expense shall be borne by the Party requesting approval of the other two (2) Parties for any such change in instructions.

3.3.6 Plans Supplied by Manitoba. Manitoba will, upon completion of the legal surveys, supply to Split Lake Cree and Canada, at no cost, plans of boundaries, Setback Lines and exclusions for public purposes on the Compensation Lands, satisfactory to the Surveyor General of Canada.

3.3.7 Legal Descriptions. Following completion of legal surveys, the Director of Surveys of Manitoba will provide to Canada and Split Lake Cree, the legal descriptions of the Compensation Lands and the Easement Lands satisfactory to the Surveyor General of Canada.

3.3.8 Affirmation. Split Lake Cree shall, upon receipt of the plans referred to in subsection 3.3.6 of this Article, and the legal descriptions referred to in subsection 3.3.7 of this Article, affirm by Council Resolution, if such is the case, that:

- (a) the lands are those described in Schedule 3.1 of this Agreement, less the exclusions in Schedule 3.3 of this Agreement;
- (b) the lands are satisfactory to Split Lake Cree as the Compensation Lands;
- (c) the Setback Lines shown on plans referred to in subsection 3.3.6 of this Article and the description of the Easement Lands referred to in subsection 3.3.7 of this Article are approved by Split Lake Cree; and,

(d) the provisions of Articles 3, 4, 7, 12 and 22 of the NFA, except as same may relate to Article 6 of the NFA, have been fully and satisfactorily implemented or otherwise settled by means of, or prior to, this Agreement.

### 3.4 ADMINISTRATION OF LANDS

3.4.1 Transfer Documents. Upon receipt of the affirmation required by subsection 3.3.8 of this Article, and confirmation of the plans in subsection 3.3.6 of this Article and the legal descriptions in subsection 3.3.7 of this Article, Manitoba will consult with Canada and Split Lake Cree on the form of Order in Council transferring administration and control of the Compensation Lands to Canada to be set apart as Reserve Lands for Split Lake Cree. Thereafter, Manitoba shall by Order in Council, conditional upon Canada's acceptance as provided in subsections 3.4.3 and 3.4.4 of this Article, transfer administration and control of:

(a) if the legislation contemplated in subsection 3.3.3 of this Article has been proclaimed, all of the Compensation Lands to Canada; or,

(b) if the legislation contemplated in subsection 3.3.3 of this Article has not been proclaimed, all of the Compensation Lands, except Parcels B and C, to Canada.

Provided that in the event of paragraph 3.4.1(b) of this Article, then, immediately upon proclamation of the legislation contemplated in subsection 3.3.3 of this Article, Manitoba shall, conditional upon Canada's acceptance as provided in subsections 3.4.3 and 3.4.4 of this Article, transfer administration and control of Parcels B and C of the Compensation Lands to Canada. In each such event Manitoba shall provide a copy of such Order in Council to Split Lake Cree.

3.4.2 Request for Reserve Status. Split Lake Cree, upon receipt of a copy of any Order in Council referred to in subsection 3.4.1 of this Article, shall by Council Resolution request that the Compensation Lands, or the portion thereof referenced in such Order in Council, be set apart as Reserve Lands for Split Lake Cree, and that the Easements relevant thereto be granted to Hydro and Manitoba.

3.4.3 Designation of Reserve Lands. Canada shall, upon receipt of the Council Resolutions referred to in subsection 3.4.2 of this Article, by order of Governor in Council, ac-



cept Manitoba's Orders in Council and designate the Compensation Lands, or such portion thereof referenced in the Orders in Council, as Reserve Lands. Canada shall make reasonable efforts to complete the designation of the Compensation Lands, or such portion thereof referenced in the Orders in Council, as Reserve Lands, within twelve (12) months of Canada's receipt of the Council Resolution.

3.4.4 Registry of Plans and Easements. Canada shall, upon acceptance of the Order in Council of Manitoba, conveying Parcel A of the Compensation Lands, in accordance with subsection 3.4.3 of this Article:

- (a) file the plans referred to in subsection 3.3.6 of this Article in accordance with the Canada Lands Surveys Act;
- (b) grant Easements on I.R. Nos. 171, 171A and 171B to Hydro; and,
- (c) transfer administration and control to Manitoba, on the same terms and conditions as contained in the grant of Easement to Hydro, in respect of I.R. Nos. 171, 171A and 171B.

Upon acceptance of any Order in Council of Manitoba conveying Parcels B and C of the Compensation Lands, Canada shall grant Easements on Parcels B and C, to Hydro, and transfer administration and control to Manitoba, on the same terms and conditions as contained in the grant of Easement to Hydro. Canada shall file all grants of Easements in accordance with the Indian Act (Canada).

3.4.5 Disposition and Use of Lands. Manitoba has, in anticipation of the conclusion of this Agreement, withheld from any disposition, by way of sale, sale agreement, lease or permit, any lands described as the Compensation Lands. Following the Date of this Agreement and prior to transfer of the Compensation Lands to Canada, Manitoba will grant to Split Lake Cree a general Land Use Permit, on terms satisfactory to Manitoba and Split Lake Cree, for the Compensation Lands. Any Land Use Permit shall terminate upon acceptance by Canada of the relevant Order in Council transferring the Compensation Lands to Canada. Notwithstanding the granting of the Land Use Permit, the Compensation Lands shall not be deemed to be Reserve Lands until designated as such pursuant to this Article.

3.4.6 Survey of Setback Lines. Where a Setback Line, or any portion of a Setback Line, on I.R. Nos. 171, 171A and 171B is reasonably required by Canada, Split Lake Cree or

Hydro to be surveyed or re-surveyed in the field, or a Setback Line or any portion of a Setback Line on Parcels B and C of the Compensation Lands, once designated as Reserve Lands, is reasonably required to be re-surveyed by Split Lake Cree, Canada or Hydro, Hydro shall, at its expense, cause legal surveys to be carried out to the satisfaction of the Surveyor General of Canada in accordance with the Canada Lands Surveys Act.

### 3.5 GENERAL

#### 3.5.1 Amendment - The Real Property Act (Manitoba).

Manitoba shall recommend that Section 111 of The Real Property Act (Manitoba) be amended to provide for the registration of Easements in favour of Hydro and Manitoba, to inundate and store water.

3.5.2 Releases to Manitoba. The NFA, by virtue of its Articles 3, 4, and 15, makes provision for the establishment of additional reserve lands, hold areas, resource areas and Band consultation in the management of resources. Articles 3, 4 and 5 of this Agreement satisfy Manitoba's obligations under Articles 3, 4 and 15 of the NFA, and Split Lake Cree hereby releases and forever discharges Manitoba, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at

law or in equity, which Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Articles 3, 4 and 15 of the NFA. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand, or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business, or Controlled Institution, on account of or in relation to any such matters.

3.5.3 Releases to Canada. Split Lake Cree releases and discharges Canada from any claims and demands, whatsoever, including claims, if any, of a fiduciary character which may arise in respect of Canada's obligations to Split Lake Cree for anything done or omitted to be done by Canada to the Date of this Agreement with respect to compensation in kind under the NFA, for Reserve Lands affected.

3.5.4 Covenants. The covenants provided in this Article shall not merge with the transfer of administration and control of the Compensation Lands.

3.5.5 Condition of Lands. Manitoba warrants, on the basis of available records, that no authorized use or damag-

ing unauthorized use is being or has been made of the Compensation Lands. No active mining, processing or shipment of ore on or from the lands has occurred, mineral exploration has been limited and all mineral claims have been removed. No timber permits, leases or licences have been issued or are in effect for the said lands, and any lumber removed has been for domestic use and shelter. No commitments exist in respect to the existing forest resource on the said lands. No major wildfires have occurred within the Compensation Lands during the three (3) years immediately preceding the Date of this Agreement. No hazardous wastes or deleterious substances have been authorized to be stored on or placed on the lands by Manitoba, and no evidence is available to Manitoba to suggest that such storage or placement exists.

3.5.6 Warranty. Split Lake warrants that it has, with professional and technical advice of its own choosing, selected and accepted the Compensation Lands based on its familiarity with and traditional use of those lands; that the lands have been inspected on behalf of Split Lake Cree by persons designated by Chief and Council and found acceptable; and that Chief and Council have caused inquiries to be made among Split Lake Cree resource harvesters and Elders as to any environmental conditions within their knowledge which might render the lands unacceptable to Split Lake Cree as Reserve Lands, and no such conditions have been found.

## SCHEDULE 3.1

### BOUNDARIES OF COMPENSATION LANDS

#### Assean Lake Parcel A Boundaries

per approximate general location Plans 3.1 and 3.2 attached to this Schedule and the following descriptions:

#### Inland Boundaries

- Beginning at the most northerly intersection of the 172.0<sup>m</sup> contour referenced to the Controlling Bench Marks with the W limit of I.R.#171 in the SW $\frac{1}{4}$  of 1-84-8E, thence Westerly, Northerly, Southerly and Easterly along a monumented traverse at the 172.0<sup>m</sup> contour to the intersection with the W limit of I.R.#171 in the N $\frac{1}{4}$  of 36-83-8E; and
- Thence Southerly along said West limit of I.R. #171 to the intersection of the N limit of 25-83-8E thence Westerly along the N limit of Sections 25 through 29 to the  $\frac{1}{4}$  N of 30-83-8E, thence Southwesterly to the  $\frac{1}{4}$  E of 4-83-7E, thence Westerly along the N limit of the S  $\frac{1}{4}$  of Sections 4, 5 and 6-83-7E and Sections 1 and 2-83-6E to the  $\frac{1}{4}$  E of 3-83-6E, thence Northerly along the E limit of 3-83-6E to Assean Lake; and
- Beginning at the said most Northerly intersection of the 172.0<sup>m</sup> contour with the West limit of I.R.#171 in the SW  $\frac{1}{4}$  of 1-84-8E, thence Northerly and Easterly along the several courses of the limit of said Reserve to the intersection of the 172.0<sup>m</sup> contour situated in the SW  $\frac{1}{4}$  of 9-84-9E thence Westerly, Northerly, and Easterly along a monumented traverse at the 172.0<sup>m</sup> contour to the intersection with the E limit of 10-84-9E thence Northerly along the E limit of Sections 10, 15, 22, 27 and 34-84-9E and Section 3-85-9E to the NE of Section 3, thence Westerly along the N limit of Sections 3, 4 and 5 to the NE of 6-85-9E, thence Southerly along the E limit of Sections 6-85-9E and 31-84-9E to the N limit of Little Assean Lake.

#### Parcel B Boundaries

per approximate general location Plans 3.1 and 3.2 attached to this Schedule and the following descriptions:

- Beginning at the most Northerly intersection of the 169.47<sup>m</sup> contour referenced to the Controlling Bench Marks with the W limit of I.R.#171 in the SW  $\frac{1}{4}$  of 1-84-8E, thence Westerly, Northerly, Southerly and Easterly along a monumented traverse at the 169.47<sup>m</sup>

contour to the intersection with the W limit of I.R.#171 in the N  $\frac{1}{4}$  of 36-83-8E.

- Thence Southerly along the west limit of I.R.#171 situated in the N  $\frac{1}{4}$  of 36-83-8E to the intersection of the 172.0<sup>m</sup> contour referenced to the Controlling Bench Marks, thence Westerly, Northerly, Easterly and Southerly along a monumented traverse at the 172.0<sup>m</sup> contour to the intersection of the W limit of I.R.#171 in the SW  $\frac{1}{4}$  of 1-84-8E, thence southerly along the W limit of I.R.#171 in the SW  $\frac{1}{4}$  of 1-84-8E to the point of beginning.

#### Parcel C Boundaries

per approximate general location Plans 3.1 and 3.2 attached to this Schedule and the following descriptions:

- Beginning at the intersection of the 169.47<sup>m</sup> contour referenced to the Controlling Bench Marks with the W limit of I.R.#171 in the SW  $\frac{1}{4}$  of 9-84-9E, thence Westerly, Northerly and Easterly along a monumented traverse at the 169.47<sup>m</sup> contour to the intersection with the E limit of 10-84-9E thence Northerly along the E limit of 10-84-9E to the intersection of the 172.0<sup>m</sup> contour referenced to the Controlling Bench Marks with the E limit of 10-84-9E.
- Thence Westerly, Southerly and Easterly along a monumented traverse at the 172.0<sup>m</sup> contour to the intersection with the W limit of I.R.#171 situated in the SW  $\frac{1}{4}$  of 9-84-9E thence northerly along the said west limit of I.R.#171 to the point of beginning.

#### OHWM Boundaries

- The OHWM Boundaries shown on Plan 3.2 and described and established as per Schedule 3.2.

#### Road Allowances

- All projected road allowances contained within the bounds of the compensation lands, as above described, form part of the compensation lands.

Water Beds

- All water beds, including lakes, ponds, rivers, creeks and streams, contained within the bounds of said compensation lands form part of said lands excepting thereout the beds of Fox Lake, the Assean and Crying Rivers, and the unnamed creek lying in projected Section 5 in the 85th Township of the 9th Range, East of the Principal Meridian.

Waskaiewaka Lake Parcel Boundaries

per approximate general location Plans 3.1 and 3.3 attached to this Schedule and the following descriptions:

Inland Boundaries

- Beginning at the intersection of U.T.M. 6° Grid Line 6262000°N with Waskaiewaka Lake thence Westerly along said Grid Line to the intersection with U.T.M. 6° Grid Line 637000°E, thence Southerly along said Grid Line to the intersection with the small creek that enters Waskaiewaka Lake just south of the Rasp River; and
- Beginning at the intersection of U.T.M. 6° Grid Line 6260000°N with Waskaiewaka Lake thence Easterly along said Grid Line to the intersection with U.T.M. 6° Grid Line 644300°E, thence Northerly along said Grid Line to Waskaiewaka Lake; and

OHWM Boundaries

- The OHWM Boundaries described and established as per Schedule 3.2.

Road Allowances

- All projected road allowances contained within the bounds of the compensation lands, as above described, form part of the compensation lands.

Water Beds

- All water beds, including lakes, ponds, rivers, creeks and streams, contained within the bounds of said compensation lands form part of said lands.

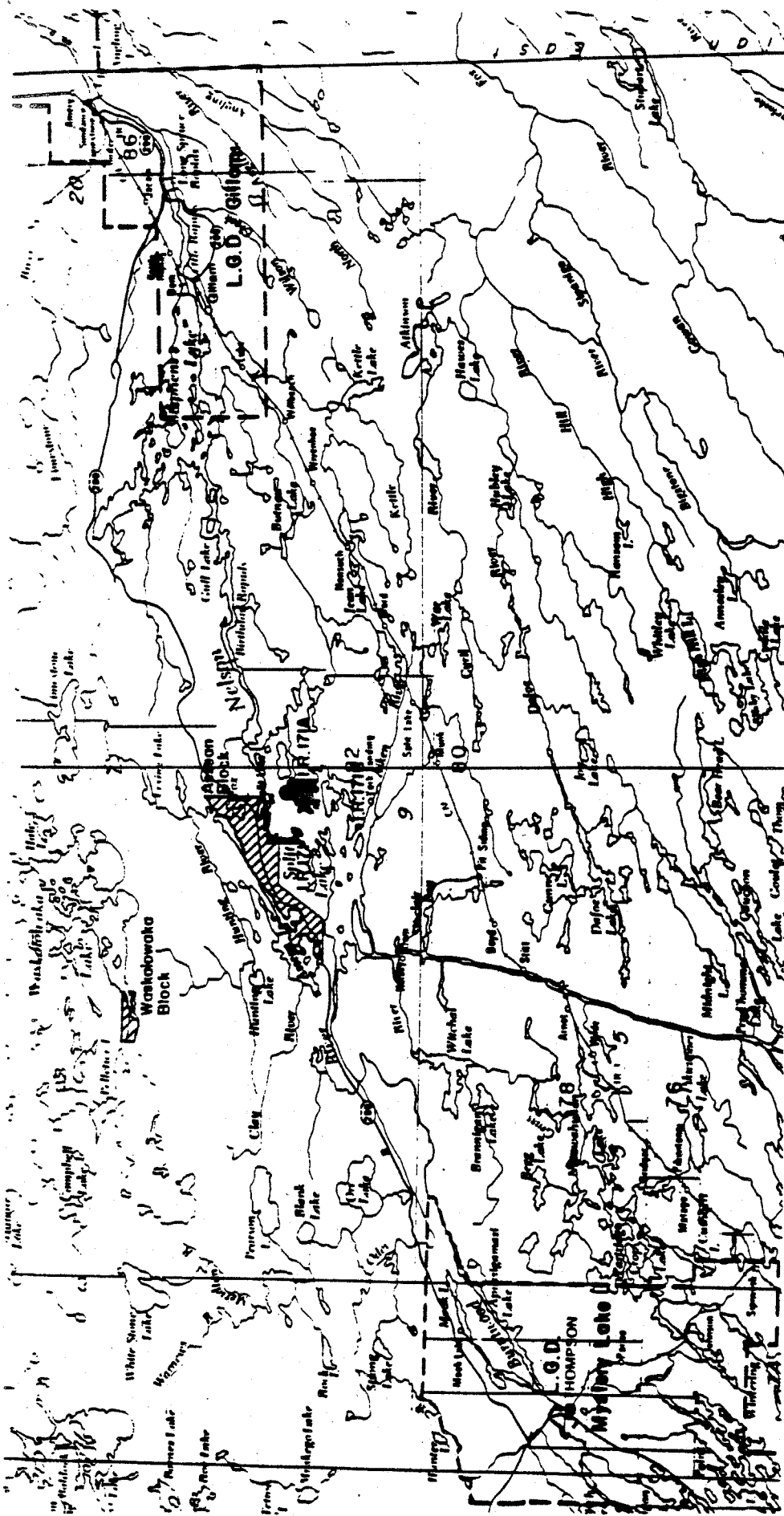


Grid Line

- Grid line reference to North American Datum 1927.

Plans

|  | <u>Scale</u> |
|--|--------------|
| Plan 3.1 General Location Plan             | Not to Scale |
| 3.2 Compensation Lands at Assean Lake      | 1:50,000     |
| 3.3 Compensation Lands at Waskaiowaka Lake | 1:50,000     |

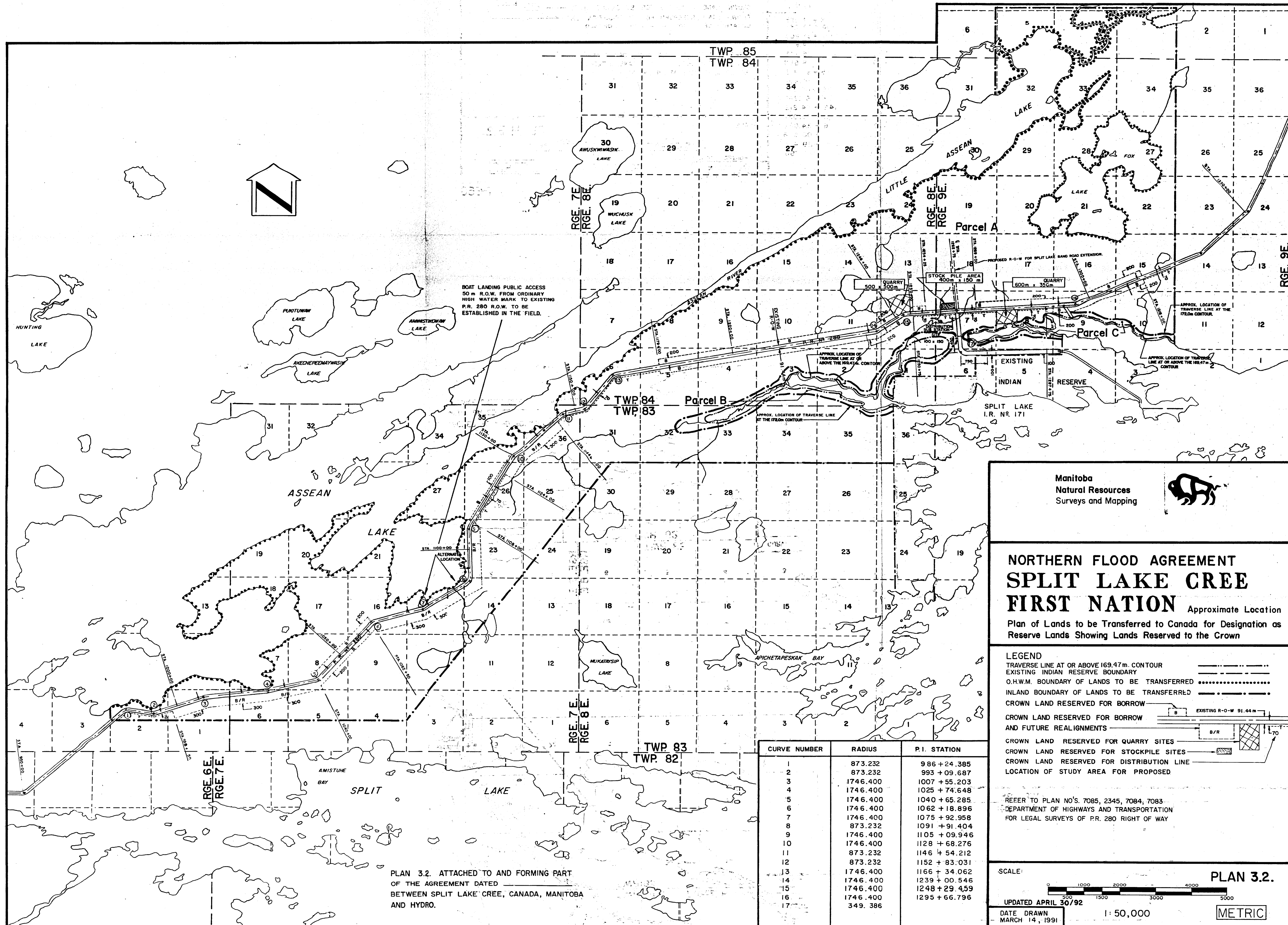


PLAN 3-1

General Location Plan Compensation Land

Attached to and forming part of the Agreement dated 06/24/92 between Split Lake Cree, Manitoba, Canada and Hydro

-  Compensation Lands
-  Existing Reserve Lands



PLAN 3.2. ATTACHED TO AND FORMING PART OF THE AGREEMENT DATED BETWEEN SPLIT LAKE CREE, CANADA, MANITOBA AND HYDRO.

Manitoba  
Natural Resources  
Surveys and Mapping



### NORTHERN FLOOD AGREEMENT SPLIT LAKE CREE FIRST NATION

Approximate Location  
Plan of Lands to be Transferred to Canada for Designation as Reserve Lands Showing Lands Reserved to the Crown

- LEGEND**
- TRAVERSE LINE AT OR ABOVE 169.47 m. CONTOUR
  - EXISTING INDIAN RESERVE BOUNDARY
  - O.H.W.M. BOUNDARY OF LANDS TO BE TRANSFERRED
  - INLAND BOUNDARY OF LANDS TO BE TRANSFERRED
  - CROWN LAND RESERVED FOR BORROW
  - CROWN LAND RESERVED FOR BORROW AND FUTURE REALIGNMENTS
  - CROWN LAND RESERVED FOR QUARRY SITES
  - CROWN LAND RESERVED FOR STOCKPILE SITES
  - CROWN LAND RESERVED FOR DISTRIBUTION LINE
  - LOCATION OF STUDY AREA FOR PROPOSED

REFER TO PLAN NO'S. 7085, 2345, 7084, 7083  
DEPARTMENT OF HIGHWAYS AND TRANSPORTATION  
FOR LEGAL SURVEYS OF P.R. 280 RIGHT OF WAY

SCALE:

UPDATED APRIL 30/92

DATE DRAWN: MARCH 14, 1991

1:50,000

PLAN 3.2.

METRIC

## SCHEDULE 3.2

### LEGAL SURVEY INSTRUCTIONS

#### Assean Lake Parcels A, B and C

#### General:

- (a) To conduct surveys and prepare plans of the described areas in accordance with Land Titles Office guidelines.
- (b) Prepare Parcel Plans of the areas at a scale of 1:20,000.
- (c) Survey of the parcel(s) as follows:

#### Parcel A Inland Boundaries

- Beginning at the most northerly intersection of the 172.0<sup>m</sup> contour referenced to the Controlling Bench Marks with the W limit of I.R.#171 in the SW  $\frac{1}{4}$  of 1-84-8E, thence Westerly, Northerly, Southerly and Easterly along a monumented traverse at the 172.0<sup>m</sup> contour to the intersection with the W limit of I.R.#171 in the N  $\frac{1}{4}$  of 36-83-8E; and
- Thence Southerly along said West limit of I.R.#171 to the intersection of the N limit of 25-83-8E thence Westerly along the N limit of Sections 25 through 29 to the  $\frac{1}{4}$  N of 30-83-8E, thence Southwesterly to the  $\frac{1}{4}$  E of 4-83-7E, thence Westerly along the N limit of the S  $\frac{1}{4}$  of Sections 4, 5 and 6-83-7E and Sections 1 and 2-83-6E to the  $\frac{1}{4}$  E of 3-83-6E, thence Northerly along the E limit of 3-83-6E to Assean Lake; and
- Beginning at the said most Northerly intersection of the 172.0<sup>m</sup> contour with the West limit of I.R.#171 in the SW  $\frac{1}{4}$  of 1-84-8E, thence Northerly and Easterly along the several courses of the limit of said Reserve to the intersection of the 172.0<sup>m</sup> contour situated in the SW  $\frac{1}{4}$  of 9-84-9E thence Westerly, Northerly, and Easterly along a monumented traverse at the 172.0<sup>m</sup> contour to the intersection with the E limit of 10-84-9E thence Northerly along the E limit of Sections 10, 15, 22, 27 and 34-84-9E and Section 3-85-9E to the NE of Section 3, thence Westerly along the N limit of Sections 3, 4 and 5 to the NE of 6-85-9E, thence Southerly along the E limit of Sections

6-85-9E and 31-84-9E to the N limit of Little Assean Lake.

Parcel B Boundaries

- Beginning at the most Northerly intersection of the 169.47<sup>m</sup> contour referenced to the Controlling Bench Marks with the W limit of I.R.#171 in the SW  $\frac{1}{4}$  of 1-84-8E, thence Westerly, Northerly, Southerly and Easterly along a monumented traverse at or above the 169.47<sup>m</sup> contour to the intersection with the W limit of I.R.#171 in the N  $\frac{1}{4}$  of 36-83-8E.
- Thence Southerly along the west limit of I.R.#171 situated in the N $\frac{1}{4}$  of 36-83-8E to the intersection of the 172.0<sup>m</sup> contour referenced to the Controlling Bench Marks, thence Westerly, Northerly, Easterly and Southerly along a monumented traverse at the 172.0<sup>m</sup> contour to the intersection of the W limit of I.R.#171 in the SW  $\frac{1}{4}$  of 1-84-8E, thence southerly along the W limit of I.R.#171 in the SW  $\frac{1}{4}$  of 1-84-8E to the point of beginning.

Parcel C Boundaries

- Beginning at the intersection of the 169.47<sup>m</sup> contour referenced to the Controlling Bench Marks with the W limit of I.R.#171 in the SW  $\frac{1}{4}$  of 9-84-9E, thence Westerly, Northerly and Easterly along a monumented traverse at the 169.47<sup>m</sup> contour to the intersection with the E limit of 10-84-9E thence Northerly along the E limit of 10-84-9E to the intersection of the 172.0<sup>m</sup> contour referenced to the Controlling Bench Marks with the E limit of 10-84-9E.
  - Thence Westerly, Southerly and Easterly along a monumented traverse at the 172.0<sup>m</sup> contour to the intersection with the W limit of I.R.#171 situated in the SW  $\frac{1}{4}$  of 9-84-9E thence northerly along the said west limit of I.R.#171 to the point of beginning.
- (d) The Plan(s) will show adjacent theoretical section lines along surveyed boundaries as broken lines - outside the Reserve only.

- (e) Bearings will be derived from the control and referenced to the Central Meridian of U.T.M. Zone 14. Bearings not angles, will show on all surveyed boundaries.
- (f) Monuments along surveyed boundaries will be inter-visible and the maximum distance between each will be 1 km. The monuments will be 0.025" x 0.025" x 0.914" or short R. posts. Ties will be shown to all permanent water bodies crossed.
- (g) The inland boundary shall be surveyed on true line and line cut to ensure a visible skyline.
- (h) Enclosed parcels will be identified by number with areas of each shown.

Setback Lines:

A survey line on Parcels B and C at or about the 170.38" contour referenced to the Controlling Bench Marks. Courses along this line should exceed 100m. Hydro will identify those locations where the Setback Line, based on the process and methodology referred to in the definition of Setback Line in Article 1 of this Agreement, must deviate from the 170.38" contour. Hydro will have a staff person visit the survey to ensure that their requirements are satisfied and to verify the location and obtain approval of Split Lake Cree while the survey is in progress. The surveyed Setback Lines will be shown on the Plan as a solid line with each parcel identified by a number.

Control:

Global Positioning System control will be expanded along Assean Lake and the Assean River to accommodate plotting the Ordinary High Water Mark and to provide additional co-ordinate control, all to be referenced to the Split Lake system. These monuments and values will be shown on the Plan. The G.P.S. process shall exceed third order accuracies.

OHWM Boundaries:

All pertinent OHWM boundaries will be plotted from aerial photography in accordance with Land Titles Office guidelines.

Road Allowances:

All projected road allowances contained within the bounds of the compensation lands, as above described, form part of the compensation lands.

Water Beds:

All water beds, including lakes, ponds, rivers, creeks and streams, contained within the bounds of said compensation lands form part of said lands excepting thereout the beds of Fox Lake, the Assean and Crying Rivers, and the unnamed creek lying in projected Section 5 in the 85th Township of the 9th Range, East of the Principal Meridian.

Controlling Bench Marks:

The Controlling Bench Marks will be identified in the Notes with supporting B.M. § placed at suitable locations and shown on the Plan.

Monumented Traverses (boundaries):

Monumented traverse(s) shall be at or above the contour lines referenced as above. Courses along these lines should exceed 100<sup>m</sup>. Hydro will identify those locations, if any, where the monumented traverse(s) are to be above the indicated contour line. Hydro will have a staff person visit the survey to ensure that their requirements are satisfied and to verify the location and obtain approval of Split Lake Cree while the survey is in progress. The monumented traverse(s) will be shown on the Plans as a solid line with each parcel identified by a number.

Exclusions:

Excluded lands as shown on Plan 3.2 and described in Schedule 3.3 will be surveyed with all new boundary lines to be line cut to ensure a visible skyline. The Plan will show bearings and distances along these new boundaries of the excluded lands.

Fox Lake, the Assean and Crying Rivers and the unnamed Creek in Sec. 5-85-9E will be excluded and shown on the Plan as such.

Waskaiowaka Lake Parcel

General:

- (a) To conduct a survey and prepare a Plan of the

described area in accordance with Land Titles Office guidelines.

- (b) Prepare the Plan at a scale of 1:10,000 as:

Plan of Survey  
Showing Lands Required For  
Split Lake Indian Reserve No. \_\_\_\_\_  
Being Part of \_\_\_\_\_

- (c) Survey the inland boundary of the parcel as follows:

- Beginning at the intersection of U.T.M. 6° Grid Line 6262000<sup>m</sup>N with Waskaiowaka Lake thence Westerly along said Grid Line to the intersection with U.T.M. 6° Grid Line 637000<sup>m</sup>E, thence Southerly along said Grid Line to the intersection with the small creek that enters Waskaiowaka Lake just south of the Rasp River; and

- Beginning at the intersection of U.T.M. 6° Grid Line 6260000<sup>m</sup>N with Waskaiowaka Lake thence Easterly along said Grid Line to the intersection with U.T.M. 6° Grid Line 644300<sup>m</sup>E, thence Northerly along said Grid Line to Waskaiowaka Lake.

- (d) The Plan will show adjacent theoretical section lines along surveyed boundaries as broken lines - outside the Reserve only.
- (e) Bearings will be derived from the control and referenced to the Central Meridian of U.T.M. Zone 14. Bearings, not angles, will show on all surveyed boundaries.
- (f) Monuments along surveyed boundaries will be inter-visible and the maximum distance between each will be 1 km. The monuments will be 0.025<sup>m</sup> x 0.025<sup>m</sup> x 0.914<sup>m</sup> or short R. posts. Ties will be shown to all permanent water bodies crossed.
- (g) The inland boundary shall be surveyed on true line and line cut to ensure a visible skyline.
- (h) Enclosed parcels will be identified by number with areas of each shown.

Control:



Global Positioning System control will be extended to Waskaiowaka Lake to accommodate plotting the OHWM and to provide additional control, all to be referenced to the Split Lake system. These monuments and values will be shown on the Plan.

OHWM Boundaries:

OHWM boundaries will be plotted from aerial photography in accordance with Land Titles Office guidelines.

Road Allowances:

All projected road allowances contained within the bounds of the compensation lands, as above described, form part of the compensation lands.

Water Beds:

All water beds, including lakes, ponds, rivers, creeks and streams, contained within the bounds of said compensation lands form part of said lands.

Grid Line

- Grid line reference to North American Datum 1927.

### SCHEDULE 3.3

#### EXCLUSIONS FOR PUBLIC PURPOSES WITHIN COMPENSATION LANDS

The following lands shall be excluded from Compensation Lands:

1. The existing Provincial Road 280 right-of-way as shown on Plans of Public Roads Nos. 7083, 7084, 7085 and 2345 (Department of Highways and Transportation).
2. Access road rights-of-way from PR 280 to the boundary of I.R. #171 and from PR 280 to the ferry landing located on Sec 9, Twp 84, R9E as shown on Plan of Public Roads No. 7085 (Department of Highways and Transportation).
3. Lands adjacent to the existing PR280 right-of-way traversing Compensation Lands as shown on Plan 3.2 attached to this Agreement, including:
  - (a) A proposed distribution sub-station site of approximately 1.5 hectares at the junction of PR280 and the access road to I.R. #171 as shown on Plan 3.2; and
  - (b) a landing area approximately 50 metres in width bordering Assean Lake within NW  $\frac{1}{4}$  Sec 15 or NE  $\frac{1}{4}$  Sec 15, Twp 83, R7E as shown on Plan 3.2.
4. All lands excluded other than those held under rights-of-way established by the Department of Highways and Transportation shall be held as provincial Crown lands available or transferrable to agents of Manitoba for borrow areas, realignment of PR280, distribution line rights-of-way or other purposes satisfactory to Manitoba.
5. Manitoba shall, in respect to excluded lands described in this Schedule:
  - (c) make available to Split Lake Cree, on request and at no cost, such quantities of borrow and quarry material on such lands as may be available and surplus to Manitoba's needs; and
  - (d) should any of the above lands be no longer required for public purposes, grant Split Lake Cree first right of refusal in respect to the acquisition of such lands, by purchase, lease or permit. Such first right of refusal shall be to purchase, lease or acquire by permit, on terms and conditions no

less favourable to Split Lake Cree than to any other prospective purchaser, lessee or permittee, and shall be open for acceptance by Split Lake Cree for not less than thirty (30) days. This first right of refusal may, at the option of Split Lake Cree, be assigned to the Land Corporation.

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SCHEDULE 3.4

EASEMENT AGREEMENT

THIS AGREEMENT made the                      day of

19

AMONG:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
as represented by The Minister of Indian  
Affairs and Northern Development,

(hereinafter referred to as "Canada"),

OF THE FIRST PART,

HER MAJESTY THE QUEEN IN RIGHT OF  
MANITOBA, as represented by The Minister  
of Northern Affairs,

(hereinafter referred to as "Manitoba"),

OF THE SECOND PART,

THE SPLIT LAKE CREE FIRST NATION, as  
represented by Chief and Council,

(hereinafter referred to as "Split Lake  
Cree"),

OF THE THIRD PART,

THE MANITOBA HYDRO-ELECTRIC BOARD,

(hereinafter referred to as "Hydro"),

OF THE FOURTH PART.

Recitals

WHEREAS

1. Indian Reserve Number \_\_\_\_\_ (hereinafter referred to as the Reserve) is a "Reserve" within the meaning of the Indian Act (Canada), and has been set apart for the use and benefit of Split Lake Cree, a "band" within the meaning of the Indian Act (Canada).

2. An Agreement dated December 16, 1977 (the "Northern Flood Agreement") was entered into among Her Majesty The Queen in Right of Manitoba, the Manitoba Hydro-Electric Board, the Northern Flood Committee, Inc., negotiating on behalf of the Cross Lake, Nelson House, Norway House, Split Lake and York Factory Indian bands, and Her Majesty The Queen in Right of Canada.

3. The Northern Flood Agreement was ratified by each of the bands.

4. The Northern Flood Agreement provides, among other provisions, for compensation for reserve lands, and adverse effects on Split Lake Cree Members, arising from, or affected by the Project.

5. The Northern Flood Agreement also provides that each of the said bands will facilitate, and Canada will grant to Hydro certain easements, for purposes related to the Lake Winnipeg Regulation and Churchill River Diversion Project, including any substantially similar redevelopment thereof.

6. Hydro is an agent of the Crown in right of Manitoba, and Manitoba will assume certain obligations of Hydro if certain eventualities occur, as set forth under this Easement.

7. Hydro is empowered by The Manitoba Hydro Act (Manitoba) to take or use lands without the consent of the owner thereof; but in lieu of the exercise of powers of expropriation, the Governor in Council has, by Orders in Council 1977-2276 and 1978-594, approving the Northern Flood Agreement pursuant to Section 35 of the Indian Act (Canada), agreed to grant an easement to Hydro with respect to the lands described in this Easement; and, subject to the terms and conditions hereinafter set forth, Canada has directed that this Easement be granted to Hydro and that an instrument transferring administration and control of the said lands be issued in favour of Manitoba, in accordance with the provisions of this Easement.

[To be substituted in the case of a new Reserve on Parcels B and C of the Compensation Lands.]

7. Canada has directed that this Easement be granted to Hydro and that an instrument transferring administration and control be issued in favour of Manitoba, in accordance with the provisions of this Easement, with respect to the lands described in this Easement.

8. Split Lake Cree Chief and Council has, by Resolution Number \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, 199\_, expressed approval of the grant of an easement on and over certain Reserve lands in this Easement described, upon the terms and conditions set out in this Easement.

9. Split Lake Cree has, by referendum, ratified the Agreement among Split Lake Cree, Canada, Manitoba and Hydro and has authorized Chief and Council to enter into this Easement on behalf of Split Lake Cree.

10. The Minister of Indian Affairs and Northern Development, Canada, has been authorized to enter into this Easement.

11. The Minister of Northern Affairs, Manitoba, has been authorized to enter into this Easement.



12. The appropriate officers of Hydro have been authorized by the Manitoba Hydro-Electric Board to execute this Easement on its behalf.

NOW THEREFORE, in consideration of the mutual terms and conditions in this Easement the Parties hereby covenant and agree as follows:

Article 1. Definitions

In this Easement:

1.1 "Agreement" shall mean the agreement dated \_\_\_\_\_  
\_\_\_\_\_ among Split Lake Cree, Canada, Manitoba and Hydro.

1.2 "ASL" shall mean Above Sea Level.

1.3 "Chief and Council" shall mean the Chief and Council of Split Lake Cree elected and in office pursuant to the Indian Act (Canada).

1.4 "Easement" shall mean this Easement Agreement and the interest in land and the other provisions of this easement agreement.

1.5 "Easement Lands" shall mean the lands which are the subject of this Easement as described in section 2.1. of this Easement.

1.6 "Future Development" shall mean the construction of any portion or portions of the Project that have not been physically constructed prior to the date of the Agreement and all major redevelopment or reconstruction of any existing portion of the Project.

1.7 "Local Datum" shall mean the elevation established for all purposes of this Easement based upon and referenced to specific controlling bench marks being any and all of

B.M. #8 ----- Water Survey of Canada brass cap in rock approximately 150 m north and east of the Water Survey of Canada recording shelter. Near the waters edge. Marked by a short metal flag on rebar.

Elevation: 167.257m (548.74 ft.) ASL Local Datum

MB8037 ----- Lag bolt in east side of the foundation of the nursing station located in the community of Split Lake. Near the south east corner.

Elevation: 174.587m (572.79 ft.) ASL Local Datum

MB8038 ----- Water Survey of Canada brass cap in rock approximately 80 m east of B.M. #8. Marked by a short metal flag of rebar.

Elevation: 168.175m (551.75 ft.) ASL Local Datum

78R129 ----- Surveys and mapping Manitoba aluminum cap in rock. Located on a small island just east of the community of Split Lake on the highest point of bedrock.

Elevation: 168.172m (551.74 ft.) ASL Local Datum

Manitoba, Split Lake Cree and Hydro release Canada from all liability with respect to the definition, selection or determination of the controlling bench marks or Local Datum, and the determination of the Set-back Lines in accordance therewith, for the purposes of this Easement.

1.8 "Project" shall mean and include all past, present and future hydro-electric development or redevelopment on the Churchill, Burntwood and Nelson River systems and all development or redevelopment of the Lake Winnipeg Regulation system north of the 53rd (fifty-third) parallel and shall also include the operation thereof by Hydro.

1.9 "Setback Lines" shall mean the lines establishing the upper boundary of the Easement Lands, established, based on the process and methodology employed for geotechnical studies pursuant to the Canada-Manitoba Northlands Agreement (1976-1981), to reflect the margin of the effects of flooding, erosion, ice conditions, wind set-up, and wave up-rush on the Easement Lands above the Static Inundation Level. Setback Lines shall include the Severance Lines on I.R. Nos.

171, 171A and 171B, shown on plans filed in the Portage la Prairie Land Titles Office as Nos. 24689 to 24706 inclusive.

1.10 "Static Inundation Level" shall mean the inundation level with wind effects eliminated. The maximum Static Inundation Level permissible on Split Lake, pursuant to this Easement, is 169.47m (556 ft.) ASL Local Datum.

Article 2.        Easement Lands

2.1            Canada shall:

2.1.1 grant to Hydro the right, liberty, privilege and easement in accordance with the terms and conditions in this Easement; and,

2.1.2 by order of Governor in Council, transfer to Manitoba such administration and control required to assure to Manitoba the right, liberty, privilege and easement in accordance with the terms and conditions in this Easement;

with respect to all the lands described as:

"Legal Description to be inserted"

Article 3.      Scope of Easement

3.1            Hydro and Manitoba shall have the right and privilege during the currency of the Easement to inundate and store water on the Easement Lands in accordance with, and subject to, the provisions of this Easement; and shall and may peaceably hold and enjoy the rights, privileges and easements hereby granted without obstruction, hindrance, molestation or interruption on the part of Canada, Split Lake Cree, or any person claiming by, through, or under Canada or Split Lake Cree.

3.2            The easement granted in this Easement, to inundate and store water on the Easement Lands, is solely for the purposes related and ancillary to the Project, in accordance with the provisions of this Easement.

3.3            Hydro and Manitoba shall not be liable to Canada, or to Split Lake Cree, for any loss or damage to persons or property, by virtue of their respective use of the Easement Lands for inundation and storage of water, within the terms and conditions prescribed in this Easement; but Hydro shall

be liable for any loss, damage, or injury to persons or property, arising from the breach by Hydro, its agents, employees, contractors and sub-contractors, of any provisions of this Easement; and, where Manitoba has or is deemed to have assumed the obligations of Hydro pursuant to the provisions of section 3.5 of this Easement, Manitoba shall be liable for any loss, damage, or injury to persons or property, arising from the breach of any provision of this Easement by Hydro, or its successor as operator of the works comprising the Project, its agents, employees, contractors and sub-contractors.

3.4 This Easement grants to Hydro and Manitoba no rights to, or to the use of, the Easement Lands, other than those expressly set forth in this Easement; and the Easement Lands remain Reserve lands under the Indian Act (Canada); and Split Lake Cree may continue any and all uses of the Easement Lands which are not inconsistent with the provisions of this Easement. This Easement is made solely for the purposes stated in this Easement, and does not create any additional rights of tenancy, or any possessory rights of exclusive use or occupation by implication. No actions of Hydro, Manitoba, Split Lake Cree or Canada, pursuant to this Easement, shall be deemed to create any additional rights or privileges in favour of Hydro or Manitoba in the Easement Lands, beyond those expressly set forth in this Easement.

3.5 In the event that Hydro ceases to:

3.5.1. be an agent of Manitoba; or,

3.5.2. have effective legal authority and control over the operation of the Project, or any major work or structure thereof whose operation may affect inundation or storage of water on the Easement Lands;

then Manitoba shall:

3.5.3. in the circumstances to which subsection 3.5.1 of this Article applies, assume all of the rights and obligations of Hydro under this Easement; and,

3.5.4. in the circumstances to which subsection 3.5.2 of this Article applies, assume the rights and obligations of Hydro under this Easement, to the extent of the works or structures over which Hydro no longer has effective authority and control, or all of the rights and obligations of Hydro under this Easement, where Hydro ceases to

· have effective authority and control over the Project;

but in any such event, the assumption by Manitoba, of Hydro's rights and obligations under this Easement, shall not relieve Hydro, or any successor beneficiary of this Easement, of its obligations under this Easement.

3.6 In the circumstances to which subsections 3.5.1 or 3.5.2 of this Article apply, Split Lake Cree shall make reasonable efforts (but shall not be obliged to incur excessive or unusual costs) to have any dispute or matter resolved by Hydro, or the successor entity having authority or control with respect to the Project or a major work or structure thereof, as the case may be, before having recourse to Manitoba, in accordance with the obligations which Manitoba will have assumed under this Easement.

3.7 In the event that a dispute should arise between Manitoba and Hydro with respect to their respective responsibilities under section 3.5 of this Article, Manitoba shall be liable for the responsibilities in dispute.

3.8 Except to the extent that partial administration and control is transferred to Manitoba by virtue of express provisions in this Easement, the Easement Lands shall remain



within the constitutional jurisdiction of the Parliament and Government of Canada. The use of the Easement Lands by Hydro, Manitoba, or any successor entity, shall be restricted to those expressly authorized in this Easement, notwithstanding that the provisions of any law of Manitoba may purport to authorize uses other than those set forth in this Easement.

3.9 The granting of this Easement, and the provisions of this Easement, do not constitute approval or acceptance by Canada, express or implied, of any Future Development, or of any application or authorization which Hydro may make or obtain, subsequent to the date of the Agreement, with respect to material changes in the operation of the Project which could affect the Reserve lands or the waters adjacent thereto; but Hydro may use and enjoy the rights under this Easement which are within the scope of the existing or subsequent licences or approvals duly obtained, providing that no such licence or approval shall be deemed to amend this Easement in any way.

3.10 Except as expressly set forth in this Easement, nothing in this Easement shall amend, alter, grant relief from, or substitute for, any obligations imposed upon Hydro by or pursuant to any law of Canada or Manitoba.

Article 4. Bank and Setback Line Protection, Maintenance  
and Related Matters

4.1 Hydro and Split Lake Cree shall have the right to inspect, protect and maintain, at their own expense, the banks and shorelines forming part of the Easement Lands.

4.2 Split Lake Cree shall, and Hydro may periodically, inspect and maintain the banks and shorelines within the Easement Lands, to ensure that Reserve lands above the Setback Lines, and not forming part of the Easement Lands, are not damaged or impaired by erosion, slumping or other adverse impacts due to the use of the Easement Lands for the purposes of the Project.

4.3 All bank protection, shoreline or maintenance work on Easement Lands, performed under this Easement, shall be done in a workmanlike fashion in accordance with applicable engineering standards.

4.4 Except while work pursuant to this Easement is in progress, Hydro, its agents, employees, contractors and sub-contractors shall not leave, park or store any vehicles, equipment or other chattels on the Easement Lands.

4.5 Subject to the provisions of Article 6 of this Easement, and except as expressly provided for in this Easement, where damage is done on Reserve lands to any works, buildings, crops, fences, livestock, goods and chattels of Split Lake Cree or Canada, or any person claiming through or under Canada or Split Lake Cree, and the damage is caused by Hydro, its agents, employees, contractors or sub-contractors, then Hydro shall be liable to compensate Canada, Split Lake Cree or any such person in respect of such damage.

4.6 Where damage is caused to bank protection put in place by Hydro, or like works constructed or placed by Hydro on the Easement Lands, which damage Chief and Council ought reasonably to have prevented, Chief and Council shall, at the expense of Split Lake Cree, restore such works to the reasonable satisfaction of Hydro.

4.7 Subject to the provisions of Article 6 of this Easement, Hydro shall indemnify and save harmless Split Lake Cree and Canada, from and against any claims of any kind for loss, injury or damage to persons or property as a result of the presence or operation of vehicles, equipment or chattels of Hydro, its agents, employees, contractors or sub-contractors, on the Easement Lands or access routes thereto; except that Hydro shall not be responsible where work under this Easement is performed on its behalf by members of Split

Lake Cree under the direction and supervision of Chief and Council.

4.8 Hydro shall not be liable under either section 4.5 or section 4.7 of this Article, to the extent that the damage results from the negligence of the person who has suffered the loss, or from a use by that person of the Easement Lands which is not authorized or permitted by this Easement.

4.9 Hydro, its employees, agents, contractors and sub-contractors may fell, cut, trim, or remove any trees or parts thereof, on or from the Easement Lands below a Static Inundation Level of 169.47 m (556.0 ft.) ASL Local Datum. Above that level, Hydro may request permission of Canada and Split Lake Cree to cut or remove trees or timber, pursuant to the provisions of the Indian Act (Canada) and the Indian Reserve Timber Regulations or any successor legislation; and such consent on the part of Chief and Council and Canada shall not be unreasonably withheld.

[To be substituted in the case of a new Reserve from Compensation Lands

4.9 Hydro may request permission of Canada and Split Lake Cree to cut or remove trees or timber, on or from the Easement Lands, pursuant to the provisions of the Indian Act

(Canada) and the Indian Reserve Timber Regulations or any successor legislation, and such consent on the part of Chief and Council and Canada shall not be unreasonably withheld.]

4.10 Except as otherwise provided in this Easement, Hydro, its agents, employees, contractors and sub-contractors shall not commit or permit the commission of any waste, spoilage or destruction, or dump any rubbish or any other matter of an offensive nature, anywhere on the Reserve, except in such places and at such times as may have been previously designated by Chief and Council, or the Minister of Indian Affairs and Northern Development, Canada. Inundation and storage permitted by this Easement shall not be a contravention of this section 4.10 of this Article.

4.11 Hydro shall promptly remove debris or waste material placed or caused to be placed on the Easement Lands by Hydro works or operations (other than inundation and storage as permitted under this Easement); and in any event not later than seven (7) days after receipt of a written request to do so from Chief and Council.

4.12 Hydro shall dispose of any material excavated or removed from the Easement Lands on the Reserve, as may reasonably be directed by Chief and Council or, if there is no such direction provided within seven (7) days of such a

request for direction, or in an emergency, off the Reserve. Any such disposal shall be in compliance with all applicable laws and regulations.

4.13 In order that construction or other activities within or near the Setback Lines can be appropriately located, Hydro shall, if requested and reasonably required by Chief and Council or Canada, locate or restore the Setback Line, establish or restore cut lines associated therewith, and place or check and replace survey monuments to the satisfaction of the Surveyor General of Canada.

4.14 Hydro shall ensure that all legal or control survey monuments are protected and not disturbed, damaged or destroyed in the course of any of its activities pursuant to this Easement. Where any monuments have been or are disturbed, damaged or destroyed as a result of Hydro activities or works related to the Project, including Project operations, Hydro shall at its expense have such monuments replaced by a qualified Land Surveyor to the satisfaction of the Surveyor General of Canada. This section does not apply to legal or control monuments which are lawfully inundated.

4.15 Where survey monuments are disturbed as a result of wilful, deliberate or negligent actions of Split Lake Cree or Canada, it shall be the responsibility of that Party to

restore or replace such monuments in a manner satisfactory to the Surveyor General of Canada.

4.16 Where Setback Lines have not been the subject of an on the ground survey and installation of monuments, Hydro shall, if reasonably required, at the request of the Chief and Council of Canada, undertake such a survey and installation of monuments in a manner satisfactory to Split Lake Cree and the Surveyor General of Canada.

4.17 Hydro shall, insofar as it is reasonably practical to do so, conduct all work so as not to interfere with the ordinary use or uses of the Easement Lands, or Reserve lands adjacent to the Easement Lands.

Article 5. Access to Easement Lands

5.1 Subject to the terms hereinafter set forth, Canada and Split Lake Cree grant to Hydro, its servants, employees and agents, a licence, without charge, for access to and from the Easement Lands, over and upon the Reserve, and over and upon any other lands which do not now but which may in the future form part of the Reserves of Split Lake Cree, contiguous to the Reserve set out in section 2.1 of this Easement, with or without vehicles, machinery and equipment, for such inspections, bank protection, maintenance and other purposes

authorized by this Easement, as Hydro at any time deem necessary or expedient.

5.2 Notice requirements for access shall be as follows:

5.2.1 Except in the case of an emergency, Hydro shall give Chief and Council not less than thirty (30) days written notice of the nature of bank protection, maintenance or other work to be done on the Easement Lands, and not less than ten (10) days written notice of inspections on Easement Lands, or such other periods of notice as may be agreed upon by Hydro and Chief and Council in writing; and,

5.2.2 In the event of an emergency, Hydro shall, as soon as possible after the need is identified, give Chief and Council notice by telephone and facsimile of the nature of the work to be performed.

5.3 One of the following means of access to the Easement Land shall be used:

5.3.1. provincial highway or other provincial road leading to the Easement Land;



5.3.2. the water adjacent to the Easement Lands;

5.3.3. aircraft; or,

5.3.4. via lands other than Reserve lands, where such lands are owned by the Crown in right of Manitoba, or Hydro or to which Hydro has a right of access and which are adjacent to the Easement Lands, other than lands forming part of the Reserve.

5.4 Where, in the opinion of Hydro, it is impossible or impractical to enter upon or exit from the Easement Land for valid purposes under this Easement by any one or more of the means provided in subsections 5.3.1 through 5.3.4 of this Article, Hydro, except in the case of an emergency, shall so notify Chief and Council in writing at least twenty-one (21) days (or at least ten (10) days when the purpose is for inspections) in advance of proposed entry or exit across the Reserve as provided for in this Easement. Such notice shall include the nature, number, dimensions and gross weight of any vehicles, equipment or materials to be transported to or on the Easement Lands; set forth the reasons why other means of entry or exit are impossible or impractical in the circumstances; the approximate number of persons involved; the

proposed route; and the earliest contemplated entry date and the estimated exit date. In the event of an emergency, Hydro shall give notice by telephone and facsimile to the Chief and Council as soon as the circumstances of the emergency are known to Hydro.

5.5 Access across Reserve lands shall be by means of Reserve roads, except where that is demonstrably impractical.

5.6 Chief and Council may, within seven (7) days of receipt of a notice under section 5.4 of this Article, object to the proposed access by notifying Hydro in writing, of its objections. Promptly after receipt of such a notice by Hydro, Chief and Council and Hydro shall use their best efforts to resolve their differences, in the interests of both Split Lake Cree and Hydro. In the event those differences cannot, in the opinion of either Chief and Council or Hydro, be resolved within a reasonable time, either Party may commence an action in, or make application to, a court of competent jurisdiction for an order or other relief; and, except in an emergency, Hydro shall refrain from use of the proposed access until the application or action is conclusively disposed of by the courts.

5.7 In the event of an emergency, Hydro may use the proposed access. If there is a dispute as to whether or not

an emergency exists, a court of competent jurisdiction may find that an emergency does not exist, and order Hydro to cease use of the proposed access.

5.8 Split Lake Cree covenants that it will take all reasonable steps to ensure that Hydro is able to exercise its rights of entry and exit as provided for in this Easement, without hindrance or interference.

Article 6. Buildings and Structures on Easement Lands

6.1 Hydro shall not construct any permanent works, buildings, structures or improvements on the Easement Lands, other than works in the nature of bank protection and shoreline maintenance or related work, without the prior written consent of Split Lake Cree and of Canada.

6.2 Except for Hydro's right to construct works in the nature of bank protection and shoreline maintenance or related works, which right is hereby granted, no person shall develop, improve or build a structure of any kind on the Easement Lands without prior approval therefor from Chief and Council, and any other approvals required under the Indian Act (Canada).

6.3 Subject to the provisions of this Article, Chief and Council may permit a structure, development or improvement involving Easement Lands, which are or are not inundated.

6.4 Chief and Council shall give Hydro not less than thirty (30) days notice of any Council meeting at which a proposal is to be considered, to which sections 6.2 or 6.3 of this Article apply. Such notice shall include:

6.4.1 a description of the nature and location on the Easement Lands of the proposed structure, development or improvement; and,

6.4.2 the date, time and place of the Council meeting at which the proposal is to be considered;

and Hydro shall have, and is hereby granted the right to appear at that meeting and(or) to make such representations to Chief and Council as it considers appropriate.

6.5 Chief and Council will grant permission, under section 6.3 of this Article, only where:

6.5.1 the structure, development or improvement is, in

their judgment, necessary for the economic and social well-being of Split Lake Cree; and,

- 6.5.2 the structure, development or improvement can reasonably be expected not to materially interfere with or adversely affect Hydro's rights under this Easement, including, Hydro's right to
- (a) inundate and store water on the Easement Lands as provided for in this Easement,
  - (b) access the Easement Lands in accordance with the entry and exit provisions of this Easement, or
  - (c) carry out bank protection, shoreline maintenance and related works on the Easement Lands, necessary for Hydro operations in accordance with the provisions of this Easement.

6.6 Where it appears to Hydro that a structure or improvement on the Easement Lands, other than its own, is causing or is likely to cause any of the results enumerated in section 6.5 of this Article, Hydro shall so notify Chief and Council in writing and indicate:

6.6.1 that Hydro proposes to alter or remove the structure or improvement at its own expense and without liability therefor on a date not sooner than twenty-one (21) days from the date notice is received by Chief and Council; or,

6.6.2 that Hydro requests that Chief and Council arrange for removal of the structure or improvement, whereupon Chief and Council will arrange for the structure or improvement to be removed at the expense of Split Lake Cree.

6.7 Chief and Council may, within fourteen (14) days of receipt of a notice under section 6.6 of this Article, object to the course of action proposed by Hydro by notifying Hydro in writing of the nature of its objections. Promptly after receipt of any such notice, Chief and Council and Hydro shall use their best efforts to resolve their differences in the interests of both Split Lake Cree and Hydro. In the event those differences cannot in the opinion of either Chief and Council or Hydro be resolved within a reasonable time, either Party may have recourse to a court of competent jurisdiction to resolve the dispute; and any action taken by Hydro to remove the structure or improvement shall be at Hydro's risk, until the dispute has been conclusively disposed of by the courts.

6.8 Hydro shall not be liable under this Easement for any damages to any improvements, structures, crops or fences put in place on Easement Lands, incidental to the exercise by Hydro of its rights under this Easement, or caused by the inundation and storage of water on Easement Lands, except where such damages occur as a result of negligence or breach of the provisions of this Easement by Hydro.

Article 7.            Additional Easement Terms

7.1            The granting of the Easement by Canada is subject to the following conditions:

7.1.1        That Hydro shall, to the extent it is possible to do so and is within the control and authority of Hydro, control the flow of water on the regulated waterways so as to ensure that the Static Inundation Level on Split Lake adjacent to the Reserve does not exceed 169.47 m (556.0 ft.) ASL Local Datum.

7.1.2        That Hydro will use all practical means, including adjustment of flows through control structures, to prevent any inundation of Reserve lands

lying between the Static Inundation Level and the Setback Lines.

7.2 Nothing in this Easement shall be deemed to vest in Hydro any title to the casual revenues of the federal Crown, or to any mines, ores, metals, coal, slate, oil, gas, hydrocarbons, aggregate or other minerals in or under the land comprising the Easement Lands; or to prevent the exploitation of such minerals by or with the permission of Split Lake Cree in accordance with the Indian Act (Canada); save that this provision does not derogate from Hydro's right and privilege to access the Easement Lands to inundate and store water on the Easement Lands and to carry out bank protection, shoreline maintenance and related works on Easement Lands, in accordance with the provisions of this Easement.

7.3 Subject to section 3.5 of this Easement, Hydro may assign or encumber the rights in this Easement granted. Promptly upon any such assignment, Hydro shall give written notice to each of Canada and Split Lake Cree.

7.4 Manitoba may assign or encumber its rights or assign its obligations, under this Easement. Promptly upon any such assignment or encumbrance, Manitoba shall give written notice to each of Canada and Split Lake Cree. Manitoba shall remain liable for the performance of all of Manitoba's cove-



nants in the event of such assignment or encumbrance, including those obligations of Hydro it is required to assume pursuant hereto.

7.5 Neither Canada nor Split Lake Cree shall dispose of or alienate their respective interests in the Easement Lands, except subject to the terms of this Easement. No alienation of the Easement Lands shall be permitted unless there are reservations in favour of Manitoba and Hydro of all of the rights and privileges to which Manitoba and Hydro are entitled under this Easement, including this provision in a form which binds assignees and successors in interest.

Article 8. Taxes, Levies and Charges

8.1 The Easement hereby granted shall be exercisable by Hydro without charge, rate, levy, assessment, licence, fee or tax exigible by or payable to Canada or Split Lake Cree in respect thereof, including taxes, levies or charges levied, or purported to be levied, by means of by-laws pursuant to the Indian Act (Canada), or any successor legislation; and this section 8.1 of this Article shall be a full and sufficient exemption from any such charges.

8.2 Section 8.1 is not intended to exempt Hydro from

any applicable excise tax, income tax or goods and services tax.

8.3 Hydro shall be responsible for, and shall indemnify Canada and Split Lake Cree with respect to, any levies, taxes or charges assessed against the interest of Hydro in the Easement Lands, or related to the use of the Easement Lands by Hydro, its agents, employees, contractors and sub-contractors, where any such levies, taxes or charges are assessed pursuant to the laws of the Province of Manitoba, or are not within the scope of the provisions of section 8.1 of this Article.

Article 9. Warranties of Power and Authority

9.1 Canada hereby warrants that it has the full power and authority to grant to Hydro and Manitoba the rights, privileges and easements granted in this Easement, and to be bound by this Easement.

9.2 Hydro warrants that it has full power and authority to enter into and be bound by this Easement, and that it is in compliance with all statutory requirements and Hydro by-laws in connection with the execution of this Easement.

9.3 Manitoba warrants that it has full power and authority to enter into and be bound by this Easement.

9.4 Split Lake Cree warrants that it has full power and authority to enter into and be bound by this Easement.

9.5 It is expressly understood by Hydro and Manitoba that Canada does not in any way warrant, control, guarantee or assume any liability, of any kind whatsoever, with respect to any actions of Split Lake Cree or Chief and Council in connection with this Easement.

9.6 Split Lake Cree and Chief and Council warrant that they have been independently advised by legal and technical counsel and advisors of their choice in entering into this Easement.

Article 10. Waiver, Indemnification and Correction of Breach

10.1 Hydro shall be responsible for, and at all times hereafter saves Canada and Split Lake Cree harmless, and will indemnify and keep Canada and Split Lake Cree indemnified from and against, all actions, claims, and demands that may be made against Canada and Split Lake Cree by reason of any act or omission by Hydro, in the exercise or purported exer-

cise of the rights granted by this Easement, or occasioned by or attributable to anything done or omitted to be done by Hydro, its agents, employees, contractors or sub-contractors in the exercise or purported exercise of the rights granted by this Easement.

10.2 Hydro shall indemnify and save harmless Canada and Split Lake Cree in respect of any actual or purported liens, encumbrances or charges which may attach to the Easement Lands under the laws of Manitoba or of Canada, where such liens, encumbrances or charges arise from the acts or omissions of Hydro, its agents, employees, contractors or sub-contractors.

10.3 No waiver of any breach, by or on behalf of Canada, shall take place or be binding unless the same be expressed in writing over the signature of the Minister responsible under the laws of Canada, or his Deputy Minister or Assistant Deputy Minister, and any waiver so expressed shall extend only to the particular breach to which such waiver will specifically relate, and shall not be deemed to be a general waiver, or to limit or affect the rights of Canada with respect to any future or other breach.

10.4 No waiver of any breach, by or on behalf of Split Lake Cree, shall take place or be binding unless the same be

expressed in writing by the Chief as authorized in a Council Resolution, and any waiver so expressed shall extend only to the particular breach to which such waiver will specifically relate, and shall not be deemed to be a general waiver, or to limit or affect the rights of Split Lake Cree with respect to any future or other breach.

10.5 No waiver of any breach, by or on behalf of Hydro, shall take place or be binding unless the same be expressed in writing over the signature of the Chairman, President or Vice President of Hydro, and any waiver so expressed shall extend only to the particular breach to which such waiver will specifically relate, and shall not be deemed to be a general waiver, or to limit or affect the rights of Hydro with respect to any future or other breach.

10.6 No waiver of any breach, by or on behalf of Manitoba, shall take place or be binding unless the same be expressed in writing over the signature of the Minister of the Government of Manitoba responsible for Hydro or Northern Affairs, and any waiver so expressed shall extend only to the particular breach to which such waiver will specifically relate, and shall not be deemed to be a general waiver, or to limit or affect the rights of Manitoba with respect to any future or other breach.

10.7 Split Lake Cree hereby releases and forever discharges Canada, Hydro and Manitoba of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any kind or nature whatsoever, at law or in equity, which Split Lake Cree or Split Lake Cree on behalf of any Member, their respective successors, assigns, heirs, executors or administrators, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever, in relation to the granting of this Easement and the arrangements or matters specifically provided for in this Easement. Nothing in this section shall relieve Canada, Hydro or Manitoba of liability for breaches of this Easement, future negligent acts or omissions or wilful misconduct, on its own part, or on the part of those for whom it is at law responsible.

Article 11.      General Provisions

11.1 The preamble is inserted solely for historical purposes and should not be used or referred to in interpreting any part of this Easement.

11.2 The division of this Easement into articles, sections, subsections and paragraphs, and the article or section headings are for convenience of reference only, and shall not affect the construction or interpretation of this Easement.

Headings used in this Easement are for general guidance only and do not have substantive meaning so as to modify the text or the provisions of this Easement.

11.3 Words importing the singular number include the plural and vice versa; words importing the masculine gender include the feminine gender, and vice versa.

11.4 The terms "herein", "hereof", "hereunder" and similar expressions refer to this Easement and not to any particular article, section, subsection, paragraph or other portion of this Easement.

11.5 In the event of a conflict between metric and Imperial measure, metric measure shall prevail.

11.6 Each of the Parties to this Easement will, from time to time, at another Party's request and expense, and without further consideration, execute and deliver such other instruments of transfer, conveyance and assignment, and take such further action as the other may require, to more effectively complete any matter provided for in this Easement.

11.7 This Easement constitutes the entire agreement among the Parties and, except as stated in this Easement,

contains all the conditions, representations or warranties of the respective Parties. There are no oral conditions, representations or warranties of the respective Parties. This Easement may not be modified or amended in any respect except by a written instrument signed by all the Parties or, where expressly authorized in this Easement, by two (2) such Parties so authorized in this Easement.

11.8 The provisions of this Easement are without prejudice to the interpretation or application of the Northern Flood Agreement by any of the Parties to this Easement with respect to any party to the Northern Flood Agreement not a Party to this Easement.

11.9 This Easement shall enure to the benefit of, and be binding upon, the Parties to this Easement their respective heirs, successors and assigns.

11.10 No part of this Easement may be assigned or otherwise transferred except as expressly provided for in this Easement.

11.11 No member of Parliament or of the Legislative Assembly of Manitoba may be admitted to any part of this Easement.



11.12 Whenever in this Easement it is required or permitted that notice or demand be given or served by any Party to this Easement to or on any other Party to this Easement, such notice or demand shall be given or served in writing and forwarded by registered mail or transmitted by telecopier confirmed by telephone, addressed as follows:

**To Canada:**

The Regional Director General  
The Department of Indian Affairs and Northern  
Development  
Suite 1100, 275 Portage Avenue  
Winnipeg, Manitoba  
R3B 3A3

Facsimile number: (204)983-6500  
(204)983-0861

**To Split Lake Cree:**

Split Lake Cree First Nation  
Split Lake, Manitoba  
ROB 1P0

Facsimile number: (204)342-2270

**To Hydro:**

Manitoba Hydro  
General Counsel  
3rd Floor, 810 Taylor Ave.  
Winnipeg, Manitoba  
R3C 2P4

Facsimile number: (204)474-4854

**To Manitoba:**

Deputy Minister of Northern Affairs  
Room 327, Legislative Bldg.  
Winnipeg, Manitoba  
R3C 0V8

Facsimile number: (204)945-3727

11.13 A Party whose address or facsimile number changes shall promptly notify each other Party of such change.

Signed, sealed and delivered  
in the presence of:

Split Lake Cree First Nation

\_\_\_\_\_  
Witness as to Chief  
and Councillors

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Councillor

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Councillor

\_\_\_\_\_

Councillor

Her Majesty the Queen in the  
Right of the Province of  
Manitoba

Per:

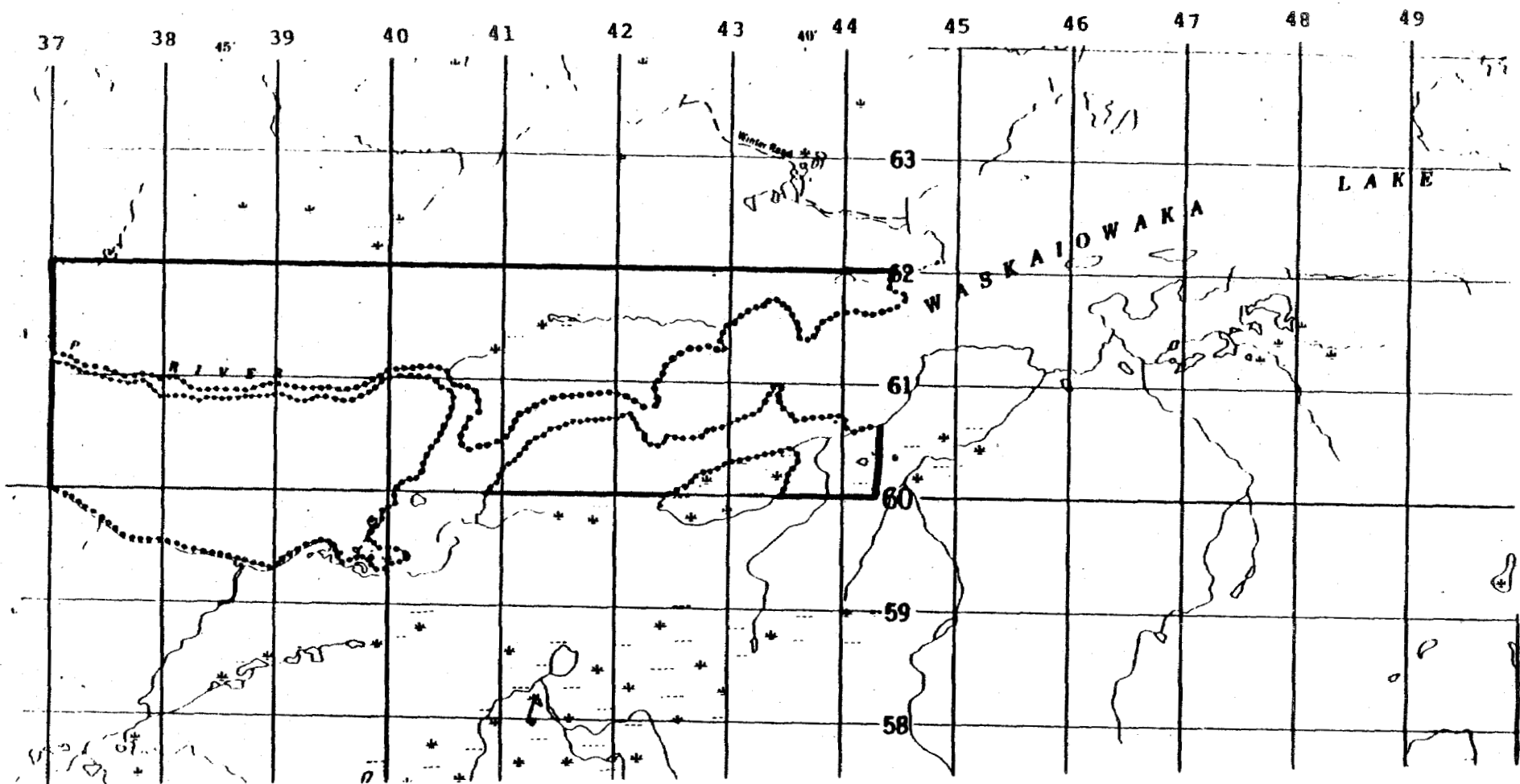
The Manitoba Hydro Electric  
Board

Per:

Per:

Her Majesty the Queen in The  
Right of Canada

Per:



METRIC

**PLAN 3-3**

Manitoba Natural Resources  
 Surveys & Mapping Branch  
 January 1992 Revised

Attached to and forming part of the Agreement  
 dated 06/24/92 - between Split Lake Cree,  
 Manitoba, Canada and Hydro.

**NORTHERN FLOOD AGREEMENT**  
**SPLIT LAKE CREE**  
**FIRST NATION**  
 Plan of Lands to be Transferred to Canada  
 for Designation as Reserve Lands.  
 ..... O.H.W.M. Boundary  
 ————— Inland Boundary  
 Scale  
 1:50 000  
 September 18, 1991. PLAN 3.3.

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## ARTICLE 4

### 4 PERMIT LANDS AND FEE SIMPLE LANDS

#### 4.1 INTRODUCTION

4.1.1 Introduction. This Article provides for the acquisition and right of use by Split Lake Cree of specific parcels of provincial Crown lands in the Resource Management Area.

#### 4.2 LAND CORPORATION

4.2.1 Incorporation. Chief and Council shall cause the Land Corporation to be incorporated under the provisions of The Corporations Act (Manitoba) as a share capital corporation with authorized capital of one (1) common share for consideration of One Dollar (\$1.00). The registered office of the Land Corporation shall be located on the Reserve. The number of directors of the Land Corporation ("Directors") shall be a minimum of three (3) and a maximum of thirteen (13), a majority of whom shall always be Members ordinarily resident on Reserve.

4.2.2 Restrictions in Articles. The Articles of Incorporation of the Land Corporation shall contain provisions restricting the business which the Land Corporation may carry

on to the holding, managing, administering and maintaining of corporate assets, initially comprised of lands provided pursuant to Article 4 of this Agreement. The Articles of Incorporation shall further contain provisions setting forth all of the restrictions, conditions and procedures set forth in section 4.3 of this Article.

4.2.3 Ownership of Share. The one (1) common share in the Land Corporation shall be held by the Chief, in trust for all Members, such share to be voted by the Chief in a manner not contrary to the provisions of section 4.3 of this Article, and at the direction of the Chief and Council by Council Resolution.

4.2.4 Declaration of Trust. The Chief, to whom such share is issued or transferred, shall execute a Declaration and Acceptance of Trust ("Declaration") as set forth in Schedule 4.2 of this Agreement, providing:

- (a) that such share is held by him as trustee and nominee of all Members;
- (b) that he shall, immediately upon ceasing to be Chief, transfer such share to his successor; and,



- (c) that he shall endorse the share certificate issued in his name and by Declaration authorize the Directors to transfer such share, in the event of his physical or mental infirmity or death, to a successor Chief or, if a successor Chief is not yet elected, to the Trustees, to hold such share in trust for Split Lake Cree and to transfer such share to the successor Chief upon his entering office.

Unless and until the Chief or successor Chief has executed such a Declaration and agreed to endorse the share certificate in the Land Corporation, no share shall be issued in his name.

4.2.5 Transfer of Shares. The Articles of Incorporation of the Land Corporation shall restrict the transfer of the share to the Chief and(or) the Corporate Trustee.

4.2.6 Land Corporation By-Laws. The Chief and first shareholder of the Land Corporation shall cause By-law No. 1 to be enacted and ratified limiting the Directors of the Land Corporation to the Chief and Members as elected by Chief and Council by Council Resolution, such Members to be eighteen (18) years of age or over, not an undischarged bankrupt or a person of unsound mind so found. The By-law shall provide

that the Officers of the Land Corporation ("Officers") shall be elected by a majority of the Directors, excepting the president of the Land Corporation, who shall be the Chief.

#### 4.3 APPROVAL OF LAND CORPORATION TRANSACTIONS

4.3.1 Conditions Applicable. The Chief, as the nominal owner and trustee of the one (1) share of the Land Corporation, or as an officer of the Land Corporation, and(or) the Directors and Officers shall not be entitled to buy, sell, transfer, lease, mortgage, pledge, hypothecate, lien, charge, alienate, grant a right of first refusal or option to purchase or otherwise deal with or encumber either land and(or) the share unless and until Split Lake Cree have duly authorized the trustee and(or) the Directors and Officers as the case may be, to consent to such transfer, lease, mortgage, pledge, hypothecation, lien, charge, alienation, right of first refusal, option to purchase or encumbrance in accordance with the following procedures:

- (a) a public meeting will be convened in accordance with subsection 11.5.2 of the Indenture at which Chief and Council shall cause to be explained to the Members, the nature and significance of the proposed transfer, lease, mortgage, pledge, hypothecation, lien, charge,

alienation, right of first refusal, option to purchase or encumbrance, including the planned disposition of proceeds arising from such transaction, if any; and,

- (b) Chief and Council shall ensure that the trustee, Directors and(or) Officers shall not authorize or consent to such transfer, lease, mortgage, hypothecation, lien, charge, alienation, right of first refusal, option to purchase or encumbrance, unless and until a majority of the Members, eighteen (18) years of age and older, attending at such meeting vote in favour of such authorization and consent, on behalf of Split Lake Cree.

4.3.2 Majority Vote. None of, an alteration to the share structure, the amendment of the Articles of Incorporation, or the voluntary winding up of the Land Corporation, shall take place without the majority vote of the Members required by paragraph 4.3.1(b) of this Article.

4.3.3 Transactions with Third Parties. Notwithstanding the foregoing provisions of subsection 4.3.1 of this Article, such provisions shall not be applicable in the event that, in the opinion of the Directors the disclosure at a public

meeting of the Members would jeopardize the interests of a Third Party who may be the recipient of any such transfer, lease, mortgage, pledge, hypothecation, lien, charge, alienation, encumbrance, right of first refusal or option to purchase, such that such Third Party might reasonably be expected not to proceed with any such transaction, and provided that such transaction is determined by the Directors to be for the benefit of Split Lake Cree, and in that event, the Directors shall provide written notice of such determination to the Trustees fourteen (14) days prior to the intended date of entering into any such transaction with a Third Party, or such lesser period of time as the Trustees may allow. Provided the Trustees agree with the determination made by the Directors and so notify the Directors, in writing, the Directors shall be entitled to cause the Land Corporation to enter into such a transaction. Forthwith upon the completion of such a transaction a public meeting will be convened in accordance with subsection 11.5.2 of the Indenture, and Chief and Council shall cause to be explained to the Members attending such meeting, the nature and significance of the transaction.

4.3.4 Pledging of Title. Split Lake Cree shall cause the Land Corporation to execute a Pledge Agreement, in form and content attached as Schedule 4.3 to this Agreement, whereby to secure the obligation of the Land Corporation not

to sell, transfer, lease, mortgage, pledge, hypothecate, lien, charge, alienate, grant a right of first refusal or option to purchase or otherwise deal with or encumber any title to the Selected Lands in respect of which Fee Simple Title has been transferred to it pursuant to subsection 4.5.7 of this Article (the "Proposed Transaction"), without first having complied with the requirements of subsections 4.3.1., 4.3.2 and 4.3.3 of this Article, the Land Corporation shall:

- (a) pledge to and deposit with the Trustees the duplicate titles to all such parcels of Fee Simple Lands; and,
- (b) deposit with the Trustees duly executed registerable transfers of land for all such parcels of Fee Simple Lands in favour of the Corporate Trustee, together with any supporting documentation required by the land titles office to permit registration.

4.3.5 Release of Pledged Documents. Upon the Trustees receiving:

- (a) written notice as provided under subsection 4.3.3 of this Article, and upon the Trustees providing to the Directors of the Land Corporation the written

agreement of the Trustees to such determination contemplated under subsection 4.3.3 of this Article; or,

(b) a Council Resolution certifying that the public meeting was convened, the Proposed Transaction in respect of specifically identified parcels of land was explained as required by paragraph 4.3.1(a) of this Article, and a majority of Members eighteen (18) years of age or older in attendance voted in favour of authorizing the Chief as trustee, Directors and(or) Officers of the Land Corporation to consent as required by paragraph 4.3.1(b) of this Article and authorizing the Chief as trustee, Directors and(or) Officers to consent to the Proposed Transaction; and,

(c) a certified true copy of the resolution of the Directors of the Land Corporation consenting to and authorizing the Proposed Transaction;

the Trustees shall release to the Land Corporation the relevant duplicate titles, transfers of land, and withdrawal or partial withdrawal of caveat relevant to such transaction. Where any parcel which is the subject matter of the Proposed Transaction is a portion only of the lands described in the

relevant duplicate title or transfer of land, the Land Corporation shall return to the Corporate Trustee the duplicate title and a revised transfer of land covering all the lands previously described in the said duplicate and transfer prior to their release to the Land Corporation pursuant hereto, excepting only any parcel which is the subject matter of the Proposed Transaction, and thereupon the Corporate Trustee shall withdraw any caveat registered against that parcel. Where the Proposed Transaction is not completed for any reason, the Land Corporation shall promptly return the relevant duplicate title, transfer of land, and any withdrawal of caveat which was provided pursuant hereto.

4.3.6 Dividends. If the Directors propose to declare dividends in excess of ten thousand dollars (\$10,000.00), cumulatively, in any fiscal year of the Land Corporation, they shall not do so unless and until they have given notice to Split Lake Cree and Split Lake Cree have held a public meeting in accordance with subsection 4.3.1 of this Article, at which the proposed disposition of dividends has been approved. Any dividends declared in amounts cumulatively of ten thousand dollars (\$10,000.00) or less, in any fiscal year of the Land Corporation, shall be paid to Split Lake Cree.

4.3.7 No Obligation. Nothing in this Article or in the

Indenture shall oblige the Trustees to see to the carrying out or completion of the Proposed Transaction.

**4.4 LAND USE PERMITS**

4.4.1 Issuance of Permits. Manitoba will, within three (3) months of receipt of a request by Council Resolution, issue general Land Use Permits to the Land Corporation for Selected Lands, subject to the following conditions:

- (a) the Land Corporation is constituted in accordance with this Agreement;
- (b) the Corporate Trustee has confirmed that the Declaration has been duly executed and the endorsed share certificate, referred to therein, has been received; and,
- (c) the use of the Selected Lands shall be subject to all applicable laws of Manitoba.

4.4.2 Non-Conversion to Reserve. It is the intent of the Parties that the Selected Lands shall not be Reserve Lands subject to the Indian Act (Canada), and, in particular that Sections 35 and 36 of the Indian Act (Canada) shall have no application to the Selected Lands. Any general Land Use



Permits issued in relation to the Selected Lands may be cancelled by Manitoba without notice, at any time, should any action be taken by any Party to this Agreement to make such Selected Lands subject to the Indian Act (Canada).

4.4.3 Permits to Third Parties. Nothing in this Article shall affect the right of any person, not a Party to this Agreement, to acquire a land use permit within the Resource Management Area, other than in respect of the Selected Lands.

#### 4.5 TRANSFER IN FEE SIMPLE TITLE

4.5.1 Request for Fee Simple Title. At any time after receipt of any Land Use Permit under subsection 4.4.1 of this Article, Split Lake Cree may request by Council Resolution that Fee Simple Title to all or any parcel of the Selected Lands be transferred to the Land Corporation.

4.5.2 Legislation by Canada. In recognition of the intent of the Parties that Sections 35 and 36 of the Indian Act (Canada) shall have no application to the Selected Lands, Canada shall recommend the enactment of legislation to ensure the said Sections 35 and 36 do not apply to the Selected Lands, and when enacted shall proclaim such legislation in force.

4.5.3 Surveys. Upon receipt of a request under subsection 4.5.1 of this Article, and the proclamation by Canada of legislation required under subsection 4.5.2 of this Article, Manitoba will:

- (a) schedule surveys within such reasonable period as may be determined taking into account the then current volume of legal surveys; and,
- (b) advise Split Lake Cree of the date on which legal surveys will commence on each parcel of the Selected Lands for which Fee Simple Title has been requested.

4.5.4 Water Body Boundaries. The water body boundary for the Selected Lands shall be the Ordinary High Water Mark observed in the field or established by surveys, except where the Selected Lands:

- (a) are subject to water erosion and other hazards as defined in Regulation 480/88R under The Planning Act (Manitoba), in which case the water body boundary shall be a line, established by Manitoba, following consultation with Split Lake Cree, based upon the reasonable criteria necessary for protection from such hazard or erosion, such

determination to be made prior to the expiry of six (6) months from the scheduled commencement of each survey scheduled under paragraph 4.5.3(b) of this Article;

- (b) are adjacent to a water body which is subject to a Water Power Licence, such as Stephens Lake, in which case the water body boundary shall be a line established by Manitoba and approved by Hydro; or,
- (c) are adjacent to a water body which is subject to a Water Power Reserve, in which case the water body boundary shall be the upper boundary established by that Water Power Reserve in all instances except for that parcel of Selected Lands identified as Clark Lake or Split Lake where the water body boundary shall be a contour line at approximate elevation 172.00 m (564.3 ft.) ASL Local Datum. Hydro will identify those locations, based upon the same criteria used for establishing Setback Lines, where the said water body boundary is to be above the said contour.

4.5.5 Level Fluctuations - Kettle Forebay. It is acknowledged that Stephens Lake is the forebay of the Kettle Generating Station and is operated, pursuant to a licence

issued by Manitoba, as a forebay for the production of hydro-electric power. As a consequence, the levels of Stephens Lake will be subject to frequent changes to meet demands for hydro-electric power. Accordingly, as a condition of the conveyance of Selected Lands on Stephens Lake, and as contemplated by subsection 13(2)(a) of The Crown Lands Act (Manitoba), Split Lake Cree, the Land Corporation and their successors in title shall not be entitled to compensation for such fluctuations in level. This condition is intended to be, and is, a covenant running with the land, and notice of such covenant may be given by filing a caveat in the appropriate land titles office.

4.5.6 Deviations. Nothing in subsection 4.5.5 of this Article is intended to limit any liability of Hydro for deviations from the Post Project Water Regime pursuant to Article 2 of this Agreement.

4.5.7 Transfer of Title. Upon completion of the legal survey of each parcel of the Selected Lands, and confirmation from Split Lake Cree, evidenced by Council Resolution, that such parcel conforms to this Agreement, Manitoba will transfer Fee Simple Title in that parcel to the Land Corporation.

4.5.8 Reservations to Manitoba. Where any parcel of the Selected Lands is transferred in Fee Simple Title to the

Ordinary High Water Mark, there is reserved to Manitoba, out of each such disposition, those reservations contained in subsections 4(1)(b), (c), (d), (e) and (f) of The Crown Lands Act (Manitoba). The reservation contained in subsection 4(1)(a) of The Crown Lands Act (Manitoba) will not be reserved to Manitoba.

4.5.9 Costs of Surveys and Transfers. Subject to subsection 4.5.10 of this Article, Manitoba shall complete all surveys, transfers and registrations of title for each parcel of the Selected Lands for which Fee Simple Title has been requested, including Registration Detail Applications and forms of Request, at no cost to Split Lake Cree, the Land Corporation or Canada, including payments of any land transfer tax which may otherwise be payable. At the time of registration of title, Registration Detail Applications, together with forms of Request, shall be completed for filing in the appropriate land titles office requesting a separate duplicate title for each parcel of the Selected Lands for which Fee Simple Title has been requested.

4.5.10 Costs Chargeable. Should, for any reason, Split Lake Cree, or the Land Corporation, decline to accept Fee Simple Title for any parcel after the commencement of the legal survey for such parcel, the cost of such legal survey,

the cost of registration of title, if incurred, and other reasonable costs will be a charge to Split Lake Cree, payable to Manitoba on demand.

4.6 GENERAL CONDITIONS

4.6.1 Waiver of Fees and Charges. Manitoba shall waive any fees or charges for the issuance and continuance of Land Use Permits acquired and renewed under this Article during the term specified in subsection 4.6.2 of this Article. Any lands required to be held under Land Use Permit by the Land Corporation at the expiry of the term specified in subsection 4.6.2 of this Article shall be subject to fees and charges due and payable by the Land Corporation in accordance with The Crown Lands Act (Manitoba).

4.6.2 Term of Provisions. Manitoba, after three (3) years from the Date of this Agreement, may withdraw the waiver of fees or charges for Land Use Permits under subsection 4.6.1 of this Article; provided that, if at that time Canada has not yet proclaimed the legislation contemplated in subsection 4.5.2 of this Article, then Split Lake Cree, may, at its option, request Manitoba to replace some or all of the

Land Use Permits with leases, to be issued to the Land Corporation in accordance with The Crown Lands Act (Manitoba). Upon the subsequent enactment and proclamation of the contemplated legislation, Split Lake Cree may request that the Selected Lands, whether held under lease or Land Use Permit, be transferred to Fee Simple Title.

4.6.3 Releases to Manitoba. The NFA, by virtue of its Articles 3, 4, and 15, makes provision for the establishment of additional reserve lands, hold areas, resource areas and Band consultation in the management of resources. Articles 3, 4 and 5 of this Agreement satisfy Manitoba's obligations under Articles 3, 4 and 15 of the NFA, and Split Lake Cree hereby releases and forever discharges Manitoba, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Articles 3, 4 and 15 of the NFA. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand, or proceeding on its own behalf or on behalf of any Members, Split Lake Cree Based Business, or Controlled

Institution, on account of or in relation to any such matters.

4.6.4 Releases to Canada. Split Lake Cree releases and discharges Canada from any claims and demands, whatsoever, including claims, if any, of a fiduciary character which may arise in respect of Canada's obligations to Split Lake Cree for anything done, including any legislation enacted pursuant to this Article, or omitted to be done by Canada to the Date of this Agreement in relation to the matters dealt with in this Article.

4.6.5 Expropriation. If any of the Selected Lands, while under the ownership and control of the Land Corporation or another corporation wholly owned and controlled by Split Lake Cree, are expropriated under the legislative authority of Manitoba, the Land Corporation or such wholly owned and controlled corporation shall have the right, as part of the compensation for, but not as a condition of, such expropriation, to acquire replacement lands within the Resource Management Area, subject to the agreement of Manitoba and Split Lake Cree, in accordance with the provisions of The Crown Lands Act (Manitoba).

4.6.6 Merger. The covenants provided in this Article shall not merge with the transfer of Selected Lands.



SCHEDULE 4.1

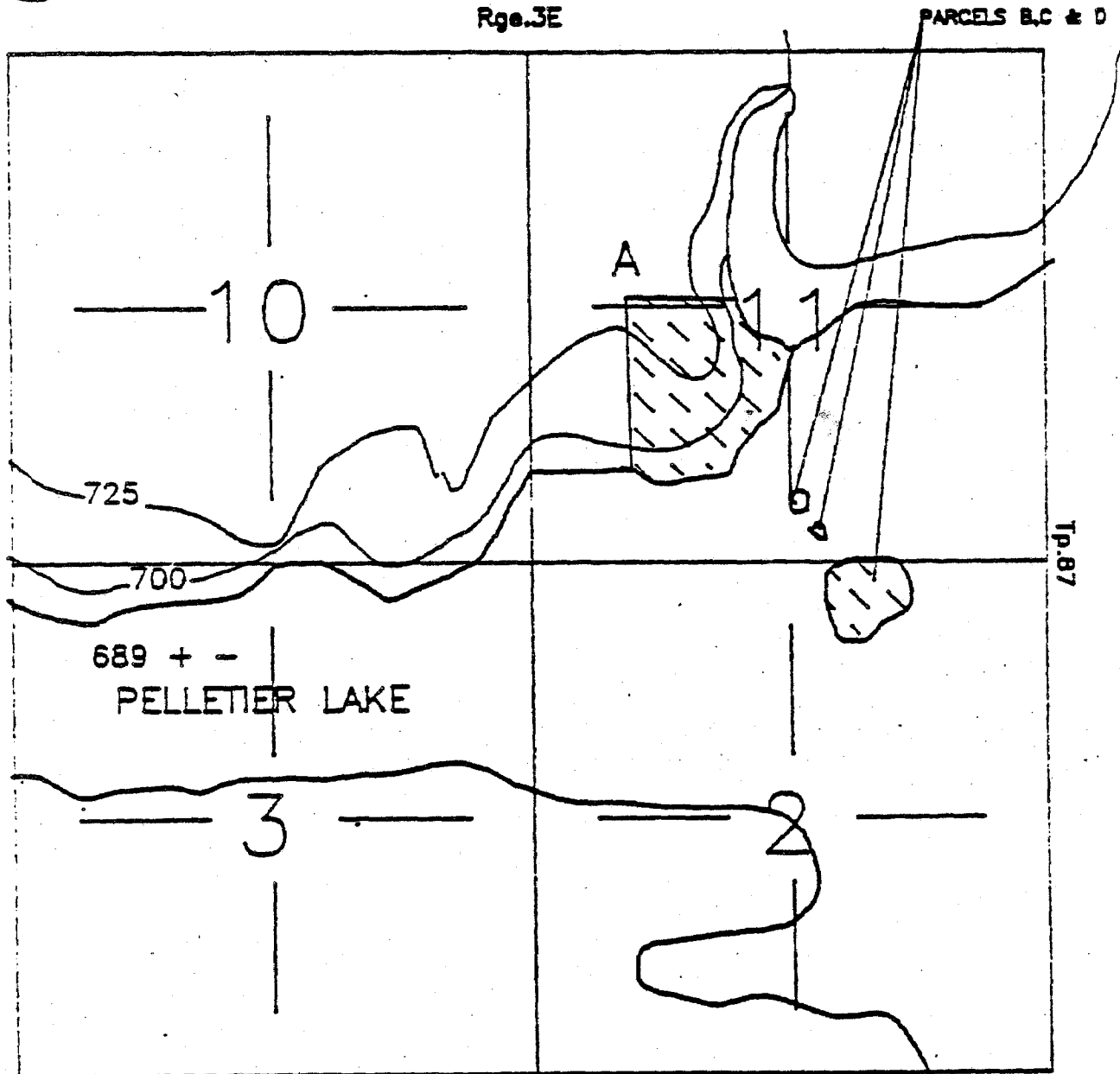
Selected Lands shall consist of Permit Lands and  
 Fee Simple Lands shown on the following plans  
 attached to and forming part of this Schedule 4.1

| <u>Plan No.</u> | <u>Location</u>                 | <u>Number of Parcels</u> |
|-----------------|---------------------------------|--------------------------|
| 4.1             | Pelletier Lake                  | 4                        |
| 4.2             | Limestone Lake                  | 1                        |
| 4.3             | Cygnets Lake                    | 1                        |
| 4.4             | Handle Lake                     | 1                        |
| 4.5             | Kiask Lake                      | 1                        |
| 4.6             | Wernham Lake                    | 1                        |
| 4.7A            | Christie Lake                   | 1                        |
| 4.7B            | Christie Lake                   | 1                        |
| 4.8             | Settee Lake                     | 1                        |
| 4.9             | Thomas Lake                     | 1                        |
| 4.10            | Butnau Lake                     | 1                        |
| 4.11            | Caldwell Lake                   | 2                        |
| 4.12            | Assean River Crossing           | 3                        |
| 4.13            | Clark Lake                      | 1                        |
| 4.14A           | Stephens Lake                   | 1                        |
| 4.14B           | Stephens Lake                   | 1                        |
| 4.15            | Myre Lake                       | 1                        |
| 4.16            | Dafoe Lake                      | 4                        |
| 4.17            | Cyril Lake                      | 2                        |
| 4.18            | Awapekamak Lake (East of Kiask) | 1                        |
| 4.19            | Whiting Lake                    | 2                        |
| 4.20            | Little Kettle Lake              | 4                        |
| 4.21            | Troy Lake                       | 2                        |

SELECTED LANDS  
 PELLETIER LAKE SITE  
 PART SEC'S.2 & 11 TP.87 RGE.3 E.P.M.  
 PARCELS A,B,C&D - 60 ACRES APPROX.



Plan 4.1 attached to and forming part of  
 the Agreement dated \_\_\_\_\_ between  
 Split Lake Cree, Manitoba, Canada and Hydro.



SCALE: 1:20,000

PARCELS SHOWN THUS 

CONTOUR LINE  700

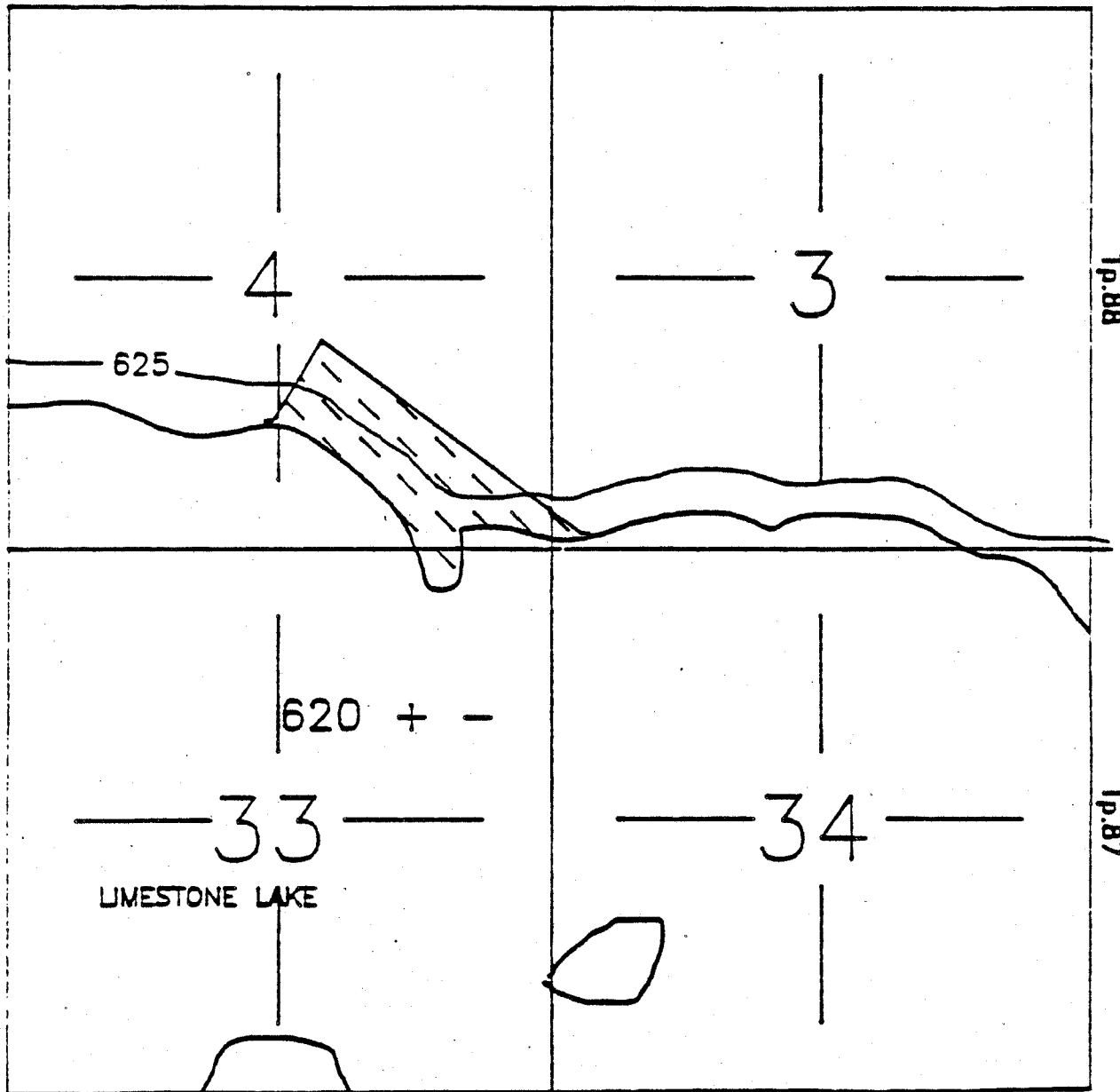
OHWM 

Plan 4.1

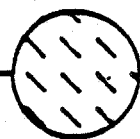


SELECTED LANDS  
 LIMESTONE LAKE SITE  
 PART SEC.33 TP.87 RGE.10 E.P.M.  
 PART SEC'S 3&4 TP.88 RGE.10 E.P.M.  
 60 ACRES APPROX.

Plan 4.2 attached to and forming part of  
 the Agreement dated \_\_\_\_\_ between  
 Split Lake Cree, Manitoba, Canada and Hydro.

Rge.10E

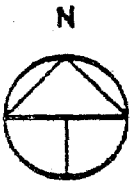


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PARCEL SHOWN THUS   
 CONTOUR LINE   
 OHWM 

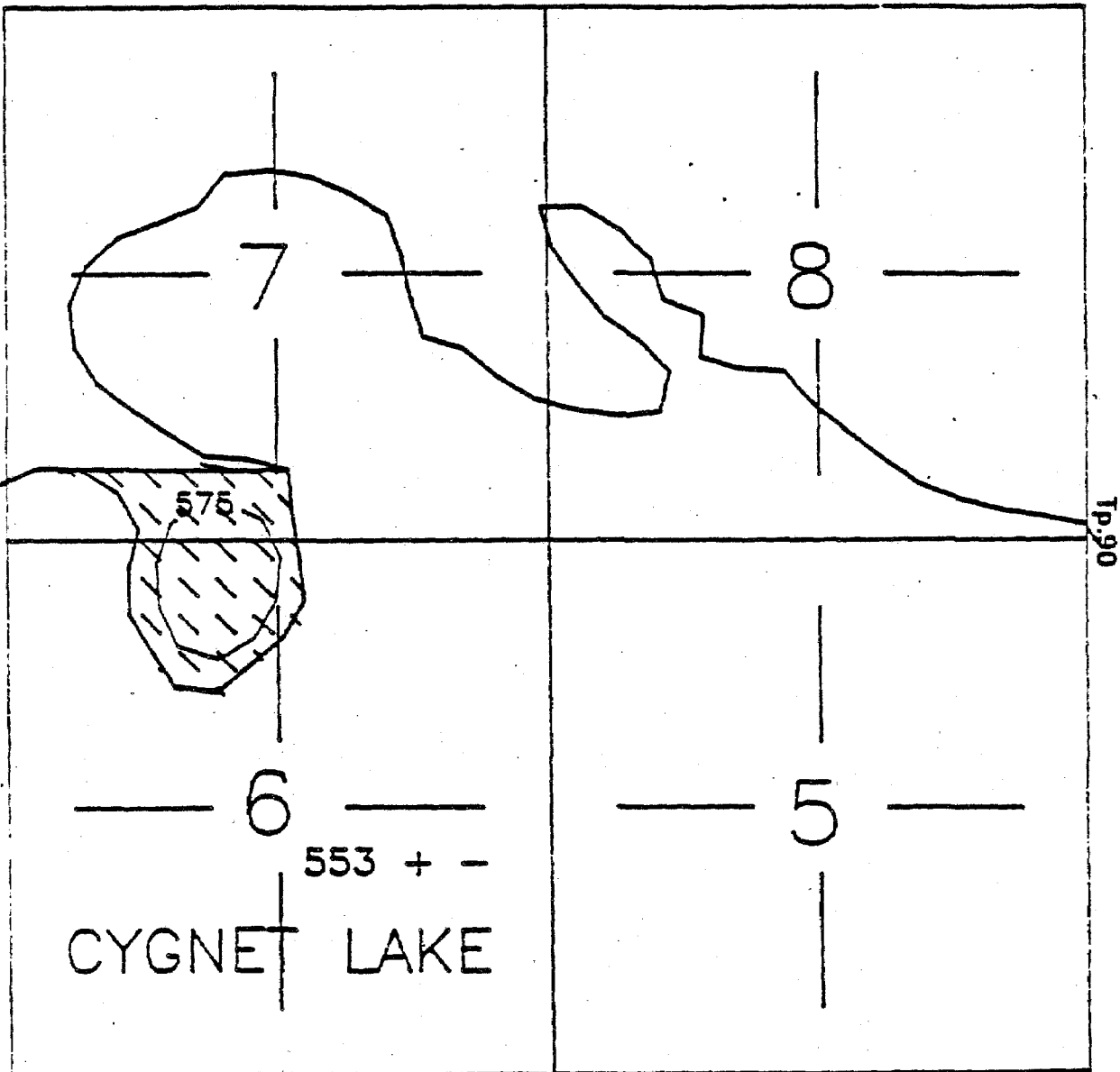
Plan 4.2

SELECTED LANDS  
 CYGNET LAKE SITE  
 PART SEC'S. 6 & 7 TP. 90 RGE. 17 E.P.M.  
 75 ACRES APPROX.






Plan 4.3 attached to and forming part of  
 the Agreement dated \_\_\_\_\_ between  
 Split Lake Cree, Manitoba, Canada and Hydro.

Rgs. 17E

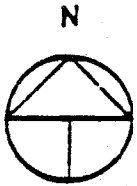


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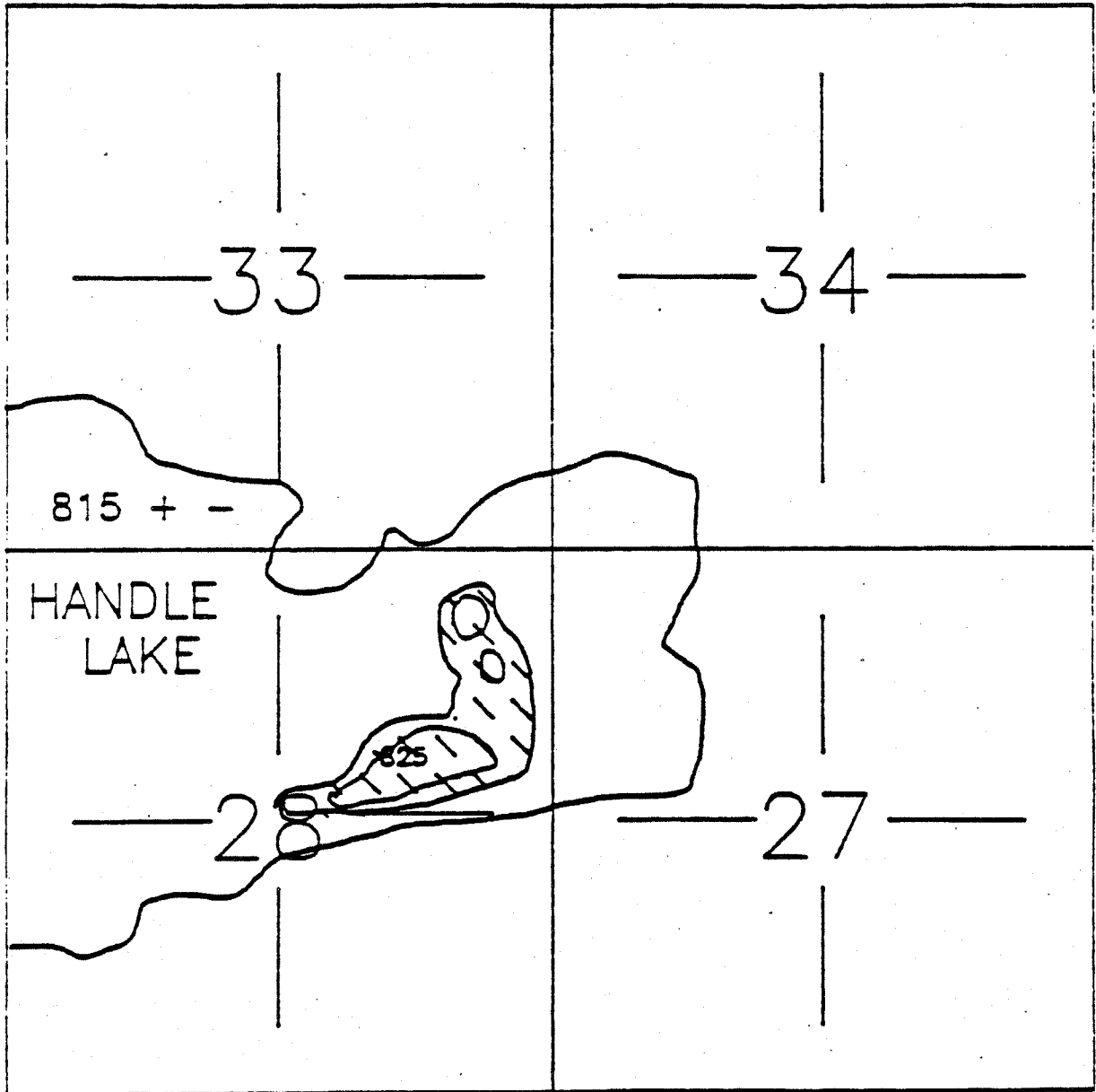
Plan 4.3

SELECTED LANDS  
HANDLE LAKE SITE  
PART SEC.28 TP.88 RGE.1 E.P.M.  
45 ACRES APPROX.



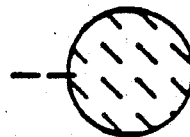
Plan 4.4 attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.

Rge.1E



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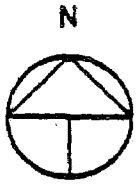


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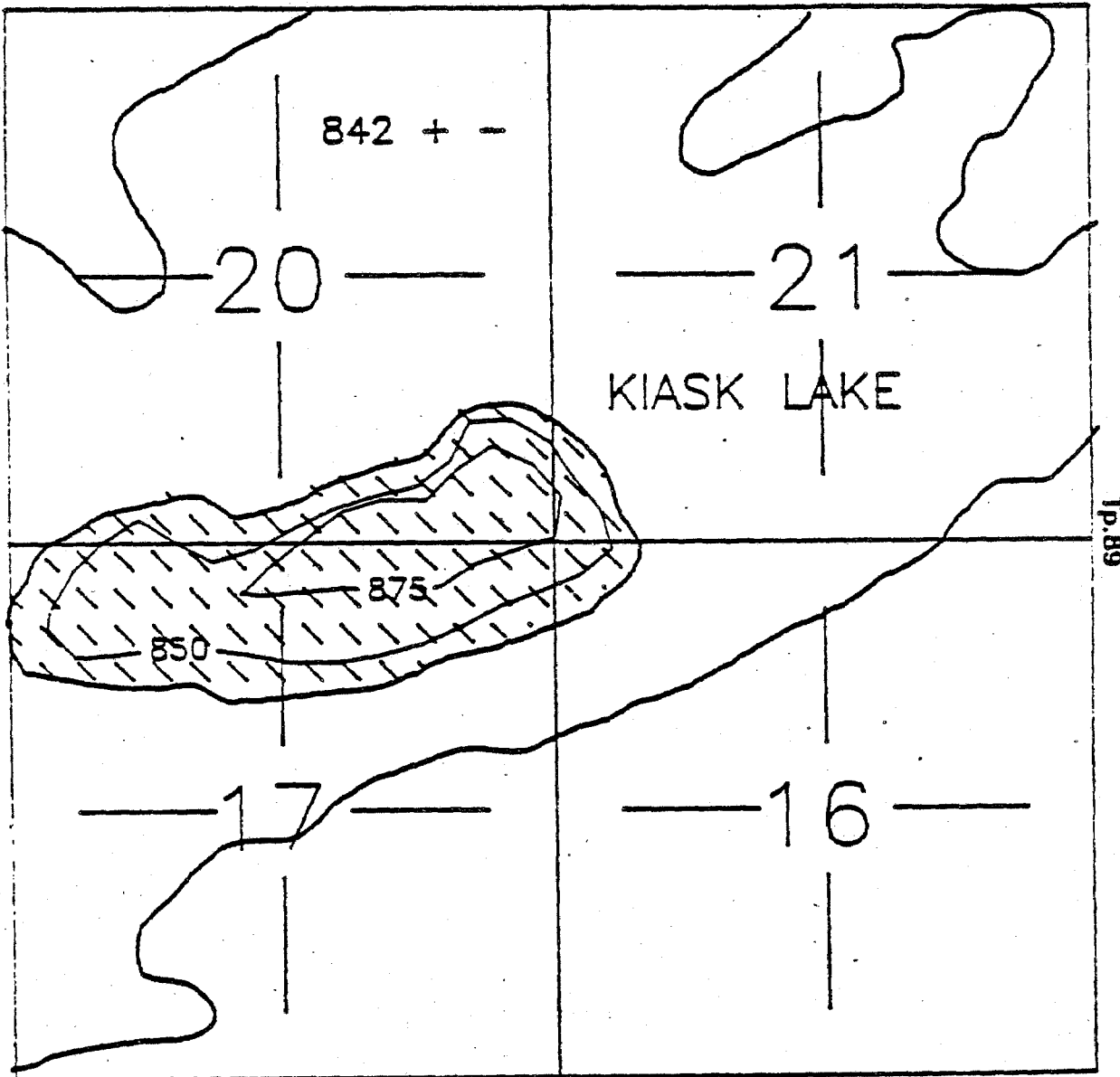
Plan 4.4

SELECTED LANDS  
KIASK LAKE SITE  
PART SEC'S.16,17,20&21 TP.89 RGE.1 E.P.M.  
200 ACRES APPROX.



Plan 4.5 attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.

Rge.1E

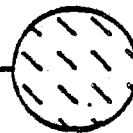


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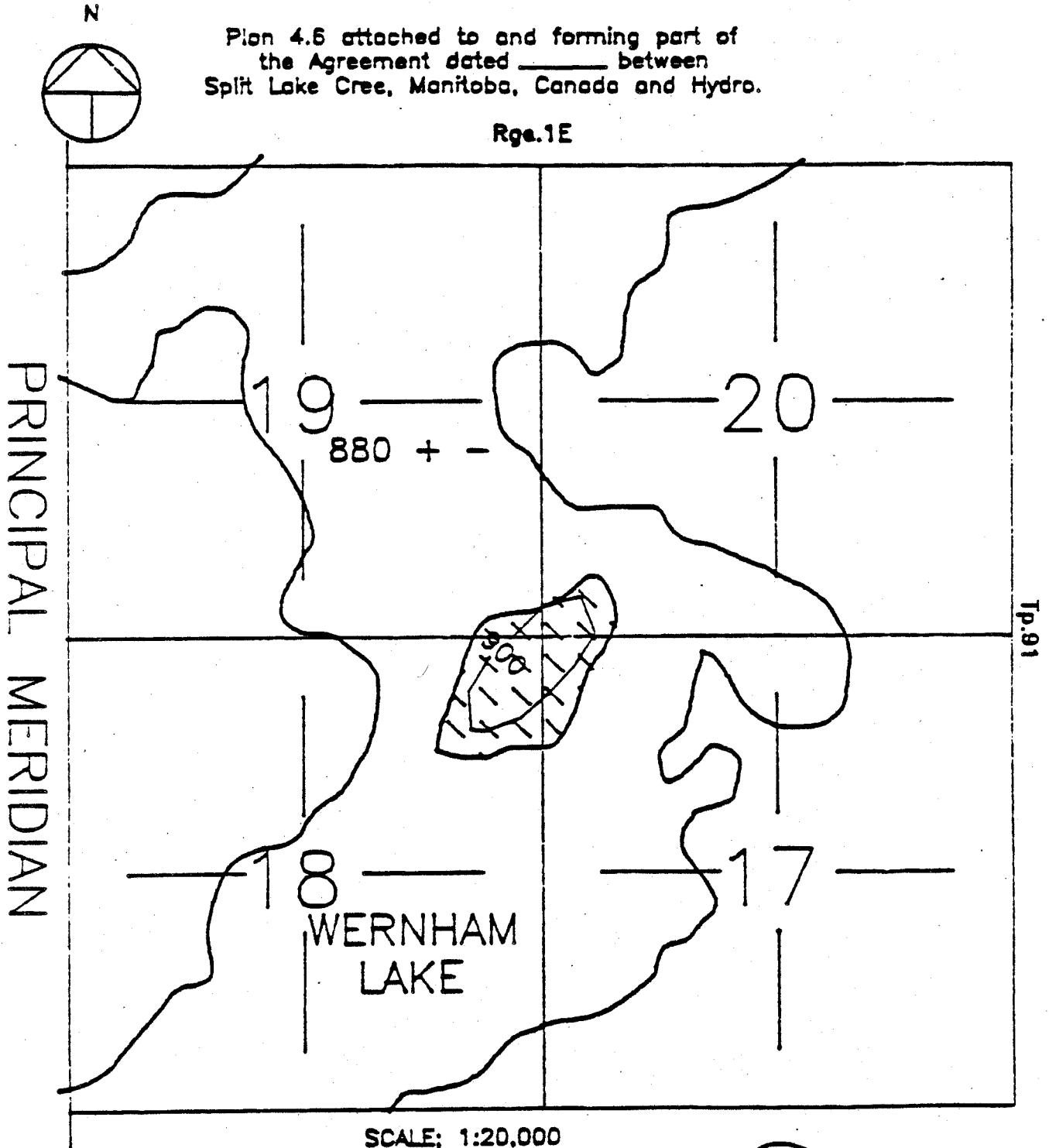


Plan 4.5




SELECTED LANDS  
WERNHAM LAKE SITE  
PART SEC'S.17,18,19&20 TP.91 RGE.1 E.P.M.  
60 ACRES APPROX.

Plan 4.6 attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.

Rge.1E



SCALE: 1:20,000

PARCEL SHOWN THUS   
CONTOUR LINE  900  
OHWM 

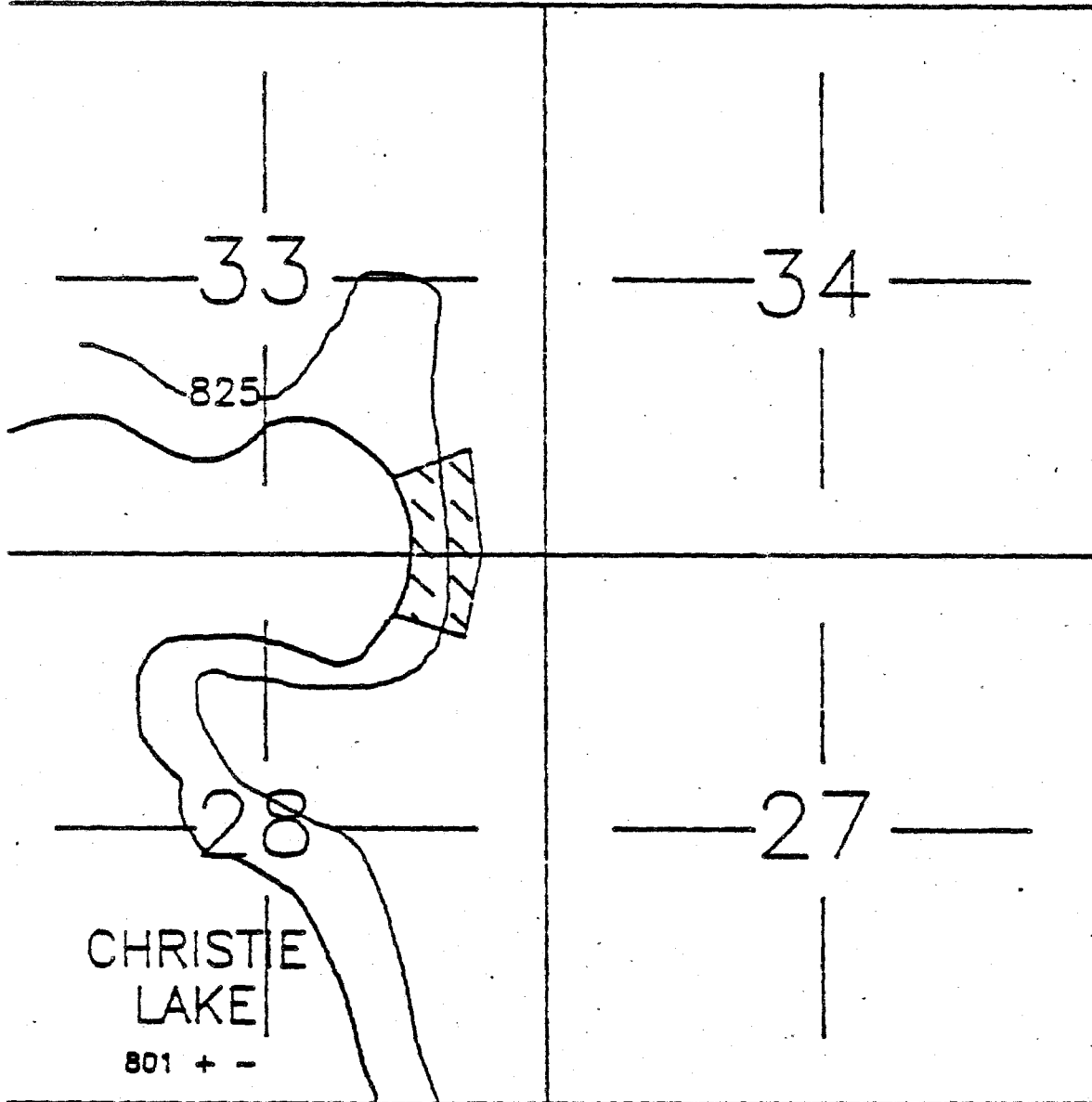
Plan 4.6

SELECTED LANDS  
CHRISTIE LAKE SITE  
PART SEC'S.28&33 TP.91 RGE.4 E.P.M.  
PARCEL A - 15 ACRES APPROX.




Plan 4.7A attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.

Rge.4E



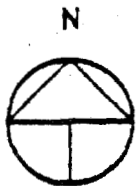
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PARCEL SHOWN THUS   
CONTOUR LINE  825  
OHWM 

Plan 4.7A

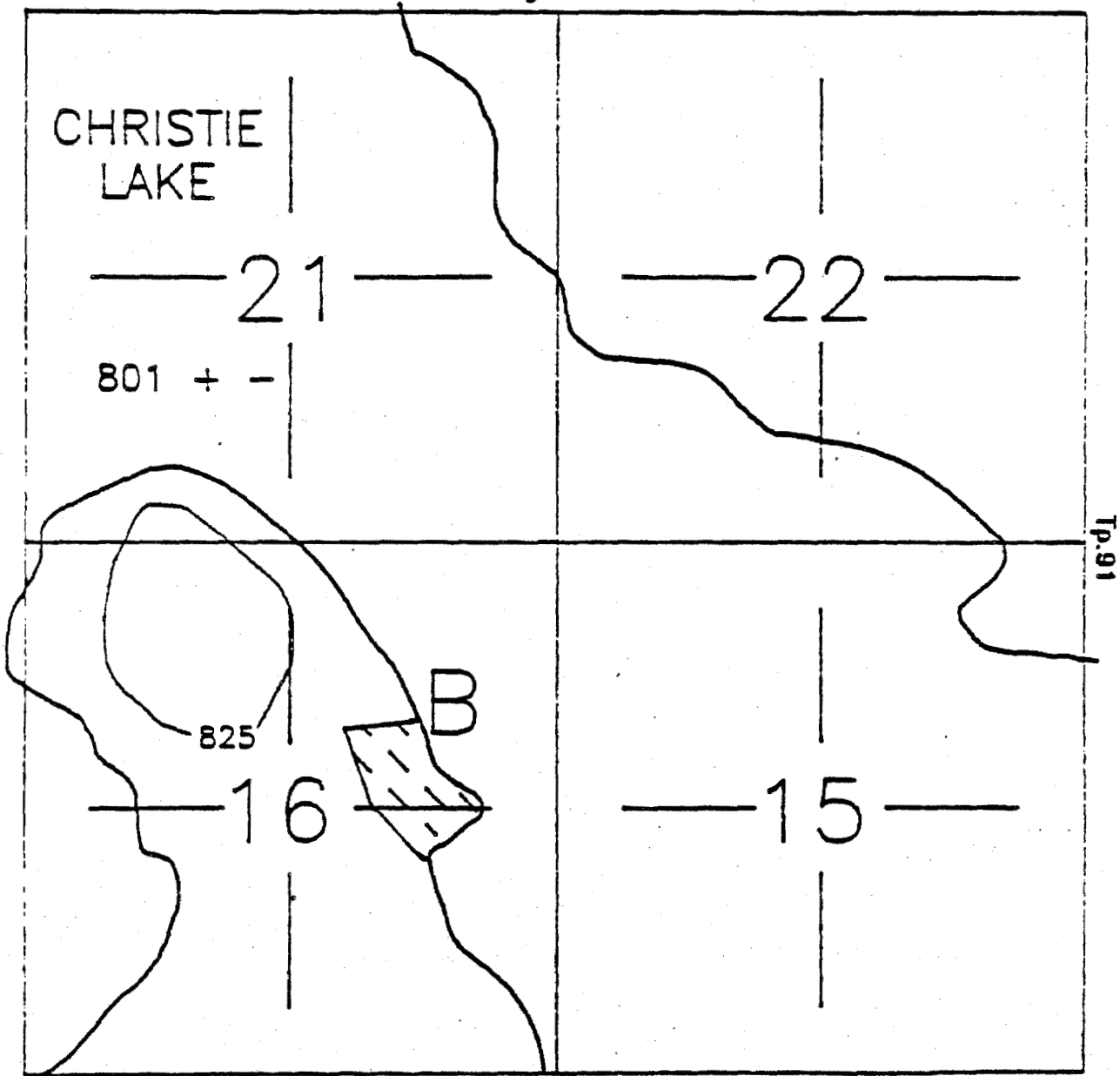


SELECTED LANDS  
CHRISTIE LAKE SITE  
SEC.16 TP.91 RGE.4 E.P.M.  
PARCEL B - 15 ACRES APPROX.




Plan 4.7B attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.

Rge.4E

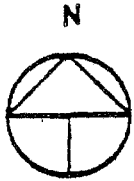


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PARCEL SHOWN THUS   
CONTOUR LINE 825  
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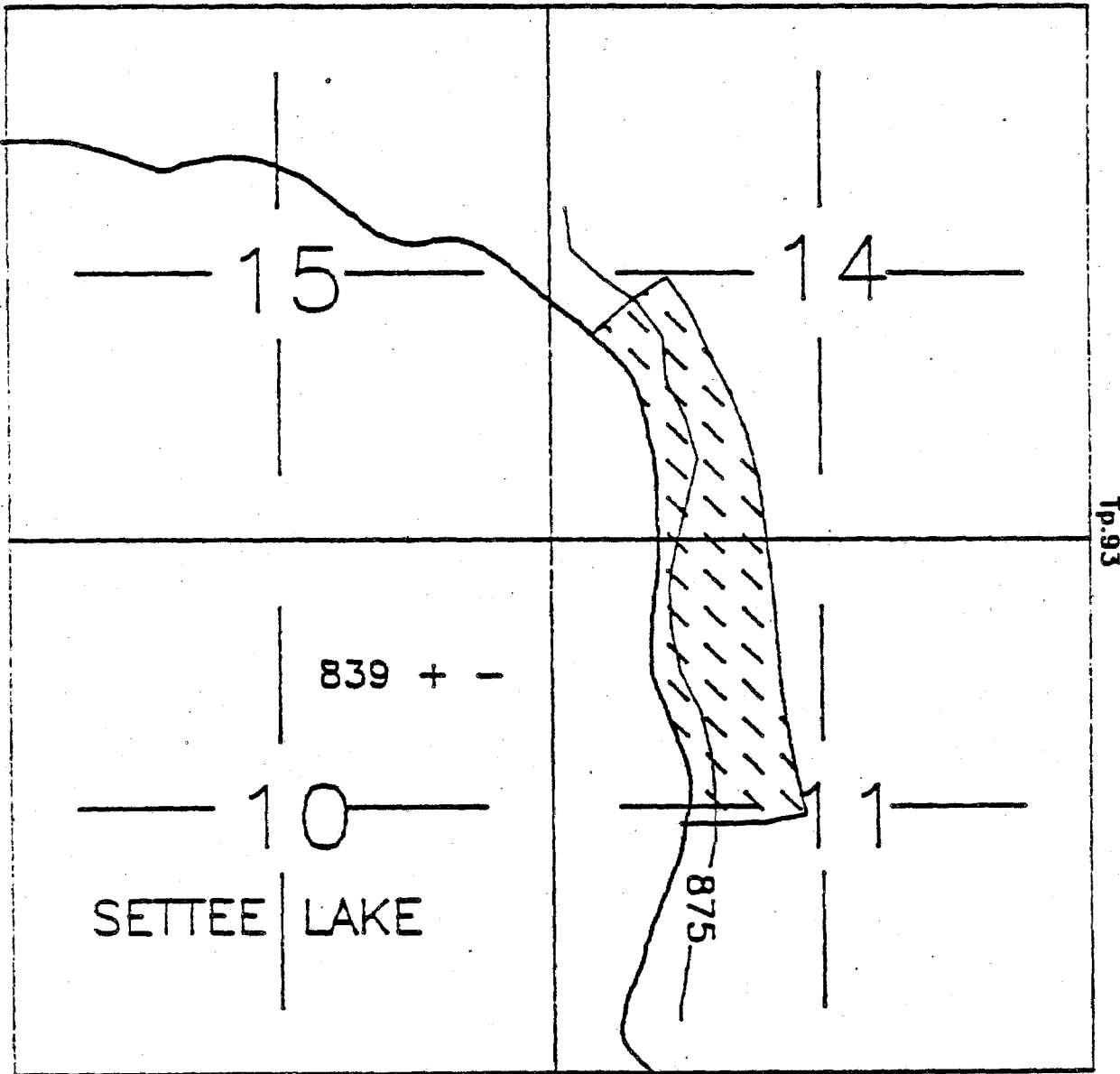
Plan 4.7B

SELECTED LANDS.  
 SETTEE LAKE SITE  
 PART SEC'S 11 & 14 TP. 93 RGE. 4 E.P.M.  
 200 ACRES APPROX.






Plan 4.8 attached to and forming part of  
 the Agreement dated \_\_\_\_\_ between  
 Split Lake Cree, Manitoba, Canada and Hydro.

Rge. 4E



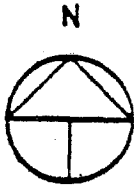
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PARCEL SHOWN THUS   
 CONTOUR LINE  875  
 OHWM 

Plan 4.8

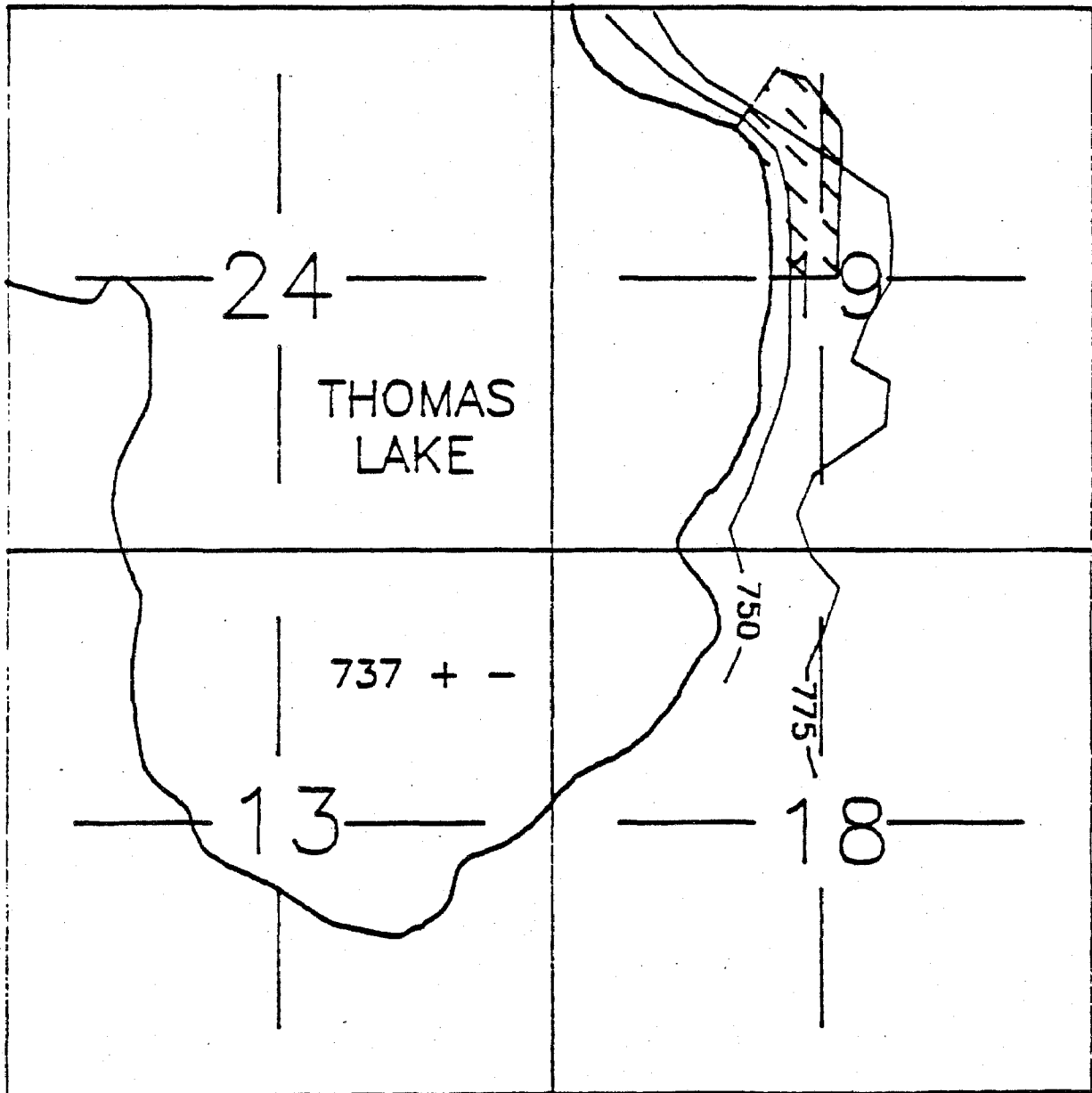
SELECTED LANDS  
THOMAS LAKE SITE  
PART SEC.19 TP.92 RGE.6 E.P.M.  
30 ACRES APPROX.

Plan 4.9 attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.






Rge.5E

Rge.6E



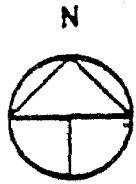
Tp.92

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PARCEL SHOWN THUS   
CONTOUR LINE  750  
OHWM 

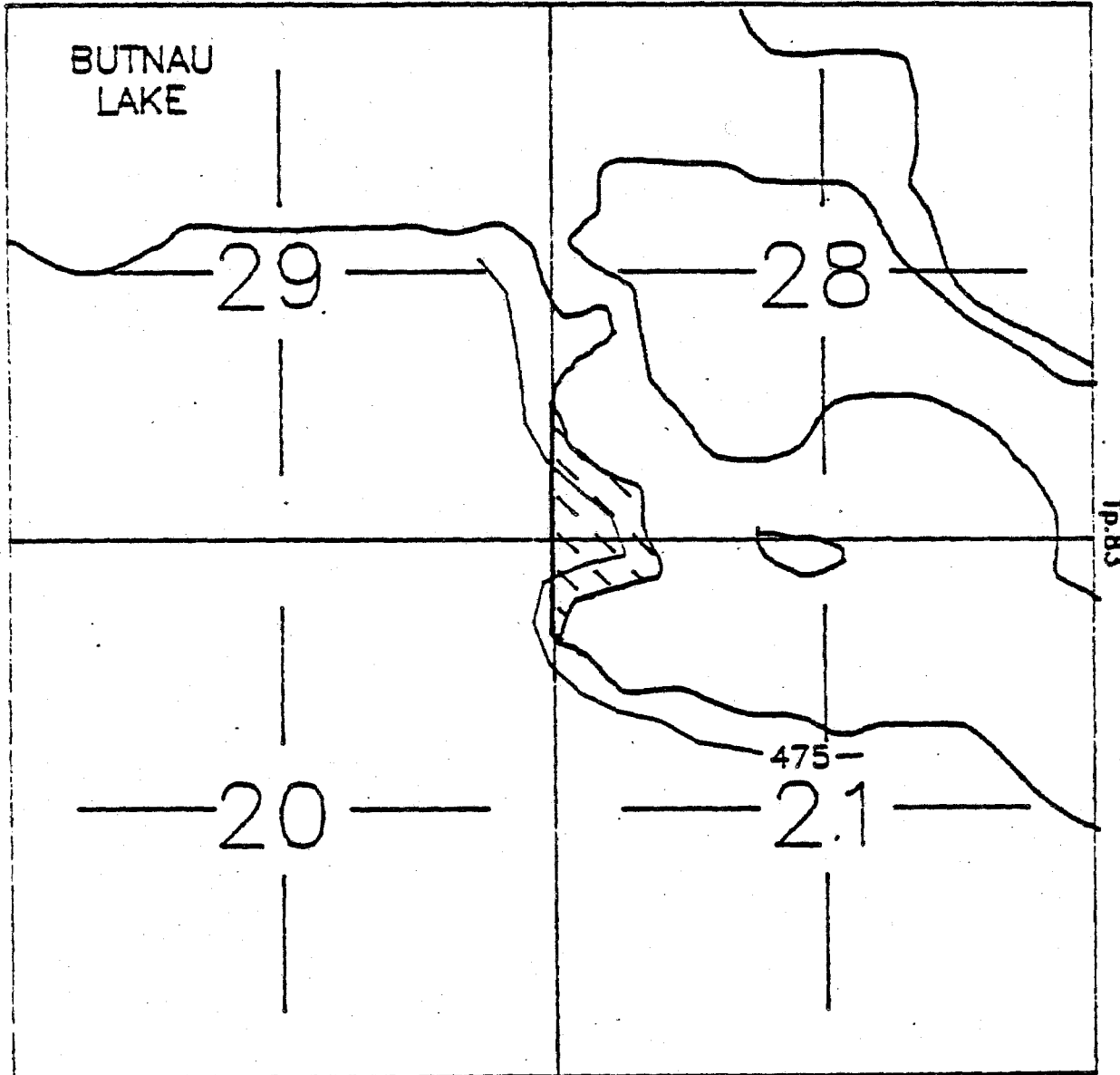
Plan 4.9

SELECTED LANDS  
BUTNAU LAKE SITE  
PART SEC'S.21&28 TP.83 RGE.14 E.P.M.  
20 ACRES APPROX.


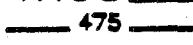



Plan 4.10 attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.

Rge.14E

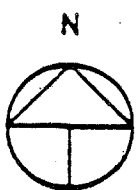


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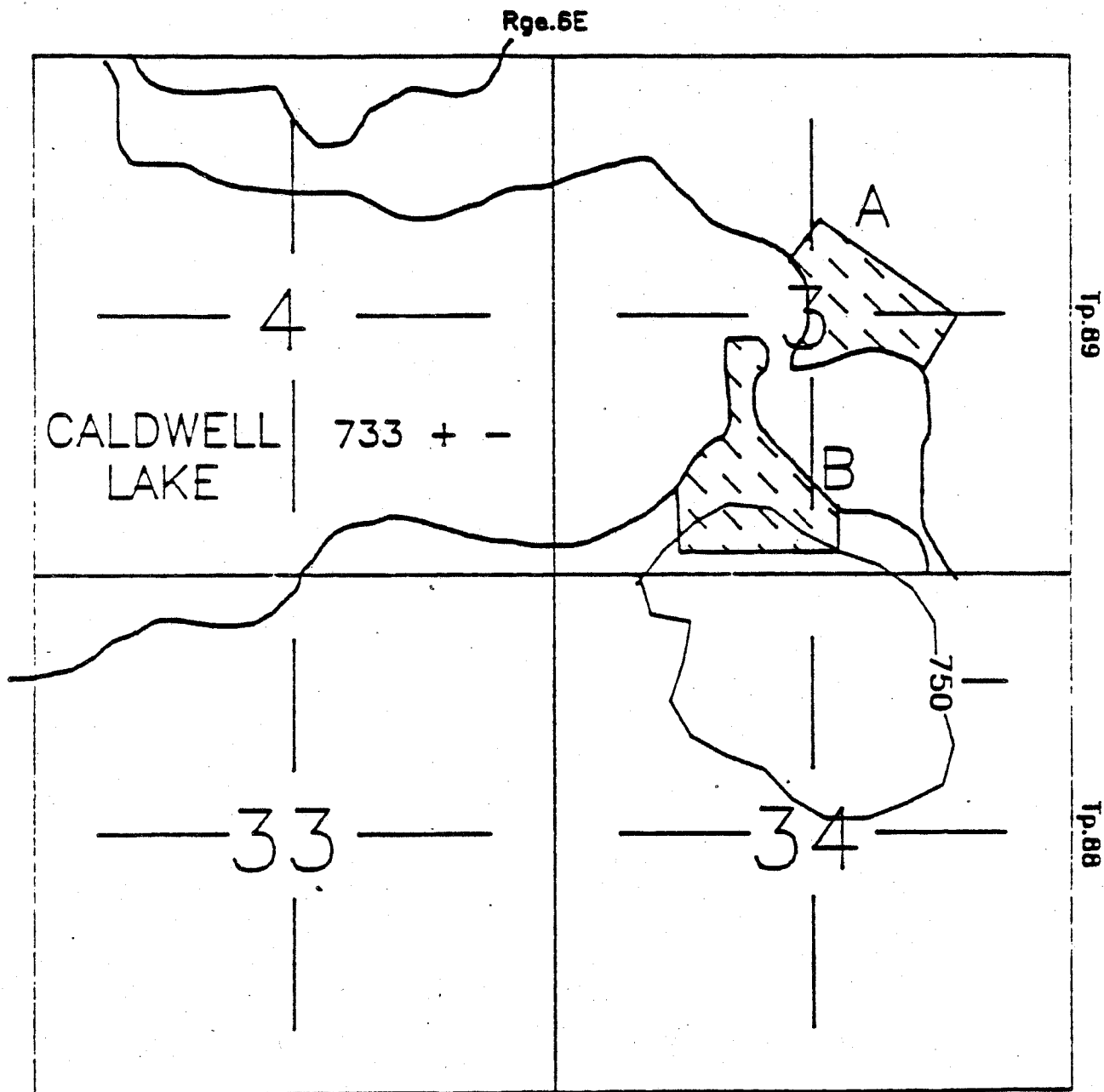
PARCEL SHOWN THUS   
CONTOUR LINE   
OHWM 

Plan 4.10




SELECTED LANDS  
 CALDWELL LAKE SITE  
 PART SEC.3 TP.89 RGE.6 E.P.M.  
 PARCELS A&B - 60 ACRES APPROX.



Plan 4.11 attached to and forming part of  
 the Agreement dated \_\_\_\_\_ between  
 Split Lake Cree, Manitoba, Canada and Hydro.



SCALE: 1:20,000

PARCELS SHOWN THUS   
 CONTOUR LINE   
 OHWM 

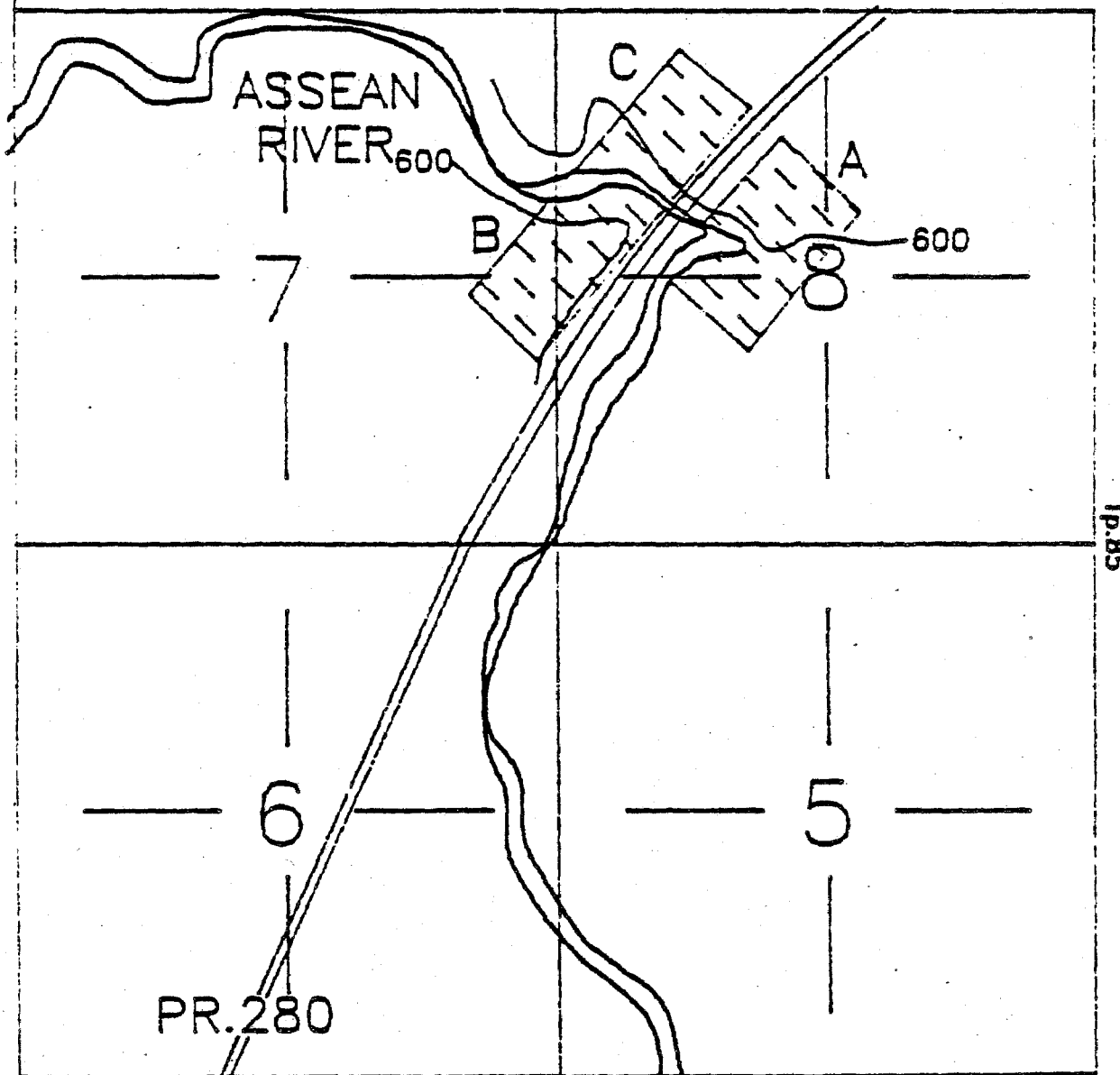
Plan 4.11

SELECTED LANDS  
ASSEAN RIVER CROSSING SITE  
PART SEC'S 7 & 8 TP. 85 RGE. 10 E.P.M.  
PARCELS A, B & C - 100 ACRES APPROX.






Plan 4.12 attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.

Rge. 10E

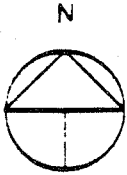


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PARCELS SHOWN THUS   
CONTOUR LINE  600  
OHWM 

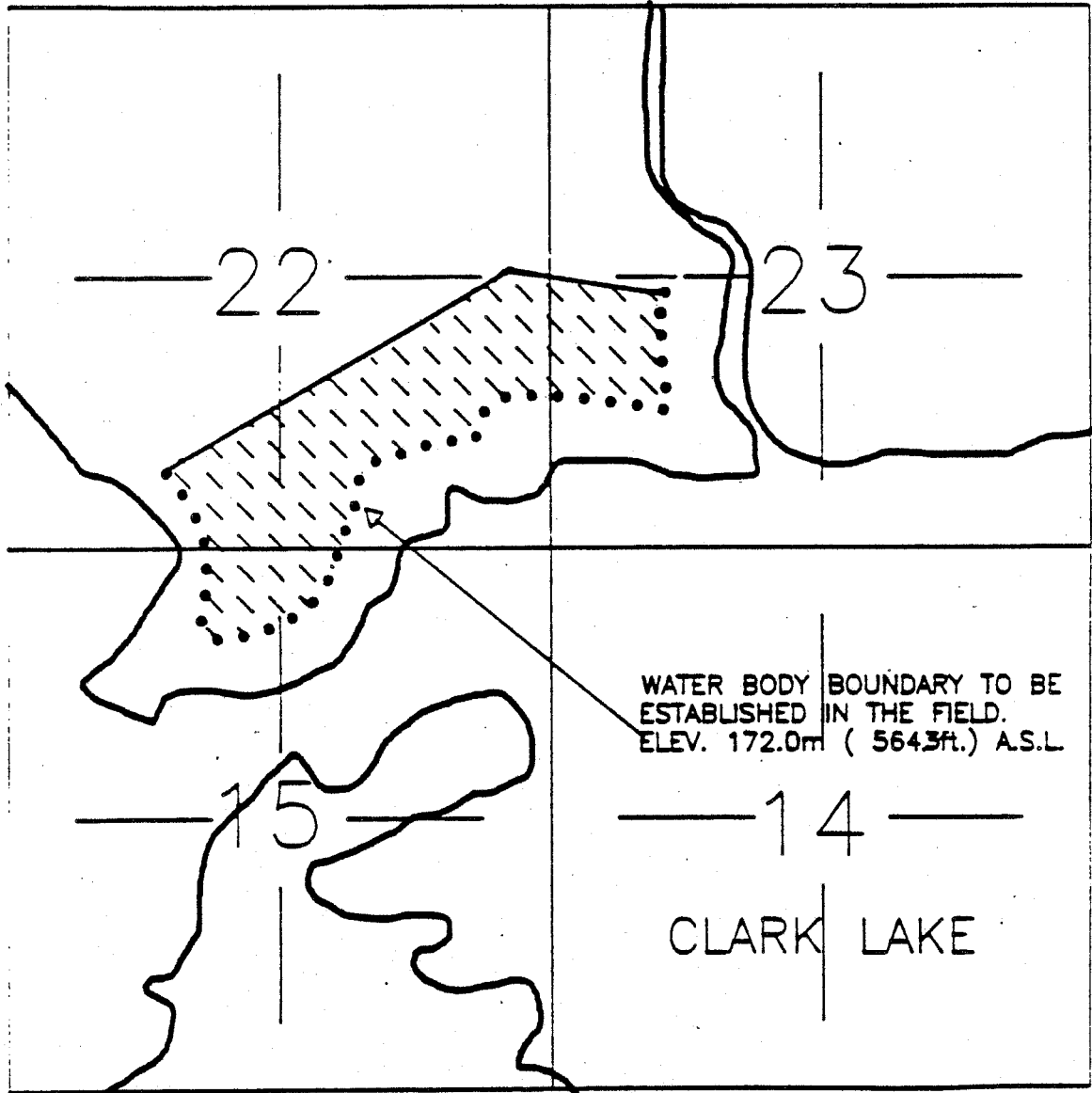
Plan 4.12

SELECTED LANDS  
 CLARK LAKE SITE  
 PART SEC'S. 15, 22 & 23 TP. 84 RGE. 10 E.P.M.  
 150 ACRES APPROX.



Plan 4.13 attached to and forming part of  
 the Agreement dated \_\_\_\_\_ between  
 Split Lake Cree, Manitoba, Canada and Hydro.  
 THE WATER BODY BOUNDARY SHALL BE A CONTOUR LINE  
 NEAR ELEVATION 172.0m. (564.3ft.) LOCAL DATUM.

Rge. 10E



TP. 84

SCALE: 1:20,000

PARCEL SHOWN THUS 

CONTOUR LINE  550

INLAND BOUNDARY 

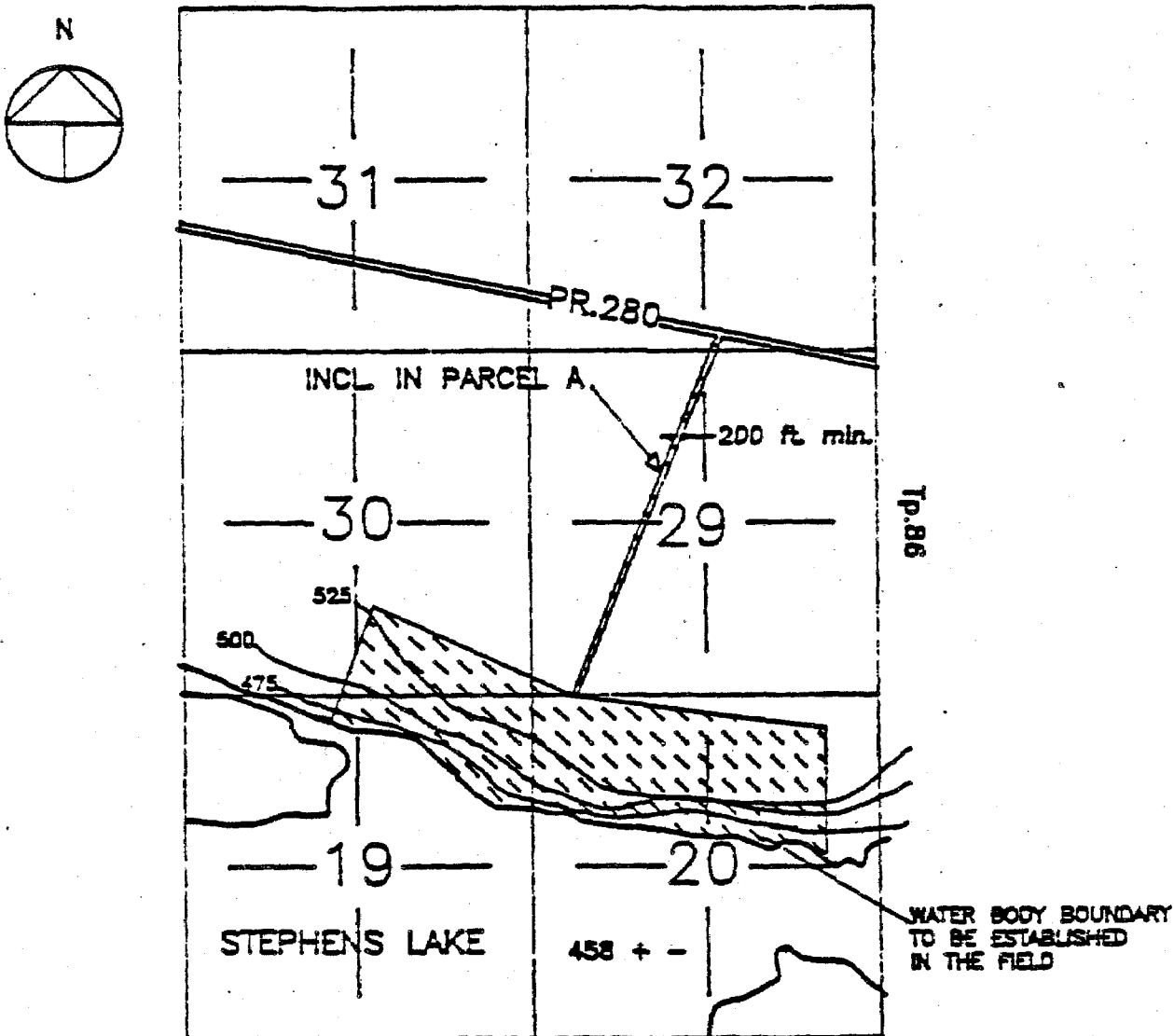
WATER BODY BOUNDARY 

Plan 4.13

**SELECTED LANDS  
STEPHENS LAKE SITE  
PART SEC'S.19,20,29,30&32 TP.86 RGE.17 E.P.M.  
PARCEL A - 400 ACRES APPROX.**

Plan 4.14A attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.

Rge.17E



THE WATER BODY BOUNDARY SHALL BE A LINE AMENDING THE SEVERANCE LINE IN THE WATER POWER LICENCE FOR THE KETTLE GENERATING STATION DATED JULY 19,1990,WHICH LINE IS TO BE ESTABLISHED BY MANITOBA AND APPROVED BY HYDRO

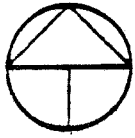
SCALE: 1:30,000

PARCEL SHOWN THUS   
 CONTOUR LINE

Plan 4.14A

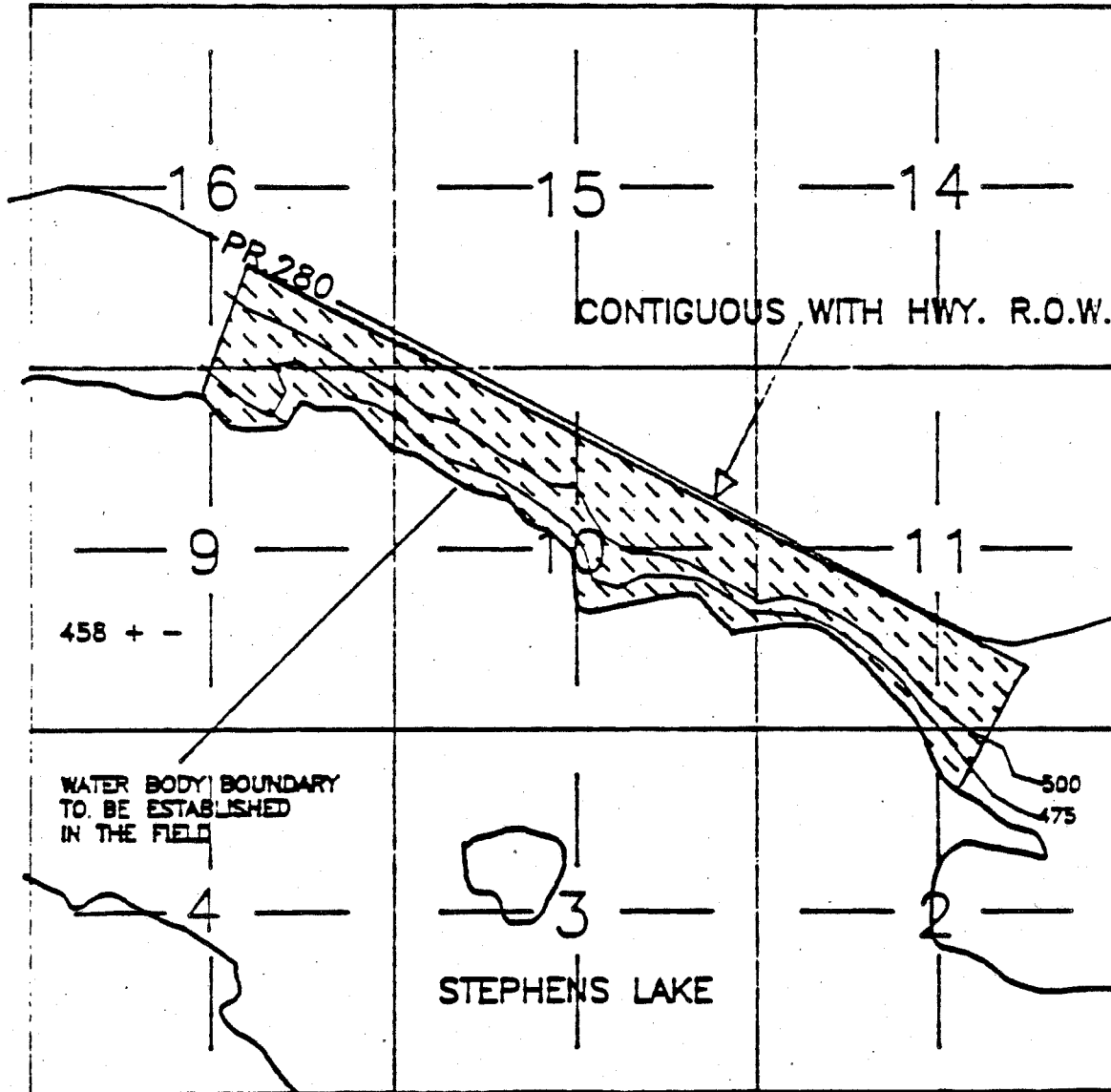


SELECTED LANDS  
STEPHENS LAKE SITE  
N PART SEC'S. 2, 9, 10, 11, 15 & 16 TP. 87 RGE. 14 E.P.M.  
PARCEL B - 400 ACRES APPROX.



Plan 4.14B attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.

Rge. 14E



THE WATER BODY BOUNDARY SHALL BE A LINE AMENDING THE SEVERANCE LINE IN  
THE WATER POWER LICENCE FOR THE KETTLE GENERATING STATION DATED  
JULY 19, 1990, WHICH LINE IS TO BE ESTABLISHED BY MANITOBA AND APPROVED BY HYDRO.

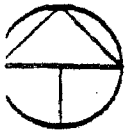
SCALE: 1:30,000

PARCEL SHOWN THUS \_\_\_\_\_  
CONTOUR LINE 475

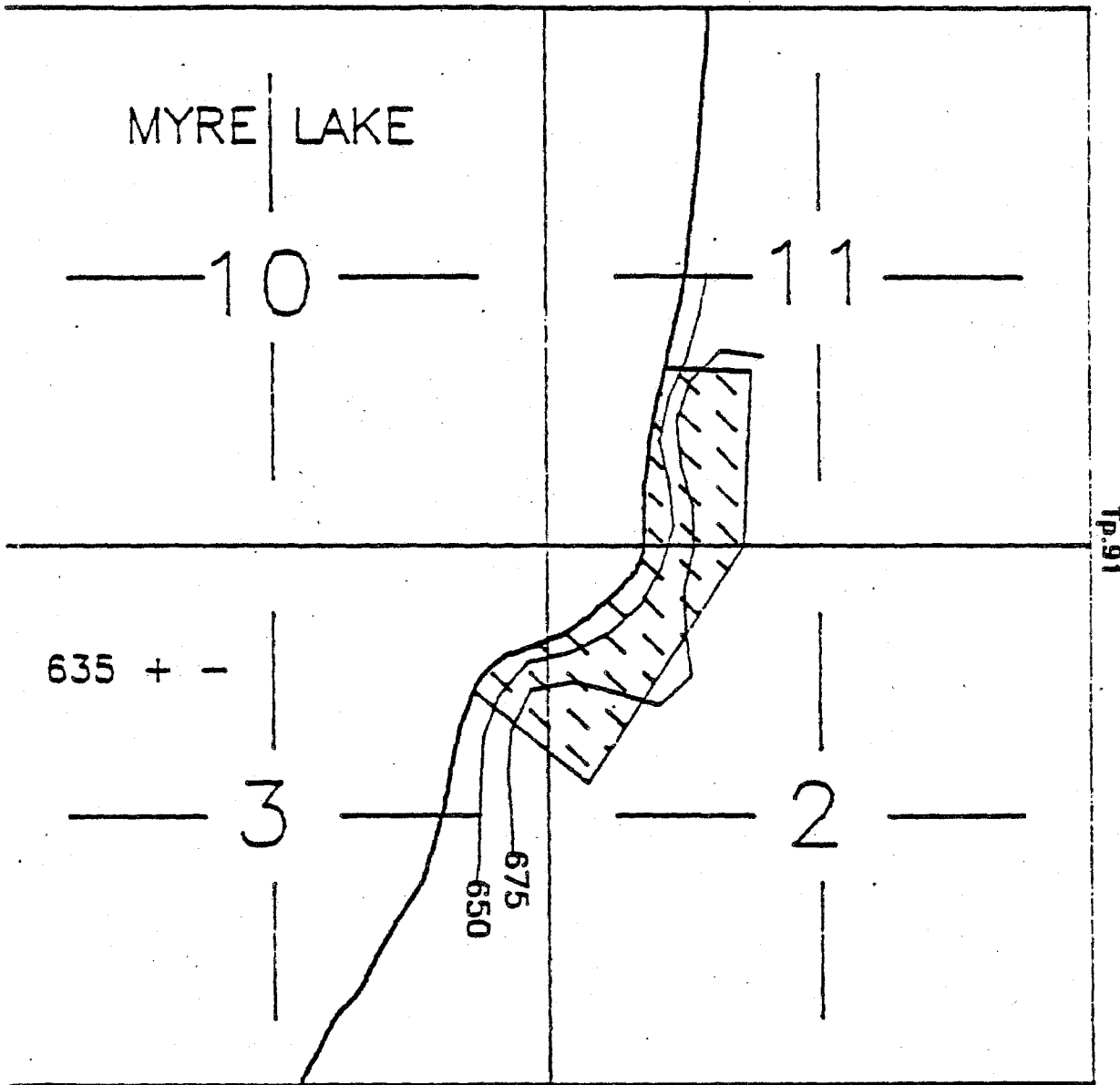
Plan 4.14B

SELECTED LANDS  
MYRE LAKE SITE



N PART SEC'S. 2, 3 & 11 TP. 91 RGE. 17 E.P.M.  
85 ACRES APPROX.



Plan 4.15 attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Spitt Lake Cree, Manitoba, Canada and Hydro.  
Rgs. 17E

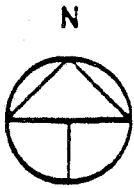


SCALE: 1:20,000

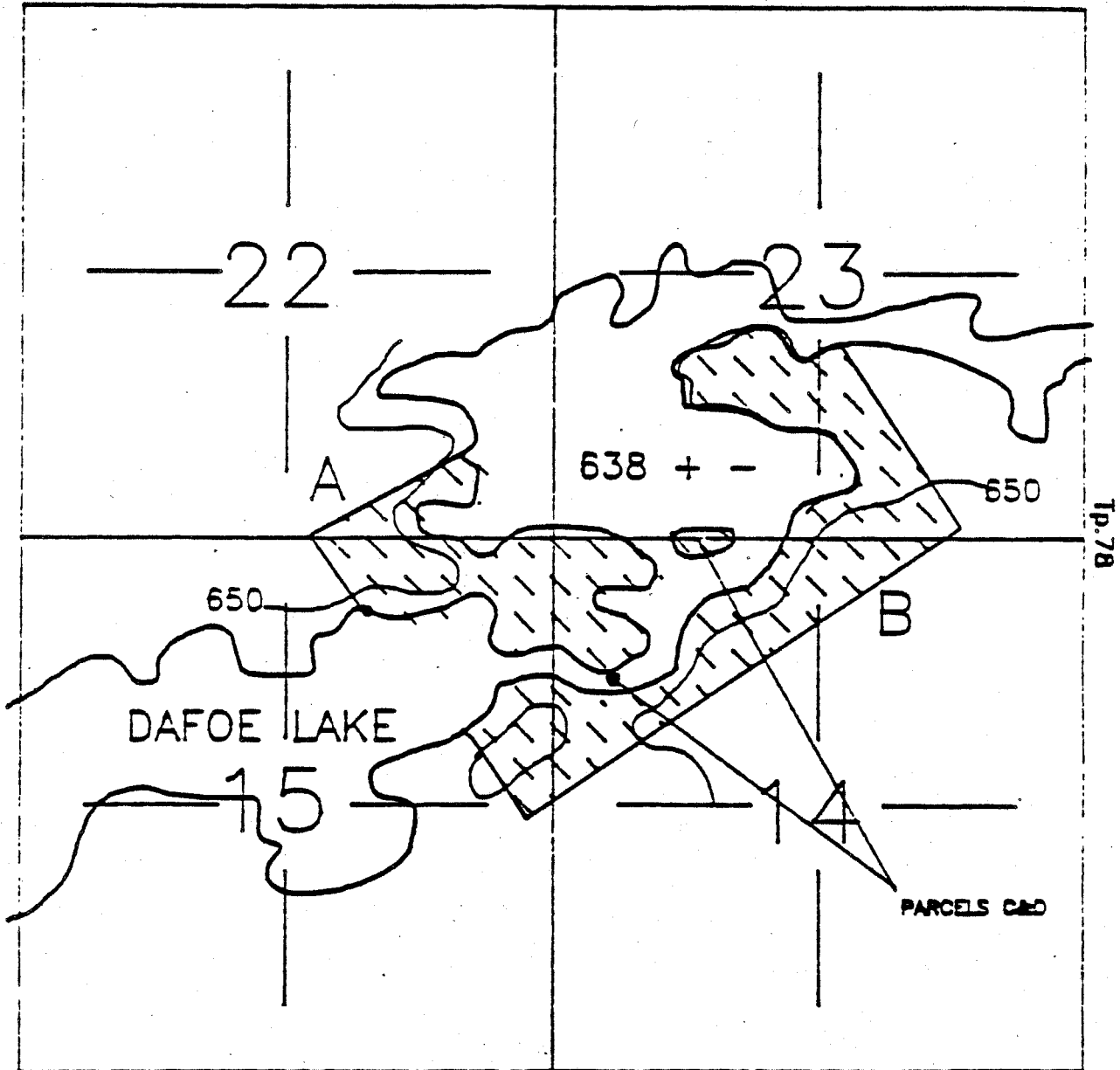
PARCEL SHOWN THUS   
CONTOUR LINE  650  
OHWM

Plan 4.15

SELECTED LANDS  
DAFOE LAKE SITE  
PART SEC'S. 14, 15, 22 & 23 TP. 78 RGE. 9 E.P.M.  
PARCELS A, B, C & D - 210 ACRES APPROX.



Plan 4.16 attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.  
Rge. 9E



SCALE: 1:20,000

PARCELS SHOWN THUS 

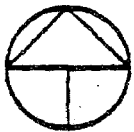
CONTOUR LINE  650

OHWM 

Plan 4.16

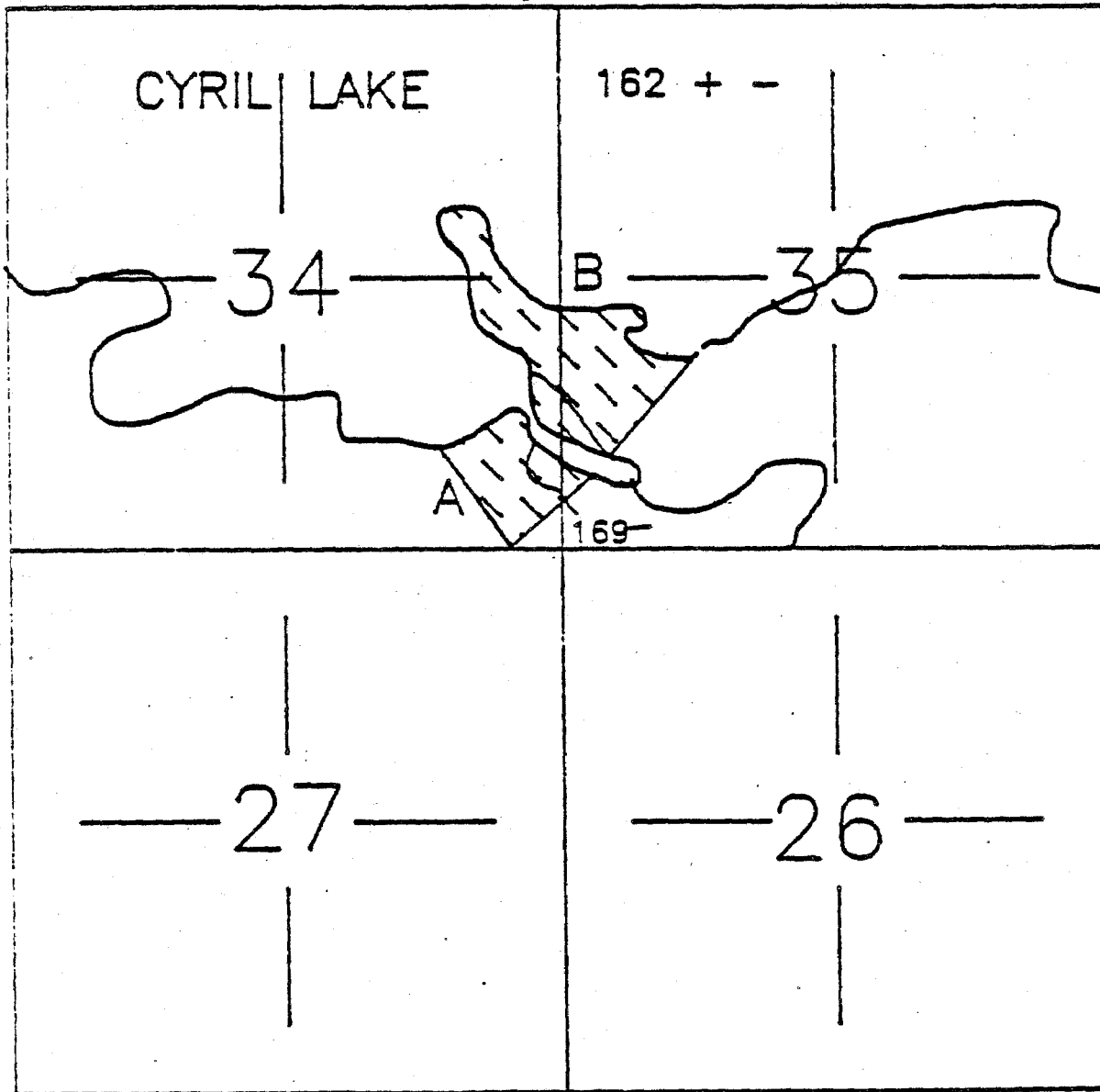
SELECTED LANDS  
CYRIL LAKE SITE

N PART SEC'S. 34 & 35 TP. 80 RGE. 15 E.P.M.  
PARCELS A & B - 50 ACRES APPROX.



Plan 4.17 attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.

Rge. 15E



SCALE: 1:20,000

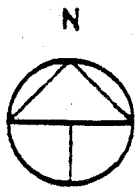
PARCELS SHOWN THUS 

CONTOUR LINE 

OHWM 

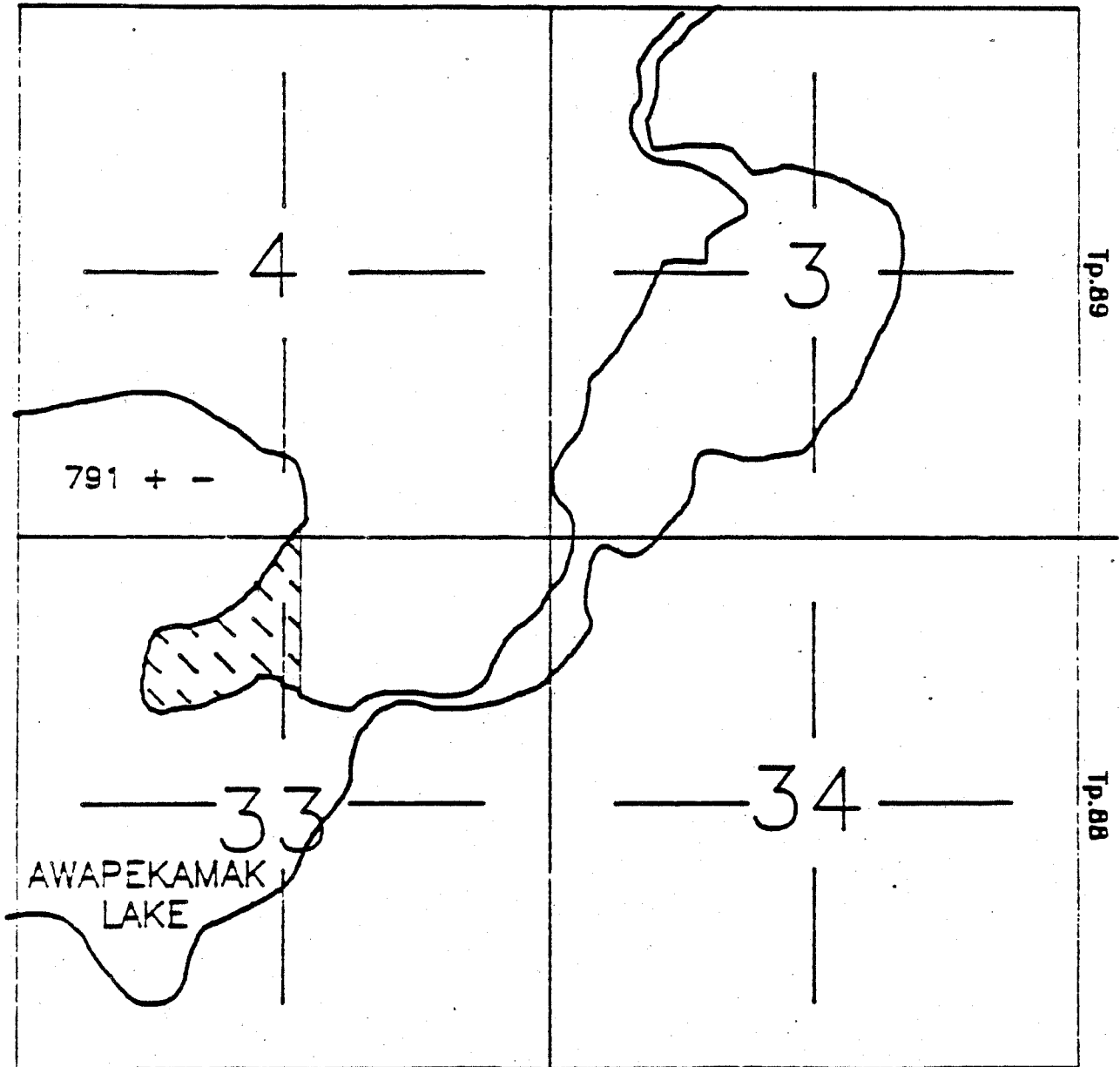
Plan 4.17

SELECTED LANDS  
AWAPEKAMAK LAKE SITE  
SEC.33 TP.88 RGE.3 E.P.M.  
30 ACRES APPROX.



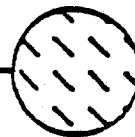
Plan 4.18 attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.

Rge.3E



SCALE: 1:20,000

PARCEL SHOWN THUS

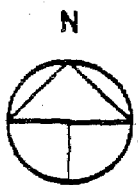


OHWM



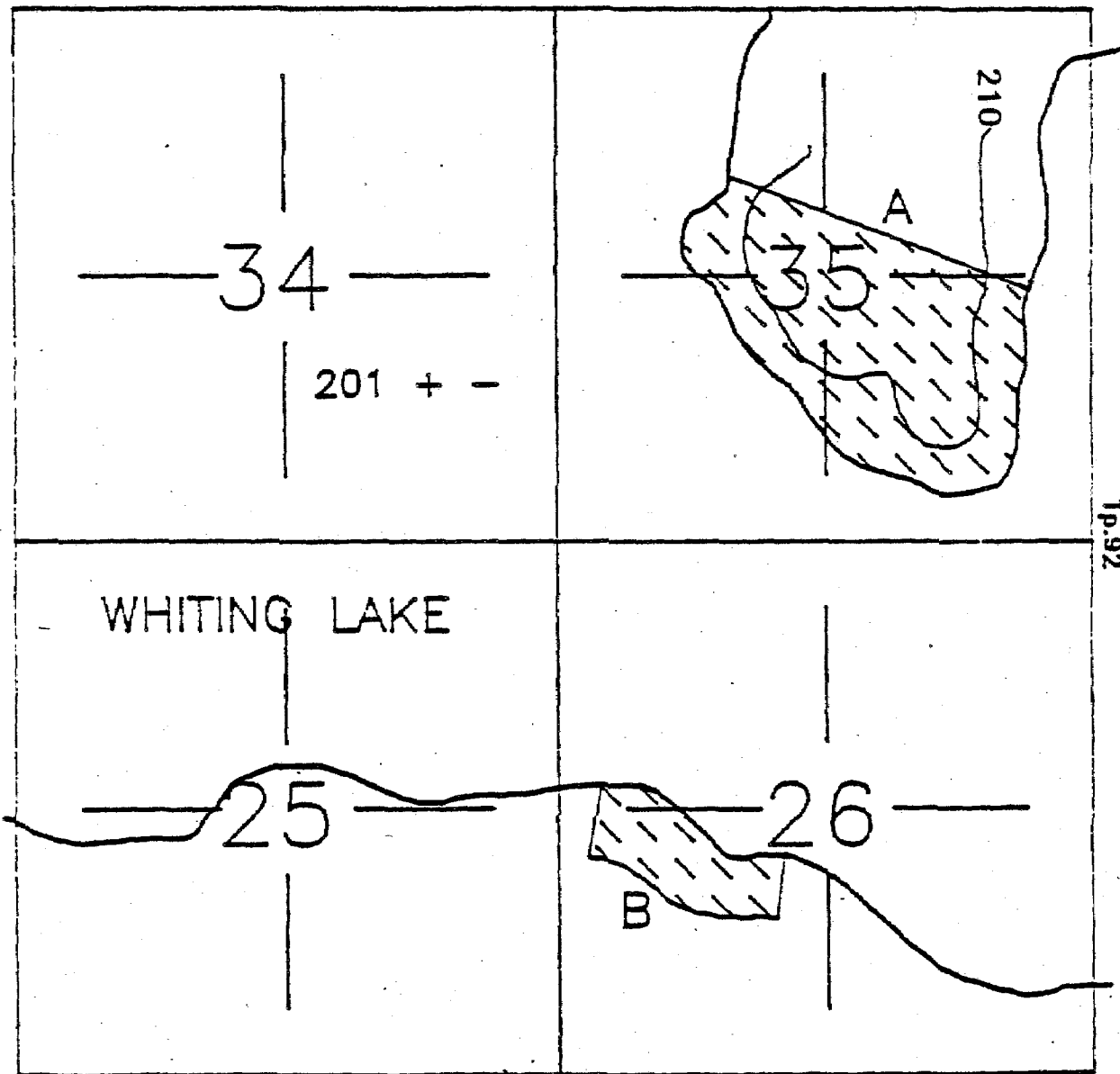
Plan 4.18

SELECTED LANDS  
 WHITING LAKE SITE  
 SEC'S. 26 & 35 TP. 92 RGE. 15 E.P.M.  
 PARCELS A & B - 180 ACRES APPROX.



Plan 4.19 attached to and forming part of  
 the Agreement dated \_\_\_\_\_ between  
 Split Lake Cree, Manitoba, Canada and Hydro.

Rge. 15E



SCALE: 1:20,000

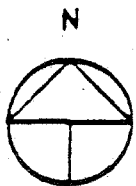
PARCELS SHOWN THUS 

CONTOUR LINE  210

OHWM 

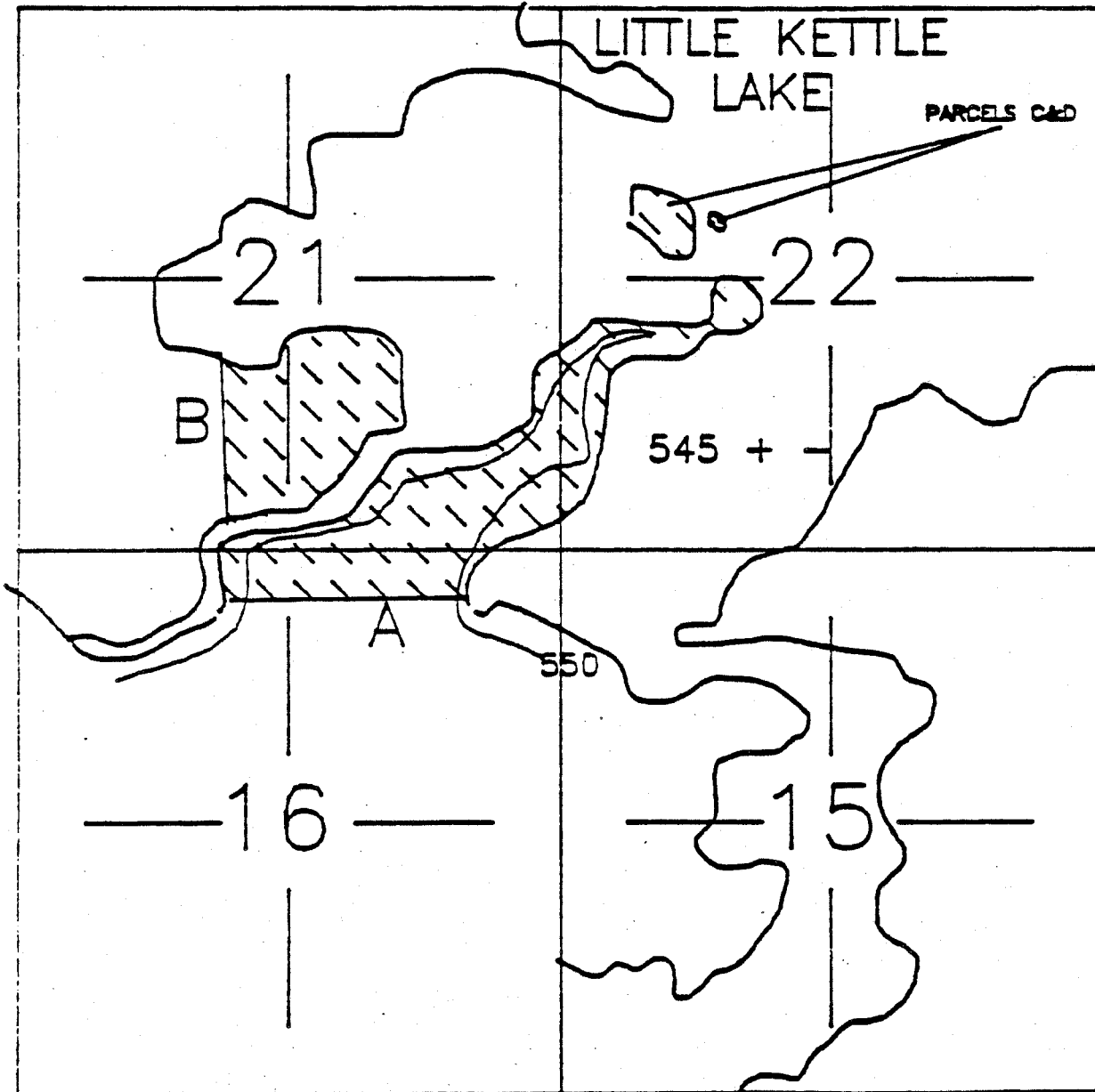
Plan 4.19

SELECTED LANDS  
LITTLE KETTLE LAKE SITE  
PART SEC'S.16,21&22 TP.82 RGE.14 E.P.M.  
PARCELS A,B,C&D - 160 ACRES APPROX.



Plan 4.20 attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.

Rge.14E



SCALE: 1:20,000

PARCELS SHOWN THUS 

CONTOUR LINE  550

OHWM 

Plan 4.20

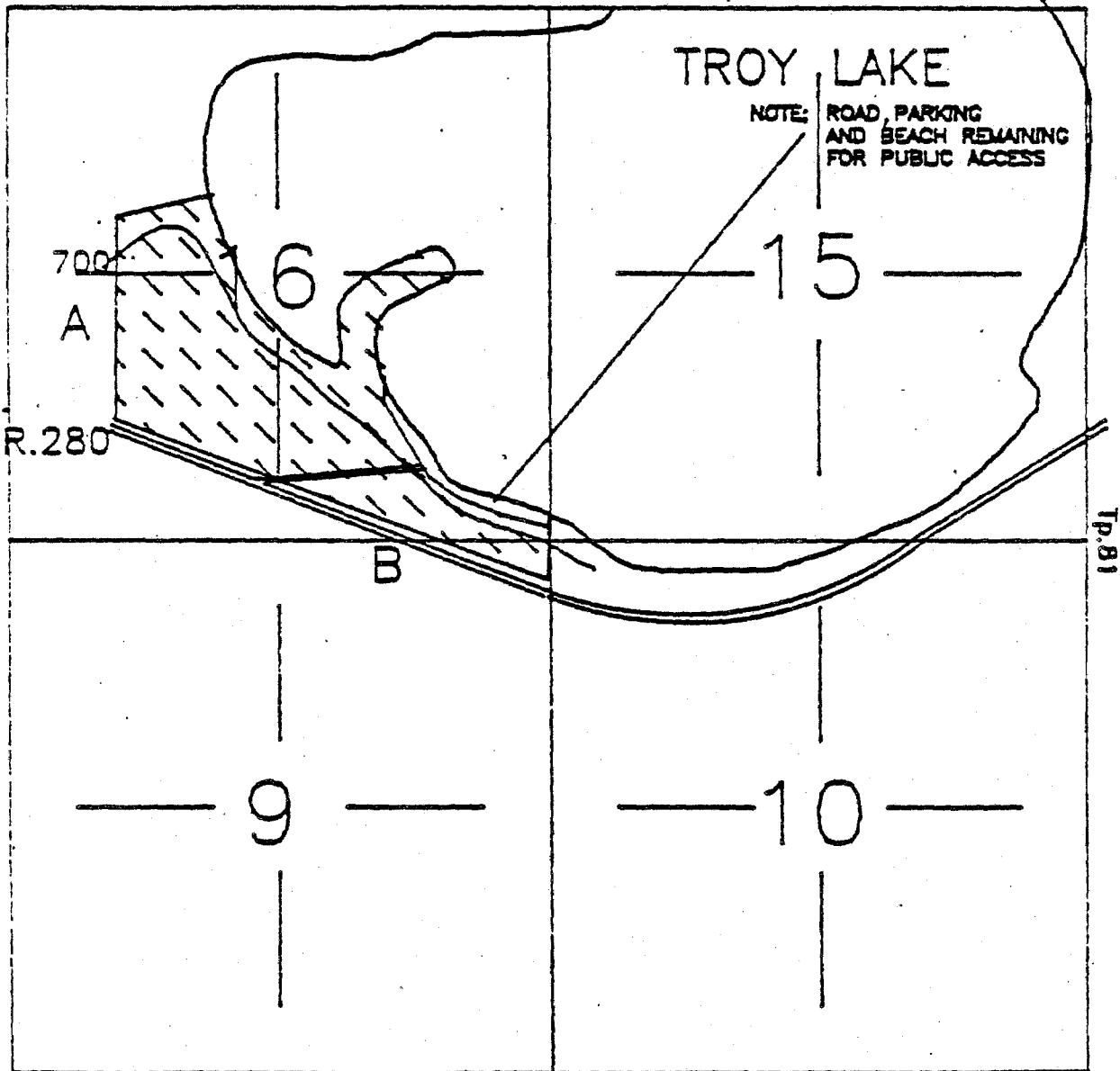
SELECTED LANDS  
TROY LAKE SITE

PART SEC'S.9&16 TP.81 RGE.2 E.P.M.  
PARCELS A&B - 200 ACRES APPROX.



Plan 4.21 attached to and forming part of  
the Agreement dated \_\_\_\_\_ between  
Split Lake Cree, Manitoba, Canada and Hydro.

Rge.2E



NOTE: EXISTING FEATURES NOT TO SCALE

SCALE: 1:20,000

PARCELS SHOWN THUS 

CONTOUR LINE  700

OHWM 

Plan 4.21



SCHEDULE 4.2

DECLARATION AND ACCEPTANCE OF TRUST

1. I, \_\_\_\_\_, Chief of Split Lake Cree hereby acknowledge and irrevocably declare that the one (1) common share of the capital stock of

Land Corporation (herein called "the Land Corporation") now registered in my name is held by me as the trustee for and nominee of Split Lake Cree and was acquired by me with funds provided by Split Lake Cree for that purpose.

2. I acknowledge and declare, as the nominal owner and trustee of such share, that I shall not sell, transfer, mortgage, pledge, hypothecate, lien, charge, alienate or encumber such share, vote such share or take any other action in any capacity to cause any land to be bought, sold, transferred, leased, mortgaged, pledged, hypothecated, liened, charged, alienated or encumbered by the Land Corporation unless and until the following conditions have been fulfilled and(or) performed.

(a) Split Lake Cree have authorized me to consent to any such sale, transfer, lease, mortgage, pledge, hypothecation, lien, charge, alienation or encumbrance in accordance with the following procedures:

(i) a public meeting of the Members of Split Lake Cree will be convened on Reserve in order to consider the matter at issue, notice of such meeting to be posted fourteen (14) days in advance at public locations on Reserve, including the general administration office;

(ii) posted notices shall describe, and at such meeting, Chief and Council shall cause to be explained to the Members attending such meeting, the nature and significance of the proposed sale, transfer, lease, mortgage, pledge, hypothecation, lien, charge, alienation or encumbrance including the planned disposition of proceeds arising from such transaction, if any; and,

(iii) Chief and Council shall ensure that the Chief, as trustee, the Directors and Officers shall not authorize or consent to such proposed sale, transfer, lease, mortgage, pledge, hypothecation, lien, charge, alienation or encumbrance unless and until a majority of Members, eighteen (18) years of age and over,

attending at such meeting vote in favour of such authorization and consent, on behalf of Split Lake Cree.

3. Notwithstanding the foregoing, the above noted conditions need not be fulfilled and(or) performed in the event that, in the discretion of the Directors, the disclosure at a public meeting of the Members would jeopardize the interests of a Third Party who may be the recipient of any such transfer, lease, mortgage, pledge, hypothecation, lien, charge, alienation, encumbrance, right of first refusal or option to purchase, such that such Third Party might reasonably be expected not to proceed with any such transaction, and provided that such transaction is determined by the Directors to be for the benefit of Split Lake Cree, and in that event, the Directors shall provide notice of such determination to the Trustees at least fourteen (14) days prior to entering into any such transaction with a Third Party, and, upon making such determination and providing such notice, and upon the Trustees agreeing with the determination so made by the Directors, the Directors shall be entitled to cause the Land Corporation to enter into such a transaction. Forthwith upon the completion of such a transaction a public meeting will be convened in accordance with subsection 11.5.2 of the Indenture, and Chief and Council shall cause to be explained to the Members attending such meeting, the nature and significance of the transaction.

4. I further acknowledge and irrevocably declare that in addition to the foregoing, I shall not vote such share to alter the share structure, amend the Articles of Incorporation, or to voluntarily wind up the Land Corporation without the majority vote of the Members required by subparagraph 2(a)(iii) of this Declaration.

5. I further acknowledge and irrevocably declare that immediately upon my ceasing to act as Chief, whether by reason of death, mental or physical infirmity, resignation, or loss of office, that such share shall be transferred immediately to the successor Chief and for that purpose, concurrently with the execution of this Declaration of Trust, I have endorsed the share certificate to facilitate such transfer of the share, the Share Certificate to be held by the Trustees as appointed from time to time under the provisions of a Trust Indenture made between Split Lake and Cree, Split Lake Cree Trustees, Manitoba, Hydro, Canada and a Corporate Trustee with respect to Settlement Proceeds received from Hydro, Manitoba and Canada, and to be voted by me in accordance with the provisions of this Declaration, until I cease to be Chief.

6. I further acknowledge and declare that in the event of my ceasing to act as Chief of Split Lake Cree for any reason whatsoever, and a successor Chief not being duly elected to take my place within twenty (20) days of my ceasing to act as Chief, that such share shall be transferred to the Trustees, such share to be held by such Trustees in trust for Split Lake Cree and to be transferred to the Chief upon his entering office, and that a transfer of the share accordingly is hereby irrevocably authorized by me and I have endorsed such Share Certificate to facilitate such transfer of share, the Share Certificate to be held by the Trustees of the Corporation and to be voted by me in accordance with the provisions of this Declaration, until I cease to be Chief.

DATED at \_\_\_\_\_, Manitoba this \_\_\_\_\_ day of  
\_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Witness

SCHEDULE 4.3

PLEDGE AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, \_\_\_\_\_ (the "Land Corporation") hereby pledges in favour of and hereby deposits with the Trustees of the Tataskweyak Trust:

- (a) all duplicate certificates of title with respect to those parcels of land more particularly described on Schedule "A" appended hereto, and
- (b) transfers of land duly executed by the Land Corporation for all such titles in favour of the Corporate Trustee, together with any supporting documentation required by the land titles office,

to secure the obligation of the Land Corporation not to sell, transfer, lease, mortgage, pledge, hypothecate, lien, charge, alienate, grant a right of first refusal or option to purchase or otherwise deal with or encumber all or any of the parcels of land described in Schedule "A" (the "Proposed Transaction") without first having complied with the terms of subsections 4.3.1, 4.3.2 and 4.3.3 of the Agreement (as hereinafter referred to), such titles and transfers of land to be held on the terms and conditions that follow:

1. Upon the Trustees receiving:

- (a) written notice as provided under subsection 4.3.3 of this Article, and upon the Trustees providing to the Directors of the Land Corporation the written agreement of the Trustees to such determination contemplated under subsection 4.3.3 of this Article; or
- (b) a Council Resolution certifying that the public meeting was convened, the Proposed Transaction in respect of specifically identified parcels of land was explained as required by subsection 4.3.1 of this Article and a majority of Members eighteen (18) years of age or older in attendance voted in favour of authorizing the Chief as trustee, Directors and(or) Officers of the Land Corporation to consent as required by subsection 4.3.1 of this Article and authorizing the Chief as trustee, Directors and(or) Officers to consent to the Proposed Transaction, and

- (c) a certified true copy of the resolution of the Directors of the Land Corporation consenting to and authorizing the Proposed Transaction;

the Trustees shall release to the Land Corporation the relevant duplicate titles, transfers of land, and withdrawal or partial withdrawal of caveat relevant to such transaction.

2. Where the parcel of land which is the subject matter of the Proposed Transaction is a portion only of the lands described in the relevant duplicate titles or transfers of land, the Land Corporation shall return to the Trustees the duplicate titles and a revised transfer of land covering all of the lands previously described in the said duplicate titles and transfers prior to their release to the Land Corporation pursuant to this agreement, excepting only the parcel which is the subject matter of the Proposed Transaction, and thereupon the Trustees shall withdraw any caveat registered against such parcel.

3. Where the Proposed Transaction is not completed for any reason, the Land Corporation shall promptly return to the Trustees the relevant duplicate titles, transfers of land, and any withdrawal of caveat which was provided pursuant to this agreement.

4. In the event that the Land Corporation does any act or thing which in any way purports to sell, transfer, lease, mortgage, pledge, hypothecate, lien, charge, alienate, grant a right of first refusal or option to purchase or otherwise deal with or encumber the titles which are the subject matter of the agreement, without first having complied with the requirements of subsections 4.3.1, 4.3.2 and 4.3.3 of the Agreement, the Trustees shall register the transfers of land, which land shall thereafter be held in trust for the benefit of Split Lake Cree. Except as specifically provided for in this paragraph 4, the Trustees shall not register any of the transfers of land executed by the Land Corporation.

5. Nothing herein shall oblige the Trustees to see to the carrying out or completion of the Proposed Transaction.

6. The terms and conditions of the agreement dated the day of \_\_\_\_\_, 1992 between Her Majesty The Queen (Canada), Her Majesty the Queen (Manitoba), the Split Lake Cree First Nation and The Manitoba Hydro-Electric Board shall be deemed to be incorporated in this agreement wherever references are made herein to Articles or defined terms or concepts from that agreement.

7. In the event of a difference of opinion between the Corporate Trustee and the Split Lake Cree Trustees as to compliance with subsections 4.3.1, 4.3.2 and 4.3.3 of the Agreement, such difference may be resolved by a court of competent jurisdiction.

IN WITNESS WHEREOF LAND CORPORATION has caused its corporate seal to be affixed hereto, duly attested thereto by its proper officers in that behalf this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

LAND CORPORATION

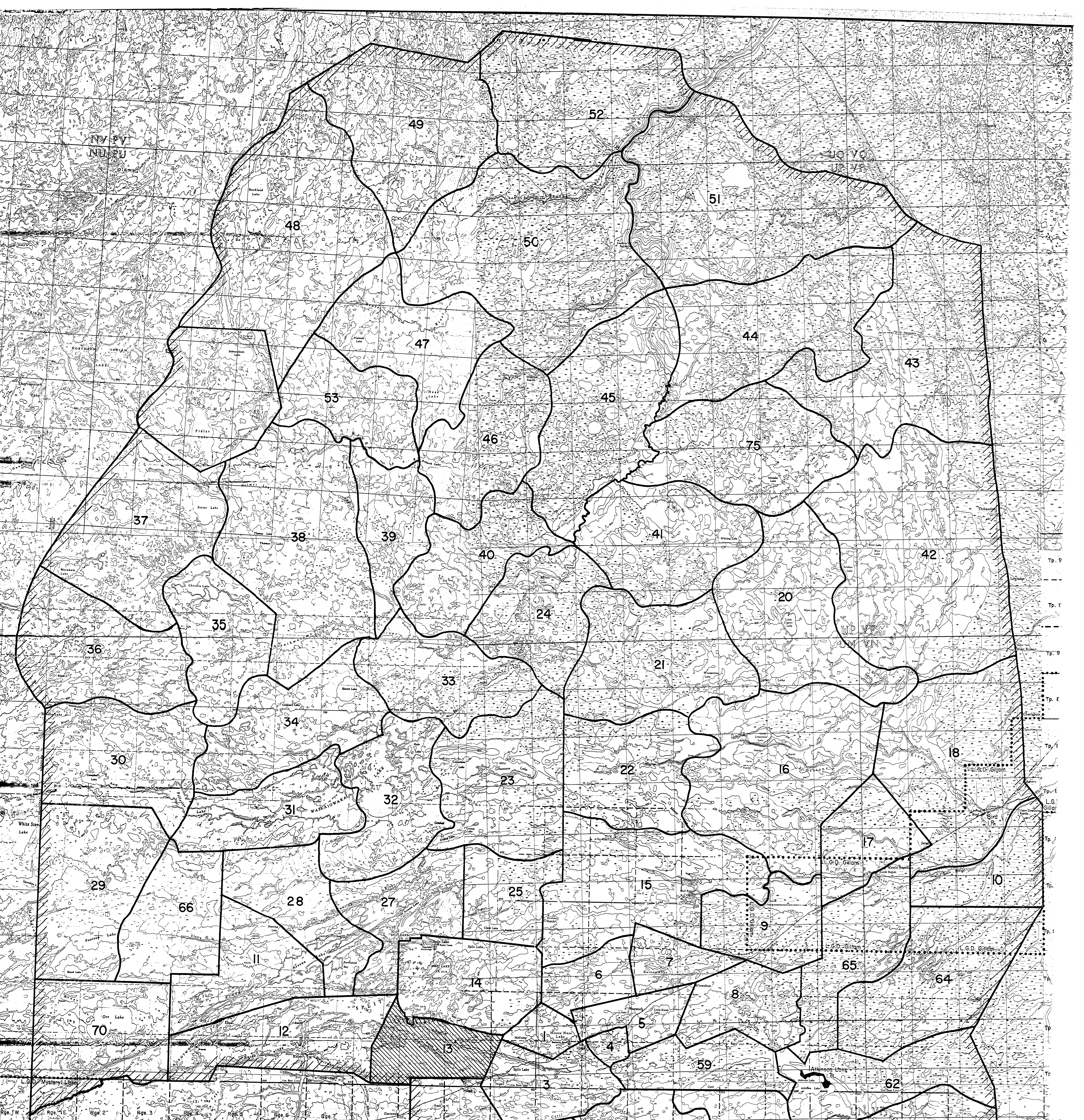
Per: \_\_\_\_\_

Per: \_\_\_\_\_

IN WITNESS WHEREOF the TRUSTEES have executed this agreement in the manner appropriate to each this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_





**Manitoba Department of Natural Resources**  
**Boundaries of Split Lake Resource Management Area**

Scale 1" = 4 miles (Approx. 1:250 000)

- Registered Traplines per Manitoba Wildlife Branch.
- Excluded Registered Trapline per agreement with York Landing.
- Boundary of Resource Management Area.

PLAN 5-1

Attached to and forming part of the Agreement dated \_\_\_\_\_ between Split Lake Cree, Manitoba, Canada and Hydro.

Note: Atkinson Lake L.R. and Bird L.R. are excluded from the Split Lake Resource Management Area.

Rge. 8    Rge. 9    Rge. 10    Rge. 11    Rge. 12    Rge. 13    Rge. 14    Rge. 15    Rge. 16    Rge. 17    Rge. 18    Rge. 19    Rge. 20    Rge. 21    Rge. 22



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## ARTICLE 5

### 5 INTEGRATED LAND USE AND RESOURCE MANAGEMENT

#### 5.1 INTRODUCTION

5.1.1 Introduction. This Article provides for the designation of the Resource Management Area and the establishment of the Resource Management Area Board.

#### 5.2 THE SPLIT LAKE RESOURCE MANAGEMENT AREA

5.2.1 Designation of Area. Integrated Land Use and Resource Management is to be achieved by the co-ordinated application of Manitoba and Split Lake Cree authority, and to this end Manitoba and Split Lake Cree shall each, within their respective authority and powers, take the necessary steps to designate the land areas described and shown in Schedule 5.1 of this Agreement, and the waters lying within the identified areas, as part of the Resource Management Area for the purposes of Integrated Land Use and Resource Management.

5.2.2 Amendment of Area. The lands and waters which are included in the Resource Management Area may be amended, from time to time, by agreement between Manitoba and Split Lake Cree.

5.2.3 Restriction. Notwithstanding subsections 5.2.1 and 5.2.2 of this Article, there shall be no restrictions or impediments imposed by this Agreement with respect to any lands held, acquired, to be acquired, or expropriated by, or transferred or transferrable to Canada, other than Reserve Lands; nor to any interest in or use of lands required by Manitoba or Canada for the purposes of fulfilling obligations to which the provisions of any one or more of Section 11 of the Manitoba Natural Resources Transfer Agreement, 1930, Section 35 of the Constitution Act, 1982, Section 35 of the Indian Act (Canada), the NFA or Treaty No. 5 apply.

### 5.3 THE SPLIT LAKE RESOURCE MANAGEMENT BOARD

5.3.1 Establishment of Board. Manitoba and Split Lake Cree shall each, within ninety (90) days of the Date of this Agreement, appoint five (5) members to constitute the Resource Management Area Board (the "Board"). Manitoba agrees with Hydro that one (1) of its appointees may be selected in consultation with Hydro. Manitoba and Split Lake Cree agree to participate in the Board in such a fashion as to implement Integrated Land Use and Resource Management and to accommodate the interests of Split Lake Cree and Manitoba,

in the Resource Management Area. By agreement between Manitoba and Split Lake Cree, which agreement shall not be unreasonably withheld, the number of appointees may be increased to accommodate representation of interests in the Resource Management Area, provided that there will always be an equal number of appointees by Manitoba and Split Lake Cree.

5.3.2 Selection of Chair. The members of the Board shall select a chair from among the members, and establish rules and procedures for the conduct of the business of the Board. The member selected as chair shall continue to have a vote as a member but shall have no additional or deciding vote as the chair.

5.3.3 Quorum. A quorum of the Board shall be a majority of the members, including at least three (3) appointees of each of Manitoba and Split Lake Cree.

5.3.4 Annual Program and Budget. The Board shall prepare annual programs and budgets, subject to review and approval by the Minister and Chief and Council. Such programs and budgets will be prepared in accordance with guidelines determined by the Board, in consultation with the Minister and

Chief and Council, and may include anticipated requirements for:

- (a) staff, facilities, equipment and administration;
- (b) public meetings, consultations and hearings;
- (c) research, publications and public education;
- (d) technical assistance; and,
- (e) other programs or activities as deemed necessary by the Board for the purposes of this Article.

5.3.5 Technical Support. Technical support and programs for land use planning and natural resource management, available from Manitoba, will be made available to, and coordinated with programs of the Board, without charge, except in those instances where a set fee or charge has been established, in which case the set fee or charge will be levied unless otherwise agreed by Manitoba.

5.3.6 Sharing of Costs. Manitoba and Split Lake Cree will pay the costs incurred by each in support of their members on the Board. Other costs to be incurred will be

shared by Manitoba and Split Lake Cree in a proportion to be determined jointly at the time of the review and approval of the annual program and budget under subsection 5.3.4 of this Article. For this purpose, Chief and Council shall have the authority to request money from Accounts or Reserve Accounts established pursuant to the Indenture, consistent with the Appropriate Uses, Article 10 of this Agreement, and Article 11 of the Indenture.

5.3.7 Fiscal Year. The fiscal year of the Board will correspond with the fiscal year of Manitoba.

5.3.8 Annual Report. The Board shall produce and provide to the Minister and Chief and Council an annual report of its activities, within three (3) months of the end of each fiscal year.

#### 5.4 POWERS AND PURPOSES OF THE BOARD

5.4.1 Powers. In order to promote Integrated Land Use and Resource Management, the Board may:

- (a) assess the appropriate consumptive and non-consumptive uses and enjoyment of the lands and resources within the Resource Management Area;

- (b) monitor the actual uses of the lands and resources within the Resource Management Area, and the extent of compliance with authorized uses;
- (c) consider what processes would be suitable for varying any authorized uses, and recommend the terms and conditions under which such variances may be allowed;
- (d) investigate the nature and extent of Fish and Wildlife populations and their habitat;
- (e) identify areas of significant Fish and Wildlife and the measures which would preserve and enhance such areas, including land use plans, zoning, water control schemes and monitoring procedures;
- (f) consider what quotas, limits and harvesting practices would be appropriate for domestic, commercial and recreational use of renewable resources, consistent with aboriginal rights and requirements;
- (g) review specific plans for forest, land and water management, the harvesting of resources, the ex-

traction of minerals and commercial ventures associated with such endeavours, including tourism;

- (h) hold such public meetings and consultations and conduct or participate in research, meetings or hearings as will promote the goals of sustainable economic development and resource management practices in the Resource Management Area;
- (i) identify areas of ecological, cultural and historical significance; and,
- (j) prepare a communication and information strategy.

5.4.2 No Sharing of Revenues. The powers and purposes of the Board do not extend to or include consideration of royalties, revenues, income or other payments derived from or attributable to resources, including minerals. Nothing in this Article entitles Split Lake Cree to share in any royalties, revenues, income or other payments derived from or attributable to resources, including minerals, situate in, on or under lands within the jurisdiction of Manitoba. Nothing in this Article entitles Manitoba to share in any royalties, revenues, income or other payments derived from or



attributable to resources, including minerals, situate in, on or under lands within the jurisdiction of Split Lake Cree.

## 5.5 LAND USE PLANNING

5.5.1 Land Use Plans. The Board shall develop and recommend any one or more of a Basic Planning Statement, a Development Plan and(or) other land use plan for the Resource Management Area, or any part thereof, for the purpose of determining and guiding development policies and decisions. Any such statement or plan may include provisions:

- (a) for the zoning of lands and waters for purposes of establishing and regulating activities thereon;
- (b) for the preservation, protection and management of Fish and Wildlife, including the regulation of habitat for such purposes;
- (c) for policies under which any Trapper or Commercial Fisherman may exercise the right to utilize unoccupied provincial Crown land within the Resource Management Area, to construct and(or) personally occupy a cabin or shelter for purposes of trapping within a Registered Trapline, commercial fishing or

hunting, without first obtaining a land use permit, and the means by which such uses shall be recorded for administrative purposes;

- (d) dealing with any matter arising out of, or ancillary to, the above matters; and,
- (e) giving a role to the Board in the administration of the statement or plan.

5.5.2 Application of Plans. Statements or plans for the Resource Management Area shall not apply to any land or water not included in the Resource Management Area and, further, shall not apply to lands or waters within the boundaries of a Municipality, where such Municipality has adopted a Development Plan or Basic Planning Statement under The Planning Act (Manitoba). Provided that, if a boundary of a Municipality is created or altered so as to include any lands or waters subject to any plan or statement developed in accordance with this Article, such plan or statement shall continue to apply until a Development Plan or Basic Planning Statement adopted by the Municipality is approved for the lands and waters affected. Statements or plans for the Resource Management Area shall not apply to lands or waters within the boundaries of a Community. If a Community

boundary is created or altered so as to include any portion of the Resource Management Area, any statement or plan developed in accordance with this Article shall not apply.

## 5.6 RESOURCE MANAGEMENT PLANNING

5.6.1 Resource Management Plans. Manitoba and Split Lake Cree recognize that aboriginal people, including Split Lake Cree, have priority rights to the harvesting of Fish and Wildlife resources within the Resource Management Area, based on their rights recognized and affirmed by Section 35 of the Constitution Act, 1982. In section 15.1 of the NFA, Manitoba agreed, as a matter of policy, subject to certain limitations, to grant to Split Lake Cree priority rights to those wildlife resources in the Resource Management Area traditionally available to and used by Split Lake Cree as a source of food supply, income-in-kind and income. Split Lake Cree and Manitoba recognize that, subject to the rights of aboriginal people, and subject to resource management plans in force, other individuals shall be able to hunt, trap and(or) fish in the Resource Management Area. Manitoba and Split Lake Cree recognize that provisions for conservation, management and protection of the Fish and Wildlife resources in the Resource Management Area will be necessary. Actions under this Article, by the Board, Chief and Council, and the

Minister, shall be consistent with the rights of Split Lake Cree, and other aboriginal people, the rights of other individuals, and the need for the conservation, management and protection of the Fish and Wildlife resources in the Resource Management Area.

5.6.2 Development of Resource Management Plans. The Board shall develop and recommend resource management plans for the Resource Management Area, or any part thereof.

5.6.3 Scope of Resource Management Plans. Resource management plans, developed and recommended by the Board, may deal with:

- (a) Fish and Wildlife population goals;
- (b) total allowable harvesting levels;
- (c) species enhancement;
- (d) habitat protection and enhancement;
- (e) methods of harvesting;
- (f) health and safety considerations;

- (g) preservation, treatment, packaging or marketing of renewable resources;
- (h) procedures for the assignment or re-assignment of new, vacant or under-utilized traplines, fishery quotas and wild rice leases;
- (i) domestic harvesting needs and priorities;
- (j) leases, permits or quotas required for commercial and subsistence harvesting of renewable and non-renewable resources, including timber;
- (k) enforcement considerations;
- (l) conflicting uses of land;
- (m) establishing criteria for the protection of Fish and Wildlife and their habitat in connection with forest and mineral developments;
- (n) protection of particular species, and, in particular, rare, threatened and endangered species;

(o) facilitating commercial uses, including tourism and sports fishing; and,

(p) protection of areas of ecological, cultural or historical significance.

5.6.4 Application of Plans. Resource management plans established in accordance with this Article shall cover any part of the Resource Management Area to the extent that they are reasonably determined not to be in conflict with any Development Plan or Basic Planning Statement in effect within a boundary of a Municipality or Community.

5.6.5 Amendment of Plans. The Board may, in respect to a resource management plan, or any other measure, policy or practice in effect in the Resource Management Area, submit for the consideration of the Minister and(or) Chief and Council, a resolution of the Board relating to any matter in subsection 5.6.3 of this Article, recommending an amendment of a plan, policy or practice which, in the opinion of the Board, is necessary for the administration and protection of resources in the Resource Management Area. Such resolutions shall be considered and dealt with in accordance with section 5.8 of this Article.

5.7           **CONSULTATION, ASSISTANCE AND DISCLOSURE**

5.7.1       Public Meetings.   In the course of the development or substantial revision of a Development Plan, Basic Planning Statement, other land use plan, and (or) resource management plan, the Board shall hold public meetings to receive comments and submissions. The Board may provide information to interested parties, and to persons attending the public meetings, to allow for informed discussion and comment on the issues being considered by the Board. In particular, in regard to resource management plans or resolutions respecting renewable resources, the Board shall hold public meetings or otherwise consult with the fur councils, fishermen's associations, and other resource users active in the Resource Management Area.

5.7.2       Provision of Information.   Manitoba and Split Lake Cree will, upon request, provide the Board with any information within their control which would assist the Board to properly carry out its responsibilities, provided such information is not privileged, or restricted by commercial confidentiality. Where a set fee or charge has been established for the provision of information, that set fee or charge will be levied, unless otherwise agreed by the Party from which the information is requested.

5.7.3 Assistance to the Board. The Minister shall, on request, provide assistance to the Board as to the application of existing provincial statutes, regulations and policies governing the management, use and harvesting of the lands and resources, including Fish and Wildlife, in the Resource Management Area, and such additional assistance as may be required by the Board, including prior consultation, review and advice on drafting of such resolutions as may be deemed appropriate by the Board, but such assistance or additional assistance shall not in any way imply or ensure approval by Manitoba.

5.8 APPROVAL OF PLANS AND STATEMENTS

5.8.1 Approval. Any Basic Planning Statement, Development Plan, land use plan, resource management plan or resolution developed by the Board shall be forwarded to:

(a) the Minister; and,

(b) Chief and Council;

for approval, enactment, or other appropriate action, con-



sistent with the respective authority and powers of Manitoba and Split Lake Cree.

5.8.2 Rejection. If the Minister (or other appropriate provincial authority), or Chief and Council are unwilling, or unable, to approve a statement, plan or resolution of the Board, the Minister or Chief and Council will, within sixty (60) days of the receipt of the statement, plan or resolution, refer the matter to the Board for further consideration, with written reasons for the rejection.

5.8.3 Resubmission by the Board. The Board may, within thirty (30) days of receipt of notice under subsection 5.8.2 of this Article, forward to the Minister and Chief and Council, a decision of the Board:

- (a) revising the statement, plan or resolution;
- (b) submitting the statement, plan or resolution for reconsideration with such additional information as the Board may deem relevant; or,
- (c) withdrawing the statement, plan or resolution.

5.8.4 Final Decision. The Minister (or other appropriate provincial authority), and Chief and Council shall, within sixty (60) days of a submission by the Board under paragraphs 5.8.3 (a) or (b) of this Article, advise the Board of their final decision in respect to the matter in question.

5.8.5 Extensions. Time limits set forth in this section may be extended by agreement of Split Lake Cree, Manitoba and the Board.

5.8.6 Withdrawal of Plans. In the absence of approval by both the Minister (or other appropriate provincial authority), and Chief and Council, pursuant to section 5.8 of this Article, any Basic Planning Statement, Development Plan, land use plan, resource management plan or resolution developed by the Board shall be withdrawn and have no force or effect.

5.8.7 Amendments. Any Basic Planning Statement, Development Plan, land use plan or resource management plan may be amended, as it relates to lands within the jurisdiction of Manitoba, by the Minister (or other appropriate provincial authority) with notice to but with or without the approval of Chief and Council, and as it relates to lands within the jurisdiction of Split Lake Cree, by Chief

and Council, with notice to but with or without the approval of Manitoba, provided that prior to such amendment being made, the proposed amendment shall be submitted to the Board for its consideration and recommendation. Recommendations by the Board, if any, shall be made within sixty (60) days of its receipt of the proposed amendment and the Board shall not be bound by section 5.7 of this Article in its consideration of such proposed amendment. If any recommendation by the Board is not followed by the Minister (or other appropriate provincial authority) as it relates to lands within the jurisdiction of Manitoba, or by Chief and Council as it relates to lands within the jurisdiction of Split Lake Cree, then the Minister (or other appropriate provincial authority) or Chief and Council shall, prior to implementing the amendment, provide written reasons for rejecting the recommendation of the Board.

5.8.8 No Derogation. The approval processes set forth in section 5.8 of this Article, do not derogate from the authority of Split Lake Cree and Manitoba with regard to the lands and resources in their respective jurisdictions.

5.9 INTERIM MANAGEMENT

5.9.1 Resource Allocations. Pending approval of any Basic Planning Statement, Development Plan, land use plan or resource management plan, Manitoba and Split Lake Cree shall refer to the Board requests for resource allocations, including any applications for land use permits, under consideration by Manitoba or Split Lake Cree, with respect to lands and resources within the Resource Management Area. The Board may, within forty-five (45) days of referral, submit resolutions with respect to such allocations or land uses in accordance with section 5.8 of this Article. In the absence of a resolution being submitted within the time provided, Manitoba may process the said applications for land use permits, and Manitoba and Split Lake Cree may act upon requests for resource allocations within their respective jurisdictions. Requests for resource allocations or applications for land use permits received prior to the establishment of the Board will be deferred pending it being established, and then referred to the Board.

5.10 GENERAL

5.10.1 Ownership of Resources. Nothing in this Article is

intended to confer rights of ownership in Fish and Wildlife or other resources.

5.10.2 Access to Lands. Nothing in this Article will be so construed as to prevent or hinder the entry of any person on provincial Crown lands within the Resource Management Area for any lawful purpose.

5.10.3 Releases to Manitoba. The NFA, by virtue of its Articles 3, 4, and 15, makes provision for the establishment of additional reserve lands, hold areas, resource areas and Band consultation in the management of resources. Articles 3, 4 and 5 of this Agreement satisfy Manitoba's obligations under Articles 3, 4 and 15 of the NFA, and Split Lake Cree hereby releases and forever discharges Manitoba, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Articles 3, 4 and 15 of the NFA. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand, or proceeding on its own behalf or on behalf of any

Member, Split Lake Cree Based Business, or Controlled Institution, on account of or in relation to any such matters.

5.10.4 Releases to Canada. Split Lake Cree releases and discharges Canada from any claims and demands, whatsoever, including claims, if any, of a fiduciary character, which may arise in respect of Canada's obligations to Split Lake Cree for anything done or omitted to be done by Canada to the Date of this Agreement in relation to the matters dealt with in this Article.

5.10.5 Extent of Authority under the Indian Act. Canada gives no warranty as to the existence or extent of the authority of Split Lake Cree under the Indian Act (Canada), in relation to the various subjects on which the Board may make recommendations for actions by Chief and Council. Nothing in this Article alters any statutory requirements for approval or action by Canada, of any action to be taken or thing to be done by Split Lake Cree or Chief and Council pursuant to this Article.

5.10.6 Limit of Powers. Nothing in this Article is intended to contemplate the exercise of power under federal

statutes or regulations other than the Indian Act (Canada) or other authorities exercisable by Split Lake Cree.

5.10.7 Jurisdictional Authority. Nothing in this Article shall derogate from the authority of Split Lake Cree, Manitoba, or Canada with regard to the lands and resources in their respective jurisdictions.

**SCHEDULE 5.1**

**THE SPLIT LAKE RESOURCE MANAGEMENT AREA**

All lands and waters within the Split Lake Trapline Zone, as shown on Plan 5.1, are included within the Split Lake Resource Management Area with the exception of:

- (a) Trapline #13 which has been allocated by Split Lake Cree to the York Factory Indian Band;
- (b) The reserve of the York Factory Indian Band;
- (c) The reserves of the Fox Lake Indian Band;
- (d) Lands within a Municipality or Community designated or occupied, from time to time, for residential, commercial, industrial or associated purposes;
- (e) Areas of Reserve Lands designated or occupied, from time to time, for residential, commercial, industrial or associated purposes.



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## ARTICLE 6

### 6.0 ENVIRONMENTAL MONITORING AND INVESTIGATION

#### 6.1 INTRODUCTION

6.1.1 Introduction. This Article is to establish and describe the Appropriate Uses, procedures for application, and requirements for management, accountability and expenditure of moneys from the Environmental Monitoring Account, and to describe the four (4) Party arrangements with respect to environmental monitoring.

#### 6.2 FINANCING

6.2.1 Payments. Hydro and(or) Manitoba and Canada shall pay to Split Lake Cree in aggregate the sum of one million five hundred and eight thousand dollars (\$1,508,000.00), to fund the Environmental Monitoring Account, in instalments, on the dates, and in accordance with the Financial Schedule.

6.2.2 Release. Split Lake Cree hereby releases and forever discharges Canada, Manitoba and, subject to the limitations contained in section 15.4 of this Agreement, Hydro, of and from any and all actions, causes of actions, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Split Lake Cree,

its successors, or assigns, have had, now have, or hereafter can, shall or may have, for or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of the environmental or other related monitoring provisions of the NFA, and recommendations 5 and 10 of the Lake Winnipeg and Churchill-Nelson Rivers Diversion Study Board, Summary Report, 1975.

6.2.3 Settlement of Claims and Obligations. This Agreement, and in particular, but without limitation, this Article, and the related monitoring provisions of Articles 2 and 5 of this Agreement, are in full satisfaction of the environmental and related monitoring provisions of, or pursuant to, Article 17 of the NFA, and recommendations 5 and 10 of the Lake Winnipeg and Churchill-Nelson Rivers Diversion Study Board, Summary Report, 1975. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand, or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business or Controlled Institution on account of or in relation to any or all of the matters dealt with and released in subsection 6.2.2 of this Article.

6.2.4 Legislation. Nothing in this Article shall require any Party to take any action in relation to environmental

monitoring not otherwise provided for in this Agreement or required by statute or regulation. Further, this Article does not modify or exempt any Party from any requirement related to environmental monitoring arising under this Agreement or statute or regulation.

**6.3 ENVIRONMENTAL AGENCY**

6.3.1 Establishment. Chief and Council shall establish an agency of the Split Lake Cree government for the purposes of environmental monitoring and related activities on the Reserve and in the Resource Area. Such environmental monitoring may be done independently, or, by agreement, jointly with any, or all, of the other Parties.

**6.4 THE TRUST**

6.4.1 Appropriate Uses. Appropriate Uses of the Environmental Monitoring Account shall be:

- (a) the gathering of data on environmental conditions;
- (b) the recommendation and commissioning of environmental investigation or monitoring activities in relation to Adverse Effects on Reserve or in the Resource Area, including those Adverse Effects ref-

erenced in subsection 15.4.1. of this Agreement, and further including those Adverse Effects which may be the subject matter of compensation claims under Articles 8 or 9 of this Agreement;

- (c) the direction or preparation of environmental studies, investigations or other work, including, without limitation
  - (i) investigations of the apprehended or actual implications of development within the Resource Area, and
  - (ii) studies of environmental aspects of regulatory, or other joint resource management proposals, under Article 5 of this Agreement;
- (d) the communication and discussion of environmental activities and findings;
- (e) community consultation in connection with environmental activities and findings;
- (f) Split Lake Cree preparation for, and participation in, meetings and related activities contemplated by section 6.5 of this Article; and,

(g) such other related activities as Chief and Council may direct in relation to environmental audits, impact statements or impact assessments.

6.4.3 Request for Funds. Chief and Council may request funding from the Income of the Environmental Monitoring Account in accordance with the procedures set forth in the Indenture and in Article 10 of this Agreement.

#### 6.5 FOUR PARTY ARRANGEMENTS

6.5.1 Responsibility. The Executive Implementation Committee shall be responsible for scheduling and convening meetings in accordance with section 6.5 of this Article.

6.5.2 Meetings. Two (2) meetings will be held in each calendar year, within forty-five (45) days of each of April 1 and October 15, or such greater or fewer number of meetings as may be unanimously agreed upon by the members of the Executive Implementation Committee.

6.5.3 Representatives of the Parties. The members of the Executive Implementation Committee will arrange, respectively, for representatives of Split Lake Cree and Hydro, and of

applicable departments of the Government of Canada and of Manitoba, to be in attendance at such meetings.

6.5.4 Convenor of Meetings. The federal member of the Executive Implementation Committee will play a coordinating role in initiating and arranging the date, time, venue, agenda, exchange of available documentation, and requests for information prior to the meeting. Such preparation will be commenced not later than sixty (60) days (or such other period as may be agreed to unanimously by the members of the Executive Implementation Committee) in advance of the projected dates for the Spring, Fall and other meetings.

6.5.5 Expenses. Each Party will bear its own costs in connection with the provisions of section 6.5 of this Article.

6.5.6 Purposes. The purposes of the meetings, and associated exchanges of information, are to:

- (a) provide such disclosure of non-privileged information, of contemporary relevance to the Resource Area, as is reasonable and practicable to provide;

- (b) discuss plans of any Parties to conduct investigations of environmental conditions in or near the Resource Area;
- (c) discuss contemplated environmental monitoring or investigations to be undertaken by any Party in or near the Resource Area, pursuant to provisions of this Agreement or any statute or regulation;
- (d) consider whether, and to what extent, it is practical for any activities under (b) or (c) to be adjusted, to accommodate the environmental assessment interests of the other Parties, without prejudicing the interests of the Party whose activities are to be adjusted; and,
- (e) discuss whether and to what extent, the results of any environmental audit, impact statement or impact assessment may be made available to other Parties.

6.5.7 Determination. The four (4) Party arrangement contemplated by this Article may be held in abeyance or terminated by the mutual agreement of all Parties, and shall, unless otherwise mutually agreed, terminate at the end of the Project, or if the representative of Split Lake Cree fails to



attend four (4) successive meetings, without being excused or without reasonable cause.

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## ARTICLE 7

### 7.0 ECONOMIC AND SOCIAL DEVELOPMENT

#### 7.1 INTRODUCTION

7.1.1 Introduction. This Article is to establish and describe Appropriate Uses, procedures for application, and requirements for management, accountability and expenditure of moneys from the Economic and Social Development Account established as part of the Indenture.

#### 7.2 FINANCING

7.2.1 Payments. Hydro and(or) Manitoba, and Canada shall pay to Split Lake Cree in aggregate the sum of twelve million, two hundred and one thousand dollars (\$12,201,000.00) to fund the Economic and Social Development Account, in instalments, on the dates, and in accordance with the Financial Schedule.

7.2.2 Acknowledgement. Split Lake Cree acknowledges that the compensation and development arrangements in this Article 7, including the establishment of the Tataskweyak Development Corporation, provide management authority, disclosure and accountability to, and within, Split Lake Cree; and that none of Manitoba, Hydro, and Canada shall be

responsible for the effectiveness of these arrangements or for the operation of the Tataskweyak Development Corporation. Split Lake Cree acknowledges that there is no sanction or warranty, either express or implied, by any of Manitoba, Hydro, or Canada, that the arrangements in this Article, including the establishment and operation of the Tataskweyak Development Corporation, will result in the attainment of the development or other purposes of Split Lake Cree. Subsection 7.2.2 of this Article does not alter or qualify the obligations of Canada, Manitoba or Hydro pursuant to this Agreement.

7.2.3 Releases. Split Lake Cree releases and forever discharges Canada, Manitoba, and, subject to the limitations contained in section 15.4 of this Agreement, Hydro, from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising under Articles 12.3, 16 and 18 and Schedule E of the NFA, and the Economic Development Agreement, dated September 1, 1977. Split Lake Cree covenants and agrees not to commence or

prosecute any action, claim, demand, or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business, or Controlled Institution on account of or in relation to any such matters.

### 7.3 COMPENSATION

7.3.1 Personal Compensation. Split Lake Cree has used, and will use, the moneys set aside for compensation for individual Members, under Articles 7, 8 and 9 of this Agreement, except compensation for the taking of or damage to real property or real property interests, to finance, in four (4) instalments, a payment totalling two thousand two hundred and fifty dollars (\$2,250.00) to each Eligible Compensation Beneficiary as defined in subsection 7.3.2 of this Article. This cash compensation represents a small portion of the total implementation package, which will assist in the alleviation of Adverse Effects experienced to the Date of this Agreement by Split Lake Cree and Members, by supplementing other compensation and development arrangements provided for in this Agreement. In accordance with the procedures set out in Articles 8 and 9 of this Agreement, the payments to Eligible Compensation Beneficiaries under section 7.3 of this Article will be credited against any other en-

titlement they may have pursuant to Articles 8 and 9 of this Agreement.

7.3.2 Eligible Compensation Beneficiaries. Any Member who is, or has been, ordinarily resident on Reserve, at any time from 1977 to, the earlier of, the date of payment or the Date of this Agreement, or, any Member who is, or has been, ordinarily resident in the Resource Area, at any time from 1977 to, the earlier of, the date of payment or the Date of this Agreement, and who has suffered an Adverse Effect, is eligible to receive cash compensation payments pursuant to subsection 7.3.1 of this Article. Eligibility of any individual Member shall be determined in accordance with these standards, by Chief and Council upon application for compensation by, or on behalf of, such Member. Decisions by Chief and Council with respect to eligibility may be appealed to a Tribunal, and the provisions of subsections 8.4.7 and 8.4.8 of this Agreement shall apply with such changes as the context requires. In the event of an appeal to a Tribunal, the onus of proof as to an Adverse Effect shall be as set out in subsection 16.7.23 of this Agreement. The decision of the Tribunal shall be final and shall be subject to no further appeal.

7.3.3 Payments prior to Agreement. Chief and Council warrant that, from moneys advanced by Manitoba and (or) Hydro as set out in the Financial Schedule, a one thousand seven hundred and fifty dollar (\$1,750.00) payment was paid to each Eligible Compensation Beneficiary of whom Chief and Council had notice at the time the funds were paid, and where minors were involved, the funds were paid in accordance with subsection 7.3.6 of this Article. Specifically, on December 19, 1990 those aged 60 years or older received one thousand dollars (\$1,000.00), and those aged less than 60 years, on that date, received five hundred dollars (\$500.00); on August 20, 1991, those aged 60 years and older, at December 19, 1990, received five hundred dollars (\$500.00), and those aged less than 60 years on December 19, 1990, received one thousand dollars (\$1,000.00); and on December 20, 1991 all eligible Members received two hundred and fifty dollars (\$250.00).

7.3.4 Final Instalment. After the Date of this Agreement, the final instalment of five hundred dollars (\$500.00) will be paid to each Eligible Compensation Beneficiary as defined in subsection 7.3.2 of this Article, and will be attributable to the Resource compensation and Asset Damage Compensation purposes of this Agreement.



7.3.5 Unpaid Instalments. Chief and Council shall pay any unpaid portion of the two thousand two hundred and fifty dollar (\$2,250.00) payment, to each Eligible Compensation Beneficiary, as set out in subsection 7.3.2 of this Article, upon application being made by or on behalf of such Eligible Compensation Beneficiary, within four (4) years of the Date of this Agreement, but not thereafter.

7.3.6 Minors. Payments to minors have been, and will be, made to that minor's parents or guardian, in trust, for the benefit of the minor, unless in the sole judgment of Chief and Council such payment would be of uncertain benefit to the minor, in which case the payment will be held in an interest-bearing trust account to be paid to the minor, including the accrued interest, at the time he attains the age of majority, or, on his behalf, at such earlier time, if, in the sole judgment of Chief and Council, the payment can be of assured benefit to the minor. Chief and Council shall maintain proper records to account for moneys paid pursuant to subsection 7.3.6 of this Article, sufficient to identify in respect of each minor, to whom or to what account the moneys payable pursuant to section 7.3 of this Article were paid.

7.3.7 Indemnity. Split Lake Cree hereby undertakes and agrees to indemnify and save harmless Canada, Hydro and Manitoba, in respect of any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, brought or instituted by any Member, Split Lake Cree Based Business, or Controlled Institution, caused by or attributable, in whole or in part, to:

- (a) the distribution of moneys, or trust accounts, on behalf of minors;
- (b) decisions pursuant to subsection 7.3.2 of this Article; or,
- (c) the administration and distribution of per capita payments under this Article.

7.3.8 Compensation to Elders. Those persons who are fifty (50) years of age or older at the Date of this Agreement, and who meet the eligibility criteria set out in subsection 7.3.2 of this Article, shall receive payments of one hundred and twenty-five dollars (\$125.00) per month, for life. Such monthly payments shall be made, directly by the Trustees, upon written confirmation of eligibility by Chief and Council or, upon appeal of the decision of Chief and Council, by a

Tribunal. The provisions of subsections 8.4.7 and 8.4.8 of this Agreement shall apply to an appeal to the Tribunal, with such changes as the context requires. This provision does not confer rights upon individuals to enforce a claim for such amounts against any Party.

7.3.9 Management. Except for those payments set out in subsection 7.3.8 of this Article, Chief and Council have been, and shall be, responsible for the management and administrative arrangements related to the cash compensation payments. The reasonable costs incurred by Chief and Council in distributing the cash compensation are a proper charge and may be paid from the moneys advanced for the cash compensation.

7.3.10 Social Assistance and Cash Compensation. Based on the determination by Manitoba, and the application of this determination by Canada, the cash payments referenced in subsection 7.3.1 of this Article will not be considered to be income for the purposes of calculating the social assistance entitlement of any Member. No social assistance payment, to which any Member is otherwise entitled, will be reduced due to the receipt by such Member of the cash compensation payment set out in subsection 7.3.1 of this Article.

7.4 APPROPRIATE USES

7.4.1 Ongoing Economic and Social Development Support.

The **Appropriate Uses** of moneys approved for disbursement from the **Economic and Social Development Account** comprise a range of purposes encompassing:

(a) economic development, including

- (i) business financing such as loans, providing collateral for loans, direct investments and (or) grants, for business ventures providing economic benefits and(or) employment for Members,
- (ii) entrepreneurial skill development and training in business functions,
- (iii) gathering and analysis of relevant economic information,
- (iv) establishment and operation of business persons' organizations, and coordination with similar regional or national organizations,

- (v) provision of technical, management and legal services to support existing and potential entrepreneurs, and
  - (vi) effectiveness evaluation of financed initiatives;
- (b) employability and employment development, including
- (i) literacy, academic upgrading and specific vocational and skill training,
  - (ii) short term job creation which supports economic and social development initiatives,
  - (iii) gathering and analysis of relevant labour force supply and demand information,
  - (iv) development of appropriate employment and entrepreneurial training curricula,
  - (v) provision of technical staff to support the implementation of training and employment initiatives,

- (vi) subsidization of incremental costs of training programs, and
  - (vii) effectiveness evaluation of financed initiatives;
- (c) cultural and recreational enhancement, including
- (i) preservation and development of cultural and historical sites and resources,
  - (ii) establishment and operation of cultural and recreational programming,
  - (iii) provision of staff support for financed initiatives, and
  - (iv) effectiveness evaluation of financed initiatives;
- (d) social development initiatives, including
- (i) definition, establishment, and operation of programs tailored to address Adverse Effects on individuals, families and the community,

- (ii) establishment and operation of social, health, and education initiatives to address social pathologies and other behaviors detrimental to healthy community life,
  - (iii) provision of specialized staff resources required to support funded initiatives, and
  - (iv) effectiveness evaluation of financed initiatives;
- (e) community infrastructure, capital development and the related operations and maintenance costs, including the establishment and operation of
- (i) work space, to permit the profitable operation of business ventures,
  - (ii) appropriate employment training facilities,
  - (iii) cultural and recreational facilities,
  - (iv) other facilities to support the development of a healthy community atmosphere, and

(v) effectiveness evaluation of financed initiatives; and,

(f) the implementation of Articles 13 and 14 of this Agreement, including the funding of activities and actions contemplated to be fulfilled by Split Lake Cree pursuant to those Articles.

7.4.2 Investments. Investments or applications of funds from the Economic and Social Development Account will be permitted to be undertaken both on and off of the Reserve, with the approval of Chief and Council and the Split Lake Cree Trustees, consistent with the disclosures, tests and procedures in the Indenture and in Article 10 of this Agreement.

## 7.5 MANAGEMENT RESPONSIBILITIES

7.5.1 Split Lake Cree Government. Chief and Council, as the governmental authority of Split Lake Cree, and consistent with the Appropriate Uses set out in section 7.4 of this Article, and the requirements set out in sections 10.5, 10.6 and 10.7 of this Agreement and the provisions of the Indenture, shall be responsible, either directly or indirectly, to ensure the proper planning, organization, coordination, management and implementation of all Program Initiatives and



Specific Projects funded out of the Economic and Social Development Account.

7.5.2 Payments to Agencies. Chief and Council shall not, in any fiscal year, propose for, or provide to:

(a) any one (1) agency, as contemplated by subsection 10.5.4 of this Agreement, more than two hundred and fifty thousand dollars (\$250,000.00) for approved Program Initiatives; and,

(b) all such agencies, in aggregate, more than five hundred thousand dollars (\$500,000.00), for such purposes.

7.5.3 No Limitation on Specific Projects. The financial limits, set out in subsection 7.5.2 of this Article, do not apply to approved Specific Projects.

7.5.4 Tataskweyak Development Corporation. On or after the Date of this Agreement, Chief and Council intend to establish the Tataskweyak Development Corporation (the "Corporation") to which the following shall apply.

(a) The Corporation shall be an agent of Chief and Council as contemplated in subsection 10.5.4 of

this Agreement. The Corporation shall be a share capital corporation, whose shares shall be held by Chief and Council in trust and under terms approved pursuant to subsection 10.5.4 of this Agreement, and whose registered head office shall be on Reserve.

- (b) The business of the Corporation will be to manage investments, by planning, organizing, coordinating, financing and operating Specific Projects and Program Initiatives, as directed by Chief and Council, consistent with the terms of paragraphs 7.4.1 (a), and (b) of this Article and Article 10 of this Agreement.
  
- (c) The Corporation will have a Board of Directors, with a minimum of three (3) and a maximum of thirteen (13) Directors, comprised, in the majority, of Members ordinarily resident on Reserve, who can provide relevant expertise to the Corporation. In all cases, the Directors will be appointed by Chief and Council, on a staggered basis, for terms of not less than two (2) years, and all Directors will be eligible for re-appointment.

(d) With respect to expenditures by the Corporation, related to the creation of training places, jobs and businesses, Chief and Council shall ensure that the Corporation establishes clearly defined criteria, from time to time, which will be proposed for the approval of Chief and Council and the Split Lake Cree Trustees. Approved criteria will enable the objective assessment of initiatives based on such conditions as

- (i) cost per job and(or) training placement,
- (ii) creation of employment not currently accessible to Members,
- (iii) adequacy of personal equity contributions, whether in cash, or in goods or services,
- (iv) availability of loan security,
- (v) prospects for loan repayment,
- (vi) degree of attainment of projected performance,
- (vii) business profitability, and

(viii) provision of goods and services not previously provided as a result of on Reserve economic activity.

(e) In addition to the approvals and disclosures required pursuant to the Indenture and Article 10 of this Agreement, the following approval authorities will apply with respect to Specific Project investments planned to be undertaken within approved Program Initiatives

- (i) up to twenty-five thousand dollars (\$25,000.00), approval by the Directors of the Corporation,
- (ii) between twenty-five thousand dollars (\$25,000.00) and fifty thousand dollars (\$50,000.00), approval by the Directors of the Corporation and Chief and Council,
- (iii) between fifty thousand dollars (\$50,000.00) and one hundred thousand dollars (\$100,000.00), approval by the Directors of the Corporation and Chief and Council, after notice of the planned investment is posted in the community consistent with the

provisions of subsection 11.5.3 of the Indenture, and

- (iv) above one hundred thousand dollars (\$100,000.00), approval by the Directors of the Corporation and Chief and Council, after notice of the planned investment is posted in the community advising Members of the proposed expenditure, and the Specific Project is approved by a public meeting of Members, convened consistent with the procedures and standards set out in subsection 11.5.2 of the Indenture.

## 7.6 FINANCIAL MANAGEMENT AND DISCLOSURE

7.6.1 Management. Money from the Economic and Social Development Account will be received and managed in accordance with the terms and conditions of the Indenture and Article 10 of this Agreement.

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## ARTICLE 8

### 8.0 RESOURCE COMPENSATION FUND

#### 8.1 INTRODUCTION

8.1.1 Introduction. This Article is to establish and describe the Appropriate Uses, procedures for application, and requirements for management, accountability and expenditure of moneys from the Resource Compensation Fund established as part of the Indenture.

#### 8.2 COMPENSATION

8.2.1 Resource Compensation. As compensation for Adverse Effects on Resources, Hydro and(or) Manitoba shall pay to Split Lake Cree in aggregate the sum of ten million, eight hundred and fifty-seven thousand dollars (\$10,857,000.00), to fund the Resource Compensation Fund, in instalments, on the dates, and in accordance with the Financial Schedule.

8.2.2 Release. Split Lake Cree hereby releases and forever discharges Canada, Manitoba, and, subject to the limitations set forth in Section 15.4 of this Agreement, Hydro, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Split Lake Cree



its successors, or assigns, have had, now have, or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever, up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of any Adverse Effects on Resources.

8.2.3 Settlement of Claims. Split Lake Cree shall obtain and provide to Canada, Manitoba, and, subject to the limitations set forth in section 15.4 of this Agreement, Hydro, releases for all claims or the relevant interest in such claims, against Canada, Manitoba and Hydro, respectively, as listed on Schedule 8.1 of this Agreement, filed by or on behalf of Split Lake Cree, any Member, Split Lake Cree Based Business, or Controlled Institution before the Arbitrator under the NFA, relating to compensation for Adverse Effects on Resources.

8.2.4 Releases. Split Lake Cree further covenants to use its best efforts to obtain releases in favour of Canada, Manitoba, and, subject to the limitations set forth in Section 15.4 of this Agreement, Hydro, from any Member, Split Lake Cree Based Business, or Controlled Institution who, or which, may, at any time or times have filed or who, in future, may file a claim before the NFA Arbitrator for compensation for Adverse Effects on Resources.

8.2.5 Covenant Not to Commence Action. Split Lake Cree covenants and agrees not to commence any action, suit, claim, demand, or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business, or Controlled Institution, against any of Canada, Manitoba or, subject to section 15.4 of this Agreement, Hydro with respect to Adverse Effects on Resources.

8.2.6 Release of Canada. Hydro and Manitoba hereby release and forever discharge Canada, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Hydro or Manitoba have had, now have or hereafter can, shall or may have against Canada, for or by reason of, any cause, matter or thing whatsoever, up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Adverse Effects on Resources.

8.2.7 Release by Canada. Canada hereby releases and forever discharges Hydro and Manitoba, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Canada has had, now has or hereafter can, shall or may have against Hydro and(or) Manitoba, for or by reason

of, any cause, matter or thing whatsoever, up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Adverse Effects on Resources.

8.2.8 Indemnity. Split Lake Cree undertakes and agrees to indemnify Manitoba and, subject to the exceptions contained in Section 15.4 of this Agreement, Hydro from the Resource Compensation Fund, but not otherwise, with respect to any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, which may at any time, or times, hereafter be brought by any Member, Split Lake Cree Based Business or Controlled Institution, against either or both Manitoba and Hydro, arising from or with respect to any action, cause of action, suit, claim, demand, loss or damage resulting from Adverse Effects on Resources.

8.2.9 Limitation. The indemnity in subsection 8.2.8 of this Article shall be limited to the amount of compensation that an Eligible Compensation Beneficiary could be awarded under this Article, if the claim had been filed as a claim against the appropriate Reserve Account. The indemnity shall be treated in the same manner, and given the same priority as to payment, as if the award against Hydro or Manitoba were a final award under the procedure for adminis-

tering compensation claims set out in this Article. It is the intention of the Parties that, subject to the rights of Hydro under subsection 8.2.12 of this Article, if any Member, Split Lake Cree Based Business, or Controlled Institution, not a Party to this Agreement, should opt to proceed under the NFA, that:

- (a) in the absence of binding legislation foreclosing such action, the claim, if successful against either Hydro or Manitoba, would be honoured by Hydro or Manitoba, who would, pursuant to the indemnity provided to them under subsection 8.2.8 of this Article, be reimbursed from the appropriate Reserve Account as provided above; and,
- (b) the settlement and the implementation provisions of this Agreement would not be nullified.

8.2.10 Conditions. The indemnity under subsection 8.2.8 of this Article is not intended to cover the costs of the indemnified Party in resisting such actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, and is conditional upon the indemnified Party:

- (a) giving notice to Split Lake Cree of any claim being advanced by any Member, Split Lake Cree Based Business or Controlled Institution for which Split Lake Cree may be liable pursuant to the indemnity, forthwith upon the indemnified Party becoming aware of such claim;
- (b) consenting to and(or) otherwise supporting any application by Split Lake Cree, if Split Lake Cree is not named as a party, to be named as a party to such claim; and,
- (c) not settling any such claim without the written consent of Chief and Council to such settlement, provided that this does not require the indemnified Party to appeal any decision, award, ruling, or judgment by which it may be bound and for which it is seeking indemnity from the Resource Compensation Fund, pursuant to subsection 8.2.8 of this Article.

8.2.11 Legislation. Canada and Manitoba will recommend the enactment of legislation providing that:

- (a) any claims of any Member, Split Lake Cree Based Business, or Controlled Institution can and shall be advanced against the appropriate Reserve Account

of the Resource Compensation Fund, in accordance with the procedure established in this Article for adjudicating such claims, including the appeal procedure to the Split Lake Cree Arbitrator, and shall not be advanced against any of the Parties to this Agreement, each of whose obligations in all respects of such claims have been fully satisfied, except

(i) as set forth in section 15.4 of this Agreement, and

(ii) for Split Lake Cree's obligations in the administration of the compensation regime and the Tataskweyak Trust; and,

(b) the payment of the portion of the Settlement Proceeds to Split Lake Cree to be used to fund the Resource Compensation Fund fully satisfies all obligations of Hydro and Manitoba under the NFA with respect to Adverse Effects on Split Lake Cree Resources, except as expressly set forth in section 15.4 of this Agreement.

8.2.12 Constitutionality. If:

(a) prior to the proclamation of the legislation contemplated in subsection 8.2.11 of this Article, a

court of competent jurisdiction or the arbitrator under the NFA should rule that Hydro or Manitoba are required to pay further compensation to any Member, Split Lake Cree Based Business, or Controlled Institution, not a Party to this Agreement, and the amount of such compensation is too large to be fully reimbursed to Hydro or Manitoba from the appropriate Reserve Account, in accordance with section 8.4 of this Article, within two (2) full calendar years from the date of the payment of such compensation by Hydro or Manitoba; or,

- (b) following the proclamation of the legislation contemplated in subsection 8.2.11 of this Article, a court of competent jurisdiction should, after all appeals have been exhausted, or the time to appeal has expired, rule that all or part of either or both the federal or provincial legislation lacks constitutional validity, and, as a result, Hydro, directly, or as a consequence of any indemnity provided by Hydro to Canada or Manitoba, indemnifying Canada and Manitoba with respect to claims arising from Adverse Effects on Resources, is required to pay further compensation to any Member, Split Lake Cree Based Business, or Controlled

Institution, not a Party to this Agreement, for any actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever related to Adverse Effects on Resources or to indemnify Canada or Manitoba in respect thereto;

then, Hydro may, at its sole option, demand the Corporate Trustee immediately repay to Hydro the entire Capital of the Resource Compensation Fund then paid into and remaining in the Tataskweyak Trust, including all earned and undistributed Income thereon, or related thereto.

8.2.13 Reversion Provision. Upon such repayment pursuant to subsection 8.2.12 of this Article, all releases and indemnities given by Split Lake Cree in this Article, in favour of Hydro, and the general releases and indemnities provided by Split Lake Cree in Article 15 of this Agreement, in favour of Hydro, as such releases and indemnities relate to Adverse Effects on Resources, shall be void and without further force and effect, and the provisions of the NFA related to compensation for damages arising from Adverse Effects on Resources, shall be revived in full force and effect and shall be the obligation of Hydro to perform. All other provisions and Articles of this Agreement, including, without limitation, the procedure for administering compensation claims set forth in this Article, as those apply to other



Articles in this Agreement, shall remain in full force and effect without modification or amendment. The Parties contemplate and intend that Hydro shall claim and be entitled to receive, as a credit, to the extent applicable, against the claim of any Member, Split Lake Cree Based Business, or Controlled Institution, any benefits received by such claimant from the Resource Compensation Fund, and any damages paid to such claimant for Adverse Effects on Resources, pursuant to the order of the court, or the arbitrator appointed pursuant to the NFA.

8.2.14 Hydro Indemnity. If the conditions outlined in paragraph 8.2.12(b) of this Article exist, or if the Capital is repaid to Hydro under subsection 8.2.12 of this Article, then Hydro shall indemnify Canada and Manitoba with respect to any damages that may be awarded against either of them, by a court of competent jurisdiction, or by the arbitrator appointed pursuant to the NFA, with respect to any loss or damage suffered by any Member, Split Lake Cree Based Business, or Controlled Institution as a result of Adverse Effects on Resources. This indemnity is not intended to cover the costs of the indemnified Party in resisting such claim, and is conditional upon the indemnified Party:

- (a) giving notice to Hydro of any claim being advanced by any Member, Split Lake Cree Based Business, or

Controlled Institution for which Hydro may be liable pursuant to the indemnity, forthwith upon the indemnified Party becoming aware of such claim;

- (b) actively and diligently resisting any action or suit brought questioning the lawfulness of this Agreement or the constitutional validity of the legislation contemplated by this Agreement, and providing reasonable cooperation to Hydro in Hydro's efforts to resist any claim brought by any Member, Split Lake Cree Based Business, or Controlled Institution with respect to which Hydro may be liable pursuant to the indemnity; and,
- (c) consenting to and(or) otherwise supporting any application by Hydro, if Hydro is not named as a party, to be named as a party to such claim.

### 8.3 THE TRUST

8.3.1 Read in Conjunction. This Article shall be read in conjunction with the Indenture, and Articles 7 and 10 of this Agreement.

8.3.2 Establishment of Accounts. That portion of the Resource Compensation Fund initially settled on the Tataskwe-

yak Trust, and each portion of the Resource Compensation Fund subsequently contributed to the Trust by Split Lake Cree, shall be divided into and held by the Trustees in Accounts and Reserve Accounts comprised as set out below.

(a) DOMESTIC RESOURCE  
COMPENSATION ACCOUNT AND RESERVE ACCOUNT

To compensate for Adverse Effects on Resources related to domestic, non-commercial use of Resources.

|                 |                   |
|-----------------|-------------------|
| Account         | \$5,105,280.00    |
| Reserve Account | <u>150,720.00</u> |
| Total           | \$5,256,000.00    |

(b) FUR TRAPPING COMPENSATION ACCOUNT AND RESERVE  
ACCOUNT

To compensate for Adverse Effects on Resources related to trapping.

|                 |                  |
|-----------------|------------------|
| Account         | \$2,939,510.00   |
| Reserve Account | <u>80,490.00</u> |
| Total           | \$3,020,000.00   |

(c) COMMERCIAL FISHING COMPENSATION ACCOUNT AND RESERVE  
ACCOUNT

To compensate for Adverse Effects on Resources related to commercial fishing.

|                 |                  |
|-----------------|------------------|
| Account         | \$ 2,512,210.00  |
| Reserve Account | <u>68,790.00</u> |
| Total           | \$ 2,581,000.00  |

(d) TOTAL \$10,857,000.00

8.3.3 Appropriate Uses. The Appropriate Uses of the Resource Compensation Fund shall be:

- (a) distributions of cash as compensation for past, present and future, loss or damage, suffered as a result of Adverse Effects on Resources;
- (b) compensation from the Domestic Resource Compensation Account for past, present and future, loss or damage, related to domestic non-commercial use of Resources, and suffered as a result of Adverse Effects on Resources;
- (c) conservation, rehabilitation, redevelopment, enhancement or replacement of Resources, or enhancement or improvement of the harvesting of Resources to mitigate Adverse Effects on Resources;
- (d) economic development of Split Lake Cree as a compensatory substitute for diminished harvesting of Resources resulting from Adverse Effects on Resources; and,

- (e) compensation awards pursuant to the procedure for the administration of compensation claims.

8.3.4 Eligible Compensation Beneficiaries. The Eligible Beneficiaries and Eligible Compensation Beneficiaries for each Account of the Resource Compensation Fund, and for each Reserve Account of the Resource Compensation Fund, shall be as follows:

- (a) for the Domestic Resource Compensation Account, the Eligible Beneficiary shall be Chief and Council on behalf of Split Lake Cree;
- (b) for the Domestic Resource Compensation Account and the Domestic Resource Compensation Reserve Account, an Eligible Compensation Beneficiary shall be any Member whose domestic, non-commercial use of Resources has suffered an Adverse Effect;
- (c) for the Fur Trapping Compensation Account and the Fur Trapping Compensation Reserve Account, an Eligible Compensation Beneficiary shall be any Trapper, whose use of Resources to hunt and trap animals for skins and fur, for sale or other commercial purpose, has decreased, or otherwise

suffered a negative impact, as a result of Adverse Effects on Resources; and,

- (d) for the Commercial Fishing Compensation Account and the Commercial Fishing Compensation Reserve Account, an Eligible Compensation Beneficiary shall be any Commercial Fisherman, whose use of Resources for or in relation to commercial fishing has decreased, or otherwise suffered a negative impact, as a result of Adverse Effects on Resources.

8.3.5 Distribution of Income. The Trustees shall distribute Income and Capital from the Resource Compensation Fund pursuant to the terms of Article 11 of the Indenture, and to section 8.4 of this Article, provided that Capital and Income to be distributed from a particular Account or Reserve Account shall only be available to those persons who are, from time to time, appropriate Eligible Beneficiaries or appropriate Eligible Compensation Beneficiaries.

8.3.6 Acknowledgement. The Resource Compensation Fund may be used, and some of the Settlement Proceeds applicable to the Resource Compensation Fund may have been used, to pay the cash compensation to any Member contemplated in subsection 7.3.1 of this Agreement, in whole or in part, in

accordance with the provisions of subsections 7.3.1 to 7.3.6, inclusive, of this Agreement.

#### 8.4 APPLICATION TO TRUSTEES

8.4.1 Information from Trustees. In each year the Trustees shall estimate the Income from each of the Domestic Resource Compensation Account, the Fur Trapping Compensation Account and the Commercial Fishing Compensation Account anticipated to be earned in the following fiscal year. The Trustees shall, not later than January 31st in the same year, communicate their estimate of the Income from each such Account to Chief and Council, and shall further communicate to any Trapper's association and to any Commercial Fisherman's association which may then exist as evidenced by notice from Chief and Council, their estimate of the Income from the Fur Trapping Compensation Account and the Commercial Fishing Compensation Account, respectively.

8.4.2 Domestic User Application. The Income from the Domestic Resource Compensation Account may be accessed and utilized by Chief and Council on behalf of Split Lake Cree in accordance with the relevant provisions of Article 11 of the Indenture.

8.4.3 Fishing and Trapping Applications. Proposals from any Commercial Fisherman, Trapper, or any group or association of Commercial Fishermen or Trappers, for distribution and use, during the then current year, of Income from the Fur Trapping Compensation Account and Commercial Fishing Compensation Account, for Specific Projects or Program Initiatives, shall be submitted to Chief and Council for consideration as an Appropriate Use of the Commercial Fishing Compensation Account and Fur Trapping Compensation Account, respectively. Such proposals shall not be dealt with pursuant to the procedures for administering compensation claims, but shall be dealt with as Specific Projects or Program Initiatives under the Indenture, and shall be subject to the requirements set out below.

- (a) Each such proposal shall contain an acknowledgement and acceptance of the compensation scheme established by this Agreement, and shall contain the agreement of the proponent and each Member constituting the proponent to be bound by the procedures and terms set forth in this Agreement, and, without limiting the rights of such proponent to make further proposals pursuant to subsection 8.4.3 of this Article, to acknowledge that that portion of the Settlement Proceeds allocated to the Resource Compensation Fund was paid in full



satisfaction of the liability, if any, of Canada, Manitoba and, subject to section 15.4 of this Agreement, Hydro, in relation to Adverse Effects on Resources.

- (b) Within thirty (30) days of receipt of such proposal, Chief and Council shall review it and determine, in accordance with Article 11 of the Indenture, whether or not to approve the proposal and submit it to Split Lake Cree Trustees, in whole or in part.
- (c) If Chief and Council do not approve the proposal, it shall not be proceeded with, but the proponent may revise and resubmit the proposal.
- (d) If the proposal or proposals, and the determination of Chief and Council, are forwarded to Split Lake Cree Trustees, Split Lake Cree Trustees shall apply the tests set forth in Article 11 of the Indenture and, within thirty (30) days, determine whether or not to fund any such proposal or proposals.
- (e) If there is insufficient income from any particular Account to fully fund all proposals, Split Lake

Cree Trustees shall decide which proposal, if any, to fund in whole or in part.

8.4.4 Prior Claims Against Reserve Accounts. Any Domestic User and any Commercial Fisherman or Trapper, may file, with Chief and Council, claims against the appropriate Reserve Account for compensation for loss or damage resulting from Adverse Effects on Resources which arose not earlier than four (4) years prior to the Date of this Agreement. Such claims shall be dealt with in accordance with the procedure for administering claims for compensation set out in this Article. Individual claims previously filed with the NFA Arbitrator may be submitted within one (1) year of the Date of this Agreement, but not thereafter, regardless of when such claims arose. All such claims shall then be dealt with in accordance with the procedure for administering compensation claims set out in this Article.

8.4.5 Subsequent Claims Against Reserve Accounts. Claims against the appropriate Reserve Account of the Resource Compensation Fund, for compensation for loss or damages arising from Adverse Effects on Resources suffered after the Date of this Agreement, by any Commercial Fisherman, Trapper or Domestic User, may be submitted at any time prior to the expiry of four (4) years from the date that such claimant suffered the loss or damage for which compensation is

claimed, but not thereafter. Such claims shall be dealt with in accordance with the procedure for administering compensation claims set out in this Article.

8.4.6 Priority Charge. Compensation claims under subsections 8.4.4 and 8.4.5 of this Article shall have priority over Specific Projects and Program Initiatives and, if there are insufficient funds in the appropriate Reserve Account, such claims shall be paid, on a first come first served basis, from Income from the appropriate Account and, to the extent unpaid, including interest on any unpaid portion, calculated at the rate of interest being seventy-five percent (75%) of the prescribed rate of interest as determined from time to time under the Income Tax Act (Canada), rounded to the nearest tenth of a point, shall represent a first charge against and be payable, firstly, from and out of the appropriate Reserve Account, and then from the Income from the appropriate Account in the succeeding calendar year or years.

8.4.7 Procedure for the Administration of Compensation Claims. Wherever, in this Article, there is provision for a claim for compensation to be made with respect to a loss suffered as a result of an Adverse Effect on Resources, such claim or any appeal therefrom shall be a submission to arbitration pursuant to The Arbitration Act (Manitoba) and

shall be administered in accordance with the procedure set out below.

(a) The claimant shall file the claim in writing with Chief and Council setting forth the following information

- (i) the name of the claimant,
- (ii) the nature of the claim,
- (iii) the date that or the period during which the loss giving rise to the claim was suffered,
- (iv) the amount of compensation being claimed, and
- (v) the details and nature of the Adverse Effect resulting in the loss giving rise to the claim for compensation.

(b) The Chief and Council shall, within thirty (30) days of their receipt of the claim, appoint a panel of not less than three (3) and not more than five (5) independent, unbiased elders, who are not members of Council, to act as an arbitration Tribunal to hear and determine such claim, and further, Chief and Council shall give notice of a hearing date to be not earlier than fifteen (15) days or later than forty-five (45) days from the date of the appointment of the Tribunal. If no Tribunal is or has been appointed by Chief and

Council, as required, the claimant shall, pursuant to section 14.9 of the Indenture, have access to the Split Lake Cree Arbitrator in accordance with the Dispute Resolution Mechanism.

- (c) Such notice shall be delivered personally to the claimant, and shall be posted in at least four (4) conspicuous places on the Reserve, including the Split Lake Cree general administration office.
- (d) On the date of the hearing, which may be adjourned from time to time, the Tribunal shall conduct a hearing with respect to the claim, and shall maintain a record of such proceedings, and may, but shall not be required to maintain a transcript of any oral evidence received.
- (e) The Tribunal shall hear representations from the claimant and all other interested persons, and conduct the hearing in a fair, equitable and reasonable manner. Submissions to the Tribunal shall be pursuant to The Arbitration Act (Manitoba) which Act shall govern except where the Act conflicts with any express term of this Article, in which case the provisions of this Article shall prevail.

- (f) The claimant, and any other interested person may, if they so desire, and at their sole expense, be represented by counsel or other person of their choosing.
  
- (g) The claimant, and any other person making representations or giving evidence to the Tribunal, shall be subject to questioning, examination and cross-examination by other interested persons, and by members of the Tribunal.
  
- (h) During the hearing, the Tribunal shall not proceed if its members present shall fall below a majority of all of its members, which majority shall be the necessary quorum, but shall adjourn until the quorum is returned. Once constituted, the membership of the Tribunal shall be fixed, and no new member shall be entitled to hear or consider the claim. If a member of the Tribunal is absent from any portion of the hearing, that member shall be excluded from continuing as a member of the Tribunal.
  
- (i) Within thirty (30) days from the conclusion of the hearing, the Tribunal shall deliberate and

- (i) render a decision on the merits of the claim, including the eligibility of the claimant, and
- (ii) if the claimant is eligible and the claim is meritorious, determine the quantum of compensation to be paid, taking fully into account any prior benefit received by or compensation paid to the claimant, including any per capita payment,

and the Tribunal shall give written reasons for its decision.

(j) The decision shall be forwarded to the claimant, Chief and Council, and any interested person shown on the record, and shall be subject to appeal to the Split Lake Cree Arbitrator under Article 16 of this Agreement.

(k) Any appeal to the Split Lake Cree Arbitrator may be made by the claimant or by any interested person shown on the record, by filing an appeal in writing within thirty (30) days of the decision of the Tribunal, and serving same on Chief and Council, the claimant, and any interested person shown on the record.

(l) In the event of an appeal, Chief and Council may,

at their option, appear in support of the appellant or as a respondent.

- (m) If the decision of the Tribunal is to recommend payment of all or any portion of the claim for compensation, and no appeal is filed, such decision shall be forwarded to Split Lake Cree Trustees, who shall within sixty (60) days pay such claim to the extent there are sufficient funds available in that year, and shall advise the Tribunal, Chief and Council and any interested persons shown on the record, accordingly.
- (n) If there are insufficient funds available in that year to pay the claim in full, the Split Lake Cree Trustees shall advise that the claim shall be paid as a priority charge pursuant to subsection 8.4.6 of this Article, and further they shall provide an estimate of the date when payment should be completed.
- (o) The discretion of the Split Lake Cree Arbitrator, with respect to a decision relating to the claim, shall be unfettered except by the limitation on payment set forth in the Indenture.



- (p) The costs of the appeal may, in the discretion of Split Lake Cree Arbitrator, be paid out of the appropriate Reserve Account or the appropriate Account, in full or in part.

8.4.8 Costs. The reasonable costs of conducting the hearing by the Tribunal shall be the responsibility of Split Lake Cree, and shall be an Appropriate Use of the appropriate Account of the Resource Compensation Fund. The costs of investigating whether or not a claimant is eligible, and if the loss claimed resulted from an Adverse Effect on Resources, shall be an Appropriate Use of the Environmental Monitoring Account.

## 8.5 SPLIT LAKE CREE

8.5.1 Role of Split Lake Cree. Nothing in this Article imposes upon Chief and Council or Split Lake Cree Trustees, any obligation to any Member, Split Lake Cree Based Business or Controlled Institution, with respect to loss or damage resulting from Adverse Effects on Resources, except to the extent of their respective roles in the fair and impartial administration of the Resource Compensation Fund.

SCHEDULE 8.1

Arbitration  
Claim No.

CLAIMANT

RESPONDENT

|     |                          |                          |
|-----|--------------------------|--------------------------|
| 12  | Northern Flood Committee | Canada, Manitoba & Hydro |
| 18  | Northern Flood Committee | Canada, Manitoba & Hydro |
| 19  | Northern Flood Committee | Manitoba & Hydro         |
| 23  | Northern Flood Committee | Manitoba                 |
| 27  | Northern Flood Committee | Manitoba                 |
| 28  | Northern Flood Committee | Canada, Manitoba & Hydro |
| 32  | Split Lake Cree          | Manitoba & Hydro         |
| 34  | Northern Flood Committee | Canada, Manitoba & Hydro |
| 36  | Northern Flood Committee | Manitoba & Hydro         |
| 38  | Northern Flood Committee | Canada, Manitoba & Hydro |
| 43  | Northern Flood Committee | Manitoba                 |
| 93  | Northern Flood Committee | Manitoba                 |
| 96  | Split Lake Cree          | Canada, Manitoba & Hydro |
| 97  | Split Lake Cree          | Manitoba & Hydro         |
| 98  | Northern Flood Committee | Canada, Manitoba & Hydro |
| 99  | Northern Flood Committee | Canada, Manitoba & Hydro |
| 104 | Split Lake Cree          | Canada, Manitoba & Hydro |
| 110 | Northern Flood Committee | Manitoba & Hydro         |
| 113 | Northern Flood Committee | Manitoba & Hydro         |
| 114 | Northern Flood Committee | Hydro                    |
| 116 | Hydro                    | Canada                   |
| 126 | Northern Flood Committee | Canada, Manitoba & Hydro |
| 129 | Northern Flood Committee | Canada, Manitoba & Hydro |
| 130 | Northern Flood Committee | Hydro                    |
| 131 | Northern Flood Committee | Canada, Manitoba & Hydro |
| 132 | Northern Flood Committee | Canada, Manitoba & Hydro |
| 133 | Northern Flood Committee | Canada, Manitoba & Hydro |
| 135 | Canada                   | Manitoba                 |
| 136 | Canada                   | Manitoba & Hydro         |
| 137 | Canada                   | Manitoba & Hydro         |
| 139 | Canada                   | Manitoba & Hydro         |
| 144 | Manitoba                 | Canada                   |
| 146 | Northern Flood Committee | Canada, Manitoba, Hydro  |

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## ARTICLE 9

### 9.0 REMEDIAL WORKS AND MEASURES ACCOUNT

#### 9.1 INTRODUCTION

9.1.1 Introduction. This Article is to establish and to describe the Appropriate Uses, procedures for application, and requirements for management, accountability and expenditure of moneys from the Remedial Works and Measures Account established as part of the Indenture.

#### 9.2 COMPENSATION

9.2.1 Remedial Works Compensation. As compensation for Adverse Effects on Split Lake Cree Assets, Hydro and(or) Manitoba shall pay to Split Lake Cree in aggregate the sum of twelve million, nine hundred and ninety-six thousand dollars (\$12,996,000.00), to fund the Remedial Works and Measures Account, in instalments, on the dates, and in accordance with the Financial Schedule.

9.2.2 Release. Split Lake Cree hereby releases and forever discharges Canada, Manitoba, and, subject to the limitations set forth in section 15.4 of this Agreement, Hydro, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind

whatsoever, at law or in equity, which Split Lake Cree, its successors, or assigns have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever, up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of any Adverse Effects on Split Lake Cree Assets.

9.2.3 Settlement of Claims. Split Lake Cree shall obtain and provide to Canada, Manitoba, and, subject to the limitations set forth in section 15.4 of this Agreement, Hydro, releases for all claims, or the relevant interest in such claims, against Canada, Manitoba, and Hydro, respectively, as listed on Schedule 8.1 to this Agreement, filed by or on behalf of Split Lake Cree, any Member, Split Lake Cree Based Business, or Controlled Institution before the Arbitrator under the NFA, relating to compensation for Adverse Effects on Split Lake Cree Assets.

9.2.4 Releases. Split Lake Cree further covenants to use its best efforts to obtain releases in favour of Canada, Manitoba and, subject to the limitations set forth in section 15.4 of this Agreement, Hydro, from any Member, Split Lake Cree Based Business, or Controlled Institution who, or which, may, at any time or times, have filed or who, or which, in future, may file a claim before the NFA Arbitrator for compensation for Adverse Effects on Split Lake Cree Assets.

9.2.5 Covenant Not to Commence Action. Split Lake Cree covenants and agrees not to commence any action, suit, claim, demand, or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business, or Controlled Institution, against Canada, Manitoba or, subject to section 15.4 of this Agreement, Hydro, with respect to Adverse Effects on Split Lake Cree Assets.

9.2.6 Release of Canada. Hydro and Manitoba hereby release and forever discharge Canada, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Hydro or Manitoba have had, now have or hereafter can, shall or may have against Canada, for or by reason of, any cause, matter or thing whatsoever, up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Adverse Effects on Split Lake Cree Assets.

9.2.7 Release by Canada. Canada hereby releases and forever discharges Hydro and Manitoba, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Canada has had, now has or hereafter can, shall or may have against Hydro and(or) Manitoba for or by reason



of, any cause, matter or thing whatsoever, up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Adverse Effects on Split Lake Cree Assets, other than claims by Canada arising from or in relation to Article 6 of the NFA.

9.2.8 Indemnity. Split Lake Cree undertakes and agrees to indemnify Manitoba and, subject to the exceptions contained in section 15.4 of this Agreement, Hydro from the Remedial Works and Measures Account, but not otherwise, with respect to any and all actions, causes of action, claims, suits, demands, losses or damages of any nature or kind whatsoever, which may at any time, or times, hereafter be brought by any Member, Split Lake Cree Based Business or Controlled Institution, against either or both Manitoba and Hydro, arising from or with respect to any action, cause of action, suit, claim, demand, loss or damage resulting from Adverse Effects on Split Lake Cree Assets.

9.2.9 Limitation. The indemnity in subsection 9.2.8 of this Article shall be limited to the amount of compensation that an Eligible Compensation Beneficiary could be awarded under this Article, if the claim had been filed as a claim against the Asset Damage Reserve. The indemnity shall be treated in the same manner, and given the same priority as to payment, as if the award against Hydro or Manitoba were a

final award under the procedure for administering compensation claims, outlined in Article 8 of this Agreement, as applied in this Article. It is the intention of the Parties that, subject to the rights of Hydro under subsection 9.2.12 of this Article, if any Member, Split Lake Cree Based Business, or Controlled Institution, not a Party to this Agreement, should opt to proceed under the NFA, that:

- (a) in the absence of binding legislation foreclosing such action, the claim, if successful against either Hydro or Manitoba, would be honoured by Hydro or Manitoba, who would, pursuant to the indemnity, provided to them under subsection 9.2.8 of this Article, be reimbursed from the Asset Damage Reserve as provided above; and,
- (b) the settlement and the implementation provisions of this Agreement would not be nullified.

9.2.10 Conditions. The indemnity under subsection 9.2.8 of this Article is not intended to cover the costs of the indemnified Party in resisting such actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, and is conditional upon the indemnified Party:

- (a) giving notice to Split Lake Cree of any claim being advanced by any Member, Split Lake Based Business or Controlled Institution for which Split Lake Cree may be liable pursuant to the indemnity, forthwith upon the indemnified Party becoming aware of such claim;
- (b) consenting to and(or) otherwise supporting any application by Split Lake Cree, if Split Lake Cree is not named as a party, to be named as a party to such claim; and,
- (c) not settling any such claim without the written consent of Chief and Council to such settlement, provided that this does not require the indemnified Party to appeal any decision, award, ruling, or judgment by which it may be bound and for which it is seeking indemnity from the Remedial Works and Measures Account, pursuant to subsection 9.2.8 of this Article.

9.2.11 Legislation. Canada and Manitoba will recommend the enactment of legislation providing that:

- (a) any claims of any Member, Split Lake Cree Based Business, or Controlled Institution, can and shall

be advanced against the Asset Damage Reserve of the Remedial Works and Measures Account, in accordance with the procedure established for adjudicating such claims set forth in Article 8 of this Agreement, including the appeal procedure to the Split Lake Cree Arbitrator, and shall not be advanced against any of the Parties to this Agreement, each of whose obligations in all respects of such claims have been fully satisfied except

- (i) as set forth in section 15.4 of this Agreement, and
  - (ii) for Split Lake Cree's obligations in the administration of the compensation regime and the Tataskweyak Trust; and,
- (b) the payment of settlement funds to Split Lake Cree to fund the Remedial Works and Measures Account fully satisfies all obligations of Hydro and Manitoba under the NFA with respect to Adverse Effects on Split Lake Cree Assets, except as expressly set forth in section 15.4 of this Agreement.

9.2.12 Constitutionality. If:

- (a) prior to the proclamation of the legislation contemplated in subsection 9.2.11 of this Article, a court of competent jurisdiction or the arbitrator under the NFA should rule that Hydro or Manitoba are required to pay further compensation to any Member, Split Lake Cree Based Business, or Controlled Institution, not a Party to this Agreement, and the amount of such compensation is too large to be fully reimbursed to Hydro or Manitoba, in accordance with section 9.8 of this Article, from the Asset Damage Reserve, within two (2) full calendar years from the date of the payment of such compensation by Hydro or Manitoba; or,
- (b) following the proclamation of the legislation contemplated in subsection 9.2.11 of this Article, a court of competent jurisdiction should, after all appeals have been exhausted, or the time to appeal has expired, rule that all or part of either or both the federal or provincial legislation lacks constitutional validity, and, as a result, Hydro, directly, or as a consequence of any indemnity provided by Hydro to Canada or Manitoba, indemnifying Canada and Manitoba with respect to claims arising from Adverse Effects on Split Lake Cree Assets, is required to pay further compensation to

any Member, Split Lake Cree Based Business, or Controlled Institution, not a Party to this Agreement, for any actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever related to Adverse Effects on Split Lake Cree Assets or to indemnify Canada or Manitoba in respect thereto;

then, Hydro may, at its sole option, demand the Corporate Trustee immediately repay to Hydro the entire Capital amount of the Remedial Works and Measures Account then paid into and remaining in the Tataskweyak Trust, including all earned and undistributed Income thereon, or related thereto.

9.2.13 Reversion Provisions Upon such repayment pursuant to subsection 9.2.12 of this Article, all releases and indemnities given by Split Lake Cree in this Article, in favour of Hydro, and the general releases and indemnities provided by Split Lake Cree in Article 15 of this Agreement, in favour of Hydro, as such releases and indemnities relate to Adverse Effects on Split Lake Cree Assets, shall be void and without further force and effect, and the provisions of the NFA related to compensation for damages arising from Adverse Effects on Split Lake Cree Assets, shall be revived in full force and effect and shall be the responsibility of Hydro to perform. All other provisions and Articles of this Agreement

shall remain in full force and effect without modification or amendment. The Parties contemplate and intend that Hydro shall claim and be entitled to receive, as a credit, to the extent applicable, against the claim of any Member, Split Lake Cree Based Business, or Controlled Institution, any benefit received by such claimant from the Remedial Works and Measures Account, and any damages paid to such claimant for Adverse Effects on Split Lake Cree Assets, pursuant to the order of the court, or the arbitrator appointed pursuant to the NFA.

9.2.14 Hydro Indemnity. If the conditions outlined in paragraph 9.2.12 (b) of this Article exist, or if the Capital is repaid to Hydro pursuant to subsection 9.2.12 of this Article, then Hydro shall indemnify Canada and Manitoba with respect to any damages that may be awarded against either of them, by a court of competent jurisdiction, or the arbitrator appointed pursuant to the NFA, with respect to any loss or damage suffered by any Member, Split Lake Cree Based Business, or Controlled Institution as a result of Adverse Effects on Split Lake Cree Assets. This indemnity is not intended to cover the costs of the indemnified Party in resisting such claim, and is conditional upon the indemnified Party:

- (a) giving notice to Hydro of any claim being advanced by any Member, Split Lake Cree Based Business, or Controlled Institution for which Hydro may be liable pursuant to the indemnity, forthwith upon the indemnified Party becoming aware of such claim;
  
- (b) actively and diligently resisting any action or suit brought questioning the lawfulness of this Agreement or the constitutional validity of the legislation contemplated by this Agreement, and providing reasonable cooperation to Hydro in Hydro's efforts to resist any claim brought by any Member, Split Lake Cree Based Business, or Controlled Institution with respect to which Hydro may be liable pursuant to the indemnity; and,
  
- (c) consenting to and(or) otherwise supporting any application by Hydro, if Hydro is not named as a party, to be named as a party to such claim.

### 9.3 THE TRUST

9.3.1 Read in Conjunction. This Article shall be read in conjunction with the Indenture, and Articles 7, 8 and 10 of this Agreement.



9.4 APPROPRIATE USES OF REMEDIAL WORKS AND MEASURES  
ACCOUNT

9.4.1 Appropriate Uses. The Appropriate Uses of the Remedial Works and Measures Account shall be:

- (a) to fund Remedial Works within the Reserve, the Resource Area, and the Project Influenced Waterways within and adjacent to the Resource Area, for the benefit of Split Lake Cree;
- (b) to fund the O & M Reserve and to pay therefrom all Operations and Maintenance with respect to Remedial Works including the necessary contributions to the Asset Replacement Reserve;
- (c) to provide funding for the Asset Replacement Reserve and to pay therefrom the costs of Replacement Remedial Works;
- (d) to fund Asset Damage Compensation Awards; and,
- (e) to fund work done by Split Lake Cree, if any, to comply with the provisions of the Easements.

9.5 OBLIGATIONS OF OTHER PARTIES

9.5.1 Funds Not to be Used for Other Obligations. Notwithstanding subsection 9.4.1 of this Article, the Remedial Works and Measures Account shall not be used to fund Remedial Works, Operations and Maintenance or Replacement Remedial Works which would otherwise be the obligation of Hydro, Manitoba or Canada to perform pursuant to any licences, permits, authorizations, or other obligations arising out of any federal or provincial legislation, any agreement of any nature including this Agreement, or which may be for the benefit of the general public.

9.5.2 Joint Undertaking. Hydro and Split Lake Cree may, but shall not be obliged to, undertake Remedial Works for their mutual benefit as a joint undertaking, provided that to the extent funding for such Remedial Works is to be derived from the Remedial Works and Measures Account, the process and procedures in this Agreement and in the Indenture related to Trustee approvals, the O & M Reserve and the Asset Replacement Reserve, must be followed.

9.6 THE ADMINISTRATION OF REMEDIAL WORKS AND MEASURES ACCOUNT

9.6.1 Plan. The money available from the Remedial Works and Measures Account for purposes of Remedial Works, Operations and Maintenance and Replacement Remedial Works are to be expended pursuant to a plan approved annually by Chief and Council. The plan must, in addition to any Specific Projects or Program initiatives for the then current year, provide a five (5) year forecast of anticipated Remedial Works and estimated demands on the Remedial Works and Measures Account. Such plan shall be submitted by Chief and Council to the Trustees, annually, prior to the approval by the Trustees of any expenditures from the Remedial Works and Measures Account, except as necessary and permitted to pay Asset Damage Compensation awards.

9.6.2 Content. The plan annually presented to the Trustees by Chief and Council in accordance with subsection 9.6.1 of this Article shall include a detailed consideration of all Remedial Works, both existing and anticipated, including the actual or anticipated capital cost thereof, the Operation and Maintenance costs and the Replacement Remedial Works costs related thereto. Each such plan shall set forth a program of Remedial Work development, if any, including Operation and Maintenance and Replacement Remedial Works, if any, and shall identify the total expenditure of Remedial Works and Measures Account money expected to be necessary for such program.

9.6.3 Disclosure. In addition to the requirements of section 10.6 of this Agreement, Chief and Council will be required to disclose to any Member and the Trustees, when proposing expenditures for any Remedial Work:

- (a) a complete description of the proposed Remedial Work and all costs associated with the Remedial Works, Operations and Maintenance and Replacement Remedial Works; and,
- (b) an Operations and Maintenance budget and a Replacement Remedial Works budget for the particular Remedial Work containing and supported by an opinion prepared by and bearing the seal of a professional Engineer registered and licensed to practise in the Province of Manitoba, based upon a thorough review of the plans and working drawings, as to the expected costs of Operation and Maintenance of the Remedial Work, the anticipated useful life of such Remedial Work and the cost of replacing such Remedial Work.

9.6.4 Allocation. Based upon information and documentation submitted by Chief and Council, in compliance with all of the requirements of subsection 9.6.3 of this Article, and any additional financial information or professional, finan-

cial or actuarial opinion required by the Corporate Trustee, all of which the Corporate Trustee is hereby authorized to obtain and rely upon, the Corporate Trustee shall allocate the amount of Capital the Corporate Trustee reasonably anticipates will be required, from the Remedial Works and Measures Account, to the O & M Reserve to cover the Operation and Maintenance of the Remedial Work and the annual funding of the Asset Replacement Reserve, and shall cause such amount to be placed in the O & M Reserve.

9.6.5 Partial Funding. During the first six (6) years following the Date of this Agreement (the "Partially Funded Period") the O & M Reserve and the Asset Replacement Reserve, for any Remedial Work may be funded either:

- (a) at the time funding is provided for the Remedial Work; or,
- (b) at the earlier of the date that the construction of the Remedial Work is complete or two (2) years following approval of the funding for the construction of the Remedial Work, provided, in either such case, that in the reasonable opinion of the Corporate Trustee, based on its determination under subsection 9.6.4 of this Article, the assumption that the Tataskweyak Trust will be funded in accor-

dance with the Financial Schedule, and in contemplation of the date that operations are scheduled to commence, there will be a sufficiency of Income and Capital available following completion of construction of the Remedial Work to fund the O & M Reserve and the Asset Replacement Reserve.

9.6.6 Full Funding. Following the Partially Funded Period, the O & M Reserve and the Asset Replacement Reserve for any Remedial Work shall be established at the same time and as part of the funding for the Remedial Work.

9.6.7 Permitted Expenditures. Other than to establish and fund Reserve Accounts contemplated by this Article, the Trustees shall not permit any expenditure from the Remedial Works and Measures Account except in accordance with section 10.6 of this Agreement, Article 11 of the Indenture, and pursuant to a proposal made by Chief and Council for a Remedial Works. Such proposal shall set out a complete description of the Remedial Works proposed and all costs associated with the Remedial Works, including engineering costs, consulting and development costs and continuing Operations and Maintenance expenses. Operation and Maintenance expenses shall include Asset Replacement Reserve contributions, anticipated in connection with the proposed Remedial Works, in sufficient detail to enable the Trustees to determine whether or not the

expenditure for the Remedial Work meets the financial criteria established by this Article, this Agreement, the Indenture and the objects of the Remedial Works and Measures Account.

9.6.8 No New Work. No new Remedial Work shall be funded out of the Remedial Works and Measures Account if the annual Income available from the Remedial Works and Measures Account not allocated or dedicated to the O & M Reserve for existing Remedial Works, the Asset Replacement Reserve or the Asset Damage Reserve would be insufficient to fund, in full, all costs related to such new Remedial Work including its Operation and Maintenance and Asset Replacement Reserve contributions.

## 9.7 OPERATION AND MAINTENANCE OBLIGATIONS

9.7.1 Covenant to Maintain. Split Lake Cree covenant and agree to manage and maintain any and all Remedial Works undertaken by or on behalf of Split Lake Cree which are Split Lake Cree's responsibility, as a reasonably prudent manager would manage and maintain comparable works in similar circumstances, and upon providing reasonable notice, Hydro may, but shall not be obliged to, inspect all Remedial Works.

9.7.2 Paramount Consideration. The requirements of subsection 9.6.8 of this Article are paramount. No Remedial Works are to be approved unless the costs of Operation and Maintenance, including Asset Replacement Reserve contributions for such work, can be funded entirely with no shortfall from Approved Funding and Programming, as defined in subsection 9.7.5 of this Article, or from Income generated from the O & M Reserve and Asset Replacement Reserve established for such Remedial Works.

9.7.3 Independent Financial Review. The Corporate Trustee is authorized and empowered to carry out its own independent financial investigation, as contemplated in subsection 9.6.4 of this Article, and to retain such experts in that regard, as it, acting reasonably, deems necessary to investigate, report and provide to it such opinions as it may rely upon, and as it may reasonably require, to enable it to exercise its discretion in this regard.

9.7.4 Liability. Except as expressly set out in this Agreement, including the Indenture, the Corporate Trustee shall have no obligation or responsibility, with the exception of its own negligence or wilful act, or omission with respect to the costs of Operation and Maintenance, including Asset Replacement Reserve contributions.



9.7.5 Approved Funding. The term "Approved Funding and Programming" shall be restricted to such Funding and Programming related to the Remedial Work and the Operation and Maintenance and Replacement Remedial Works requirements of the Remedial Work, that has been approved by either Canada or Manitoba. There is no undertaking by Canada or Manitoba, in this Agreement, that any such Approved Funding and Programming will be available or, if available, will be on terms or for periods required to satisfy subsections 9.7.1 and 9.7.2 of this Article, or any provision of this Agreement.

9.7.6 Shortfalls. The actual annual costs of Operation and Maintenance, including Asset Replacement Reserve contributions, for each Remedial Work previously funded, in whole or in part, from the Remedial Works and Measures Account, shall be reviewed annually in the plan, to be provided pursuant to subsection 9.6.1 of this Article, and if:

- (a) the actual Operation and Maintenance costs, including Asset Replacement Reserve contributions, for any year exceeds the Income generated from the O & M Reserve, then, prior to any further distribution from the Remedial Works and Measures Account in that year or any following year, the relevant O & M Reserve and, if necessary, the Asset Replacement

Reserve shall be increased to the extent required to cover the excess and to ensure in future years that such shortfall shall not be repeated; or,

- (b) a Remedial Work is no longer required, is demolished or disposed of, and is not to be replaced, and if as a result there is an excess in the Asset Replacement Reserve, then the Asset Replacement Reserve may be decreased to reflect the reduction in demand for money for Replacement Remedial Works, with the surplus amount being returned to the Remedial Works and Measures Account.

9.7.7 Other Funds If there is a shortfall in the O & M Reserve or the Asset Replacement Reserve, and there is insufficient Income and Capital in the Remedial Works and Measures Account to offset that shortfall and sufficiently increase the O & M Reserve and(or) the Asset Replacement Reserve as required by subsection 9.7.6 of this Article, then Chief and Council, as may be necessary to fulfill the covenant of Split Lake Cree contained in subsection 9.7.1 of this Article, shall request the Trustees to apply such Income as may be necessary from:

- (a) the Asset Damage Reserve;
- (b) the Economic and Social Development Account;

- (c) the Implementation Account; and(or)
- (d) the Environmental Monitoring Account;

for such purpose, and the Trustees shall apply the Income from such Accounts for such purpose in accordance with the request of Chief and Council or, if Chief and Council determine that no further funds are necessary, Chief and Council shall advise the Corporate Trustee of such cost saving measures or other steps taken to reduce the costs of Operation and Maintenance, supported by information equivalent to that required in paragraph 9.6.3(b) and subsection 9.6.4 of this Article.

## 9.8 ASSET DAMAGE CLAIMS

9.8.1 Acknowledgement. The Remedial Works and Measures Account may be used, and some of the Settlement Proceeds applicable to the Remedial Works and Measures Account may have been used, to pay the cash compensation to Members contemplated in subsection 7.3.1 of this Agreement, in whole or in part, in accordance with the provisions of subsections 7.3.1 to 7.3.6, inclusive, of this Agreement.

9.8.2 Prior Claims. Any Member may file with Chief and Council claims for compensation for loss or damage suffered by that Member not more than four (4) years prior to the date

of such claim, as a result of an Adverse Effect on Split Lake Cree Assets. Such claims shall be dealt with in accordance with the procedure for administering claims for compensation set out in Article 8 of this Agreement. Individual claims previously filed with the NFA Arbitrator may be submitted to Chief and Council within one (1) year of the Date of this Agreement, but not thereafter, regardless of when such claims arose. Such claims shall then be dealt with in accordance with the procedure for administering compensation claims set out in Article 8 of this Agreement.

9.8.3 Subsequent Claims. Claims by Members, for loss of or damage to Split Lake Cree Assets suffered after the Date of this Agreement as the result of an Adverse Effect, may be submitted to the Chief and Council at any time prior to the expiry of four (4) years from the date that the claimant suffered the loss for which compensation is claimed, but not thereafter. Such claims shall be dealt with in accordance with the procedure for administering claims for compensation set out in Article 8 of this Agreement.

9.8.4 Limitation on Payment of Asset Damage Claims. Claims for damages arising from Adverse Effects on Split Lake Cree Assets, filed by Members, shall be paid from the Asset Damage Reserve and, in the discretion of the Split Lake Cree Trustees or the Split Lake Cree Arbitrator, from any other

Income generated from the Remedial Works and Measures Account, except that generated by the O & M Reserve or the Asset Replacement Reserve. Notwithstanding anything to the contrary, including the decision of Chief and Council, Split Lake Cree Trustees, or the Split Lake Cree Arbitrator, payments towards such claims, or awards made with respect to such claims, shall not exceed in any one (1) year the Asset Damage Reserve and the Income generated in that year by the Remedial Works and Measures Account, excluding the Income generated from the O & M Reserve and the Asset Replacement Reserve.

9.8.5 Insufficient Funds. If there are insufficient funds generated to pay awards with respect to claims for Asset Damage Compensation in any year, the awards shall be prioritized on a first come first served basis and shall be paid as funds are available from Income from the Remedial Works and Measures Account, exclusive of Income generated by the O & M Reserve. To the extent any award remains unpaid, including interest thereon, calculated at the rate of interest being seventy-five percent (75%) of the prescribed rate of interest as determined from time to time under the Income Tax Act (Canada), rounded to the nearest tenth of a point, it shall represent a first charge and claim against Income not required to fund Operation and Maintenance costs,

or Asset Replacement Reserve contributions in the succeeding calendar year or years.

9.9            SPLIT LAKE CREE

9.9.1        Role of Split Lake Cree.    Nothing in this Article imposes upon Chief and Council or Split Lake Cree Trustees, any obligation to any Member, Split Lake Cree Based Business or Controlled Institution, with respect to loss or damage resulting from Adverse Effects on Split Lake Cree Assets, except to the extent of their roles in the fair and impartial administration of the Remedial Works and Measures Account.

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## ARTICLE 10

### 10 IMPLEMENTATION

#### 10.1 INTRODUCTION

10.1.1 Introduction. This Article is to establish and describe the Appropriate Uses, procedures for application and requirements for management, accountability and expenditure of moneys from the Implementation Account established as part of the Indenture, and to provide for the Executive Implementation Committee.

#### 10.2 FINANCING

10.2.1 Payments. Hydro and(or) Manitoba, and Canada shall pay to Split Lake Cree in aggregate the sum of three million, eight hundred, fifty-eight thousand dollars (\$3,858,000.00), to fund the Implementation Account, in instalments, on the dates, and in accordance with the Financial Schedule.

10.2.2 Split Lake Cree Warranty. Save and except as provided in section 10.3 of this Article, Split Lake Cree warrants that there have been no financial commitments or undertakings with respect to those Settlement Proceeds which have not been received at the Date of this Agreement.

10.2.3 Acknowledgement. Split Lake Cree acknowledges that none of Manitoba, Hydro or Canada shall be responsible for the effectiveness of the implementation arrangements in this Agreement and in the Indenture, with respect to which Split Lake Cree, Chief and Council, Split Lake Cree Trustees, the Corporate Trustee, any Member, Split Lake Cree Based Businesses and(or) Controlled Institutions have rights and defined responsibilities. Split Lake Cree acknowledges that there is no sanction or warranty, either express or implied, by any of Manitoba, Hydro, or Canada, that the arrangements in this Agreement will result in the attainment of the development and other purposes of Split Lake Cree. This subsection does not limit the obligations of Canada, Manitoba, and Hydro, pursuant to this Agreement.

10.2.4 Releases. Split Lake Cree hereby releases and forever discharges Canada, Manitoba and Hydro, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have for, or by reason of, any cause, matter or thing whatsoever, up to the Date of the Agreement or at any future time, attributable, in whole or in part, to or arising out of or in respect to the obligations of Canada, Manitoba or Hydro to Split Lake Cree under provisions of the NFA, related to

implementation of the NFA, or for anything done, or omitted to be done, in this regard by Canada, Manitoba or Hydro, except as specifically provided for in this Agreement.

### 10.3 PRE-OPERATIONAL EXPENSES

10.3.1 Pre-operational Expenses. Split Lake Cree will immediately settle all moneys referenced in subsection 10.2.1 of this Article, save and except only those moneys which are to be available for reasonable expenses incurred, and to be incurred, by Split Lake Cree, in the definition and establishment of implementation structures, and arrangements with respect to this Agreement, ("Pre-operational Expenses"), which are further described in subsection 10.3.2 below. The money from the Settlement Proceeds approved for Pre-operational Expenses shall not exceed seven hundred and fifty thousand dollars (\$750,000.00).

10.3.2 Nature of Expenses. Pre-operational Expenses shall include only those expenditures undertaken prior to the Date of this Agreement on those matters which are directly related to enabling Split Lake Cree, and Chief and Council, to effectively implement Split Lake Cree rights and responsibilities as set out in this Agreement. Without limiting the generality of the foregoing, such matters will include the definition and operational organization of

Tataskweyak Trust, the Tribunals, the environmental agency established pursuant to Article 6 of this Agreement, the arrangements in Article 5 of this Agreement, the transfer of Compensation Lands and Fee Simple Lands, the Tataskweyak Development Corporation, the Joint Committee established pursuant to Article 13 of this Agreement, and associated Split Lake Cree governmental management and accounting systems.

10.3.3 Approval of Expenses. Split Lake Cree warrants that:

- (a) with respect to those commitments related to Pre-operational Expenses entered into by Chief and Council during 1991, such commitments were authorized for payment from the money set aside for Pre-operational Expenses only after they had been approved by Members and Chief and Council through a process providing disclosure to; and approvals by Members no less exacting than those required pursuant to section 7.18 of the Indenture; and,
- (b) with respect to the Pre-operational Expenses planned to be undertaken in 1992, such undertakings were authorized, prior to the commitment and expenditure of Pre-operational Expenses, by Members

and Chief and Council through a process providing disclosure to, and approvals by Members no less exacting than those required pursuant to section 7.18 of the Indenture.

10.3.4 Non-Qualifying Amounts. If Members do not approve the expenditure of Pre-operational Expenses, with respect to any prior commitments by Chief and Council related to the purposes for which Pre-operational Expenses are available, Split Lake Cree warrants that such commitments will not be paid or reimbursed from the money available under section 10.3 of this Article for Pre-operational Expenses.

10.3.5 Limitation on Approvals. Split Lake Cree represents and acknowledges that Article 12 and sections 14.8, 14.9 and 14.10 of the Indenture will apply with respect to the moneys approved for Pre-operational Expenses, pursuant to subsection 10.3.3 of this Article, as if such moneys had been paid out of the Trust Funds. Split Lake Cree warrants that Chief and Council shall not receive, and to the Date of the Agreement, Chief and Council have not received, in connection with the discharge of their duties as Chief and Council, any amounts from Settlement Proceeds related to Pre-operational Expenses.

10.4 APPROPRIATE USES OF IMPLEMENTATION ACCOUNT

10.4.1 Appropriate Uses. The Appropriate Uses of the Implementation Account shall be to finance Split Lake Cree costs associated with:

- (a) designing and implementing local governmental, financial and institutional structures and arrangements reasonably required to enable the effective, continuing implementation of the terms of this Agreement, as set out in this Article and Articles 6, 7, 8 and 9 of this Agreement, consistent with the authority and responsibility of Split Lake Cree and its obligations under this Agreement; and,
- (b) participating in implementation arrangements with Canada, Manitoba and Hydro, as appropriate, and as established pursuant to this Agreement, including resolving disputes and paying costs related to either the Agreement, or the matters excepted by subsections 15.4.1 and 15.7.6 of this Agreement.

10.4.2 Costs. With respect to the resolution of disputes referenced in paragraph 10.4.1(b) of this Article, such financing from the Implementation Account will not diminish the liability, if any, of the other Party or Parties to the

dispute, to reimburse Split Lake Cree for reasonable costs incurred in resolving the dispute, consistent with Articles 15 and 16 of this Agreement.

10.5            **SPLIT LAKE CREE IMPLEMENTATION RESPONSIBILITIES**

10.5.1        Split Lake Cree Government. Chief and Council, as the governmental authority of Split Lake Cree, and consistent with the Appropriate Uses, the requirements set out in Article 10 of this Agreement, and the provisions of the Indenture, shall be responsible to ensure the proper planning, organization, coordination, management and implementation of all Program Initiatives and Specific Projects to be funded from any of the Accounts, with the exception of the payments which are to be made directly by the Trustees to Eligible Compensation Beneficiaries, pursuant to the terms set out in this Agreement.

10.5.2        Direct Management. Chief and Council, may meet its responsibilities, as set out in subsection 10.5.1 of this Article, directly, including through the use of Split Lake Cree government organizations and agencies, in which case Chief and Council will retain overall responsibility for approved Program Initiatives and Specific Projects.

10.5.3 Indirect Management. Chief and Council may meet its responsibilities, as set out in subsection 10.5.1 of this Article, indirectly, with respect to Specific Projects, through the efforts of community organizations and(or) Members, whether at the request of Chief and Council or as the result of proposals to Chief and Council, in which case, provided all required disclosures and approvals have been made, the responsibility of Chief and Council pursuant to subsection 10.5.1 of this Article will, after payment from the Designated Bank Account established pursuant to subsection 10.7.1 of this Article, be limited to the responsibility of Chief and Council to ensure reporting pursuant to subsection 10.7.6 of this Article.

10.5.4 Split Lake Cree Agencies. In those instances in which Chief and Council propose to use a corporate entity, as an agent of Split Lake Cree government, to implement Program Initiatives or Specific Projects funded out of any Accounts or Reserve Accounts, Chief and Council will, in advance, disclose their intention to Members together with the material characteristics of such corporate entities, and secure the approval of the Members, according to the standards set out in sections 10.6 and 10.7 of this Article, and the process of community and Chief and Council approvals set out in Article 11 of the Indenture.



10.6 STANDARDS FOR FINANCIAL SUPPORT

10.6.1 Disclosure. Chief and Council shall be required to disclose to Members and Split Lake Cree Trustees, when proposing expenditures as Program Initiatives and Specific Projects, the reasons for believing the expenditures will result in lasting benefits and improvements for present and future Members, including:

- (a) the use of the funds, including the amounts, if any, for salaries, purchases of goods and services, provision of project and initiative financing and(or) payment of compensation;
- (b) the specific benefits which are anticipated, and where the activities and the expenditures will be undertaken or provided;
- (c) how the proposed expenditures will achieve the contemplated benefits;
- (d) the competence of involved individuals and(or) organizations to produce the benefits within the resources provided;

- (e) if previously funded, the amount of money previously provided and the results accomplished; and,
- (f) how any Program Initiative will be administered, including the decision process with respect to Specific Projects funded thereby.

10.6.2 Prohibition. Chief and Council shall not authorize, or allow, the pledging, binding commitment or encumbering of any future year's or years' anticipated Income from any Accounts, for any purposes save and except as specifically provided by this Agreement.

#### 10.7 FINANCIAL MANAGEMENT AND DISCLOSURE

10.7.1 Designated Bank Account. Upon receipt of moneys from the Accounts, Chief and Council will cause such money to be deposited in a bank account designated for that purpose, (the "Designated Bank Account"), segregated from Split Lake Cree operating accounts, as required by section 11.4 of the Indenture.

10.7.2 Expenditures. Expenditures from the Designated Bank Account shall not vary from the purposes approved, consistent with Article 11 of the Indenture.

10.7.3 Accounting. Expenditures from the Designated Bank Account shall be accounted for in a manner that will enable the reporting and auditing of the use of the funds, to allow for an assessment of the compliance of expenditures of funds with purposes approved consistent with Article 11 of the Indenture. The annual audit report of the Designated Bank Account shall include an opinion as to the compliance, or otherwise, of the accounting system utilized, with the standards established in section 11.4 of the Indenture.

10.7.4 Relationship to General Audit. The availability and use of moneys from the Accounts and Reserve Accounts within Split Lake Cree government and administration shall be identified and reported on clearly, in a manner permitting comparison between the actual use of the funds and the approved uses, within the general, annual audit report of Split Lake Cree. This report shall also be made available to the Trustees within ninety (90) days of the fiscal year end. On request, a copy of the audit report shall be made available to any Member or any Party.

10.7.5 Financial Report. Chief and Council shall have the responsibility to provide, or, in the case of indirect delivery as contemplated in subsection 10.5.3 of this Article, to obtain and provide, a narrative and financial report for each

year in which moneys from an Account or Reserve Account are received, with respect to all uses of such moneys, which report shall disclose the purposes to which such moneys were applied, and the discernible results.

10.7.6 Availability of Reports. Any report required pursuant to subsection 10.7.5 of this Article, when approved by Chief and Council, shall be provided to the Trustees within ninety (90) days of the end of the fiscal year, and notice, that such report is available on request to any Member or any Party, shall be posted on Reserve in conspicuous places including the general administration office.

10.7.7 Failure to Provide. If the required audit reports and opinions, and other reports, are not provided within the ninety (90) day period set out in subsections 10.7.4 and 10.7.6 of this Article, Chief and Council will cease to have the authority to propose expenditures, or receive funds, from any Account or Reserve Account, either directly or indirectly as the case may be, until the reporting deficiency is corrected.

10.7.8 Required Meeting. If the said audit reports and opinions, and other reports, are not provided within a further fifteen (15) day period, a meeting of the Members,

including the Trustees, shall be called by Chief and Council to explain the failure to comply with the reporting requirements, which meeting shall be held on Reserve, within a further fifteen (15) day period.

10.7.9 Remedies. At any time following the meeting of Members contemplated pursuant to subsection 10.7.8 of this Article, or the date by which such meeting should have been held, any Member may seek remedies through the provisions of Article 16 of this Agreement, to ensure compliance with the aforesaid reporting requirements, either by Chief and Council, or by other independent means, as ordered by the Split Lake Cree Arbitrator.

#### 10.8 EXECUTIVE IMPLEMENTATION COMMITTEE

10.8.1 Establishment. An Executive Implementation Committee (the Committee) shall be established to facilitate the implementation of the Agreement.

10.8.2 Composition. The Committee shall include the Chief of Split Lake Cree, the Chief Executive Officer of Hydro; the Assistant Deputy Minister of Northern Affairs of Manitoba, and an Assistant Deputy Minister of Indian Affairs and Northern Development of Canada.

10.8.3 Duties. The Committee shall:

- (a) review progress on the implementation of the Agreement;
- (b) follow-up previously identified commitments by any of the Parties; and,
- (c) seek solutions to emerging identified difficulties, if any, in implementing the Agreement, including assisting in the amicable resolution of disputes, if any, among the Parties.

10.8.4 Meetings. The Committee will meet twice annually, generally in March and September, to receive and consider reports filed by Split Lake Cree, Hydro, Manitoba and Canada, and by the joint committees and implementation bodies established pursuant to this Agreement. Each member of the Committee will be responsible to ensure that reports, related to implementation issues and activities reasonably required for the activities of the Committee, are filed with the other members of the Committee, at least thirty (30) days prior to the date established for the meeting.

10.8.5 Co-ordination. The member of the Committee appointed by Canada shall undertake a coordinating role with respect to initiating and arranging the date, time, venue, agenda, exchange of required reports and requests for information prior to the meeting. Such preparation shall be commenced not later than sixty (60) days (or such other period as may be unanimously agreed by the members of the Committee) in advance of the projected dates for spring and fall meetings, and special meetings, if any.

10.8.6 Staffing. The Committee will normally rely upon the internal resources of the respective Parties to meet staffing and operating requirements.

10.8.7 Secretariat. The members of the Committee may, by unanimous agreement but not otherwise, establish an ongoing secretariat capacity, and(or) organize and finance projects, related to joint or related responsibilities. Such agreement must stipulate and provide for funding of any unanimously approved secretariat capacity or projects.

10.8.8 Term. The Committee shall be obliged to hold meetings as set out in subsection 10.8.4 of this Article, until:

- (a) the Compensation Lands have been set aside as Reserve and the Easements have been granted as required by Article 3 of this Agreement;
- (b) all Fee Simple Lands have been transferred pursuant to Article 4 of this Agreement;
- (c) all payments have been made as set out in the Financial Schedule; and,
- (d) all contemplated legislation has been enacted and proclaimed;

provided that, in the case of paragraphs 10.8.8(a) and 10.8.8(b), of this Article, Chief and Council have not unduly withheld required approvals with respect to the transfer of the Compensation Lands and the granting of the Easements. Thereafter, the Committee shall only be obliged to meet annually upon the request of at least two (2) members of the Committee.

**10.9        REPORTS BY THE EXECUTIVE IMPLEMENTATION COMMITTEE**

10.9.1     Reporting.     The Committee will report annually, in those years in which a meeting is held, within ninety (90) days of the end of the fiscal year, giving details of the



implementation of this Agreement. The Committee will provide the annual report to Chief and Council, the Chief Executive Officer of Hydro, the Minister of Indian Affairs and Northern Development of Canada and the Minister of Northern Affairs of Manitoba.

10.9.2 Separate Reports. One or more members of the Committee may issue a separate report or reports, and if dissenting from the report of the Committee, provide reasons for such dissent.

#### 10.10 IMPLEMENTATION ACTIONS

10.10.1 Implementation. Various actions, as set out in the specific Articles of this Agreement are required to accomplish effective implementation. Whether the required action is of a one-time or continuing character, the Parties will take the steps pursuant to their obligations in order to accomplish the agreed action, either within the time frames specified in the various Articles, or in the absence of specified time frames, on a demonstrably reasonable and timely basis, but, nothing in subsection 10.10 of this Article shall alter the obligations set out elsewhere in this Agreement.

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## ARTICLE 11

### 11.0 INDIAN MONEYS

#### 11.1 INTRODUCTION

11.1.1 Introduction. The purpose of this Article is to describe arrangements for the portion of the Settlement Proceeds which may be subject to certain provisions of the Indian Act (Canada).

#### 11.2 EXEMPTIONS FROM INDIAN MONEYS REQUIREMENTS

11.2.1 Legislation. Canada will recommend legislation to Parliament to provide that subsection 35(4) of the Indian Act (Canada) does not apply to this Agreement or the Settlement Proceeds.

11.2.2 Alternative to Specific Legislation. In the event that the legislation contemplated by subsection 11.2.1 of this Article has not been enacted and proclaimed, prior to April 30, 1994, then:

- (a) if other legislation has been enacted and proclaimed which authorizes the transfer and administration of Indian Moneys to Indian control, including by trust arrangements of

the kind set forth in this Agreement, then each Party shall take the steps pursuant to that legislation to accomplish the transfer and administration of all Settlement Proceeds to and under the trust arrangements set forth in the Agreement and the Indenture; or

(b) if no legislation has been enacted and proclaimed, then, provided that

(i) there is a reasonable prospect of the legislation referred to in subsection 11.2.1 or paragraph 11.2.2.(a) of this Article being enacted and proclaimed within two (2) years of the proclamation contemplated below, and,

(ii) Canada has received written covenants from each of Split Lake Cree, Hydro and Manitoba that the exemption granted by the proclamation contemplated below will, on their own part, be used only and exclusively for the purposes of transfer of Settlement Proceeds to, and the administration of the Settlement Proceeds in accordance with the

trust arrangements set forth in the  
Agreement and the Indenture

Canada will, pursuant to subsection 4(2) of the  
Indian Act (Canada), consider declaring by  
proclamation that the provisions of subsection  
35(4) of the Indian Act (Canada) shall not apply  
to Split Lake Cree.

11.3 PAYMENTS OF INDIAN MONEYS TO CANADA

11.3.1 Amounts. In the event that there is neither  
legislation nor the proclamation of a declaration as  
contemplated by section 11.2 of this Article, then the  
following amounts and bonds, which would otherwise have been  
paid or delivered to Split Lake Cree for settlement on the  
Trust, shall instead be paid and delivered to Canada for the  
use and benefit of Split Lake Cree:

The amount payable by Manitoba and(or) Hydro in  
accordance with this Agreement:

\$1,000,000.00 payable on April 30, 1994

\$1,000,000.00 payable on April 30, 1995

\$1,000,000.00 payable on April 30, 1996

\$ 920,000.00 payable on April 30, 1997

The bonds to be issued by Hydro in accordance with this Agreement:

\$5,000,000.00 to be issued on April 30, 1994

\$6,500,000.00 to be issued on April 30, 1995

and the obligations to pay Split Lake Cree set forth in Articles 6, 7, 8, 9 and 10 of this Agreement, and in the Financial Schedule, shall be modified accordingly, as required.

11.3.2 Allocation. These amounts shall be designated for the same purposes as corresponding Accounts and Reserve Accounts as set out in the Financial Schedule in consultation with the Corporate Trustee and such Capital shall be similarly so allocated.

11.3.3 Designation of Capital. From the amount designated for the Remedial Works and Measures Account under subsection 11.3.2 of this Article, Split Lake Cree may, in accordance with the provisions of Article 9 of this Agreement and Article 11 of the Indenture, request the allocation of Capital to the O & M Reserve, the income of which shall be used to fund Operations and Maintenance of Remedial Works; and, on receipt of the certificates contemplated by those

Articles, the Minister shall set aside the amounts available for that purpose.

11.3.4 Expenditures. Settlement Proceeds received and held by Canada will be expended in accordance with section 64 and other applicable provisions of the Indian Act (Canada) and Canada undertakes, pursuant to Section 64, to allow any expenditure which is an Appropriate Use as contemplated pursuant to Article 9 of this Agreement, and is also approved at the time requested by the Minister, pursuant to the applicable provisions of the Indian Act (Canada).

11.3.5 Application of Agreement. In addition to the requirements of the Indian Act (Canada) it is the intention of the Parties that the provisions of Article 11 of the Indenture and sections 10.6 and 10.7 of this Agreement will apply to any requests for expenditures of Settlement Proceeds held by Canada for the use and benefit of Split Lake Cree.

11.3.6 Nominal Capital Amounts. Where Capital is held by Canada for the use and benefit of Split Lake Cree, this Capital shall be added to the corresponding amounts in the Accounts and Reserve Accounts for the purposes of determination by the Corporate Trustee of Minimum Nominal Capital Amounts and Continuing Nominal Capital Amounts. On request of the Corporate Trustee, Canada shall promptly

advise the Corporate Trustee of the amount of such Capital held by Canada.

11.3.7 Payment of Income. Income earned, on the Capital amounts held by Canada for the use and benefit of Split Lake Cree, shall be paid to the Corporate Trustee for the Tataskweyak Trust on an annual or more frequent basis.

11.3.8 Allocation of Income to Capital. Where the Indenture provides that a portion of income is to be allocated to the Capital of an Account or a Reserve Account, that amount shall be so allocated by the Corporate Trustee from income received pursuant to subsection 11.3.7 of this Article.

#### 11.4 SUBSEQUENT LEGISLATION

11.4.1 Subsequent subsection 11.2.1 Legislation. If the legislation referred to in subsection 11.2.1 of this Article is considered by Parliament subsequent to April 30, 1994, Canada shall recommend to Parliament that such legislation include provision for the transfer to the Trust of all Settlement Proceeds, if any, held by Canada.

11.4.2 Subsequent paragraph 11.2.2(a) Legislation. If legislation of the kind referred to in paragraph 11.2.2(a) of



this Article is proclaimed subsequent to April 30, 1994, but prior to any legislation to which subsection 11.4.1 of this Article refers, each Party shall take the steps necessary pursuant to the proclaimed legislation to accomplish the transfer and administration of all Settlement Proceeds, if any, to and under the trust arrangements set forth in the Agreement and the Indenture.

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## ARTICLE 12

### 12.0 SETTLEMENT PROCEEDS AND FEDERAL AND PROVINCIAL FUNDING AND PROGRAMMING

#### 12.1 INTRODUCTION

12.1.1 Introduction. This Article describes standards and procedures for the relationship between the use of Settlement Proceeds by Split Lake Cree, and the provision of Funding and Programming to Split Lake Cree by Canada and Manitoba.

#### 12.2 RELEASE

12.2.1 Release. Split Lake Cree releases and forever discharges each of Canada and Manitoba of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for or by reason of any cause, matter or thing whatsoever up to the Date of the Agreement, or at any future time, attributable, in whole or in part, to or arising out of the provisions of Article 2.4 and related provisions of the NFA. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand, or proceeding on its own behalf or on behalf of any Member, or Controlled Institution on account of or in relation to any such matters.

12.3 PROVISIONS APPLICABLE TO CANADA

12.3.1 Programs of Canada. The application or disbursement of Settlement Proceeds by Split Lake Cree, in accordance with this Agreement or the Indenture, shall not be considered substitutes for Funding and Programming which may otherwise be made available by Canada. Decisions on such Funding and Programming by departments of the government of Canada shall be in accordance with the standards set forth in the paragraphs immediately following.

- (a) Where Funding and Programming are based on assessments of the financial needs of first nations, their members, or their members ordinarily resident on Reserve, a reduction of Split Lake Cree need shall not reduce the quantum of such Funding and Programming to the extent that such a reduction of need is reasonably attributable to, or results from, the expenditure of Settlement Proceeds.
  
- (b) Where Funding and Programming are based on applications to be submitted, it shall be the applicant's responsibility to make application in an appropriate form on a timely basis. In appraising the merits of, and making decisions on, such applica-

tions, departments of the government of Canada shall not reject applications based on the availability or expenditure of Settlement Proceeds. However, the availability or expenditure of Settlement Proceeds may be taken into account where such availability or expenditure would make the decision more favourable to Split Lake Cree or the applicant, such as, without limiting the generality of the foregoing, where the provision or investment of equity or matching or qualifying funds is required or permitted in connection with the application process.

- (c) Where Funding and Programming are based on quantitative formulae reflecting statistical measures of demographic and other characteristics of first nations, such formulae shall not be designed, developed or applied so as to substitute the availability, or expenditure, of Settlement Proceeds for Funding and Programming which, in the absence of those Settlement Proceeds, would be, or would have been, available.
  
- (d) Where Funding and Programming are administered by a board, panel or other entity appointed by Canada, but with independent decision making authority with

respect to the provision of funding or the application or administration of the program, the program design shall provide to Split Lake Cree, Chief and Council, any Member, and (or) Controlled Institution, treatment which is the same as or similar to that provided to other first nations or their members in comparable circumstances.

- (e) Where Settlement Proceeds are expended to construct works or infrastructure on Reserve, it shall be the responsibility of Split Lake Cree to provide for the operation and maintenance of such works or infrastructure. Canada shall not be obliged to, but may, in its discretion, provide funding for operations and maintenance of such works and infrastructure under subsection 12.3.1 of this Article. Operations and maintenance funding shall be available to Split Lake Cree to the same extent it is available to other first nations who fund capital works and infrastructure out of sources other than Funding and Programming.

12.3.2 Disclosure. Not later than October 1 in each year, or such other date as may be mutually agreed in writing by Canada and Split Lake Cree, Split Lake Cree shall:

(a) disclose to Canada the availability or expenditure of Settlement Proceeds

- (i) planned, proposed or approved for the forthcoming fiscal year or years of Canada,
- (ii) planned, proposed or approved in accordance with the Indenture, for the current fiscal year of the Tataskweyak Trust, and
- (iii) undertaken during the previous three (3) fiscal years of the Tataskweyak Trust as set out in financial reports as required by the Indenture; and,

(b) indicate the amounts, and(or) nature, of the Funding and Programming requested from that department for the following fiscal year of Canada, or where Funding and Programming is available on a multi-year basis, for the relevant fiscal years of Canada.

12.3.3 Applications. If a specific date is established, and publicly announced, by a department of the government of Canada for the receipt or submission of applications for Funding and Programming, such date shall be the date which is applicable with respect to Split Lake Cree disclosures and requests instead of the October 1 date referenced in subsection 12.3.2 of this Article.

12.3.4 Information. The information provided by Split Lake Cree, pursuant to subsection 12.3.2 of this Article,



shall be accompanied by such additional material as in the opinion of Split Lake Cree will reasonably assist the relevant department or departments of the government of Canada to comply with the provisions of this Article. Split Lake Cree will provide such supplementary information or clarification as may reasonably be requested by such department(s), within a reasonable period of time following such request.

12.3.5 Non-Compliance. If Split Lake Cree does not comply with subsections 12.3.2, 12.3.3 and 12.3.4 of this Article, in respect of any particular Funding and Programming, it shall have no claim under the provisions of this Article against Canada with respect to the relationship of Settlement Proceeds to such particular Funding and Programming for the applicable fiscal period.

12.3.6 Emergencies. The procedures set out above will not preclude or prejudice consideration of any application by Split Lake Cree for assistance in the event of emergencies. This subsection shall not be construed to suggest that such emergency funding is or will be available.

12.3.7 Negotiations. Within a reasonable time after receipt of the documentation or supplementary documentation, representatives of Split Lake Cree and representatives of departments of the government of Canada, to whom Funding and

Programming requests have been made under subsection 12.3.2 of this Article, will negotiate an arrangement with respect to Funding and Programming in compliance with this Article.

12.3.8 Referral. If an arrangement as contemplated by subsection 12.3.7 of this Article is not concluded within one hundred and fifty (150) days of the submission of the documentation provided for in subsection 12.3.2 of this Article, the outstanding issues shall be referred, for resolution, to the Chief or other person designated by Chief and Council and to the Deputy Minister or Assistant Deputy Minister of the department concerned.

12.3.9 Issues. If the outstanding issues are not resolved within a further ninety (90) days, Split Lake Cree or Canada may, within sixty (60) days from the expiry of the ninety (90) day period, but not thereafter, submit such outstanding issues for resolution to the Dispute Resolution Mechanism.

12.3.10 Alteration. Split Lake Cree and Canada may by agreement in writing alter any time limit set out in section 12.3 of this Article.

12.3.11 Compensation Lands. It is understood, as between Canada and Split Lake Cree, that Funding and Programming allocations to Split Lake Cree will be neither restricted

from application to the Compensation Lands, nor increased other than as may result from the fair application of general Funding and Programming policies of Canada by reason of the Compensation Lands, unless Canada and Split Lake Cree otherwise agree in the future.

12.4 PROVISIONS APPLICABLE TO MANITOBA

12.4.1 Manitoba Programs. Settlement Proceeds shall not be considered substitutes for Funding and Programming available to communities, residents, or groups of residents of Manitoba, under the normal program criteria in effect from time to time.

12.4.2 Considerations. In considering requests for Funding and Programming, Manitoba shall:

- (a) consider all requests in accordance with existing program criteria; and,
- (b) provide Funding and Programming, subject to there being unexpended moneys within the existing budget of the relevant program, without reduction in the amounts which would be available in the absence of Settlement Proceeds.

12.4.3 P.R. 280. Manitoba's existing regional transportation program contemplates the regrading and stabilization of Provincial Road 280 from Thompson to Gillam, which program shall be implemented based on the following considerations:

- (a) demonstration of need, including traffic volumes, public safety and maintenance requirements;
- (b) provincial policies and priorities; and,
- (c) activities occurring in the Resource Management Area and adjoining lands as a result of implementation of this Agreement.

12.4.4 Timing. Manitoba currently proposes to undertake the program described in subsection 12.4.3 of this Article under normal programming within ten (10) years of the Date of this Agreement, subject always to the considerations in subsection 12.4.3 of this Article and the appropriation of funds by the Legislative Assembly of Manitoba. Manitoba shall advise Split Lake Cree in advance of implementation of the work in order to facilitate Split Lake Cree participation in construction and maintenance activities under the policies of the Department of Highways and Transportation of Manitoba.

12.4.5 Notice. If Manitoba's future regional transportation program contemplates developments or improvements in the Resource Management Area, other than those mentioned in subsection 12.4.3 of this Article, Manitoba shall advise Split Lake Cree for the purposes outlined in subsection 12.4.4 of this Article.

## 12.5 GENERAL PROVISIONS

12.5.1 No Requirement. Except for the purpose of compliance with the standards set out in section 12.3 of this Article in respect of Canada, and section 12.4 of this Article in respect of Manitoba, nothing in this Article shall, or shall be deemed to, require the provision by the governments of Canada or of Manitoba of any Funding and Programming. Nothing in this Article shall require the maintenance or continuation of any Funding and Programming, or require that any particular terms or form of Funding and Programming be established or maintained.

12.5.2 Exclusion. If Canada or Manitoba should establish a program of compensation, and the program by its terms and conditions, excludes a class or classes of first nations, communities or persons who have previously received compensation, with respect to those matters for which such program is established, and Split Lake Cree and(or) any Member is within

the scope or definition of such a class or classes which are excluded from, or not included in the program, the provisions of sections 12.3 and(or) 12.4 of this Article shall not apply to that program.

12.5.3 Potable Water. Split Lake Cree is entitled to Funding and Programming in relation to the provision of potable water and sewer services as set out in the agreement among Canada, the Northern Flood Capital Reconstruction Authority Inc., the Northern Flood Committee Inc., and the Cross Lake, Nelson House, Norway House, Split Lake and York Factory Bands pursuant to Article 6.1 of the NFA and dated May 10, 1988. Nothing in this Article 12 shall change that agreement. If the NFA arbitrator or a court of competent jurisdiction rules that the May 10, 1988 Agreement is or has been terminated, then any rights Split Lake Cree may have in relation to provision of potable water shall be as set out in Article 6 and related provisions of the NFA.

12.5.4 Disputes. Disputes arising under the provisions of this Article shall, where not otherwise provided for in this Article, be resolved pursuant to the Dispute Resolution Mechanism.

12.5.5 Distribution Date. Unless all Parties to this Agreement otherwise agree in writing, the provisions of this

Article shall be deemed spent on the Distribution Date, if any, under the Indenture.

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## ARTICLE 13

### 13.0 PROJECT EMPLOYMENT

#### 13.1 INTRODUCTION

13.1.1 Introduction. This Article outlines general procedures for the co-ordination of opportunities with respect to training, Project employment and business.

#### 13.2 PROGRAMS

13.2.1 Training and Opportunity Programs. Subject to subsection 13.2.3 of this Article, Hydro shall, in consultation with Split Lake Cree, and within and consistent with Hydro's policies as such policies apply to all Northern aboriginal people, endeavour to establish:

- (a) practical programs to provide opportunities for Members to participate in employment and training respecting the Project; and,
- (b) practical programs to provide opportunities for Split Lake Cree Based Businesses to participate in business respecting the Project.

13.2.2 Split Lake Cree Programs. Subject to subsection 13.2.4 of this Article, Split Lake Cree shall:

- (a) in consultation with Hydro, and within and consistent with Split Lake Cree's policies, endeavour to establish practical training, employability and business support programs with respect to the Prerequisite Training to provide opportunities for any Members to participate in further training;
- (b) identify any Members with the Prerequisite Training who are interested in becoming candidates for training and employment in respect of the Project;
- (c) identify employment candidates who are Members interested in obtaining employment in respect of the Project or related industries;
- (d) with respect to all candidates, whether for employment and training related to the Project or related industries, obtain all relevant information necessary to prepare employment records for such candidates including age, physical condition and health, education and training (formal or informal), job related experience, interests and perceived aptitudes, and willingness to relocate,

if required, to participate in training and  
- employment in respect of the Project;

(e) update all such information on a regular basis and provide current lists of such candidates and their qualifications to Hydro and the Joint Committee; and,

(f) provide Hydro and the Joint Committee with lists of Split Lake Cree Based Businesses, and a description of such businesses, the personnel involved, work experience and such other information as Hydro and the Joint Committee may reasonably require.

13.2.3 Alteration of Policies - Hydro. Hydro, in its sole discretion, may change or rescind all or any portion of its policies, and all or any portion of such programs as are established by it pursuant to subsection 13.2.1 of this Article, at any time or times.

13.2.4 Alteration of Policies - Split Lake Cree. Split Lake Cree, in its sole discretion, may change or rescind all or any portion of its policies, and all or any portion of such programs as are established by it pursuant to subsection 13.2.2 of this Article, at any time or times.

**13.3 RELEASES**

13.3.1 Release of Canada and Manitoba. Split Lake Cree hereby releases and forever discharges Canada and Manitoba of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Project employment. Split Lake Cree covenants and agrees not to commence or prosecute any action, suit, claim, demand, or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business or Controlled Institution against Canada or Manitoba, in relation to or arising out of the provisions of the NFA referenced in subsection 13.3.1 of this Article.

13.3.2 Release to Hydro. Split Lake Cree hereby releases and forever discharges Hydro of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Split Lake Cree, its successors, or assigns, have had, now

have or hereafter can, shall or may have, for or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, attributable, in whole or in part, to or arising out of Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Hydro's obligations respecting Project employment. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand, or proceeding, arising prior to the Date of this Agreement, on its own behalf or on behalf of any Members, Split Lake Cree Based Business or Controlled Institution against Hydro, in relation to or arising out of the provisions of the NFA referenced in subsection 13.3.2 of this Article.

13.3.3 Acknowledgement. Hydro and Split Lake Cree acknowledge, with the exception of the release of and from past obligations, that this Article and the practical programs, if any, established pursuant to this Article, and the joint efforts of Hydro and Split Lake Cree to implement such programs, are not to be interpreted or construed as reflecting the position of either Hydro or Split Lake Cree as to their respective rights and obligations under Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Hydro's obligations respecting Project employment. To the contrary, such programs and joint efforts are entirely without prejudice to the positions that either

Hydro or Split Lake Cree may advance in the context of arbitration or legal proceedings, if any, respecting the rights and obligations of Hydro and Split Lake Cree under Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Hydro's obligations respecting Project employment.

13.3.4 Hydro Obligations. Notwithstanding any provision of this Agreement, the obligations of Hydro to Split Lake Cree respecting Project employment, from the Date of this Agreement, are Article 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Hydro's obligations respecting Project employment. There is no assumption by Hydro of the obligations to Split Lake Cree of either Canada or Manitoba in relation to employment and training under the NFA, all of which are released under this Agreement, or of the obligations of either Canada or Manitoba in relation to normal programming, as set out in Article 12 or otherwise.

13.3.5 Preservation of Right. Subject to the release of and from past obligations, nothing in this Agreement shall preclude either Split Lake Cree or Hydro from proceeding on the basis of reference through the Arbitrator under the NFA to the Manitoba Court of Appeal, as provided by the NFA, to determine their respective rights, entitlements, remedies and

obligations under Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Hydro's obligations respecting Project employment. This Article, and practical programs, if any, established pursuant to this Article, shall not derogate from or enhance the rights, entitlements, remedies, obligations or defences of either Hydro or Split Lake Cree in any such proceeding.

13.3.6 Acknowledgment. It is acknowledged that all obligations of Canada and Manitoba in relation to employment matters under the NFA are satisfied and settled in full by the provisions of this Agreement, and that the relationship of Settlement Proceeds to Funding and Programming is exclusively addressed by the provisions of Article 12 of this Agreement. Canada and(or) Manitoba may, in their discretion, assist Split Lake Cree and(or) Hydro in the activities contemplated in this Article, but no provision of this Article is enforceable against Canada and(or) Manitoba under the Dispute Resolution Mechanism or in any other forum.

#### 13.4 FUNDING

13.4.1 Appropriate Use. Funding of the development and implementation of policies and programs related to Prerequisite Training, and the costs of Split Lake Cree participation in the activities of the Joint Committee established in



section 13.5 of this Article, will be Appropriate Uses of Income from the Economic and Social Development Account. Income from the Economic and Social Development Account may be used to augment and enhance normal programming of Canada and Manitoba in relation to employment and training.

13.5 JOINT COMMITTEE

13.5.1 Committee. A committee to be called the Joint Committee shall be established consisting of five (5) members of whom three (3) shall be Split Lake Cree representatives, and two (2) shall be Hydro representatives.

13.5.2 Term of Office. Subject to resignation or disqualification, members of the Joint Committee shall serve at the pleasure of the Party appointing them.

13.5.3 Appointment. Hydro and Split Lake Cree shall appoint their respective Members to the Joint Committee, not later than ninety (90) days after the Date of this Agreement.

13.5.4 Canada and Manitoba. To describe normal education and training policies and programs offered or available from Canada and Manitoba, in order to assist the effort of the Joint Committee, Canada and Manitoba shall each designate an individual as their representative to the Joint Committee and

such individual shall be given notice of and may attend all Joint Committee meetings, but in any event such representative shall attend not less than two (2) meetings per year. Canada and Manitoba may change their respective representative by notice in writing to the Joint Committee.

13.5.5 Qualifications. The members of the Joint Committee shall be persons acquainted with the employment, education, and business conditions prevailing in the Project area.

13.5.6 Resignation. Any member of the Joint Committee shall be entitled to resign, at any time, by tendering a written resignation with or without notice. If any one of the members of the Joint Committee should die, or resign, or become mentally incompetent, or for any other reason be unable to continue to act, the Party who appointed such member shall forthwith, and in any event not later than thirty (30) days following the date of such vacancy, appoint a new representative to be a member of the Joint Committee.

13.5.7 Purpose and Powers of the Joint Committee. The purposes and powers of the Joint Committee shall be as follows:

- (a) to review Project activities from time to time, in order to identify opportunities for increased

participation of Members in Project employment and  
- business benefits, including facilitating the  
arrangements required to support such increased  
participation;

- (b) to make recommendations to Canada, Manitoba, Split  
Lake Cree and Hydro relating to the provision and  
coordination of their respective programs and  
policies, so as to achieve the purposes of this  
Article;
- (c) to make recommendations to Chief and Council with  
respect to its programs and policies related to  
Prerequisite Training and the promotion of Split  
Lake Cree Based Business, and to Hydro with respect  
to its programs and policies relating to Project  
employment and training, and the promotion of  
opportunities for participation in Project related  
business;
- (d) to review the implementation of the policies and  
programs established by Split Lake Cree and by  
Hydro, and to recommend change, if appropriate;
- (e) to report, at least annually, to Hydro and Split

Lake Cree with respect to each Split Lake Cree  
- Based Business detailing, to the extent possible

- (i) the name, address and phone number of each business,
  - (ii) the name of a contact person for each business,
  - (iii) a list of past undertakings, endeavours, contracts and work done by each business,
  - (iv) the number of employees of each business,
  - (v) the amount and availability of equipment, materials and labour resources of each business,
  - (vi) the performance history of each business, and
  - (vii) the financial strength, to the extent disclosed, of each business including its past ability to obtain labour and material bonds and performance bonds;
- (f) to recommend to Hydro, unanimously but not otherwise, if, and the extent to which, contract security should be waived with respect to any particular contract; and,
- (g) to consider inquiries, representations and recommendations made to it, and to make representations and recommendations, with regard to any matter affecting the provision of further training, education, employment and business opportunity, for the purpose of this Article.

13.5.8 Recommendations. Both Hydro and Split Lake Cree agree to receive and consider any recommendation of the Joint Committee, but neither Hydro nor Split Lake Cree shall in any way be bound to accept or follow such recommendations.

13.5.9 Joint Committee Meetings. The first meeting of the Joint Committee shall be held as soon as practical after the appointment of its members, and shall be convened by the Chief.

13.5.10 Minimum. The Joint Committee shall meet at least once every three (3) months.

13.5.11 Quorum. The quorum required for a meeting of the Joint Committee shall be a majority of the members of that committee, provided that at least one (1) representative of each of Hydro and Split Lake Cree must be present.

13.5.12 Appointment of Chair. At the first meeting and annually thereafter, the Joint Committee shall appoint from among its members a chair who shall be a Split Lake Cree representative and who shall act as chair of the meetings of the Joint Committee.

13.5.13 Voting. Unless unanimity is otherwise required, all questions before the Joint Committee shall be decided by a majority of the members present and voting thereon at the meeting, provided that the chair shall not have a vote except in the case of an equality of votes, in which case the chair shall have a deciding vote.

13.5.14 Rules of Procedure. The Joint Committee may make, vary or revoke rules for the conduct of its business.

13.5.15 Costs and Administration. To the extent reasonably possible, the Committee shall meet in either the Hydro office at Thompson, or the Split Lake Cree office at Split Lake, and any incidental costs in relation to such meetings, including the provision of facilities, a secretary and supplies, shall be the obligation of the Party whose offices are employed for such meeting.

13.5.16 Expenses. Each Party shall be responsible for the expenses of its members or representatives to attend and participate in the functions of the Joint Committee.

13.5.17 Budget. If the Joint Committee is unanimously of the view that further funds are necessary to permit it to function effectively, a budget for such expenses shall be prepared and submitted to Hydro and Split Lake Cree who may

agree to fund such budget in whole or in part. Any dispute between Hydro and Split Lake Cree with respect to such funding, may be referred by either for resolution pursuant to the Dispute Resolution Mechanism contained in Article 16.

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## ARTICLE 14

### 14.0 SPLIT LAKE CREE DISTRIBUTION COMPANY

#### 14.1 INTRODUCTION

14.1.1 Introduction. This Article provides for a feasibility study related to the potential acquisition and operation by Split Lake Cree, of the electrical distribution system at Split Lake, and establishes certain terms and conditions in the event of a transfer of ownership of such system.

#### 14.2 DISTRIBUTION COMPANY

14.2.1 Feasibility Study. As soon as reasonably practicable after the Date of this Agreement, Split Lake Cree may, in consultation with Hydro, arrange for the preparation of a study to determine the feasibility of the formation of a Split Lake Cree Distribution Company to operate, or to own and operate, all or a portion of the electrical distribution system on the Reserve. The cost of the preparation of the feasibility study will be the responsibility of Split Lake Cree, and may be paid for from the Economic and Social Development Account and(or) the Implementation Account, established pursuant to the Indenture, in accordance with the relevant approval requirements of the Indenture.

14.2.2 Split Lake Cree Distribution Company. If, after receipt of the feasibility study, Hydro and Split Lake Cree both determine that a Split Lake Cree Distribution Company is feasible, and if Split Lake Cree decides to form such an entity to operate, or to own and operate, all or a portion of the electrical distribution system on the Reserve, Split Lake Cree will incorporate Split Lake Cree Distribution Company, and retain control thereof, and require that it comply with the terms of this Article. Disputes as to whether or not Split Lake Cree Distribution Company is feasible shall not be referred to the Dispute Resolution Mechanism for resolution. Provided they have acted in good faith the determinations by Hydro and Split Lake Cree, respectively, as to the feasibility or non-feasibility of a Split Lake Cree Distribution Company shall be solely in their respective discretion and shall not be subject to review.

14.2.3 Purchase of System. If the ownership of the electrical distribution system on the Reserve is determined by both Hydro and Split Lake Cree to be feasible, and is desirable to Split Lake Cree, then after the formation of Split Lake Cree Distribution Company, Split Lake Cree will cause Split Lake Cree Distribution Company to purchase the then existing electrical distribution system on the Reserve, or such portion thereof as is agreed upon by Split Lake Cree and Hydro. The purchase price shall be the book value of such

assets as recorded on the books and records of Hydro, or such other price as may be agreed upon by Hydro and Split Lake Cree. The agreement shall include:

- (a) a prohibition against Split Lake Cree and Split Lake Cree Distribution Company selling, transferring or otherwise disposing of the assets purchased from Hydro, except to Hydro, without Hydro's prior written consent;
- (b) a provision that Split Lake Cree and Split Lake Cree Distribution Company will maintain, or cause to be maintained, in accordance with technical and legal standards applicable to like systems in the Province of Manitoba, the electrical distribution system including, without limitation, all meters, in good condition and repair; and,
- (c) a provision that Split Lake Cree and Split Lake Cree Distribution Company shall, at all times, employ, or contract for the provision of, qualified personnel necessary to ensure proper operation of the electrical distribution system.

Failing agreement, the terms and conditions of such sale, other than the purchase price and the required provisions set

out in paragraphs 14.2.3 (a), (b) and (c) of this Article, shall be fixed or settled in accordance with the Dispute Resolution Mechanism provided in Article 16 of this Agreement. Hydro, Split Lake Cree and Split Lake Cree Distribution Company shall execute and deliver a purchase and sale agreement, which shall set out the terms and conditions agreed upon, or determined as provided in this Article. Neither Canada nor Manitoba shall be named as a respondent to any arbitration, or be bound by any decision or award, relating to the terms and provisions of the purchase and sale agreement.

14.2.4 Qualified Personnel. Prior to the transfer of operating control of any portion of the electrical distribution system to Split Lake Cree Distribution Company, and as a condition precedent to the transfer of such control, Split Lake Cree Distribution Company shall demonstrate to Hydro that Split Lake Cree Distribution Company has retained qualified personnel to operate and maintain the distribution system in accordance with Hydro's standards for large, industrial/commercial, customer owned and operated distribution systems. Should any training be required for the purposes of enabling Split Lake Cree Distribution Company employees to meet such standards, such training and education may be provided by Hydro and(or) any educational institution qualified to provide such education and training, and in

either event the costs of the same may be paid as an Appropriate Use of either the Implementation Account or the Economic and Social Development Account, consistent with the provisions of the Indenture.

14.2.5 Power Supply Agreement. Upon, and as a condition precedent to, the transfer of the electrical distribution system from Hydro to Split Lake Cree Distribution Company, Hydro and Split Lake Cree Distribution Company will execute Hydro's standard power supply agreement for large industrial/commercial customers contracting for the supply of power and energy. Unless otherwise agreed between Hydro and Split Lake Cree, the cost to Split Lake Cree Distribution Company, for the supply of electric power and energy, will be up to, but not more than, the lowest rate being charged to other bulk power users that have contracted for an equivalent supply of power and energy under equivalent conditions.

14.2.6 Service and Maintenance. Upon request by Split Lake Cree Distribution Company, Hydro shall provide services and maintenance for the Reserve distribution system, in accordance with its normal practices and charges for providing such services to large, industrial/commercial, customers owning their own distribution system.

14.2.7 Default. If Split Lake Cree or Split Lake Cree Distribution Company default:

- (a) in payment of the purchase price to be paid for the electrical distribution system purchased pursuant to subsection 14.2.3 of this Article;
- (b) in payment of the charges for electrical power and energy contemplated in subsection 14.2.5 of this Article;
- (c) in payment of the charges for services and maintenance contemplated in subsection 14.2.6 of this Article; or,
- (d) in their obligations contemplated in paragraphs 14.2.3(b) and (c), as such are reflected in the purchase and sale agreement contemplated in subsection 14.2.3 of this Article;

and any such default continues in whole or in part for thirty (30) days, Hydro shall give written notice to Split Lake Cree, that if such default is not remedied, by payment in full of the amount owing and in arrears, or otherwise, within sixty (60) days of the date of delivery of such notice to Split Lake Cree, then immediately after expiry of the sixty

(60) day period, title and ownership of the electrical distribution system shall automatically revert in Hydro, and Hydro shall repossess and recommence Hydro operation of the electrical distribution system. Upon the reversion of title and repossession of the electrical distribution system, all amounts owing by Split Lake Cree to Hydro under paragraphs 14.2.7 (a), (b) and (c) of this Article shall thereby be satisfied.

14.2.8 Resumption by Hydro. If Hydro recommences operation of the electrical distribution system pursuant to subsection 14.2.7 of this Article, Hydro shall provide electrical power to Split Lake Cree customers in accordance with its normal practices and charges, and all of its rights, in relation to such operation and the collection of arrears arising thereafter, shall exist, unabated.

14.2.9 Access. As may be required for the purposes of permitting the operation of subsection 14.2.7 of this Article, Split Lake Cree and Canada covenant:

- (a) to permit access to the Reserve to Hydro, or a Hydro representative, to deliver the default notice to Split Lake Cree general administration office; and,

- (b) to permit Hydro such access to the Reserve as may from time to time be reasonably required for the operation by Hydro of the electrical distribution system;

and Split Lake Cree covenants to execute, or cause Split Lake Cree Distribution Company to execute, any documentation reasonably required to formalize the revesting of the electrical distribution system and assets in Hydro, pursuant to the default provision contained in subsection 14.2.7 of this Article.

14.3 CANADA NOT BOUND

14.3.1 Not binding. The provisions of this Article do not in any way bind Canada to any agreement of purchase and sale or imply consent on the part of Canada to the transfer of the electrical distribution system and assets.



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## ARTICLE 15

### 15.0 RECIPROCITY

### 15.1 INTRODUCTION

15.1.1 Introduction. This Article sets forth the general releases and indemnities, and the exceptions to both the general and specific releases contained in this Agreement.

### 15.2 RELEASES

15.2.1 Release - Manitoba. Split Lake Cree hereby releases and forever discharges Manitoba, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever attributable, in whole or in part, to the Project and(or) the NFA.

15.2.2 Release - Canada. Split Lake Cree hereby releases and forever discharges Canada, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Split Lake Cree, its successors, or assigns,

have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever attributable, in whole or in part, to the Project and(or) the NFA, save and except as set forth in subsection 15.7.6 of this Agreement.

15.2.3 Release - Hydro. Split Lake Cree hereby releases and forever discharges Hydro, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever attributable, in whole or in part, to the Project and(or) the NFA, save and except as expressly set forth in section 15.4 and subsection 15.7.6 of this Agreement.

15.2.4 Covenant. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business, or Controlled Institution, against any of Canada, Manitoba or Hydro with respect to any action, cause of action, suit, claim, demand, loss or damage

with respect to which Split Lake Cree has respectively released Canada, Manitoba and(or) Hydro.

15.2.5 Saving. Nothing in this Agreement shall relieve any Party of liability for breaches of this Agreement, future negligent acts or omissions, or future wilful misconduct, on their own part, jointly or severally, or on the part of those for whom they are responsible at law, whether jointly or severally.

### 15.3 INDEMNITIES

15.3.1 Indemnity - Manitoba. Split Lake Cree hereby undertakes and agrees to indemnify and save harmless Manitoba, in respect of any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, brought or instituted by any Member, Split Lake Cree Based Business, or Controlled Institution, caused by or attributable, in whole or in part, to the Project and(or) the NFA.

15.3.2 Indemnity - Canada. Split Lake Cree hereby undertakes and agrees to indemnify and save harmless Canada, in respect of any and all actions, causes of action, claims, suits, demands, losses or damages of any nature or kind whatsoever, at law or in equity, brought or instituted by any

Member, Split Lake Cree Based Business, or Controlled Institution, caused by or attributable, in whole or in part, to the Project and(or) the NFA.

15.3.3 Indemnity - Hydro. Split Lake Cree hereby undertakes and agrees to indemnify and save harmless Hydro in respect of any and all actions, causes of action, claims, suits, demands, losses or damages of any nature or kind whatsoever, at law or in equity, brought or instituted by any Member, Split Lake Cree Based Business, or Controlled Institution, caused by or attributable, in whole or in part, to the Project and(or) the NFA.

15.3.4 Exception. Nothing in this Agreement shall require Split Lake Cree to indemnify Canada, Manitoba or Hydro:

- (a) for an amount or amounts, in aggregate, greater than the Trust Funds;
- (b) for the matters set forth in section 15.4 and subsection 15.7.6 of this Article; or,
- (c) for future negligent acts or omissions, or future wilful misconduct on the part of Canada, Manitoba or Hydro, or on the part of those for whom they are responsible at law, whether jointly or severally.

15.3.5 Costs. The indemnities under subsections 15.3.1, 15.3.2, and(or) 15.3.3 of this Article are not intended to cover the costs of the indemnified Party, and are conditional upon the indemnified Party:

- (a) giving notice to Split Lake Cree of any claim being advanced by any Member, Split Lake Cree Based Business or Controlled Institution for which Split Lake Cree may be liable pursuant to the indemnity, forthwith upon the indemnified Party becoming aware of such claim;
- (b) consenting to and(or) otherwise supporting any application by Split Lake Cree, if Split Lake Cree is not named as a party, to be named as a party to such claim; and,
- (c) not settling any such claim without the written consent of Chief and Council to such settlement, provided that this does not require the indemnified Party to appeal any decision, award, ruling, or judgment by which it may be bound, and for which it is seeking indemnity pursuant to any one of subsections 15.3.1, 15.3.2, and(or) 15.3.3 of this Article.



15.4 CONTINUING LIABILITY OF HYDRO

15.4.1 Liability. It is understood and agreed that Split Lake Cree does not waive, release, or indemnify Hydro from, the following:

- (a) personal injury and death, past and future, caused by or attributable to the Project;
- (b) Adverse Effects, to the extent such Adverse Effects were caused by or attributable to the Project, and arose from or as a result of deviations in the Post-Project Water Regime;
- (c) Adverse Effects of the Project, as further defined by subsection 15.4.2 of this Article, that were, at the Date of this Agreement, unknown and(or) unforeseen and not discernible or foreseeable with the exercise of due diligence and concern;
- (d) human disabilities, illness or death resulting from the ingestion of methyl mercury caused by or attributable to the Project; or,

- (e) future obligations of Hydro under Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Hydro's obligations respecting Project employment;

and, except as set forth in section 15.5 of this Article, the provisions of the NFA remain in force and effect as such provisions relate to Hydro's liability, and the assessment of that liability, under paragraphs 15.4.1(a) to 15.4.1(e) inclusive, of this Article. Canada and Manitoba shall have no liability or obligation under subsection 15.4.1 of this Article and, nothing in subsection 15.4.1 of this Article imposes on either Canada or Manitoba any obligation to exercise due diligence or concern.

15.4.2 Limitation. The Adverse Effects referred to in paragraph 15.4.1(c) are further limited to bio-physical impacts causing material damage to the claimant, and attributable to the Project. Alleged socio-economic damages to the claimant, if any, are understood to be compensable only to the extent that they are caused by or attributable to such bio-physical impact.

15.5 FOUR PARTY EXPERT PANEL REVIEW

15.5.1 Alleged Occurrence. If Split Lake Cree is of the opinion that an Adverse Effect referred to in paragraph 15.4.1(b) or paragraph 15.4.1(c) of this Article, has occurred, and that Split Lake Cree or any Member, Split Lake Cree Based Business or Controlled Institution, has, as a result of such Adverse Effect, suffered damage, Split Lake Cree shall, forthwith, advise Hydro of the alleged occurrence of such Adverse Effect of the type referred to in paragraph 15.4.1(b) or paragraph 15.4.1(c) of this Article, and the nature of the perceived damages resulting from that Adverse Effect, and shall contemporaneously provide to Hydro any available evidence in support of that belief.

15.5.2 Response. If Hydro disputes that the alleged Adverse Effect, if proven, is of the nature referred to in either paragraph 15.4.1(b) or paragraph 15.4.1(c) of this Article, then, within one hundred and twenty (120) days of Hydro's receiving notice of the alleged Adverse Effect, and any supporting evidence, Hydro shall advise the members of the Executive Implementation Committee of such dispute, and provide to that Committee a copy of the notice and supporting evidence provided to Hydro by Split Lake Cree. If Hydro does not dispute the opinion of Split Lake Cree that the alleged Adverse Effect, if proven, is of the nature referred to in

either paragraph 15.4.1(b) or paragraph 15.4.1(c) of this Article, then, the matter shall proceed for determination pursuant to the NFA.

15.5.3 Expert Panel. Within thirty (30) days of the receipt of the notice from Hydro referred to in subsection 15.5.2 of this Article, the members of the Executive Implementation Committee shall each appoint a person appropriately qualified in relation to the subject matter of the dispute, and the persons so appointed shall constitute an expert panel (the "Expert Panel") for the purposes hereinafter set out in this section.

15.5.4 Summary Investigation. The members of the Expert Panel shall make a summary investigation as to whether or not the alleged Adverse Effect, if proven, would be an Adverse Effect within the meaning of paragraph 15.4.1(b) or paragraph 15.4.1(c) of this Article.

15.5.5 Costs. The Parties agree to cooperate with the members of the Expert Panel in conducting their summary investigation, provided that, except for the costs of their appointee to the Expert Panel, no Party shall be required to incur costs to conduct any investigation, or to retain any outside consultants or experts.

15.5.6 Preliminary Determination. Upon completion of their summary investigation, the members of the Expert Panel shall make their preliminary determinations as to whether or not the alleged Adverse Effect, if proven, would be an Adverse Effect within the defined meaning of paragraphs 15.4.1(b) or 15.4.1(c) of this Article, and forthwith:

- (a) advise Hydro and Split Lake Cree of their preliminary determinations; and,
- (b) advise Hydro and Split Lake Cree if, in their opinions, further investigation would be warranted before finalizing their determinations;

and either or both Hydro and Split Lake Cree shall be entitled to request, at its own expense, such further investigations to be conducted by or under the supervision of one (1) or more of the members of the Expert Panel.

15.5.7 Determination. If neither Split Lake Cree nor Hydro agree to fund further investigations, or, if the members of the Expert Panel are not prepared to conduct, or to have such further investigations conducted, in a timely manner, then the preliminary determinations of the members of the Expert Panel shall be their determinations for the purposes of subsection 15.5.11 of this Article.

15.5.8 Further Investigation. If warranted, based on their preliminary determinations, and if funded by either or both Hydro and Split Lake Cree, the members of the Expert Panel will cause the alleged Adverse Effect to be further investigated and, upon completion of such investigation, the members of the Expert Panel shall finalize their determination.

15.5.9 Facts. If possible, as part of their investigations and determinations under subsections 15.5.6 and 15.5.8 of this Article, the members of the Expert Panel will establish the scientific facts related to the dispute, and make recommendations to Hydro and Split Lake Cree, in a timely fashion, with respect to the existence, and probable significance and meaning of the alleged Adverse Effect.

15.5.10 Without Prejudice. The participation of any Party in the Expert Panel, and in any investigation conducted by the members of the Expert Panel, and any statement of any Party during the investigations and the determinations of the members of the Expert Panel, shall be without admission of liability and without prejudice to the position of that Party.

15.5.11 Dispute Resolution. If a dispute continues to exist, between Hydro and Split Lake Cree, as to whether or not the alleged Adverse Effect, if proven, would be an Adverse Effect within the defined meaning of paragraphs 15.4.1(b) or 15.4.1(c) of this Article, that dispute shall be resolved as an issue between Parties in accordance with the Dispute Resolution Mechanism.

15.5.12 Costs. If, following the summary investigation contemplated under subsection 15.5.6 of this Article, or following the further investigation contemplated under subsection 15.5.8 of this Article, two (2) or more of the members of the Expert Panel are of the opinion that the alleged Adverse Effect, if proven, would be of a kind defined in paragraphs 15.4.1(b) or 15.4.1(c) of this Article, then, in such event but not otherwise, and subject to any ultimate determination under the Dispute Resolution Mechanism, Hydro shall be responsible, on an interim basis, for the cost of Split Lake Cree in relation to the resolution of any continuing dispute between Hydro and Split Lake Cree as to whether or not the alleged Adverse Effect, if proven, would be of a kind defined in paragraphs 15.4.1(b) or 15.4.1(c) of this Article, including the costs, if any, incurred by Split Lake

Cree to fund the further investigation of the members of the Expert Panel pursuant to subsection 15.5.8 of this Article.

15.6 ASSUMPTION OF LIABILITY

15.6.1 Assumption of Liability. If Hydro ceases:

- (a) to be an agent of Her Majesty the Queen in Right of Manitoba;
- (b) to have legal authority and control over the operation of the Project; or,
- (c) to have legal authority and control over the operation of any major work or structure constituting part of the Project, the operation of which could affect inundation or storage of water on Split Lake;

then Manitoba shall:

- (d) in the circumstances to which paragraph 15.6.1(a) or paragraph 15.6.1(b) of this Article applies, assume all of the rights and obligations of Hydro under this Agreement; and,



(e) in the circumstances to which paragraph 15.6.1(c) of this Article applies, assume the rights and obligations of Hydro under this Agreement, as such rights and obligations relate to the work(s) or structure(s) over which Hydro no longer has effective authority and control.

In all such events, the provisions of this Agreement shall be read with the necessary changes to reflect the assumption by Manitoba of rights and obligations of Hydro under this Agreement, but such assumption shall not relieve Hydro, or any successor of Hydro, of its obligations under this Agreement.

15.6.2 Dispute. In the circumstances to which subsection 15.6.1 of this Article applies, Split Lake Cree shall make reasonable efforts, but shall not be required in making such reasonable efforts to expend excessive or unusual costs, to have any dispute or matter resolved by Hydro, or the successor of Hydro having authority or control with respect to the Project or a major work or structure thereof, as the case may be, before having recourse to Manitoba in accordance with the obligations it will have assumed under this Agreement.

## 15.7 NFA

15.7.1 Satisfaction. Except as otherwise specifically provided in this Agreement, all existing and future rights of action and claims of Split Lake Cree, and of Split Lake Cree on behalf of each and every past, present and future Member, and their respective estates, and of Split Lake Cree on behalf of any Split Lake Cree Based Business or Controlled Institution, in respect of any claims or causes of action relating to or arising out of the Project and the NFA, as against Canada, Manitoba and Hydro are fully and finally concluded.

15.7.2 Acknowledgments. All claims filed by or on behalf of Split Lake Cree, or any Member, Split Lake Cree Based Business, or Controlled Institution (collectively referred to in this Article as the "Claimants") before the arbitrator under the NFA, as detailed in Schedule 8.1 to this Agreement, shall be and are by the terms of this Agreement fully satisfied, and Split Lake Cree has obtained and shall provide to Canada, Manitoba and, subject to the limitations set forth in subsection 15.4 of this Agreement, Hydro, releases for all claims, or the relevant interest in such claims, against Canada, Manitoba and Hydro, respectively, as listed on Schedule 8.1 to this Agreement, filed by, or on behalf of, Split Lake Cree, any Member, Split Lake Cree Based Business,

or Controlled Institution before the arbitrator under the NFA, relating to or arising out of the Project and the NFA. Split Lake Cree further covenants to use its best efforts to obtain releases, subject to the limitations set forth in section 15.4 of this Agreement, from any Member, Split Lake Cree Based Business, or Controlled Institution who, or which, may, at any time or times, have filed, or who, or which, in future, may file a claim before the NFA arbitrator relating to or arising out of the Project and the NFA. Further, Split Lake Cree shall obtain and provide to Canada, Manitoba, and Hydro consents contemplated in subsection 15.7.3 of this Article, duly executed under seal, from all Claimants identified on Schedule 8.1, with respect to such claims, or the interests of the Claimants in such claim.

15.7.3 Order. The Parties agree that after the Date of this Agreement, application will be made jointly by all of the Parties, to the arbitrator under the NFA, with the consent of the Claimants, obtained by Split Lake Cree pursuant to the provisions of subsection 15.7.2 of this Article, and the consents of Canada, Manitoba and Hydro, for an order dismissing all outstanding claims detailed in Schedule 8.1 to this Agreement. If any claim has been filed by the NFC or any other Third Party that is not a Claimant, on behalf of a Claimant, then application shall be made to the arbitrator under the NFA for an order confirming the settlement and

discontinuance of such claim as it relates to the Claimant's interest in such claim.

15.7.4 Rights of Other First Nations Not Affected. It is agreed and understood that nothing in this Agreement will or can affect the rights or obligations of the Cross Lake, Nelson House, Norway House, or York Factory First Nations under or pursuant to the provisions of the NFA.

15.7.5 Warranty. Split Lake Cree warrants that from at least November 30, 1990, up to and including the Date of this Agreement, the NFC has not been and is not the agent or representative of Split Lake Cree in relation to the NFA, or any claim thereunder, or for any other purposes.

15.7.6 Agreement Not to Affect NFA Article 6. Nothing in this Agreement shall settle or amend, or be deemed to settle or amend, any claim or obligation arising under Article 6 of the NFA, including any related provisions of the NFA, or the agreement dated May 10, 1988 to which Canada, Split Lake Cree and others are parties.

15.7.7 General Releases Govern. Where a conflict exists between the specific releases set out in various Articles of this Agreement, and the general releases contained in this Article, the general releases shall govern. Where a limita-

tion or condition exists with respect to any specific indemnity, set out in the various Articles of this Agreement, such limitation, to the extent of the specific indemnity, shall govern.

15.7.8 Liability for Actions or Omissions of Other Parties. No Party shall have liability or responsibility for things done or omitted to be done by any other Party or Parties.

#### 15.8 TREATY AND ABORIGINAL RIGHTS

15.8.1 Treaty Rights. Nothing in this Agreement is intended to alter aboriginal or treaty rights of Split Lake Cree, or other aboriginal peoples, recognized and affirmed under section 35 of the Constitution Act, 1982. The Parties are, pursuant to the terms of this Agreement, compensating and making provision for future compensation in cash, kind and through the implementation of compensatory and mitigatory programs for Adverse Effects on Split Lake Cree, any Member, Split Lake Cree Based Business and Controlled Institution, their respective property, resources, assets and the exercise of their rights.

15.9 LEGISLATION

15.9.1 Legislation. After the Date of this Agreement, Canada and Manitoba shall recommend legislation, as set forth in the relevant Articles of this Agreement, to give effect to the provisions of this Agreement.

15.9.2 Legislative Drafting. Where by the terms of this Agreement, Canada or Manitoba are required to recommend legislation to give effect to provisions contained within this Agreement, the following consultation process shall be used:

- (a) each Party shall appoint a representative to a working group (the "Working Group");
- (b) draft legislation prepared by Canada and Manitoba shall be submitted for review and comments by each member of the Working Group;
- (c) Canada and Manitoba shall consider those comments in the preparation of successive drafts for consideration by the Working Group, and shall consider all such comments prior to submitting final draft legislation for consideration by the

Governor in Council or Lieutenant Governor in Council; and,

- (d) the Working Group shall report to the Executive Implementation Committee established under section 10.7 of this Agreement.

Nothing in this subsection 15.9.2 shall be deemed to, or be interpreted so as to, derogate from the powers and prerogatives of the Governor in Council or Lieutenant Governor in Council in relation to the recommendation of legislation to Parliament or the Legislative Assembly of Manitoba, respectively.

#### 15.10 EASEMENT PROVISION

15.10.1 Easement Provision. The continuing liability of Hydro under section 15.4 of this Article does not extend to damage, loss or destruction to or of any building, structure, or improvement, constructed, erected or placed by Split Lake Cree or any Member, Split Lake Cree Based Business, or Controlled Institution, on the Easement Lands contrary to the requirements of the Easements.

15.11 INTER PARTY RELEASE

15.11.1 Release. Subject to subsection 15.7.6 of this Article, each of Canada, Manitoba and Hydro hereby release and forever discharge each other, of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which any one or more of Canada, Manitoba and(or) Hydro have had, now have or hereafter can, shall or may have against one or more of the other, for, or by reason of, any cause, matter or thing whatsoever, up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to the Project and(or) the NFA, to the extent such actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever relate to Split Lake Cree. This release does not apply to costs which were dealt with in the March 16, 1992 joint proposal letter of the negotiators on behalf of Canada, Manitoba and Hydro.



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## ARTICLE 16

### 16.0 DISPUTE RESOLUTION MECHANISMS

#### 16.1 INTRODUCTION

16.1.1 Introduction. This Article sets forth methods of resolving disputes among or between the Parties, and of resolving compensation claims for Adverse Effects and other matters arising out of this Agreement including the Indenture.

#### 16.2 ARBITRATION

16.2.1 Arbitration Act. Submissions to arbitration shall be pursuant to The Arbitration Act (Manitoba), which Act shall govern the arbitration except where the Act conflicts with any express term of this Article, in which case the provisions of this Article shall prevail. Nothing in this Article grants any substantive rights to any Party, except for the right to refer matters to arbitration.

16.2.2 Fees. Any arbitrator appointed pursuant to this Article shall be entitled to be paid a reasonable fee which shall not be fixed or determined by The Arbitration Act (Manitoba).

16.3 DISPUTES BETWEEN THE PARTIES

16.3.1 Submission. The Parties agree to arbitrate any dispute as to the meaning, application, implementation or breach (the "Issue") of this Agreement including the Indenture, but excluding the Easement, except as provided in subsection 16.8.4 of this Article. Each such Issue shall be submitted to arbitration in the Province of Manitoba to an arbitrator (the "Arbitrator") to be appointed as hereinafter set forth.

16.3.2 Notice. The Party initiating recourse to arbitration (the "Claimant") shall serve upon each of the other Parties (the "Respondents") a written notice of arbitration, whether or not each of the Respondents is likely to be affected by the decision of the Arbitrator.

16.3.3 Contents. The notice of arbitration shall include the following:

- (a) a demand that the Issue be referred to arbitration;
- (b) the nature of the Issue;
- (c) the relief, remedy or redress sought; and,

- (d) the Party or Parties with whom the Claimant has the dispute constituting the Issue.

Notwithstanding the foregoing, any Party may refer to the Arbitrator a dispute as to the interpretation of this Agreement, without claiming any relief, remedy or additional redress.

16.3.4 Amendments. The notice of arbitration may be amended, at any time prior to the decision or award of the Arbitrator, with leave of the Arbitrator, following notice to all of the Parties, and on such terms as the Arbitrator deems just.

16.3.5 Participation. Each of the Respondents, whether identified by the Claimant pursuant to paragraph 16.3.3(d) of this Article or not, has the right to participate in the arbitration. However, any Respondent not identified in paragraph 16.3.3(d) may, at its option, elect not to participate in the arbitration. A Respondent that elects not to participate in the arbitration shall not participate in choosing the Arbitrator for the arbitration, but shall be bound by the decision of the Arbitrator. Notwithstanding that a Party elects not to participate, such

Party may, at any subsequent time, with leave of the Arbitrator, and subject to awards of costs for delay, choose to take part in, and be represented at, the arbitration.

16.3.6 The Arbitrator. The Parties to this Agreement agree, each with the other, that, provided at the relevant time there is an incumbent filling the position of arbitrator pursuant to Article 24 of the NFA (the "NFA Incumbent"), the Claimant shall, immediately following the service of notice upon the last of the Respondents, request the NFA Incumbent to act as the Arbitrator, and if, within thirty (30) days of that request, the NFA Incumbent notifies the Claimant that:

(a) he is able and willing to act as the Arbitrator;  
and,

(b) he is able to hear the Issue in a timely fashion;

then, provided the NFA Incumbent is under no legal impediment, as determined, if necessary, by a court of competent jurisdiction, he shall be, and is hereby, appointed as the Arbitrator, and the Claimant shall immediately notify all of the Respondents, in writing, accordingly.

16.3.7 Selecting Arbitrator. If there is no NFA Incumbent, or if the NFA Incumbent fails to respond to the Claimant's request within the time specified, or is unwilling or unable to act, or to hear the Issue in a timely fashion, or is under any legal impediment, then the Arbitrator shall be determined in accordance with the procedure set out in paragraphs 16.3.7(a) to (f), inclusive, of this Article.

- (a) The Claimant and each of the Respondents participating in the arbitration ("Participating Respondents"), shall have the right to participate in the appointment of the Arbitrator in accordance with this procedure.
- (b) The Claimant shall, within twenty-one (21) days of the determination that the NFA Incumbent will not be the Arbitrator, submit to each of the Respondents the names, addresses and occupations of not more than five (5) individuals, any one of whom may be selected by the Participating Respondents to act as the Arbitrator.
- (c) If the Claimant fails to submit the list of names within the time specified, it shall be deemed to have withdrawn its notice of arbitration, and the



matter shall not proceed further except by a new notice of arbitration under subsection 16.3.2 of this Article.

(d) If the Respondent is not one identified by the Claimant pursuant to paragraph 16.3.3(d) of this Article, it shall, within twenty-one (21) days of its receipt of the names submitted by the Claimant, advise the Claimant if it wishes to be a Participating Respondent, failing which it shall be deemed to have decided not to participate.

(e) Each of the Participating Respondents, within twenty-one (21) days of their receipt of the names submitted by the Claimant, shall

i) select one (1) or more of the individuals submitted by the Claimant that is or are acceptable to it to act as the Arbitrator, and so advise the Claimant in writing, or

ii) reject all of the individuals submitted by the Claimant,

but, if a Participating Respondent does not respond within the twenty-one (21) days provided, it shall be deemed to have accepted any selection made by the Claimant and the other Participating Respondents.

- (f) If any of the individuals whose names have been so submitted is unanimously selected by the Participating Respondents, and is willing and able to act as the Arbitrator, then that person shall be, and is hereby, appointed as the Arbitrator. If more than one (1) individual is unanimously selected, the Arbitrator shall be chosen from those individuals by the Claimant, and such individual, if willing and able to act, shall be and is hereby appointed as the Arbitrator to hear the Issue submitted to arbitration.

16.3.8 Application to Judge. If the Claimant and the Participating Respondents (collectively the "Participating Parties") do not unanimously agree as to the individual to be named as the Arbitrator, then any Participating Party may request that the Arbitrator be appointed by a Judge of the Court of Queen's Bench of Manitoba in accordance with the provisions of The Arbitration Act (Manitoba).

16.3.9 Time for Hearing. The Arbitrator shall be obliged to render his decision and the reasons for such decision, in writing, within thirty (30) days of the conclusion of the arbitration hearing, unless such time is extended by agreement of the Participating Parties or by order of a court of competent jurisdiction.

16.4 HEARING PROCEDURE ON DISPUTES BETWEEN THE PARTIES

16.4.1 Jurisdiction. From and after the date of his appointment, the Arbitrator shall have jurisdiction to supervise the conduct of the proceedings and to make such orders as to procedure as may be necessary or expedient to ensure that all Participating Parties are in a position to proceed to determination of the Issue on an expeditious and fair basis.

16.4.2 Procedures. The Arbitrator may conduct the arbitration in whatever manner he considers appropriate, but shall maintain a record (although not necessarily a verbatim transcript unless such transcript is requested by any Participating Party, and then upon such terms as the Arbitrator may impose, including, without limitation, the

costs thereof) of the proceedings, and at all times shall conform to the rules of natural justice.

16.4.3 Evidence. If any Participating Party so requests, at any stage of the proceedings, the Arbitrator shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the Arbitrator shall decide whether or not to hold such a hearing, and whether or not the proceedings shall be conducted on the basis of documents and other materials.

16.4.4 Disclosure. The Parties agree that whether they are Participating Parties or not, they shall disclose and produce any document or documents, as may be required, in writing, by the Arbitrator, except such documents as would not be compellable were the Issue an action brought in a court of law.

16.4.5 Distribution. All documents or information supplied to the Arbitrator by any Party shall concurrently be provided by that Party to each Party to this Agreement, whether participating or not.

16.4.6 Rules of Evidence. The Arbitrator shall not be strictly bound by the rules of evidence, but may receive all evidence submitted by the Participating Parties which is determined to be relevant by the Arbitrator.

16.5 AWARD AND COSTS

16.5.1 Power and Authority. The Arbitrator shall have the power and authority to hear and determine any Issue, including the power to:

- (a) interpret this Agreement, including the Indenture and, for the purposes of subsection 16.8.4 of this Article, the Easement, and any provisions thereof, and declare the rights and obligations of any Party thereunder;
- (b) determine any dispute as to facts;
- (c) direct that an audit be undertaken;
- (d) award damages;
- (e) award interest; and,

(f) award costs;

and shall, within the time prescribed by subsection 16.3.9 of this Article, render the decision. The Arbitrator shall not have the authority or jurisdiction to change, alter, or amend this Agreement, the Indenture, or the Easements, or any term or provision contained therein.

16.5.2 Costs Generally. In the absence of an order as to costs, each Participating Party shall bear its own costs and an equal share of the Arbitrator's fee.

16.5.3 Cost Awards. Subject to section 16.5.4, the costs of the arbitration, including the Arbitrator's fee, upon application of any Participating Party, may be awarded by the Arbitrator against any of the Participating Respondents in full, or upon all Participating Respondents in any proportion. In making an award of costs, the Arbitrator shall consider all relevant circumstances including the relative financial means of the Participating Parties.

16.5.4 Costs Against Claimant. Costs may be awarded under section 16.5.3 against the Claimant but only in circumstances where the Issue brought by the Claimant was determined by the Arbitrator to be frivolous or vexatious.

16.5.5 Finality. The award of the Arbitrator shall be final and binding on all Parties, subject to the right of any Party, including any non-Participating Party, to appeal, within thirty (30) days of the Party's receipt of the decision being rendered, to the Court of Appeal of Manitoba, on a point of law or jurisdiction.

16.6 SPLIT LAKE CREE COMPENSATION AND TRUST DISPUTES

16.6.1 Split Lake Cree Arbitrator. Wherever this Agreement provides for a reference to the Dispute Resolution Mechanism to arbitrate any matter involving any one or more of Split Lake Cree, Chief and Council, Split Lake Cree Trustees, Members, Split Lake Cree Based Businesses or any Controlled Institutions, but not involving the other Parties to this Agreement, including, without limitation:

- (a) any decision of the Tribunal under Articles 8 or 9;  
or,
- (b) any issue related to the use of Trust Funds as provided in this Agreement, including the Indenture;

(the "Matter"), the Matter shall be submitted to arbitration in the community of Split Lake, or elsewhere in Manitoba with the consent of all of the parties to the arbitration, to the Split Lake Cree Arbitrator appointed as hereinafter set forth.

16.6.2 NFA Incumbent. If, from time to time during the currency of this Agreement, there is an incumbent filling the position of arbitrator pursuant to Article 24 of the NFA (the "NFA Incumbent"), then, if the NFA Incumbent is able and willing to act as Split Lake Cree Arbitrator and is not under any legal impediment, as determined, if necessary, by a court of competent jurisdiction, the NFA Incumbent shall be and is hereby appointed as Split Lake Cree Arbitrator.

16.6.3 Selecting Arbitrator. If there is no NFA Incumbent at any time during the currency of this Agreement, or if the NFA Incumbent is, or subsequently becomes, unwilling or unable to act as Split Lake Cree Arbitrator, or if it becomes apparent to both Chief and Council and Split Lake Cree Trustees that the NFA Incumbent is unable to act in a timely fashion with respect to any reference to him pursuant to this Agreement, then the Split Lake Cree Arbitrator shall be determined by agreement between Chief and Council and Split Lake Cree Trustees (and if any Member,



Split Lake Cree Based Business or Controlled Institution has a direct interest as a Claimant relating to such matter, with the agreement of such person or entity as a Claimant) and failing agreement, any persons or entities whose agreement is required may request that the Split Lake Cree Arbitrator be appointed by a Judge of the Court of Queen's Bench of Manitoba in accordance with the provisions of The Arbitration Act (Manitoba).

**16.7 HEARING PROCEDURE AND POWERS OF SPLIT LAKE CREE ARBITRATOR**

16.7.1 Awards and Implementation. Subject to the specific limitations contained in this Agreement, the Split Lake Cree Arbitrator shall have broad authority and power to make awards capable of implementation, and to fashion an appropriate and just remedy in respect of any and all compensation claims for Adverse Effects, including those under Articles 8 and 9, with the intent that such remedies shall, to the extent permitted by the limitations of this Agreement, and the Indenture, place that Claimant in no worse condition in that respect than he would have been in the absence of the Adverse Effects for which compensation is claimed.

16.7.2 Power and Authority. The Split Lake Cree Arbitrator shall have the power and authority to hear and determine any Matter.

16.7.3 Mitigatory Measures. Mitigatory and(or) remedial measures are more likely to have a lasting beneficial effect on the viability of a community and(or) on individual residents than monetary compensation, and accordingly such measures, which have been implemented on a group or community basis, and their mitigatory effect, when they have been implemented, shall be carefully considered in assessing the quantum of compensation to which any Member, Split Lake Cree Based Business or Controlled Institution claiming for compensation shall be entitled.

16.7.4 Interim Orders. The Split Lake Cree Arbitrator shall have the right to forthwith order interim compensation prior to the determination of any Matter in totality.

16.7.5 Liability to Compensate. In dealing with any matter submitted to the Split Lake Cree Arbitrator, and in particular in assessing compensation or approving funding of an Appropriate Use, the Split Lake Cree Arbitrator shall deal with such Matter on the basis that the liability to compensate, whether under Articles 8 and 9 or otherwise, is

the sole and exclusive responsibility of Split Lake Cree, to be funded by the appropriate Account or Reserve Account, and any recommendation for remedial action or the like is similarly the responsibility of Split Lake Cree, to be funded by the appropriate Account or Reserve Account, and any award or approved funding must be subject to the restrictions contained in this Agreement.

16.7.6 Procedures. The powers and procedures set forth in The Arbitration Act (Manitoba) shall govern all references to arbitration except:

- (a) where the powers and procedures in The Arbitration Act (Manitoba) are contrary to the provisions set forth in this Agreement, in which case the powers and procedures set forth in this Agreement shall govern;
- (b) where the Split Lake Cree Arbitrator deems the procedures in The Arbitration Act (Manitoba) to be inappropriate, or inconsistent with his duty to arrive at a just award or order, in which case the Split Lake Cree Arbitrator shall give written reasons for deciding to vary the procedure in connection with any matter before him; and,

- (c) the Split Lake Cree Arbitrator shall be entitled to be paid a reasonable fee which shall not be fixed or determined by The Arbitration Act (Manitoba).

16.7.7 Access. Any Member may, as provided in Articles 8 and 9 of this Agreement or in the Indenture, have a Matter dealt with under the terms of this Article of this Agreement, and in circumstances where this Agreement provides for a Member to have access to the Split Lake Cree Arbitrator, that Member shall be entitled to require the appointment of the Split Lake Cree Arbitrator pursuant to the terms of this Agreement.

16.7.8 Corporate Trustee. Notwithstanding subsection 16.7.7 of this Article, the Corporate Trustee has not agreed to submit any Matter in which it is involved to arbitration, and all such Matters shall be referred to a court of competent jurisdiction. Further, where any Matter involves, or could potentially involve personal liability or criminal sanction against any Split Lake Cree Trustee, the Chief, or any Split Lake Cree Councillor, such individual may at his option, prior to the commencement of the arbitration, revoke his agreement to submit the Matter to arbitration, in which

case the Matter may only be proceeded with in a court of competent jurisdiction.

16.7.9 Counsel. Any person appearing before the Split Lake Cree Arbitrator may do so in person, or may be represented by counsel.

16.7.10 Rules of Conduct. The Split Lake Cree Arbitrator may establish his own rules of conduct and may rule upon the admissibility of evidence. When acting in an appellate capacity, the Matter shall be brought as a new trial, but the decision of the Tribunal, including any written reasons, shall be submitted to the Split Lake Cree Arbitrator. It is agreed that evidence may be presented by affidavit, and the evidence of consultants or experts may be presented without the author being physically present, and hearsay evidence may be received. In all such cases it shall be for the Split Lake Cree Arbitrator to determine the weight, if any, to be placed upon such evidence.

16.7.11 Statement of Agreed Facts. An arbitration before the Split Lake Cree Arbitrator may proceed by way of a statement of agreed facts.

16.7.12 Professional Assistance. The Split Lake Cree Arbitrator may retain the assistance of such professionals or consultants as he may require in order to advise him on any issue involving, without limitation, accounting, law, engineering, or physical, social or economic impact consequences, as may in the sole discretion of the Split Lake Cree Arbitrator be necessary in order to properly consider the evidence presented. It is understood and agreed however, that any person interested in any Matter before the Split Lake Cree Arbitrator shall have the primary responsibility for presenting evidence to support his position, and the power of the Split Lake Cree Arbitrator to retain assistance of professionals or consultants shall be exercised only where the Split Lake Cree Arbitrator believes further advice or information would be necessary or desirable to formulate and reach a sound and fair decision.

16.7.13 Right to Cross-Examine. If the Split Lake Cree Arbitrator exercises any of the powers set out in subsection 16.7.12 of this Article, for the purpose of obtaining assistance, any person interested in the Matter or his authorized representative shall have the right to cross-examine such individual or individuals from whom such information was obtained, and shall have the right to peruse any documentary evidence, and to cross-examine thereon.

16.7.14 Decisions. In making any award in relation to a claim for compensation for Adverse Effects under Articles 8 and 9 of this Agreement, the Split Lake Cree Arbitrator shall, among other things,

- (a) determine whether there is a liability under this Agreement;
- (b) determine the appropriate quantum of compensation;  
and,
- (c) designate the appropriate Account or Reserve Account under the Indenture to fund compensation and, if more than one Account or Reserve Account, apportion the funding.

16.7.15 Power and Authority. In making any determination or decision in relation to any facts in dispute, or any interpretation and order as to the responsibilities or actions of Chief and Council, the Split Lake Cree Trustees, or any individual member of those bodies, in relation to the administration of the Indenture and the Trust Funds, including the community consultative provisions thereof, the Split Lake Cree Arbitrator has full power and authority:

- (a) to determine any facts in dispute;
- (b) to interpret this Agreement and declare rights and obligations thereunder;
- (c) to determine liability, if any, of Chief and Council and Split Lake Cree Trustees, or subject to subsection 16.7.8 of this Article, any individual member of those bodies;
- (d) to award restitution or damages subject to subsection 16.7.8 of this Article;
- (e) to direct an accounting; and,
- (f) to determine the entitlement, if any, of any individual Split Lake Cree Trustee to indemnification from the Trust Fund.

16.7.16 Awards in Writing. Every award or order of the Split Lake Cree Arbitrator shall be in writing and shall set forth reasons.



16.7.17 Variations. Any participant in a Matter may apply in writing to the Split Lake Cree Arbitrator within fifteen (15) days after the receipt of an award or order, to amend or vary the award or order in respect of anything that was raised before the Split Lake Cree Arbitrator, or as to the application or interpretation of the said award or order.

16.7.18 No Appeal. There shall be no appeal from the order or award of the Split Lake Cree Arbitrator except on an issue of law or jurisdiction, in which case the appeal shall be presented to the Manitoba Court of Appeal, and there shall be no further appeal therefrom.

16.7.19 Counsel. In hearing any claim for compensation under Articles 8 and 9 of this Agreement, the Split Lake Cree Arbitrator shall have the discretion to make an order that counsel of the Claimant's choice be made available, at the expense of the appropriate Account, to assist the Claimant in preparing and advancing his claim.

16.7.20 Costs. Subject to the restriction on costs contained in section 13.2 of the Indenture, the Split Lake Cree Arbitrator may award costs in favour of any Member involved in and appearing before him with respect to any Matter, as he deems fair and equitable in the circumstances.

16.7.21 Inclusions. Any award of costs may include legal fees or the costs of consultants or experts retained in order to deal with a Matter brought to the Split Lake Cree Arbitrator, to the extent such fees and costs are found by him to be reasonable.

16.7.22 Ancillary Expenses. Any award of costs may include travelling allowances and ancillary expenses for participants in the Matter, their legal counsel, consultants or necessary witnesses.

16.7.23 Onus. In determining any Matter brought before the Split Lake Cree Arbitrator arising as a claim for compensation for Adverse Effects, including a claim under Articles 8 and 9 of this Agreement, the onus shall be on any Member, or entity with status to appear and make representations to the Split Lake Cree Arbitrator, who disputes such compensation claim for Adverse Effects, to establish that the Project did not cause or contribute to the Adverse Effect giving rise to the claim where such claim arises by virtue of an actual or purported Adverse Effect.

16.7.24 Reviews. All awards and orders of the Split Lake Cree Arbitrator shall be reviewable by the Split Lake Cree

Arbitrator within four (4) years of such award or order at the request of any claimant, and the Split Lake Cree Arbitrator shall have the power to award additional compensation, including interest. No review of awards or orders of the Split Lake Cree Arbitrator shall be made after the aforesaid times have expired, and all such awards and orders shall then be deemed to be final.

#### 16.8 GENERAL PROVISIONS

16.8.1 No Derogation. The provisions of this Article do not apply to actions of the Governor in Council or Lieutenant Governor in Council, Ministers or other servants of Her Majesty in Right of Canada or of Manitoba, where such actions are taken specifically pursuant to federal or provincial statute. Nothing in this subsection 16.8.1 of this Article shall derogate from specific obligations of Canada and Manitoba pursuant to this Agreement.

16.8.2 Canada. Notwithstanding Section 2 of The Arbitration Act (Manitoba), that Act does not, by its own force, apply to Canada, but Canada shall recommend to the Parliament of Canada, legislation to enact the provisions of this Article as they apply to Canada. Unless or until such

legislation is enacted, arbitration herein involving Canada is, as it relates to Canada, governed by common law rules.

16.8.3 Vacancy. Where a vacancy occurs in the office of the Arbitrator, or the Split Lake Cree Arbitrator, after the commencement of proceedings, the proceedings are not required to be recommenced if, but only if, the Participating Parties or the participants to the proceeding, as the case may be, unanimously consent.

16.8.4 Easement Resolution. The Parties agree that if a dispute relating to the Easements involves Split Lake Cree, then Split Lake Cree may, at its sole option, exercisable notwithstanding receipt by Split Lake Cree of a notice of referral to court, elect to refer such matter for resolution to the Dispute Resolution Mechanism for disputes between the Parties. Notwithstanding this subsection 16.8.4 of this Article, in the event that Canada is a party to a dispute relating to the Easements, involving either Manitoba and(or) Hydro, which dispute concerns an interest in land under the Easements, then the option to refer such matter to the Dispute Resolution Mechanism for disputes between the Parties shall not be available to Split Lake Cree.

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## ARTICLE 17

### 17.0 RATIFICATION AND EXECUTION

#### 17.1 INTRODUCTION

17.1.1 Introduction. This Article sets forth the ratification and execution process for this Agreement.

#### 17.2 RATIFICATION AND EXECUTION

17.2.1 Condition Precedent. The ratification and execution process required as a condition precedent to the execution of this Agreement is as set out below.

(a) Prior to the advance poll referenced in subparagraph 17.2.1(e)(iii) of this Article, Split Lake Cree, together with its consultants and legal advisors, shall conduct, on the Reserve, at least one (1) public meeting of Members in order to explain the nature and significance of this Agreement.

(b) Each public meeting shall be announced in the local media, and in a newspaper having general circulation in the Province of Manitoba, well in advance of such public meeting being held.

- (c) Split Lake Cree will publish a phone number, as part of the notice referred to in paragraph 17.2.1 (b) of this Article, which can be used by Members who wish to obtain a copy of the Agreement and information in relation to the Referendum vote.
  
- (d) Split Lake Cree will provide Manitoba, Canada, and Hydro with five (5) days written notice of the aforesaid public meeting(s), and they shall have the opportunity to attend.
  
- (e) A Referendum shall be conducted on or about June 1, 1992 in accordance with the secret ballot procedures prescribed by sections 4 to 20 of the Indian Referendum Regulations, C.R.C. 1978, c. 957, (the "Referendum"), excepting that:
  - (i) the term "elector" shall be read as "Member";
  
  - (ii) the date of the Referendum shall be deemed to be "the date of the voting" for the purpose of subsection 4(1) of the said Regulations;
  
  - (iii) there shall be an advance poll to be held on

the day which is two (2) Saturdays prior to the date of the Referendum;

(iv) the day of the advance poll shall be set forth in the notice posted by the electoral officer under subsection 4(1) of the said Regulations; and,

(v) the advance poll shall be conducted substantially in accordance with the procedures for voting on the date of the Referendum with such modifications as may be reasonably necessary.

(f) All Members eighteen (18) years of age or older shall be entitled to vote in the Referendum. If:

(i) at least fifty percent (50%) plus one (1) of the Members eligible to vote cast a ballot; and,

(ii) a majority of votes cast are in favour of approval of this Agreement;

then this Agreement shall be deemed to have been approved by the Referendum. If either condition



(i) or (ii) above is not met, then the Agreement shall be deemed to have been rejected by the Referendum.

- (g) The Referendum is to be conducted by Canada, and Canada shall provide to Manitoba and Hydro a statement in a form similar to that required under Section 29 of the said Regulations, but the term "elector" shall be read as "Member".
- (h) Prior to the date of the Referendum vote, Split Lake Cree shall provide to Canada, Manitoba and Hydro certification that the conditions precedent set out in paragraphs 17.2.1(a), (b) and (c) of this Article have been fulfilled.
- (i) Upon approval by the Referendum, Split Lake Cree shall forthwith request a Council Resolution authorizing the Chief and Council to execute this Agreement on behalf of Split Lake Cree.
- (j) Upon approval by the Referendum, Manitoba shall forthwith authorize an appropriate Minister to execute this Agreement on behalf of Her Majesty the Queen in Right of the Province of Manitoba.

(k) Upon approval by the Referendum, Canada shall forthwith authorize an appropriate Minister to execute this Agreement on behalf of Her Majesty the Queen in Right of Canada.

(1) Upon approval by the Referendum, Hydro shall forthwith request its Board of Directors to pass a resolution authorizing its appropriate officers to execute this Agreement on behalf of Hydro.

17.2.2 Agreement of No Force and Effect. This Agreement shall be without force and effect, and without prejudice to any of the Parties, unless and until it has been duly ratified and executed as provided in this Article.

### 17.3 INDENTURE

17.3.1 Concurrent Execution. It is a condition of this Agreement that concurrently with the execution of this Agreement, the parties to the Indenture, including Split Lake Cree, Split Lake Cree Trustees and the Corporate Trustee, shall execute the Indenture.

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## ARTICLE 18

### 18.0 GENERAL PROVISIONS

#### 18.1 INTRODUCTION

18.1.1 Introduction. This Article contains provisions of a general nature relating to this Agreement.

#### 18.2 INTERPRETATION

18.2.1 Headings. The Article and section headings, and the introductory subsection in each Article, and the Community Consultation Report attached as Schedule 18.1 are for reference and information purposes only, and shall not affect in any way the meaning or interpretation of this Agreement. The terms "of this Agreement", "hereof", "herein", and "hereunder" and similar expressions, refer to the Agreement in its entirety and not to any particular Article, section, subsection, paragraph or other portion of this Agreement.

18.2.2 Numbers, Plural, Gender. Words importing the singular number only shall include the plural, and vice versa, as the context may require; words importing the use of any gender shall include both genders; and words importing

persons shall include firms and corporations, and vice versa, as the context may require.

18.2.3 Metric Measure. In the event of a conflict between metric and Imperial measure, metric measure shall prevail.

### 18.3 PRESUMPTIONS

18.3.1 No Presumptions. The Parties have endeavoured to ensure that the terms of this Agreement are as clear as possible and do not intend that any presumption of law or interpretation be relied upon in interpreting this Agreement. In particular, that there shall be no presumption in favour of or against any Party.

### 18.4 VALIDITY OF PROVISIONS

18.4.1 Powers and Prerogatives. Nothing in this Agreement shall be deemed to bind or infringe upon the powers and prerogatives of the Parliament of Canada or the Legislative Assembly of Manitoba or any legislative powers of Chief and Council of Split Lake Cree.

18.4.2 Statutory Requirements. Nothing in this Agreement shall require any Party to take any actions not otherwise

provided for in this Agreement, or required by statute or regulation, or exempt any Party from, or be deemed to modify, any requirement arising under statute or regulation.

**18.5 AMENDMENT, MODIFICATION, ETC.**

18.5.1 Amendment - General. The terms, conditions, and provisions of this Agreement may be amended or modified by the Parties, but no amendment to, or modification of, any of the provisions of this Agreement shall be effective unless made in writing, with equivalent procedure and formality, and signed by all of the Parties. The Trustees shall be given reasonable notice of any proposed and(or) agreed amendment or modification.

18.5.2 Amendment - Financial. Any amendment to the financial provisions or limitations specified in this Agreement shall only require the approval of the Governor in Council, the Lieutenant Governor in Council, a Council Resolution and resolution of the Board of Hydro.

**18.6 PARTIES**

18.6.1 Binding on Parties. This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and assigns. Except as

specifically set forth in this Agreement, nothing in this Agreement is intended to confer upon any other person any rights or remedies under or by reason of this Agreement.

18.6.2 Not to Share. No member of the House of Commons of Canada or the Legislative Assembly of Manitoba, or any employee or servant thereof, except as may be performed in the course of normal duties and responsibilities, will be admitted to or share a part of this Agreement, or of any contract, agreement or commission made pursuant to this Agreement, or to any benefit to arise from this Agreement.

#### 18.7 NOTICE

18.7.1 Notices. All notices and other communications provided for in this Agreement shall be in writing, and shall be given by personal delivery to an officer or other responsible employee of the addressee, or sent by tele-facsimile, charges pre-paid, at or to the applicable addresses or tele-facsimile numbers, as the case may be, set out in subsection 18.7.1 of this Article, opposite the respective Party's name, or, at or to the last address or addresses or tele-facsimile number or numbers as any Party may from time to time designate to the other Parties in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and



effectively given on the date of such delivery, if such date is a business day and such delivery has been made during the normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the business day next following such date of delivery. Any communication which is transmitted by tele-facsimile as aforesaid, shall be deemed to have been validly and effectively given on the date of the transmission if such date is a business day and such transmission, was made during the normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the business day next following such date of transmission.

**To Canada:**

The Regional Director General  
The Department of Indian Affairs and Northern  
Development  
Suite 1100, 275 Portage Avenue  
Winnipeg, Manitoba  
R3B 3A3

Facsimile number: (204)983-6500  
(204)983-0861

**To Split Lake Cree:**

Split Lake Cree First Nation  
Split Lake, Manitoba  
R0B 1P0

Facsimile number: (204)342-2270

**To Hydro:**

Manitoba Hydro  
General Counsel  
3rd Floor, 810 Taylor Ave.

Winnipeg, Manitoba  
R3C 2P4

Facsimile number: (204)474-4854

To Manitoba:

Deputy Minister of Northern Affairs  
Room 327, Legislative Bldg.  
Winnipeg, Manitoba  
R3C 0V8

Facsimile number: (204)945-3727

18.8 ENTIRE AGREEMENT

18.8.1 Agreement Supersedes. This Agreement constitutes the entire Agreement between and among the Parties, pertaining to the subject matter of this Agreement, and, except as expressly provided, this Agreement supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between or among the Parties with respect to the subject matter of this Agreement. There are no representations, warranties, collateral agreements or conditions except as expressed in this Agreement.

18.8.2 No Merger. Except as expressly provided in this Agreement, or in any other agreement among the Parties, no provisions of any other agreement shall merge with this Agreement.

18.8.3 Assignment. Except as expressly provided in this Agreement, neither this Agreement nor any portion or provision of this Agreement, may be assigned without prior written permission of all of the Parties.

18.8.4 Further Action. Each of the Parties to this Agreement will, from time to time, at another Party's request and expense, and without further consideration, execute and deliver such other instruments of transfer, conveyance and assignment, and take such further action as the other may require, to more effectively complete any matter provided for in this Agreement.

18.9 GOVERNING LAW

18.9.1 Laws in Manitoba. This Agreement shall be governed by, and construed in accordance with, the federal and provincial laws in force in the Province of Manitoba.

18.9.2 Citations. Any reference to legislation shall include amendments thereto or successor legislation, except where the statute or regulation is identified in this Agreement as that in force at the Date of this Agreement.

18.9.3 Enforceable by Parties. This Agreement shall be enforceable by any of the Parties, but not otherwise,

provided that any Member shall have rights of enforcement as beneficiary of the Trust established by the Indenture.

18.9.4 Licences. Nothing in this Agreement is intended to detract from, or relieve any Party from, obligations incurred pursuant to any approvals, licences or authorities under which such Party operates. Each Party expressly reserves the right to raise any issue relating to such licences or authorities.

18.9.5 Federal Licences. Nothing in this Agreement is intended to qualify or amend approvals, licences or permits of any kind, granted by Canada pursuant to any statute other than the Indian Act (Canada).

18.10 NFA

18.10.1 No Precedent. Neither this Agreement nor any provision of this Agreement, shall constitute a precedent for the position of any or all Parties in relation to like or unlike matters arising in relation to any Third Party.

18.10.2 No Admission. Nothing in this Agreement shall constitute an admission of liability on the part of any of the Parties.

18.10.3 Without Prejudice. This Agreement is without prejudice to the position of any Party with respect to the provisions of the NFA, as those provisions may apply to any Third Party.

18.11 WARRANTY

18.11.1 Independent Advice. In addition to the representations and warranties contained in the Community Consultation Report attached as Schedule 18.1 to this Agreement, Split Lake Cree warrants that, throughout the negotiations leading to this Agreement:

- (a) it has been independently advised by negotiators, legal counsel, technical advisors and consultants of its choice with respect to all matters arising in connection with or dealt with in this Agreement;
- (b) this Agreement has been jointly drafted, considered and revised by representatives of all of the Parties, and duly authorized Split Lake Cree representatives have participated fully in the preparation of this Agreement; and,
- (c) it has caused all aspects of this Agreement to be explained at community meetings, which were open to

all Members, in order that all Members could have had the opportunity to discuss all relevant matters under negotiation and in order that the Members could have had the opportunity to make an informed decision at the time of ratification.

18.11.2 Acknowledgment. The Parties acknowledge that there has been extensive information gathered and exchanged among the Parties, regarding the impacts of the Project and the implementation of the provisions of the NFA. This has included information gathered or commissioned by each of the Parties; information jointly obtained by two (2) or more Parties; information obtained by or on behalf of Split Lake Cree but funded by another Party or Parties; and information obtained by Split Lake Cree for its own purposes in the conduct of these negotiations. The Parties acknowledge that additional information could have been gathered; but that it was, and is, the unanimous judgment of the Parties that the gathering of additional information should not further delay the implementation of the NFA and other measures provided for in this Agreement; and that this Agreement should be concluded on the basis of the information in the possession of the Parties at the Date of this Agreement.

18.11.3 Disclosure - Canada. Based upon information received from inquiries made to the Assistant Deputy

Ministers of the departments of the government of Canada listed in Schedule 18.2 of this Agreement, Canada warrants that none of the said departments of the government of Canada have, at any time prior to December 31, 1991, made a decision to withhold information or documentation from Split Lake Cree, which information or documentation a department could reasonably have known was material to the implementation of the NFA for the benefit of Split Lake Cree, except such information or documentation as is or was of a privileged or confidential character, or is or was prepared for the purposes of presenting recommendations to the Governor General in Council.

18.11.4 Disclosure - Manitoba. Based upon information received from inquiries made to the Assistant Deputy Ministers of the departments of the government of Manitoba listed in Schedule 18.3 of this Agreement, Manitoba warrants that none of the said departments of the government of Manitoba have, at any time prior to December 31, 1991, made a decision to withhold information or documentation from Split Lake Cree, which information or documentation a department could reasonably have known was material to the implementation of the NFA for the benefit of Split Lake Cree, except such information or documentation as is or was of a privileged or confidential character, or is or was prepared

for the purposes of presenting recommendations to the Lieutenant Governor in Council.

18:11.5 Disclosure - Hydro. Hydro warrants that it has not, at any time prior to December 31, 1991, made a decision to withhold information or documentation from Split Lake Cree, which information or documentation Hydro could reasonably have known was material to the implementation of the NFA for the benefit of Split Lake Cree, except such information or documentation as is or was of a privileged or confidential character, or is or was prepared for the purposes of presenting recommendations to the Board of Hydro.

18.11.6 Disclosure - Split Lake Cree. Based upon information received from inquiries made to Chief and Council, Split Lake Cree warrants that it has not, at any time prior to December 31, 1991, made a decision to withhold information or documentation from Canada, Manitoba or Hydro, which information or documentation Split Lake Cree could reasonably have known would have been material to the decision of the other Parties in entering into this Agreement, except such information or documentation as is, or was, of a privileged or confidential character, or is, or was, prepared for the purposes of presenting recommendations to Chief and Council.

18.12 INDEPENDENT LEGAL ADVICE




18.12.1 Independent Legal Advice. Each of the specific releases to be provided under subsections 8.2.3, 8.2.4, 9.2.3, 9.2.4 and 15.7.2 of this Agreement shall be accompanied by a certificate of independent legal advice and such release and certificate shall be in the form and have the content of Schedule 18.5 of this Agreement, with such modification as may be necessary in the particular circumstances.

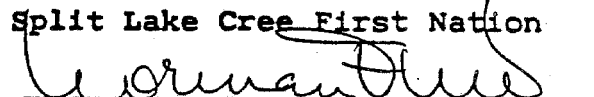
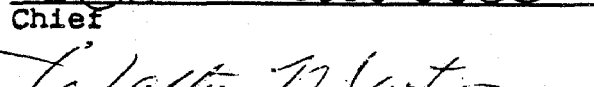
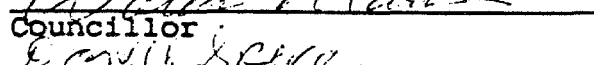
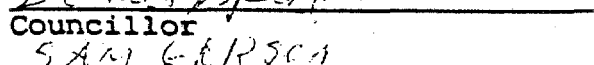
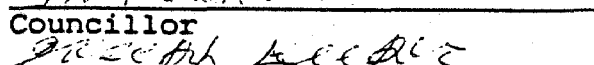
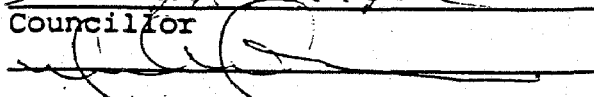
18.13 APPROPRIATION

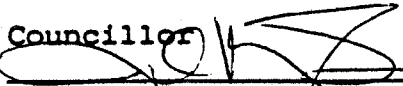
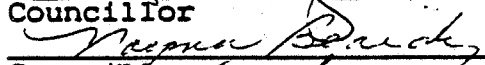
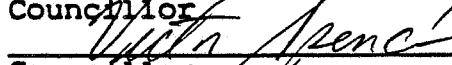




18.13.1 Appropriation. The amounts payable by Canada and Manitoba pursuant to this Agreement are subject to appropriation by the Parliament of Canada and the Legislative Assembly of the Province of Manitoba, respectively.

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates indicated below.

Signed, sealed and delivered) in the presence of:


  
Witness as to Chief and Councillors

Split Lake Cree First Nation  
  
Chief  
  
Councillor  
  
Councillor  
  
Councillor  
  
Councillor  
  
Councillor

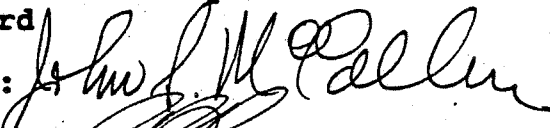
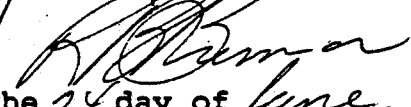
Councillor   
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on the 24 day of June , 1992.

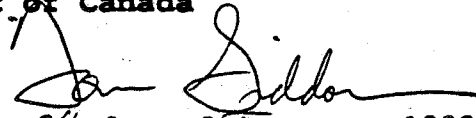
Her Majesty the Queen in the Right of the Province of Manitoba

Per:   
 on the        day of        , 1992.

The Manitoba-Hydro Electric Board

Per:   
 Per:   
 on the 24 day of June , 1992.

Her Majesty the Queen in The Right of Canada

Per:   
 on the 24 day of June , 1992.

**SCHEDULE 18.1**

**COMMUNITY CONSULTATION  
REPORT**

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## **1.0 OVERVIEW OF COMMUNITY CONSULTATION PROCESS**

### **1.1 Introduction**

The most important motivating factor to Split Lake Cree, in their efforts to reach an effective implementation of the NFA, has been their continuing belief that they were and are, entitled to adequate compensation for the injuries inflicted upon their land, their lives and their livelihood by the Project.

For years Split Lake Cree were told that the NFA would be implemented and that the injuries that they had suffered would be compensated. However, nothing substantial happened until the NFC was able to negotiate a settlement of Article 6.1 of the NFA, and the NFCRA was formed. Article 6.1 of the NFA was an obligation that rested with Canada.

Apart from the water and sewer settlement, Split Lake Cree had been able to settle some fishing and trapping claims on a "pro tem" basis, but very little else.

With the successful negotiation of Article 6.1, Split Lake Cree were able to see the value of a negotiated settlement. They obtained some insight and understanding of the value of the negotiating process as opposed to Arbitration.

Global negotiations during 1989 and early 1990 resulted in a Proposed Basis of Settlement (PBS). In April, 1990, the NFC Bands agreed to hold information workshops on the PBS in each of their communities in order to get further direction from their Band members.

During the spring and summer of 1990, from May to July, information workshops were held on the Split Lake Reserve. Split Lake Cree leaders received clear direction at these meetings from their Members that Split Lake Cree should proceed into the second phase of global negotiations.

When the other NFC Bands decided to suspend global negotiations in late August, 1990, Split Lake Cree leaders reported back to their people. Chief and Council were instructed to continue their efforts to get the NFA implemented as per the completed PBS, formally endorsed by the negotiators for the four Parties to the NFA on July 19, 1990.

From September to November, 1990 an agreement to continue the global negotiation process was completed between Split Lake Cree and the other Parties. On November 30, 1990 a Letter of Understanding to this effect was signed between Split Lake Cree and the other Parties.

### **1.2 Split Lake Cree Concerns About the Negotiation Process**

At this point, Chief and Council were concerned that the Members continue to be meaningfully involved in the ongoing negotiation process.

**Chief and Council** felt strongly that membership involvement was key to a successful negotiation process, for two reasons:

- the first was that it was of paramount importance that the **Members** insofar as possible, understand and participate in the decision making processes on issues that are to be the building blocks for their future; and
- the second, equally important reason, was that the **Split Lake Cree** negotiating team be able to negotiate on the basis of informed feedback and ongoing direction from the **Members**.

In order to reach the above stated goal, an effective communication process had to be put into place.

### **1.3 Community Consultation Process**

As a first step in the consultation process, a community consultation process staff team was created and put in place on the **Split Lake Reserve**. This team consisted of four local people: two co-ordinators, a secretary and a financial officer.

Setting the communication process into place consisted of the following elements:

- an office with the requisite office equipment; and
- technical advisors working on all the subject areas identified in the **PBS**.

The plan for dealing with the different subject areas was that workshops were to be organized, to be held in **Split Lake**, at which the advisors could dialogue with the **Members**.

The goal of these workshops was to provide and to validate existing information on the content and process of the ongoing negotiations, and to obtain feedback and any new information or advice for the negotiating team.

The community consultation team was to explore and use whatever other means of communication that could be useful.

The plan is outlined in the attached booklet, entitled the "Community Consultation Process" (Appendix 1). The final draft was produced in both English and Cree.

#### **1.3.1 REFERENCE GROUPS**

In order to facilitate the consultation process, Reference Groups, consisting of local people knowledgeable about a particular subject area, were formed. There was a chairman and co-chairman for each group.

There were Reference Groups formed for the following subject areas: Land, Resources, Community Development, Implementation.

### 1.3.2 WORKSHOPS IN THE COMMUNITY

The formal workshops were facilitated by an advisor(s) who had the requisite expertise in the subject area and category being discussed. Also present was an advisor, fluent in the Cree language and knowledgeable of the cultural dynamics necessary to secure meaningful group participation.

The first workshop held in Split Lake attended by **Chief and Council** and Reference Group members was a slide show presentation of an overview on the PBS.

Initially, the workshops involved only the Reference Groups but very quickly workshop attendance expanded to include any Member who was interested.

The format for the workshops was an initial presentation by the consultant, followed by a question and answer session and discussion.

There were two very positive results coming from the workshop process:

- first, the **Members** were given an understanding of the information and perceptions of the other **Parties** about a particular subject area; and
- second, the negotiating team and technical advisors were able to get feedback from the **Members** on the information presented plus any new information about the subject area, including the aspirations and perceptions of the **Members**.

### 1.3.3 MEETINGS OF REFERENCE GROUPS ON AN INFORMAL BASIS

As the traditional Cree method of communication has been by word of mouth in an informal setting, there were many informal meetings and discussions among members of the Reference Groups. These types of meetings and discussions were an important adjunct to the organized workshops.

### 1.3.4 THE YOUTH

Split Lake Cree leaders were concerned that the younger people at Split Lake, because of the Cree tradition of respect for the Elders, would not participate in the workshops and general membership meetings.

Workshops for the youth were organized for July and August, facilitated by the Deputy Chief and the community consultation co-ordinators.



### 1.3.5 USE OF THE MEDIA

#### 1.3.5.1- Television

The slide show, overview presentation of the PBS, was produced on videotape with a Cree language explanation. This was shown several times on the local TV station.

#### 1.3.5.2 Newsletter

There were two newsletters published, the first in March and the second in June.

As there did not appear to be much response to the written newsletters, the coordinators decided to put their efforts into the more direct oral forms of communication.

### 1.3.6 ATTENDANCE AT NEGOTIATION MEETINGS

The opportunity for Split Lake Councillors and Elders to attend, observe and participate in the negotiation meetings has proven to be a useful learning experience, not only for those individuals attending, but for the entire community. The majority of those attending the negotiation meetings were also members of the various Reference Groups.

Attendance at these meetings gave those participating the opportunity to provide on the spot advice to the negotiators and to report back to the membership at Split Lake, not only on substance of the meetings but on the particular process of negotiation. They received an understanding of the complexities and difficulties inherent in the negotiation process with four parties involved.

### 1.3.7 Split Lake Cree GENERAL MEMBERSHIP MEETINGS

From January, 1991 through January 1992, there were almost monthly Split Lake Cree general membership meetings in Split Lake, to update the Members on the negotiations and to provide the membership the opportunity to express their opinions and thoughts on the negotiations.

The senior negotiator and the senior advisor were present, when requested by Chief and Council, at these meetings.

### 1.3.8 INTERPRETATION

The functional language of Split Lake Cree is their own Cree language. The Cree language as spoken by Split Lake Cree is the Swampy Cree form of Cree with its own localisms and colloquialisms peculiar to Split Lake. There are community and regional differences in the Cree language in the same way as there are differences in any language in any other country.

It was therefore necessary to have all communication at workshops and other types of meetings translated from English into Cree. An important component of effective translation from English into Cree is not only the ability to interpret the actual words being spoken but also the ability to interpret concepts that are foreign to the Cree way of looking at things. This ability to interpret concepts is more important than the interpretation of words.

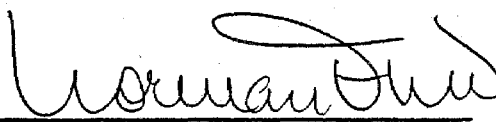
#### 1.4 Summary and Conclusions

The formation of the community consultation team with their own office in the general administration offices in Split Lake, helped to legitimize, in the minds of Split Lake Cree the negotiation with the other Parties. For the first time, the resources necessary for real participation in the negotiation process were available to the leaders and membership. There is no doubt the community consultation process helped the membership feel that they were playing an integral part in the negotiations. They were one of the players and not just part of the stakes.

It is axiomatic that the issues closest to the heart and understanding of Split Lake Cree, particularly the Elders, are the land and resources. However, the membership, particularly the younger leaders, are keenly aware that there is a changing world forcing its way upon them. They hope to choose what is best of the new and keep what is best in the old, in order to plan and find their way to the future.

The one conclusion that the writers have reached concerning the total process of negotiation is the paramount importance of dialogue among the competing interests. It is in the self interest of each Party and to the benefit of all the Parties, i.e., the Indian people, governments, power corporations, to arrive at a common understanding of each other's position. Through this type of a process the prospect of arriving at an effective negotiated agreement can become more achievable.

  
\_\_\_\_\_  
Joseph Irvine Keeper

  
\_\_\_\_\_  
Norman Flett  
Chief

## 2.0 COMMUNITY WORKSHOPS - DATA

### 2.1 Subject Area Classification

The subject areas covered the broad categories of Land, Resources, Community Development and Implementation. Within these broad categories there was a more detailed classification addressing specific matters which needed to be addressed.

| Land  | Resources  | Community Development   | Implementation   |
|---|--|---|--|
| Compensation Lands<br>Permit/Fee Simple<br>Lands<br>Hydro Easement<br>Project Operations/<br>Water Regime | Joint Land and Resource<br>Management<br>Resource<br>Compensation<br>Fund<br>Mercury and Environment | Economic Development<br>Employment and Training<br>Cultural Development<br>Local Government<br>Social Development<br>Project Employment | Four Party Structure<br>Trust Indenture<br>Mercury Disability Fund<br>Environmental<br>Monitoring<br>Remedial Works<br>Split Lake-Owned<br>Power Commission<br>Ratification<br>Government Funding<br>and Programming |

### 2.2 Workshop Sessions - Split Lake

There were a total of 39 separate workshop sessions held on 35 separate working days from January 8, 1991 to the end of July, 1991. This does not include general membership meetings nor does it include strategy and information sessions between the negotiating team and the Chief and Council.

The majority of these workshop sessions were held from January to April, 1991 as this period came within the original 90 day timeframe which was the initial estimate for the negotiations.

**Table 1: January 1991**

| Date         | Location  | Category              | Attendance |
|--------------|-----------|-----------------------|------------|
| Jan 8/91     | Boardroom | Overview              | 17         |
| Jan 9/91     | Boardroom | Lands                 | 18         |
| Jan 9/91     | Boardroom | Mercury & Environment | 18         |
| Jan 10/91    | Boardroom | Resources             | 19         |
| Jan 15/91    | Band Hall | Community Development | 20         |
| Jan 16/91    | Band Hall | Implementation        | 27         |
| Jan 30/91    | Band Hall | Lands                 | 30         |
| Jan 31/91    | Band Hall | Resources             | 30         |
| Total 7 days |           | 8 Workshops           | 179        |
|              |           | Average/Session       | 22         |

**Table 2: February 1991**

| Date         | Location  | Category              | Attendance |
|--------------|-----------|-----------------------|------------|
| Feb 1/91     | Band Hall | Budget                | 15         |
| Feb 6/91     | Band Hall | Remedial Works        | 32         |
| Feb 6/91     | Band Hall | Employment            | 32         |
| Feb 14/91    | Boardroom | Lands                 | 21         |
| Feb 20/91    | Band Hall | Implementation        | 56         |
| Feb 21/91    | Band Hall | Resources             | 60         |
| Feb 26/91    | Band Hall | Remedial Works        | 32         |
| Feb 27/91    | Band Hall | Trust Indenture       | 32         |
| Feb 27/91    | Band Hall | Community Development | 34         |
| Feb 28/91    | Band Hall | Mercury & Environment | 23         |
| Total 8 days |           | 10 Workshops          | 337        |
|              |           | Average/Session       | 34         |

**Table 3: March 1991**

| Date         | Location  | Category              | Attendance |
|--------------|-----------|-----------------------|------------|
| Mar 5/91     | Band Hall | Implementation        | 52         |
| Mar 6/91     | Band Hall | Resources             | 48         |
| Mar 14/91    | Band Hall | Lands                 | 55         |
| Mar 19/91    | Band Hall | Remedial Works        | 53         |
| Mar 19/91    | Band Hall | Employment            | 49         |
| Mar 20/91    | Band Hall | Resources             | 26         |
| Mar 26/91    | Band Hall | Mercury & Environment | 36         |
| Mar 27/91    | Band Hall | Community Development | 38         |
| Total 7 days |           | 8 Workshops           | 357        |
|              |           | Average/Session       | 45         |

**Table 4: April 1991**

| Date         | Location  | Category                            | Attendance |
|--------------|-----------|-------------------------------------|------------|
| Apr 4/91     | Boardroom | Lands                               | 18         |
| Apr 4/91     | Boardroom | Electricity Distribution<br>Company | 14         |
| Apr 12/91    | Boardroom | Funding and<br>Programming          | 10         |
| Apr 18/91    | Band Hall | Community Development               | 39         |
| Total 3 days |           | 4 Workshops                         | 81         |
|              |           | Average/Session                     | 20         |

**Table 5: May 1991**

| Date         | Location  | Category              | Attendance |
|--------------|-----------|-----------------------|------------|
| May 8/91     | Band Hall | Resources             | 18         |
| May 9/91     | Band Hall | Lands                 | 21         |
| May 28/91    | Boardroom | Mercury & Environment | 16         |
| May 29/91    | Band Hall | Trust Indenture       | 31         |
| May 30/91    | Band Hall | Resources             | 34         |
| Total 5 days |           | 5 Workshops           | 120        |
|              |           | Average/Session       | 24         |

**Table 6: June 1991**

| Date         | Location      | Category                                | Attendance |
|--------------|---------------|---|------------|
| Jun 4/91     | Resource Area | Land Site Visits and<br>Ground Truthing | 8          |
| Jun 5/91     | Band Hall     | Resources                               | 34         |
| Total 3 days |               | 2 Workshops                             | 42         |
|              |               | Average/Session                         | 21         |

**Table 7: July 1991**

| Date         | Location  | Category                               | Attendance |
|--------------|-----------|--|------------|
| July 18/91   | Band Hall | NFA Overview Update                    | 60         |
| July 31/91   | Band Hall | Youth Community<br>Information Session | 200        |
| Total 2 days |           | 2 Workshops                            | 260        |
|              |           | Average/Session                        | 130        |

**Table 8: Number in Each Category**

|                                  |           |
|----------------------------------|-----------|
| Land                             | 7         |
| Resources                        | 8         |
| Community Development            | 4         |
| Remedial Works                   | 3         |
| Employment                       | 2         |
| Implementation                   | 3         |
| Environment/Mercury              | 4         |
| Trust Indenture                  | 2         |
| Overview                         | 1         |
| Budget                           | 1         |
| Electricity Distribution Company | 1         |
| Funding and Programming          | 1         |
| Youth Session                    | 1         |
| Information Session              | 1         |
| <b>TOTAL</b>                     | <b>39</b> |

**Table 9: Workshop Summary**

|                    |       |
|--------------------|-------|
| Sessions           | 39    |
| Dates              | 35    |
| Total Attendance   | 1,376 |
| Average Attendance | 35    |

### 2.3 Negotiation Meetings In Winnipeg

There were a total of 706 person days of negotiation meeting attendance by the Split Lake Councillors and Elders over the period from January 1991 to January 1992.

**Table 10: Participation in Winnipeg Negotiations**

| Month          | Person Days     |
|----------------|-----------------|
| January 1991   | 14 person days  |
| February 1991  | 33 person days  |
| March 1991     | 21 person days  |
| April 1991     | 29 person days  |
| May 1991       | 39 person days  |
| June 1991      | 50 person days  |
| July 1991      | 55 person days  |
| August 1991    | 32 person days  |
| September 1991 | 64 person days  |
| October 1991   | 103 person days |
| November 1991  | 80 person days  |
| December 1991  | 129 person days |
| January 1992   | 57 person days  |
| Total          | 706 person days |

### 2.4 Comments

The attendance at the workshops peaked in March when a total of 357 people attended 8 sessions for an average of 45 per session.

The total attendance at the workshop sessions over the seven month period January-July, 1991 was 1,376.

## 2.5 Reference Groups

The community workshop process was chosen as the most effective method of acquiring the community knowledge and input into the negotiation process within the constraints of time, resources and money.

The membership of each Reference Group was chosen as those individuals having particular skills and knowledge in the subject area.

The Reference Groups were the community participants which represented the membership in the ongoing negotiation process.

**Table 11: Reference Group List**

| <b>Lands</b>   | <b>Community Development</b>  |
|--|---|
| Alfred Beardy - Chairman<br>Joseph Morris<br>Isaac Keeper<br>Eli Harvey<br>John Garson<br>Ahab Flett   | Michael D. Garson - Chairman<br>Norma Beardy<br>Charlotte Wastesicoot<br>Lazarus Kitchekeesik<br>Daniel Spence<br>John Garson |
| <b>Resources</b>   | <b>Implementation</b>   |
| Victor Spence - Chairman<br>Sam Garson<br>Daniel Kirkness<br>Ahab Flett<br>Billy Spence<br>John Garson | John P. Mayham - Chairman<br>Walter Martin<br>Allison Kitchekeesik<br>Norman Flett<br>Lazarus Kitchekeesik<br>John Garson     |

## 3.0 WORKSHOP ABSTRACTS

### 3.1 Land

The issues that were identified and addressed in the workshops on Lands dealt with the two categories of land i.e. exchange **Reserve Lands (Compensation Lands)** and **Fee Simple Lands**. They were the following:

- 1) Finalization of new Reserve boundaries.



- 2) Negotiations on reasonable limits to Manitoba rights-of-way (Example: P.R. 280).
- 3) Review of land transfer procedures/resources within Manitoba/Canada to ensure there are sufficient staff resources and an efficient process; need for a transfer regime to monitor progress.
- 4) Transfer schedule and deadline date required so new Reserve is delivered expeditiously.
- 5) Completion of a circulation process within ninety (90) days and for the Parties to resolve most land transfer issues during negotiations. When does Manitoba propose to initiate the process of transferring the Assean Lake Reserve to Split Lake Cree?
- 6) Establishing monitoring process to determine Manitoba's progress in compensating Third Party interests and need to define "Best Efforts".
- 7) Defining funds required for planning of new Reserve Land to fulfill "Joint interests in orderly development" (p.12 of PBS).
- 8) Mapping of new Reserve Land so Reserve can be planned. What scale of map?
- 9) Provisions which allow Split Lake Cree to use, develop, or occupy proposed new Reserve Land prior to actual transfer.
- 10) Investigating whether land owned by Canada within the Reserve could be transferred to Reserve status as part of overall transfer regime.
- 11) Other issues and concerns identified by Split Lake Cree.

The first Land Use Study under the NFA, Article 3, carried out in the early 1980's, had promoted a mind set and conceptual framework for land selection among Split Lake Cree that was slow to change. The land selection process had proposed the selection of a several small but key Reserve locations, scattered throughout the whole Resource Area. The basic rationale for this type of selection was that the control of these key sites would give Split Lake Cree an important and vital voice in any development in the Resource Area. The disadvantage was their isolation from the main Reserve and inaccessibility by road.

The provincial offer of a much larger Reserve Land base than offered under the NFA, which was located in a favorable area and was accessible by road, was accepted by Split Lake Cree. The subsequent addition of a parcel of Reserve Land at Waskaiowaka Lake served to allay fears that there would not be any Reserve Land in the heart of the viable remainder of their Resource Area.

The idea of owning several parcels of land with a **Fee Simple Title**, in the same area as the sites that had earlier been selected for **Reserves** was a concept that had not ever been considered by **Split Lake Cree**. Since time immemorial, the **Split Lake Resource Area** has been the permanent tribal homeland of **Split Lake Cree**. There was apprehension in the minds of **Split Lake Cree** of the concept of "fee simple" ownership. There were many questions such as: (1) Who would own the land? (2) Would it be subject to taxation and regulation under provincial laws? (3) How would the Indian Act (Canada) apply or could it apply? (4) Could **Fee Simple Lands** be more easily expropriated than Indian lands and if expropriated, would they be replaced?

Large scale maps and slides were produced for the workshops which showed, in detail, all the proposed land transfers, both the new **Reserve Lands** and the **Fee Simple Lands**.

There was much discussion in the workshops about the nature of "fee simple" ownership as compared to **Reserve Lands**. The application of provincial laws as they might apply to **Fee Simple Lands** owned by **Split Lake Cree** was explained. The structure proposed for **Split Lake Cree** ownership of the **Fee Simple Land**, the **Land Corporation**, was explained. The differences between **Split Lake Cree** ownership of **Fee Simple Land** as compared to **Split Lake Cree** interest in **Reserve Land** was explained.

The land selected was examined on the ground by **Members**, provincial technicians and **Split Lake Cree** technicians and advisors. There were some changes as a result of these visits but as of this date, there appears to be general agreement by **Split Lake Cree** as to the lands selected and the process contemplated by the relevant **Parties** for completing the land transfers.

### **3.2 Resources**

The issues that were identified and addressed in the workshops on resources dealt with two aspects of resources: planning and management of land and resources, and the process of ensuring the appropriate allocation of the moneys in the **Resource Compensation Fund**. They were the following:

- 1) **Planning and management of land and resources:**
  - The definition and implementation of a regime which will possess real and substantive authority for the planning and management of land and resources in the **Resource Area**.
  - The establishment of regimes which will involve a true sharing of authority between **Manitoba** and **Split Lake Cree** for the whole of the **Resource Area** including mineral development, protecting the ultimate authority of each with regard to its respective lands.

- The development of a process in which substantive planning and management can take place at the **Resource Area** level.
- The consolidation of the many functions and activities related to land and resource planning and management within a streamlined structure minimizing the number of organizational bodies.
- The level of technical support that could be available to the regime, the relationship of existing provincial staff and the specific provincial and **Split Lake Cree** responsibilities for financing of the regime.
- The role of **Members** in the day-to-day management of conservation, resource enhancement and regulatory activities.
- The role of public participation and consultation in the development and the review of land use and resource management plans.
- The support for independent research and development related to land and resource management in the **Split Lake Resource Area**.
- The role of the **Land and Resource Management** regime including: the right to determine the **Resource Area** total annual allowable cut, to set aside lands to be protected from active harvesting and to propose timber cutting quotas for **Split Lake Cree**.

2) **Resource Compensation:**

- Reaching agreement among **Split Lake Cree** and the other **Parties** on the amount of compensation for each resource category.
- Clarification of the **Adverse Effects** for which compensation is intended to be paid, and the process for determination of those eligible for compensation and the related amounts.
- A detailed examination of other purposes for which payments from the **Resource Compensation Fund** can be paid.
- The structure, mandate and composition of the **Trustees** of the **Resource Compensation Fund**.
- The relationship of the **Trustees** to **Chief and Council** and resource harvester organizations.

The two major issues that were identified and discussed in the workshops were:

- the concept of joint management of land and resources, in the **Split Lake Cree Resource Area**, by **Manitoba and Split Lake Cree**; and
- the management of the **Resource Compensation Fund**.

The issue of integrated management was examined very carefully by **Split Lake Cree**. Initially this concept was difficult for the **Members** to comprehend and to accept. **Split Lake Cree** have agreed to cooperate with **Manitoba** in integrated management of land and resources. They have accepted the concept in principle, but it is the method of implementation of the joint management mechanism that will test its effectiveness.

The issue of the management of the **Resource Compensation Fund** was discussed at length in the workshops. There was a general agreement that the funds should be used for innovative and creative approaches for developing and enhancing the use of the resources. There was also the recognition that it may be necessary to explore alternative economic activities to the traditional use of resources because of changing conditions, environmentally and in the market forces of the outside world.

It was agreed that the existing commercial user groups would have to participate in determining how compensation funds would be utilized.

In the matter of the domestic use of resources compensation, as damages to domestic harvesting impacted every resident **Member**, it was agreed that this matter could best be handled through a process that would allow for the participation of the membership with **Chief and Council**.

### 3.3 Remedial Works

The issues that were identified and addressed in the workshops on **Remedial Works** were related to the planning process for the operations and expenditures of **Split Lake Cree Remedial Works** activities. They were the following:

- 1) What are the **Remedial Works** required?
- 2) How much will they cost to design and build?
- 3) How much will they cost to operate and maintain?
- 4) When can they be built?
- 5) What other **Remedial Works** will **Hydro** undertake?

- 6) How can regular programs be used with Remedial Works expenditures?
- 7) How can Split Lake Cree benefit from Hydro and Manitoba policies for use of local labour and business?
- 8) How will Split Lake manage this?
- 9) What are the upgrading requirements for PR 280 to Thompson and Gillam, and when can they be scheduled?
- 10) What are the potential liabilities that may run with Split Lake Cree constructed works, and the relationship to the continuing Hydro liability for personal injury and death?

The Remedial Works of Split Lake Cree encompass the following broad categories:

- navigation and transportation improvements;
- direct Remedial Works, including community improvements;
- alternative recreational facilities;
- operation and maintenance; and
- engineering and project management and advice.

### 3.4 Employment and Economic Development

The issues that were identified and discussed in the workshops on Employment and Economic Development were:

- 1) Training in the past has been found to be too short, and in some instances was inadequate.
- 2) Past training has taken place too late to allow for success on the job, or to enable individuals to apply for jobs while they are still available.
- 3) Split Lake Cree must be able to respond immediately to any labour demand requests being made by CEIC, Hydro and any other contractors.
- 4) Information on past Project employment has shown that a significant number of northern Natives hired resigned or were fired within the first 30 days of employment.
- 5) It may be helpful to understand the skills practised or coping mechanisms developed by some of the "successful workers".
- 6) Some concern has been expressed regarding the skills that have been requested on some of the job orders, in the past. Some Members believe that some job orders requested skills which may have not really been necessary to perform the particular job.

- 7) There is concern with the end results of applying the preset employment goals which have been specified for some of the trades. This in actuality may have reduced the overall number of Native people employed in the past.
- 8) Concern has been expressed with the past method of making job referrals using a rotating community approach.
- 9) Measures need to be taken during the employment phase of a Project to overcome past barriers and problems.
- 10) What needs to be done after the employment phase?

The facts of employment and economic development are the challenges that are implicit in all aspects of the Agreement. As a consequence, the matters of economic development and employment came up for discussion in most of the workshop sessions.

In the workshops on economic development and employment, there was a focus on the barriers which Split Lake Cree face in trying to reach these objectives.

There was the recognition that there were training, educational and developmental processes that must be set into place which will enable the short and long term needs to be fulfilled. There was discussion of how the Economic and Social Development Account could be used to pursue Split Lake Cree objectives, both independently and in coordination with government Funding and Programming and Hydro initiatives.

Other issues identified and discussed were the systemic barriers within governmental agencies, Hydro and unions, such as hiring practices, referrals through Canada Employment, Hydro hiring and contracting criteria and union contracts.

Clearly, there is a definite and distinct need to set the needed programs into place and this can only be accomplished with the active commitment and cooperation of Hydro, Manitoba and Canada.

### 3.5 Environment and Mercury

#### ENVIRONMENT

The issue of the environmental impact of the Project upon Split Lake Cree is one that exceeds the sum of the Adverse Effects upon the various facets of their social and economic life.

In workshops on environment and in workshops on other subject areas, the impact of the Project was continually being brought to the fore in one way or another. It

is the intangible, nebulous presence that is difficult to describe and to isolate, but which seems to pervade the thinking of the Members with respect to all matters and discussions relating to the Project.

The workshops identified the issues of past, present and future impacts of the Project. The Members discussed the issues within the context that all known past, present and predictable future Adverse Effects will be compensated as set out in the Agreement, and that any future impacts that could reasonably not have been foreseen will be eligible for compensation, separate and apart, and in addition to, the compensation proposed in the Agreement being negotiated.

Split Lake Cree wish to ensure that a mechanism with adequate funds be in place, that firstly, can identify and agree on the past and present Adverse Effects of the Project; and that secondly, can monitor the Project to identify any unpredicted, unforeseen, or new Adverse Effects.

#### MERCURY

The issue of the impact of mercury on the physiological and psychological health of Split Lake Cree was identified as a matter of concern. It was agreed by workshop participants that the risk of mercury related disability upon individuals had produced a considerable psychological impact upon Split Lake Cree. There is the need for an adequate mechanism to provide for a reliable information, advice and a testing facility for concerned Members.

The issue is one of physical and mental health and the ability of Split Lake Cree to have the necessary remedies to deal with the issue. It was explained that Adverse Effects on health as a result of the ingestion of methyl mercury caused by or attributable to the Project would continue to be one of the responsibilities of Hydro.

### 3.6 Implementation and Community Development

The broad issues that were identified and addressed in the workshops on Implementation and Community Development were issues relating to an enhanced governmental and developmental structure, namely:

- need to establish objectives and to exercise control of implementation;
- need to plan and manage Split Lake Cree interests;
- need to establish and manage financial and economic instruments: Tataskweyak Trust, Development Corporation and capital construction capability; and
- need to develop services for Members.

The issues relating to Implementation and Community Development were issues that needed to be presented within the context of planning for change.

The challenge for the workshop facilitators was to present the issues within a scenario that could be understood by the workshop participants. This was done by relating the presentation to structures that are presently in place.

In planning for change, the challenge is to try to design the process of change so that the end product is not only the particular structures and organizations being planned, but also that the process for positive change becomes internalized by the people.

The workshops created an awareness and a recognition that the financial and other developmental resources produced by an effective NFA Implementation Agreement would cause changes in the administrative and local government structures now existing in Split Lake. There is recognition that change, if it is to have a positive effect, must be planned and carried out by Split Lake Cree themselves.

### **3.7 Trust Indenture**

The broad issues identified and addressed in the workshops on the Trust were:

- The concept of the Trust, and how it could preserve the capital for investment and income production over the long term.
- There would be money to finance economic, social, cultural and infrastructural development of Split Lake Cree.
- A focus on the Split Lake Resource Area and regional economies.

The workshops on the Trust Indenture focused on creating an awareness and an understanding of the nature of the Trust, the investment of the capital and its preservation. The process of how the Trust would be managed and administered for the benefit of Split Lake Cree was explained in detail, including the roles of Members, Chief and Council, Split Lake Cree Trustees and the Corporate Trustee.

### **3.8 Funding and Programming**

The workshop on Funding and Programming dealt with the issue and availability of Funding and Programming from Canada and Manitoba within the context of the Agreement.

All the Parties have agreed that the Implementation Plan should not impact or change the availability of Funding and Programming for Split Lake Cree.

However, if the maximum benefit is to be realized from the Implementation Plan it is essential that the planning for the use of the benefits from the Implementation Plan be integrated with the benefits available from Funding and Programming.



The challenge for **Chief and Council** is to set up an organization which can implement a plan which will utilize all available resources for the benefit of **Split Lake Cree**.

### **3.9 Split Lake Owned Distribution Company**

This will need to be examined in much greater detail once the Agreement is in place. The issues identified and addressed in the workshop were:

- 1) The key to the feasibility or non-feasibility of **Distribution Company**, is the rate at which **Hydro** is prepared to sell the power to **Split Lake Cree**.
- 2) Even at the most favorable low rate, it is likely that the principal gain for **Split Lake Cree** will be in the creation of two permanent, skilled, and well paid jobs.
- 3) Will the **Distribution Company** be allowed to be a public or private utility (There may be advantages to going private)?
- 4) The need to clarify the roles and responsibilities, if any, of **Canada**, should there be a **Distribution Company on Reserve**.
- 5) There are a host of technical issues that need to be addressed including but not limited to the following:
  - Joint use agreements with **Manitoba Telephone System**;
  - Ownership of existing and future electrical assets on **Reserve**;
  - Purchase of specialized electrical services and equipment rental from **Hydro**;
  - Responsibilities and standards for system up-grading and expansion;
  - Regulatory jurisdiction for changing rate structures; and
  - Distribution to non-**Split Lake Cree** customers.

There was not much reaction either for or against the concept. There was agreement that the concept should be placed within the negotiations as a future option, as there are possible advantages dependent upon future developments in **Split Lake**.

## **4.0 WARRANTY**

### **4.1 Introduction**

The final provisions of the Agreement have been negotiated under the direction of **Chief and Council** and with the assistance of **Members** through the community consultation process as described in this report.

While **Split Lake Cree** initiated and participated throughout the negotiations to reach the Agreement, it has been important to highlight provisions of particular significance - those involving release of rights under the NFA, deviations from NFA arrangements, newly acquired powers, opportunities and risks, responsibilities, costs, limitations, and benefits to the other Parties. This is important for all of the Parties to the Agreement - for **Split Lake Cree** to ensure that the membership is adequately informed as to the content of the Agreement which they will be asked to vote upon and, for the other Parties who desire finality in resolving NFA obligations and claims.

Therefore, **Split Lake Cree** senior negotiator, Robert F. Roddick, Q. C. and senior advisor Ernest E. Hobbs warrant that the main provisions of the Agreement have been explained to:

- the Members, at negotiating meetings with the other Parties, and in attendance at various general membership meetings, throughout the negotiating process through provision of various overviews and summaries of the proposed Agreement; and
- **Chief and Council** in meetings and discussions throughout the negotiations, including negotiating meetings with the other Parties, and in a Council meeting at which a presentation of the entire proposed Agreement was made.

Based on these consultations and the scheduled general meetings of Members that will have taken place prior to the ratification referendum, Robert F. Roddick, Q. C. and Ernest E. Hobbs further warrant that all aspects of this Agreement, set out in sections 4.2 to 4.16 inclusive below, were explained by them at public community meetings, in order that all Members could have had the opportunity to discuss all relevant matters, and in order that the Members could have had the opportunity to make an informed decision at the time of ratification.

In all instances, we warrant that to the best of our knowledge there has been no impediment to questions or the range of discussion. We are satisfied that we have been able to explain the proposed Agreement and its characteristics fully to **Chief and Council** and to all Members in attendance. Cree interpretation has been available during our discussions and presentations. Often more than half of the discussions at which we attended have been in Cree, which neither Robert F. Roddick, Q. C. nor Ernest E. Hobbs speaks or understands. Robert F. Roddick, Q. C. and Ernest E. Hobbs are satisfied, that whenever desired, issues have been posed for us in English, in order to contribute to the Cree discussions.

We faced no barriers, other than language, in our efforts to frankly and openly discuss the nature and scope of the proposed Agreement with **Split Lake Cree**.

At all times Members and **Chief and Council** were advised that only the proposed Agreement contained the actual legal undertakings of the Parties and that the overviews, summaries and responses to questions were for the purposes of

information only, and had no legal force and effect. The most important features of the Agreement highlighted in our presentations and discussions, and explained to our professional satisfaction, are set out below.

#### 4.2 Definitions

The Agreement cannot be comprehended without understanding the various terms used throughout the Articles.

Every definition in Article 1 was explained to Chief and Council, and all key terms were explained to the membership. The key phrases used in this warranty were emphasized in the various discussions and presentations. Emphasis was placed on the importance, when reading the Agreement, to check back for the precise meaning of those words which are written in bold type, since this indicates the inclusion of a specific definition of the term in Article 1, setting out the meaning for all purposes of the Agreement.

#### 4.3 Project Operations and Easements

- 1) Subject to the standards for deviation established in subsection 2.4.4, Hydro has a liability free zone in which to operate the Project. This zone is the range of water levels experienced since the Project. So long as Hydro stays within this zone, Hydro has no further liability for damages except for reasonably unforeseen Adverse Effects, disabilities caused by the ingestion of methyl mercury, and personal injury and death, all attributable to the Project.
- 2) Canada is released from liability with regard to the selection or determination of the Controlling Bench Mark or Local Datum which are used to measure water elevations on Split Lake (subsection 2.2.1).
- 3) The Post-Project Water Regime describes the effect of the Project upon Split Lake waterways. The effects have been monitored and the resulting data has been used to establish guidelines for determining and measuring deviations from the Post-Project Water Regime. The monitored data is recorded in a document entitled "Post-Project Water Regime Data" The document may contain occasional errors, resulting from the process of collecting and researching raw data, although any errors determined to exist can be deleted. Canada and Manitoba have no liability for the use of the data (subsection 2.2.5).
- 4) Natural floods and droughts will form part of the Post-Project Water Regime (subsection 2.3.2).
- 5) Hydro is not liable for deviations from the Post-Project Water Regime if they are beyond Hydro's control (subsection 2.5.1).

- 6) **Hydro's liability for the accuracy of its forecasts is limited to negligence or deliberate misconduct (paragraphs 2.6.4 (b) and (d)).**
- 7) **A budget must be agreed upon before Hydro will pay Split Lake Cree costs of participating in the Resolution Process For Deviations (subsection 2.8.1 (i)). Split Lake Cree have funds in the Environmental Monitoring Account to enable Split Lake Cree to retain technical assistance on matters of dispute over water levels, prior to any Hydro reimbursement.**
- 8) **Split Lake Cree agree to negotiate with Hydro with respect to the possible amendment of Setback Lines or, of the Static Inundation Level which would be required to make possible and feasible the Birthday Rapids and Gull Rapids developments (subsection 2.8.4). Such negotiations do not imply or provide Split Lake Cree approval of any such developments. The only Split Lake Cree undertaking is to talk and to try to reach agreement so long as all Split Lake Cree concerns are addressed to the satisfaction of Split Lake Cree. Hydro will pay Split Lake Cree reasonable costs of the negotiation.**
- 9) **Easement Agreement (Schedule 3.4)**
  - a) **Hydro has no liability regarding ice which may be deposited upon the Easement Land provided it stays below the Setback (severance) Line.**
  - b) **The Easement, as provided in sections 3.1 - 3.3 and subsection 7.1.1, allows Hydro and Manitoba to store water on Split Lake Cree Reserve up to the Static Inundation Level (169.47 metres or 556 feet ASL), without liability, except as provided in the Easement Agreement.**
  - c) **Hydro has the right with proper notice, to enter the Reserve to inspect, protect and maintain Reserve Land banks and shorelines, which are subject to the Easement (sections 4.1 - 4.2).**
  - d) **Where damage is caused to bank protection works put in place by Hydro, which Chief and Council ought reasonably to have prevented, Split Lake Cree has to restore such works to Hydro's satisfaction (section 4.6).**
  - e) **Hydro has access to and from the Easement Lands including travel over Reserve Lands, although subject to notice and other specified requirements (sections 5.1 - 5.8).**
  - f) **There are restrictions concerning the construction of Split Lake Cree buildings and structures on Easement Lands (sections 6.2 -**

6.6). Such structures generally need the advance approval of Manitoba.

- g) Hydro has the right to remove buildings and structures which interfere with their Easement rights (albeit, at their own risk) and also incur no liability for damage to buildings and structures permitted on Easement Lands incidental to the exercise of their rights, so long as they are within the Post-Project Water Regime (sections 6.6 - 6.8).
- h) Canada is released with regard to the definition in terms of a Local Datum (section 7.2).
- i) Split Lake Cree can only dispose of an interest in the Easement Lands subject to reservations in favor of Manitoba and Hydro of their rights and privileges under the Easement Agreement (section 7.6).
- j) Manitoba has the right to encumber or assign its rights or obligations under the Easement Agreement. Manitoba has to give notice to Canada and Split Lake Cree at the time of any such encumbrance or assignment (section 7.5).
- k) Hydro has the right to encumber or assign its rights under the Easement Agreement, but is not relieved of its obligations thereunder. Upon such encumbrance or assignment of rights Hydro shall give written notice to Canada and Split Lake Cree (section 7.4).
- l) Hydro has the right to exercise its Easement rights without fee or charge (section 8.1).
- m) Canada, Manitoba and Hydro are released for all matters relating to the granting of the Easement and the provisions of the Easement Agreement (section 10.7).

#### 4.4 Land

##### A. COMPENSATION LANDS

- 1) Manitoba undertakes to transfer Compensation Lands which border Project Influenced Waterways to a level of 169.47 metres (556 feet) ASL with an Easement to 170.39 metres (559 feet) ASL. A transfer to this level with respect to two (2) small parcels of the lands on Split Lake will require provincial legislation (subsection 3.3.2).
- 2) If the disposition of parcels B and C of the lands on Split Lake is not approved by the Legislative Assembly, these parcels will remain provincial

Crown lands and **Split Lake Cree** will require the permission of **Manitoba** to erect any structure on these lands between the **Compensation Land** and **Split Lake**, (subsection 3.2.5) including facilities to draw water from **Split Lake** (subsection 3.2.6).

- 3) Permission to erect any structure on land between the **Compensation Land** and **Split Lake** is conditional upon **Split Lake Cree** agreeing to indemnify **Manitoba** for any damages to **Third Parties** arising out of the existence or use of any structure (subsection 3.2.5).
- 4) Neither **Manitoba** nor **Hydro** are responsible for any damage to structures built on land between the **Compensation Land** and **Split Lake**, subject to **Article 2** and to any negligence of the **Parties** (subsection 3.2.7).
- 5) **Canada** is released from responsibility regarding the arrangements in subsections 3.2.3 - 3.2.8 concerning **Split Lake Cree** access to provincial Crown lands between the **Compensation Lands** and **Split Lake**.
- 6) **Split Lake Cree** requires a transmission line to service its community. It is most likely that this land line will have to be constructed across the **Compensation Lands** on its way from **Kelsey** to **Split Lake**. This may require that **Split Lake Cree** agree to an **Easement** of up to seventy-five (75) metres (246 feet) in width on the **Compensation Lands** to accommodate such transmission line (subsection 3.2.2).
- 7) The expense of changing survey instructions will be borne by the Party making the request (subsection 3.3.4).
- 8) **Manitoba** will make reasonable efforts to survey all of the **Compensation Land** within twelve (12) months of the **Date of this Agreement** (subsection 3.3.2).
- 9) Upon receipt of survey plans, **Split Lake Cree** must affirm that the provisions of **NFA Articles 3, 4, 7, 12, and 22** (except as it relates to **NFA Article 6**) are implemented (subsection 3.3.8).
- 10) **Canada** shall make reasonable efforts to designate the **Compensation Lands** as **Reserve Lands** within twelve (12) months of **Split Lake Cree** requesting such designation (subsection 3.4.3).
- 11) provincial legislation will be required to enable the registration of the **Easement** to store water (subsection 3.5.1).
- 12) **Split Lake Cree** releases **Manitoba** from all obligations regarding **Article 3** of the **NFA** (subsection 3.5.2) and **Canada** from all obligations regarding compensation under the **NFA** for affected **Reserve Lands** (subsection 3.5.3).

- 13) There are exclusions for public purposes within **Compensation Lands** (Schedule 3.4), which are described in writing and shown on maps, which were reviewed in meetings and available to **Members**.
- 14) **Manitoba warrants**, on the basis of available records, that no authorized use or damaging unauthorized use is being made of the **Compensation Lands** (subsection 3.5.5).
- 15) **Split Lake Cree warrant**, on the basis of an environmental review carried out by environmental consultants, involving **Split Lake Cree Members** visiting the lands, and discussions with knowledgeable **Split Lake Cree** resource harvesters, that the **Compensation Lands** are acceptable to them and that they will have to accept the consequences of any defects which do not fall within the **Manitoba warranty** in subsection 3.5.5 (subsection 3.5.6).

**B. SELECTED LANDS**

- 1) The **Selected Lands** are held and managed through a **Land Corporation** controlled by **Split Lake Cree**. Such a Corporation would be subject to normal corporate rules.
- 2) The **Chief** has trust obligations in holding the sole share of the **Land Corporation** as trustee on behalf of all **Members** (subsection 4.2.4 and Schedule 4.2).
- 3) The **Trustees** are to ensure that proper approvals have been provided including approval of the membership, before releasing title to any parcel of the **Selected Lands**, or making changes to the legal structures of the **Land Corporation** (subsection 4.3.4).
- 4) The **Split Lake Cree** community may, on occasion, not approve proposed land transactions (prior to the transaction) where **Third Party** interests may be jeopardized, but the **Split Lake Cree Trustees** must approve any such plan by **Directors** of the **Land Corporation**, as elected by the **Chief** as the sole shareholder at the direction of **Chief and Council**, and **Members** must be advised upon conclusion of the transaction (subsection 4.3.2).
- 5) The **Selected Lands** are not reserves (subsection 4.4.2), but are **Fee Simple Lands** held in trust by the **Land Corporation** for the benefit of **Split Lake Cree**.
- 6) Legislation must be passed exempting the **Selected Lands** from "special reserve" status before they can be transferred in **Fee Simple Title** to the **Land Corporation** (subsection 4.5.2).

- 7) **Third Parties** have the right to be granted **Land Use Permits** within the **Resource Management Area**, (subsection 4.4.3) under the land use regime approved pursuant to the established joint resource management regime (Article 5).
- 8) **Surveys of the Selected Lands** will be scheduled by **Manitoba** within a reasonable period of time, taking into account the current volume of surveys. **Manitoba** must advise **Split Lake Cree** of the date upon which surveys are to commence on each parcel of **Selected Lands** (subsection 4.5.3).
- 9) The water body boundary for **Selected Lands** subject to water erosion and other hazards will be established by **Manitoba**, following consultation with **Split Lake Cree**, based upon reasonable criteria necessary for protection from such erosion or hazard. The boundary will be surveyed within six (6) months from the scheduled commencement of surveys pursuant to subsection 4.5.3 (paragraph 4.5.4(a)).
- 10) The water body boundary for **Selected Lands** on the water bodies known as **Split Lake** or **Clark Lake** is 172.00 metres (564.3 feet) ASL, higher than the **NFA** severance line of 170.39 metres (559 feet). (paragraph 4.5.4 (c)).
- 11) **Selected Lands** on **Stephens Lake** will only be conveyed on the condition that **Split Lake Cree** will not be entitled to compensation as the result of frequent water level fluctuations in order to meet hydro power demands, albeit **Hydro** is still liable for **Adverse Effects** caused by water regime deviations (subsections 4.5.5 and 4.5.6).
- 12) There are reservations to **Manitoba** from the transfer of **Selected Lands**, resulting from the application of section 4(1) of the Crown Lands Act (**Manitoba**) (subsection 4.5.8), including:
  - public right of landing as is reasonably necessary;
  - the beds of bodies of water below the **Ordinary High Water Mark**;
  - public right of passage over a portage road or trail then in existence (where the land borders a body of water);
  - mines and minerals, including sand and gravel, together with the right to enter, locate, prospect, mine for and remove minerals;
  - the right to, and to use, land necessary for the protection or development of adjacent water power; and
  - the right to raise or lower the levels of a body of water adjacent to the land, regardless of the effect upon the land, subject to section 13(2) of the Crown Lands Act (**Manitoba**) which provides for the negotiation of compensation.
- 13) Once the **Selected Lands** are transferred in fee simple, **Split Lake Cree** may use them for any purpose under provincial law, and they may be sold



or mortgaged or otherwise used for financing purposes, if approved in advance by the membership.

- 14) If **Split Lake Cree** declines to accept title for any parcel of **Selected Lands** after surveys commence, they will be liable for any costs incurred including costs of survey and registration of title (subsection 4.5.10).
- 15) The waiver of fees and charges for **Land Use Permits** expires after three (3) years if **Canada** has not proclaimed legislation stipulating that the **Selected Lands** are not to be construed as reserves (subsection 4.6.2), and the lands become subject to normal fees and charges unless **Manitoba** and **Split Lake Cree** negotiate some alternative agreement, at that time.
- 16) **Split Lake Cree** releases **Manitoba** with regard to any obligation arising from Article 4 of the NFA and covenants not to commence any actions or claims (subsection 4.6.3).
- 17) **Split Lake Cree** releases **Canada** from any claims including those of a fiduciary nature which may arise in respect to **Canada's** obligations to **Split Lake Cree** for anything done, including any legislation enacted pursuant to this Article, or omitted to be done, by **Canada**, to the **Date of this Agreement**, with regard to any matters dealt with in Article 4 (subsection 4.6.4).

#### **4.5 Resources**

##### **A. INTEGRATED LAND USE AND RESOURCE MANAGEMENT**

- 1) **Manitoba** and **Split Lake Cree** are required to take the necessary steps and to designate the **Split Lake Resource Management Area** for the purposes of joint land use planning and resource management (subsection 5.2.1).
- 2) Any lands or interest in lands in the **Resource Area**, apart from **Reserve Lands**, may be required by either **Manitoba** or **Canada** to fulfill constitutional, treaty or NFA obligations, to other **Aboriginal people** (subsection 5.2.3).
- 3) The **Split Lake Resource Management Area Board** is to implement joint land and resource management and to accommodate the interests of **Split Lake Cree** and **Manitoba** in the **Resource Management Area**, subject to the authority of **Split Lake Cree** on **Reserve Land** and, **Manitoba**, on provincial Crown land (subsection 5.3.1).
- 4) **Split Lake Cree** has to pay for the costs of its **Members** to participate on the **Split Lake Resource Management Area Board** and any further costs have to be annually negotiated (subsection 5.3.6).

- 5) Land use plans do not apply to lands or waters within **Community** boundaries or, municipal boundaries where a **Municipality** has adopted a land use plan or statement (subsection 5.5.2).
- 6) **Split Lake Cree** has priority rights to **Wildlife Resources** in the **Resource Management Area**, as outlined in subsection 5.6.1, but this does not exclude:
  - rights of other Aboriginal peoples pursuant to the Constitution;
  - rights of individuals to hunt, trap or fish, pursuant to laws and regulations in existence from time to time; and
  - reasonable and necessary conservation measures.
- 7) Resource management plans do not apply where they are reasonably determined to conflict with a land use plan or statement in effect within the boundary of a **Community** or **Municipality**, but otherwise will apply within such boundaries (subsection 5.6.4).
- 8) In developing plans and statements, the Board must hold public meetings to receive comments and submissions from **Members** and other interested parties (subsection 5.7.1).
- 9) Plans, statements and any other Board actions have to be approved by the **Minister** and by **Chief and Council** in order to have force and effect (subsection 5.8.6).
- 10) The approval processes in section 5.8 do not derogate or take away from ultimate **Manitoba** and **Split Lake Cree** authority with regard to the use of lands and **Resources** in their respective jurisdiction (subsection 5.8.7).
- 11) No rights of ownership in **Fish and Wildlife** or other renewable **Resources** are provided by Article 5 (subsection 5.10.1).
- 12) **Manitoba** is released of obligations under Article 15 of the NFA and has the benefit of **Split Lake Cree's** covenant not to bring any claims or actions relating to any matter thereto (subsection 5.10.3).
- 13) **Canada** is released with regard to any matters covered by Article 5 of the **Agreement** (subsection 5.10.4).
- 14) There is no warranty by **Canada** that **Split Lake Cree** has the authority to participate in the contemplated integrated land and resource management (subsection 5.10.5), under existing Canadian legislation. Self-government legislation may be required to give a full autonomous legal basis for **Split Lake Cree** participation in the new joint management regime, although the regime will operate within the scope of the existing **Split Lake Cree** and **Manitoba** powers. The **Agreement** contains no commitment from **Canada** with respect to recommending such legislation.

**B. RESOURCE COMPENSATION**

- 1) **There is a finite amount of Resource Compensation Fund moneys established as a result of past and reasonably foreseen Adverse Effects on Resources (subsection 8.2.1). This amount was negotiated between Hydro and Split Lake Cree within the limitations imposed by existing information and the damages perceived by Split Lake Cree since the start of the Project.**
- 2) **Split Lake Cree releases the other Parties from any further obligation to compensate for Adverse Effects to Resources except for Hydro's continuing liability under section 15.4 (subsection 8.2.2).**
- 3) **Split Lake Cree is to obtain releases for all NFA claims filed by Split Lake Cree or any resource harvesting group, institution, business or Member relating to compensation for Adverse Effects upon Resources, subject to continuing Hydro liability under section 15.4 (subsection 8.2.3). Independent legal advice will be made available to each individual or group, who signs such a release (subsection 18.12.1).**
- 4) **Split Lake Cree agrees to use its best efforts to obtain releases from any Split Lake Cree resource harvesting group, institution, business, or Member, in favour of the other Parties, subject to continuing liability in Hydro's case under section 15.4, in respect to the liability to compensate for Adverse Effects to Resources and, not to commence any action or claim on their behalf (subsections 8.2.4 - 8.2.5). Independent legal advice will be made available to each individual or group, who signs such a release (subsection 18.12.1).**
- 5) **Split Lake Cree agrees to indemnify Manitoba and, subject to section 15.4, Hydro, for any losses resulting from any actions brought by a Split Lake Cree resource harvesting group, institution, business or Member out of the money in the Resource Compensation Fund but only up to the limit of such moneys (subsection 8.2.8).**
- 6) **Legislation will be recommended to give full force and effect to the resource compensation arrangements in Article 8, meaning that any claims for Adverse Effects on Resources would be advanced only against the appropriate Reserve Account of the Resource Compensation Fund and placed before a Tribunal of Elders, subject to appeal to the Arbitrator. When the legislation is proclaimed, claims would not be advanced against Canada, Split Lake Cree, Manitoba or Hydro and all of their NFA obligations would be fully satisfied, subject to Hydro's continuing liability under section 15.4, and Split Lake Cree's obligations in administering the compensation regime and the Trust (subsection 8.2.11).**

- 7) Until legislation is passed giving effect to the resource compensation arrangements in Article 8, Split Lake Cree resource harvesting groups, institutions, businesses or Members may file claims against Canada, Manitoba and Hydro (subsection 8.2.11).
- 8) Any award given to a Split Lake Cree resource harvesting group, institution, business or Member by the Arbitrator or a court against Hydro or Manitoba will be indemnified by Split Lake Cree out of the appropriate Resource Compensation Fund Reserve Account (subsections 8.2.8 and 8.2.9).
- 9) If a court rules that the legislated compensation arrangements in Article 8 are unconstitutional or insufficient, or if an award given is greater than the amount of money in the Resource Compensation Fund Reserve Account, Hydro may demand the repayment of all the Resource Compensation Fund moneys still remaining (subsection 8.2.12) and all liabilities for Adverse Effects on Resources under the NFA will revive in full force and effect, as Hydro responsibilities.
- 10) The Resource Compensation Fund moneys, as set out in section 8.3 of the Agreement, are allocated among three (3) Accounts, with differing recipients, as follows:
  - Domestic Resource Account - Eligible Beneficiary is Chief and Council on behalf of Split Lake Cree. Eligible Compensation Beneficiary is any Member whose domestic, non-commercial use of Resources has suffered an Adverse Effect.
  - Fur Trapping Account - Eligible Compensation Beneficiary is any Trapper, whose use of Resources to hunt and trap animals for skins and fur and for commercial purposes has suffered a negative impact.
  - Commercial Fishing Account - Eligible Compensation Beneficiary is any Commercial Fisherman, whose use of Resources for commercial fishing purposes has suffered a negative impact.
- 11) Split Lake Cree Trappers and Commercial Fishermen, individually or as a group, have the opportunity to submit to Chief and Council, for its approval, yearly proposals for the expenditure of moneys from the Commercial Fishing and Fur Trapping Accounts (subsections 8.4.1 - 8.4.3). Projects can be approved by Chief and Council only if they are deemed to be supportive of the long term development of Split Lake Cree and are expected to provide lasting benefits to Split Lake Cree (section 11.1 of the Trust Indenture). Projects must also be approved by the Split Lake Cree Trustees who must decide whether the project is an

Appropriate Use, was properly disclosed to the membership, and will provide lasting benefits to Split Lake Cree (section 11.2 of the Trust Indenture).

- 12) Any Split Lake Cree Domestic User, Trapper or Commercial Fisherman can file claims for damages, incurred before the Date of this Agreement, against the appropriate Resource Compensation Fund Reserve Account with respect to Adverse Effects on Resources arising not earlier than four (4) years prior to the Date of this Agreement. Individual claims previously filed with the NFA Arbitrator may be submitted within one (1) year of the Date of this Agreement for consideration by a Tribunal (subsections 8.4.4 and 8.4.5).
- 13) Any Split Lake Cree Domestic User, Trapper or Commercial Fisherman can file a claim for damages, incurred after the Date of this Agreement, arising from an Adverse Effect on Resources against the appropriate Resource Compensation Fund Reserve Account at any time prior to the expiry of four (4) years from the date that the claimant suffered such damage (subsection 8.4.5).
- 14) Split Lake Cree, not Hydro, has the responsibility for administering claims against the Resource Compensation Fund Reserve Account, consisting of a hearing before a Tribunal of Elders appointed by Chief and Council, which determines the amount of compensation to be awarded. The Tribunal's decision is subject to appeal to the Arbitrator (subsection 8.4.7).
- 15) If there are insufficient funds in the appropriate Reserve Account of the Resource Compensation Fund to pay a claim in full, the claim becomes a priority charge, on a first come, first served basis, ahead of Specific Projects and Program Initiatives, on Income from the Resource Compensation Fund. To the extent unpaid, it shall represent a first charge against the appropriate Reserve Account and(or) Accounts in the succeeding calendar year(s) (subsection 8.4.6).
- 16) The costs of conducting the hearing of claims by a Tribunal are borne by the Resource Compensation Fund (subsection 8.4.8).

#### 4.6 Remedial Works

- 1) There is a finite amount of money for Remedial Works established as a result of past and reasonably foreseen Adverse Effects (subsection 9.2.1). This amount was negotiated between Hydro and Split Lake Cree within the limitations imposed by existing information and damages perceived by Split Lake Cree since the start of the Project.

- 2) **Split Lake Cree releases the other Parties, subject to continuing Hydro liability under section 15.4, with regard to liability to compensate for Adverse Effects to Split Lake Cree Assets (subsection 9.2.2).**
- 3) **Split Lake Cree is to obtain releases for all NFA claims filed by Split Lake Cree, or any resource harvesting group, institution, business or Member relating to compensation for Adverse Effects upon Split Lake Cree Assets (subsection 9.2.3). Independent legal advice will be made available to each individual or group, who signs such a release (subsection 18.12.1).**
- 4) **Split Lake Cree agrees to use its best efforts to obtain releases, in favour of the other Parties, subject, in Hydro's case, to continuing liability under section 15.4, from Split Lake Cree resource harvesting groups, institutions, businesses or Members, in respect to liability to compensate for Adverse Effects to Split Lake Cree Assets and, not to commence any actions or claims on their behalf, subject to section 15.4 (subsections 9.2.4 - 9.2.5). Independent legal advice will be made available to each individual or group who signs such a release (subsection 18.12.1).**
- 5) **Split Lake Cree agrees to indemnify Manitoba and, subject to section 15.4, Hydro, from the Remedial Works and Measures Account for any damages or losses suffered by them as a result of actions brought by a Split Lake Cree resource harvesting group, business, institution or Member, only up to the limit of moneys in the Account (subsection 9.2.8).**
- 6) **Legislation will be recommended to give effect to the Remedial Works and Measures Account compensation scheme meaning that any claims for damages from Adverse Effects to Split Lake Cree Assets would be advanced only against the Asset Damage Reserve Account and heard by a Tribunal of Elders, subject to appeal to the Arbitrator. When the legislation is proclaimed, claims would not be pursued against Canada, Manitoba, Split Lake Cree or Hydro, and their NFA obligations would be fully satisfied, subject to Hydro's continuing liability under section 15.4 and Split Lake Cree's obligations in administering the compensation scheme and the Trust (subsection 9.2.11).**
- 7) **Until the legislation is passed giving effect to the Remedial Works and Measures Account compensation scheme, Split Lake Cree resource harvesting groups, businesses, institutions or Members may file claims against Canada, Manitoba and Hydro (subsection 9.2.11).**
- 8) **Any award given to a Split Lake Cree resource harvesting group, institution, business or Member by the Arbitrator or a court against Hydro or Manitoba will be indemnified by Split Lake Cree out of the Asset Damage Reserve Account (subsections 9.2.8 and 9.2.9).**

- 9) If any award given is greater than what can be repaid out of the **Asset Damage Reserve Account**, or if the contemplated legislation is declared unconstitutional, Hydro may demand the repayment of all of the money from the **Remedial Works and Measures Account**. All liabilities for **Adverse Effects to Spit Lake Cree Assets** under the NFA will revive in full force and effect, as Hydro responsibilities, in this event (subsections 9.2.12 and 9.2.13).
- 10) **Split Lake Cree** are obliged to expend **Remedial Works and Measures Account** moneys pursuant to a detailed annual plan, approved by membership and **Chief and Council**, in compliance with the disclosure provisions of section 10.6 of the Agreement and Article 11 of the **Indenture** (subsections 9.6.1, 9.6.2 and 9.6.7). The plan must provide a five (5) year forecast of anticipated **Remedial Works** and estimated demands on the **Remedial Works and Measures Account**.
- 11) **Chief and Council** are required to disclose to **Split Lake Cree Trustees** reasons for believing that the expenditures will result in lasting benefits and improvements for present and future **Split Lake Cree Members**. In addition, **Chief and Council** will be required to disclose a complete description of the proposed **Remedial Works** and all associated costs and budgets for **Operations and Maintenance and Replacement Remedial Works**, supported by an opinion of a licensed professional engineer (subsection 9.6.3). **Split Lake Cree Trustees** can only approve the expenditures for payment by the Trust if they determine that the expenditures are an **Appropriate Use**, were properly disclosed to the membership, and will provide lasting benefits to **Split Lake Cree** (section 11.2 of the **Trust Indenture**).
- 12) **Remedial Works** may only be constructed if **Operations and Maintenance** costs can be covered by normal program funding or from the **Income generated by the O & M Reserve** (subsections 9.6.8 and 9.7.2).
- 13) **Split Lake Cree** are responsible for management and maintenance of all **Remedial Works** undertaken by them or on their behalf (subsection 9.7.1).
- 14) There is no undertaking by **Canada or Manitoba**, that normal **Funding and Programming** will be provided in order to meet **Operations and Maintenance** obligations (subsection 9.7.5), although **Split Lake Cree** access is guaranteed to all government **Funding and Programming** as they exist from time to time for this purpose.
- 15) **Split Lake Cree**, not **Hydro**, is responsible for administering asset damage claims, comprised of hearing the claim before a **Tribunal of Elders**, subject to an appeal to the **Split Lake Cree Arbitrator**, (section 9.8).

- 16) Any Member may file claims for compensation for damages to Split Lake Cree Assets incurred prior to the Date of this Agreement arising not more than four (4) years prior to the date of such claim. Individual claims previously filed with the NFA Arbitrator may be submitted within one (1) year of the Date of this Agreement, but not thereafter for consideration by a Tribunal (subsection 9.8.2).
- 17) Members may file claims for compensation for damages to Split Lake Cree Assets incurred after the Date of this Agreement at any time prior to the expiry of four (4) years from the date that the claimant suffered the damages (subsection 9.8.3).
- 18) The payment of Tribunal costs is to be borne by the Remedial Works and Measures Account (subsection 9.8.3).
- 19) Awards for asset damage claims cannot exceed in any one (1) year the Asset Damage Reserve Account and the Income from the Remedial Works and Measures Account excluding the Income from the O & M Reserve and the Asset Replacement Reserve (subsection 9.8.4).
- 20) If there are insufficient funds to pay any awards in any year, the awards are prioritized for payment on a first come, first served basis, from the Income of the Remedial Works and Measures Account, except for Income from the O & M Reserve. If an award still remains unpaid, it is a first charge upon Income not required to fund Operations and Maintenance costs or Asset Replacement Reserve contributions (subsection 9.8.5).
- 21) Canada and Manitoba are not required to provide training and assistance for construction of remedial works, over and above what may be provided through government Funding and Programming.
- 22) Operations and Maintenance funding from Indian Affairs is available to Split Lake Cree to the same extent it is available to First Nations who fund capital projects out of sources other than government Funding and Programming (paragraph 12.3.1 (e)).

#### **4.7 Employment and Economic Development**

##### **A. ECONOMIC AND SOCIAL DEVELOPMENT**

- 1) There is a finite amount of compensation moneys in the Economic and Social Development Account as a result of past and reasonably foreseen Adverse Effects. This amount was negotiated among all of the Parties to the Agreement within the limitations imposed by existing information and damages perceived by Split Lake Cree since the start of the Project (subsection 7.2.1).



- 2) **Manitoba, Hydro and Canada** are not responsible for the effectiveness of the compensation and development arrangements of Article 7 (subsection 7.2.2).
- 3) **Split Lake Cree** releases the other Parties, subject to Hydro's continuing liability under section 15.4, for past present and future obligations related to Articles 16, 18 and Schedule E of the NFA and the Economic Development Agreement (subsection 7.2.3).
- 4) **Members** eligible to receive per capita payments are: those Members who are, or have been, ordinarily resident on Reserve, or in the Resource Area, at any time from 1977 to, the earlier of, the date of payment or the Date of this Agreement, and, in the case of Members resident in the Resource Area, have suffered an Adverse Effect. Decisions as to eligibility are made by Chief and Council and can be appealed to a Tribunal whose decision is final (subsections 7.3.2 and 7.3.8).
- 5) **Chief and Council** must maintain administrative responsibilities for per capita payments to Members including minors (subsections 7.3.6 and 7.3.9).
- 6) **Split Lake Cree** indemnifies the other Parties for actions brought by any Split Lake Cree business, institution or Member relating to the administration and distribution of per capita payments, including eligibility decisions (subsection 7.3.7).
- 7) **Chief and Council** are responsible for the effective planning and management of programs and projects funded from the Economic and Social Development Account (subsection 7.5.1). Chief and Council may meet its responsibilities, with respect to Specific Projects, through the efforts of community organizations and Members. In this case, provided that all approvals and disclosures have been made, Chief and Council's responsibility would be limited to ensuring annual reporting (subsection 10.5.3).
- 8) **Chief and Council** are responsible for the establishment and direction of the Tataskweyak Development Corporation (subsection 7.5.4).
- 9) There are ceilings on the expenditures that can be made in any one year to agencies and, from the Corporation (subsection 7.5.2, and paragraph 7.5.4 (c)), but no limitations on size and location of projects other than those set from time to time by Members, or Chief and Council.
- 10) None of the other Parties is responsible for any failure of the Tataskweyak Development Corporation to achieve the economic and social development purposes of Split Lake Cree (subsection 7.5.5).

- 11) Moneys from the **Economic and Social Development Account** must be expended in accordance with the standards of the **Indenture** and **Article 10** of the **Agreement** (subsection 7.6.1).

**B. PROJECT EMPLOYMENT**

- 1) **Split Lake Cree** has **Project** employment responsibilities including developing employability programs and identifying candidates for **Project** employment, training and businesses (subsection 13.2.2).
- 2) **Hydro** is to endeavor to establish programs with respect to **Project** employment and training opportunities and to **Project** business opportunities but may cancel any of these programs at any time. However, their obligation under **Articles 18.4** and **18.5** and other employment provisions of the **NFA** continues to exist (subsection 13.2.3).
- 3) **Split Lake Cree** releases **Canada** and **Manitoba** from all past, present and future obligations regarding **Project** training, education and employment (subsection 13.3.1).
- 4) **Split Lake Cree** releases **Hydro** from all past obligations, up to the **Date of this Agreement**, regarding **Project** employment. **Hydro** is not released for future obligations of **Articles 18.4** and **18.5** of the **NFA**, and any other provision of the **NFA** as it relates to **Project** employment (subsection 13.3.2).
- 5) There is no assumption by **Hydro** of the obligations of either **Canada** or **Manitoba** in relation to employment, training and education under the **NFA**, all of which are released under the **Agreement**, or **Funding and Programming**, as set out in **Article 12** or otherwise (subsection 13.3.5).
- 6) The employment obligations of **Canada** and **Manitoba** under the **NFA** with respect to the **Project** are settled (subsection 13.3.6).
- 7) The **Hydro-Split Lake Cree Joint Committee**, whose purpose is to facilitate **Project** employment for **Members**, and business opportunities for businesses, is advisory only (subsection 13.5.8).
- 8) **Split Lake Cree** is responsible for the costs of its representatives participating on the **Joint Committee** (subsection 13.5.16).

**4.8 Environment and Mercury**

- 1) **Hydro** shall undertake, at its own expense and jointly with **Split Lake Cree** if possible, a review of the impacts upon the **Resource Area** of the **Existing Development** of the **Project**, and of future environmental impacts on **Split Lake Cree** anticipated to result from any **Future Development** including **Birthday** and **Gull Rapids** (paragraph 2.8.3(b)).

- 2) **Split Lake Cree** has the authority to monitor environmental conditions in the **Resource Area**, including **Adverse Effects of the Project**, including mercury, that are not monitored by the other **Parties** as required by law or resulting from policy (subsection 6.4.1) and the moneys in the **Environmental Monitoring Account** will be available to finance related costs on an interim or final basis.
- 3) **Split Lake Cree** would be responsible for the interim costs of investigating **Adverse Effects** following the summary investigation by the Panel of Experts unless two (2) or more members of the Expert Panel believe that the **Adverse Effect** is a kind as defined in Article 15 (subsection 15.5.12).
- 4) Four **Party** meetings are to be held twice annually for the purpose of exchanging environmental information, including planned monitoring or studies by **Split Lake Cree, Canada, Manitoba or Hydro**. **Split Lake Cree** will pay their own cost of participating in such meetings out of the money in the **Environmental Monitoring Account** (section 6.5).
- 5) **Split Lake Cree** release the other **Parties** from all past, present and future obligations, subject to section 15.4 regarding **Hydro**, and all claims relating to the environmental provisions of the **NFA**, particularly Article 17 and Study Board recommendations 5 and 10 (subsections 6.2.2 and 6.2.3).
- 6) Other **Parties** are obliged to undertake environmental monitoring pursuant to all environmental laws and regulations.

#### **4.9 Implementation and Community Development**

- 1) None of the other **Parties** is responsible for the effectiveness of the implementation arrangements in Article 10 (subsection 10.2.3).
- 2) **Split Lake Cree** releases the other **Parties** from all implementation obligations relating to the **NFA** (subsection 10.2.4).
- 3) **Split Lake Cree** are responsible, for the planning, management and implementation of all programs and projects funded from the **Trust Accounts**, including expenditure disclosure, accounting, and reporting.
- 4) **Chief and Council** may meet this responsibility, with regard to **Specific Projects**, through the efforts of community organizations, and provided that all disclosures and approvals have been made, the responsibility of **Chief and Council** is limited to ensuring reporting (sections 10.5 - 10.7).
- 5) **Chief and Council** have the responsibility of providing annual narrative and financial reports and audits with regard to the **Trust moneys**. The

narrative and financial reports shall disclose the purposes to which moneys were applied and the concrete results (subsection 10.7.3 - 10.7.5).

- 6) The reports and audits must be provided to the Trustees within ninety (90) days of the end of the fiscal year and notice shall be posted on Reserve indicating that the reports are available to any Member upon request (subsection 10.7.6).
- 7) If the reports and audits are not provided within ninety (90) days Chief and Council lose the authority to receive any Trust moneys (subsection 10.7.7). If the reports and audits are not provided within a further fifteen (15) days, a meeting of the Members shall be held within fifteen (15) days by Chief and Council to explain the failure to provide such reports and audits (subsection 10.7.8).
- 8) At any time following such a meeting, Members may apply to the Split Lake Cree Arbitrator, in accordance with the provisions of Article 16, to seek compliance with the reporting requirements (subsection 10.7.9).
- 9) Canada will recommend legislation to ensure that the Settlement Proceeds to be paid by Manitoba and Hydro on or after April 1994 (\$3.92 million in cash and \$11.5 million in Hydro bonds) can be deposited into the Trust rather than being paid to Canada for the use and benefit of Split Lake Cree (subsection 11.2.1).

#### **4.10 Funding and Programming**

- 1) Split Lake Cree releases the other Parties from obligations of Article 2.4 and related provisions of the NFA, and covenants not to commence any actions or claims relating to any matters thereto (subsection 12.2.1).
- 2) The Trust Funds shall not be considered as substitutes for Funding and Programming which may otherwise be made available by Canada or agents of Canada. They cannot be taken into account in determining financial need or in processing applications for funding. They can be taken into account where it would make the decision more favourable to Split Lake Cree, such as with respect to equity funding (subsection 12.3.1).
- 3) Split Lake Cree is responsible to annually submit certain documentation to Canada to ensure it receives its fair share of Funding and Programming otherwise it will have no claim under Article 12 (subsections 12.3.2 - 12.3.4).
- 4) Funding and Programming will neither be restricted from application to Compensation Lands nor increased other than as may result from the fair application of normal Funding and Programming by reason of the Compensation Lands, unless Split Lake Cree and Canada agree otherwise (subsection 12.3.11).

- 5) **Manitoba** proposes to regrade PR280 within ten (10) years of the execution of the Agreement, subject to demonstration of need, provincial policies and priorities and activities occurring in the **Resource Management Area** (subsection 12.4.4). If and when the work is undertaken, **Split Lake Cree** will get priority access to jobs and business opportunities.

#### **4.11 Split Lake Owned Distribution Company**

- 1) A study can be undertaken by **Split Lake Cree** to determine the feasibility of the formation of a **Distribution Company** to operate and maintain the electrical distribution system on the Reserve. The cost of the feasibility study is borne by **Split Lake Cree** out of the **Economic and Social Development Account** (subsection 14.2.1).
- 2) If, as a result of the feasibility study, **Hydro** and **Split Lake Cree** agree that a takeover of the electrical distribution system on Reserve by **Split Lake Cree** is feasible, certain terms and conditions will then take effect, including:
  - **Split Lake Cree** are required to retain and(or) train qualified personnel to operate and maintain the electrical distribution system prior to transfer (paragraphs 14.2.3 (b) and (c) and subsection 14.2.4).
  - If **Split Lake Cree** default in payment of the purchase price, charges for power and energy, service and maintenance costs, for a period of more than ninety (90) days, the electrical distribution system would revert to **Hydro** (subsection 14.2.7).

#### **4.12 Dispute Resolution**

- 1) Disputes among **Split Lake Cree, Canada, Manitoba** and **Hydro** with regard to any matter arising out of the Agreement that cannot be resolved by the **Four Party Executive Implementation Committee** may be referred to an Arbitrator who conducts the hearing in accordance with natural justice, including making orders to ensure that all Parties can fairly advance their case (sections 16.1-16.4).
- 2) The Arbitrator can interpret the Agreement, make damage awards and award costs (subsection 16.5.1).
- 3) Decisions of the Arbitrator can only be appealed to the **Manitoba Court of Appeal** on points of law (subsection 16.5.5).
- 4) Disputes within **Split Lake**, (including **Chief and Council, Split Lake Cree Trustees, institutions, businesses and Members**) concerning uses

of Trust Funds and, including appeals from Tribunals, may be referred to the Arbitrator (section 16.6).

- 5) The costs of arbitrating disputes within Split Lake Cree must be borne by these parties (either from the Trust or otherwise) including the fee of the Arbitrator (paragraph 16.7.6 (c), and subsections 16.7.20 - 16.7.22).
- 6) Any awards made in regard to disputes within Split Lake Cree are to be paid out of the Trust (subsection 16.7.5).
- 7) Awards of the Arbitrator may be appealed to the Manitoba Court of Appeal on a point of law (subsection 16.7.18).
- 8) All awards of the Arbitrator shall be reviewable by the Arbitrator within four (4) years of such award and additional compensation may be ordered. After the four (4) year time limit, all awards shall be final (subsection 16.7.24).
- 9) Article 16 does not apply to actions taken by Manitoba or Canada where such actions are taken specifically pursuant to federal or provincial statute. However, this does not prevent recourse to dispute resolution where the action causes or contributes to a breach of an obligation under the Agreement (subsection 16.8.1).

#### 4.13 Reciprocity

- 1) Hydro has continuing obligations under section 15.4 including:
  - personal injury or death attributable to the Project;
  - Adverse Effects attributable to the Project that were reasonably unforeseen and(or) arose from deviations in the Post-Project Water Regime;
  - disability or death resulting from mercury ingestion; and
  - future obligations of Hydro with regard to Article 18.4 and 18.5 of the NFA and any other provision of the NFA as it relates to Project employment.

The provisions of the NFA remain in effect with regard to Hydro's liability, and the assessment of that liability, including the reverse onus provision.

- 2) Split Lake Cree releases the other Parties for any obligation or matter attributable to the Project (which includes past, present and Future Development) or to the NFA, except for the continuing liability of Hydro as provided by section 15.4 and subsection 15.7.6, and Canada's liability in subsection 15.7.6, and covenants not to bring any action or claim (section 15.2, subsection 15.7.1).

- 3) Nothing in the Agreement relieves any Party of liability for breaches of the Agreement, future negligent acts or omissions or future willful misconduct (subsection 15.2.5).
- 4) **Split Lake Cree** agrees to indemnify the other Parties with respect to any losses or damages suffered by them as a result of actions or claims taken by a **Split Lake Cree** business, institution, or Member except for amounts greater than the **Trust Funds**, **Hydro's** continuing obligations under section 15.4 and **Canada's** obligation under subsection 15.7.6 to provide potable water on the **Reserve** (section 15.3).
- 5) **Canada** and **Manitoba** have no continuing liability for future or unforeseen **Adverse Effects** including any obligation to exercise due diligence or concern (subsection 15.4.1).
- 6) **Canada** has continuing responsibility for potable water on the **Reserve**, as contained in the May 10, 1988 Agreement between the **NFA Bands**, including **Split Lake Cree**, and **Canada**, (subsection 15.7.6) and **Hydro** has not been released from any obligation it may have under Article 6.2 of the **NFA**.
- 7) Nothing in the Agreement affects **Aboriginal** or **Treaty** rights of **Split Lake Cree** (subsection 15.8.1).
- 8) Legislation will be recommended by **Canada** and **Manitoba** to give effect to certain provisions of the Agreement including:
  - subsection 3.3.3 (**Legislative approval of disposition of Parcels B and C of Compensation Lands**);
  - subsection 3.5.1 (**registration of Easement**);
  - subsection 4.4.2 (**Selected Lands not to be Reserve Lands**);
  - **Articles 8 and 9** (**compensation processes**);
  - **Article 11** (**exempting requirement to pay a portion of the Settlement Proceeds to Canada for the use and benefit of Split Lake Cree**; and
  - **Article 16** (**Dispute Resolution**) (subsection 15.9.1).
- 9) The continuing liability of **Hydro** under section 15.4 does not extend to damage to any structure erected by **Split Lake Cree** on the **Easement Lands**, contrary to the requirements of the **Easement**, if **Hydro** is operating within the **Post-Project Water Regime** (subsection 15.10.1).

#### 4.14 General Provisions

- 1) There are no presumptions in favour of or against any Party (subsection 18.4.1).

- 2) This Agreement supersedes all prior agreements and understandings among the Parties and there are no representations, or understandings except as contained in the Agreement (subsection 18.8.1).
- 3) Nothing in the Agreement constitutes an admission or waiver of liability on the part of any of the Parties (subsection 18.10.2).
- 4) The Agreement is being concluded on the basis of information in the possession of all Parties as of the Date of this Agreement (subsection 18.11.2).
- 5) Split Lake Cree warrants in subsection 18.11.1 that:
  - throughout negotiations it has been independently advised by a negotiator, legal counsel, technical advisors and consultants with respect to all matters relating to the Agreement;
  - Split Lake Cree representatives have participated fully in the preparation of the Agreement; and
  - all aspects of the Agreement were explained at community meetings which were open to all Members.
- 6) Canada, Manitoba and Hydro warrant that none of their listed departments have withheld information which the department reasonably could have known was material to the implementation of the NFA for the benefit of Split Lake Cree, except privileged or confidential information (subsections 18.11.3 - 18.11.5).
- 7) Split Lake Cree warrants that it has not at any time prior to December 1, 1991 withheld information from Canada, Manitoba or Hydro which Split Lake Cree could reasonably have known would have been material to the decision of the other Parties to enter into this Agreement, except for privileged or confidential information (subsection 18.11.6).

#### 4.15 Trust Indenture

- 1) The Trustees (which includes the Corporate Trustee and the Split Lake Cree Trustees) must be guided by the following principles as outlined in Article 6 of the Indenture:
  - purpose of the Trust is to provide compensation with respect to Adverse Effects of the Project and to support the development of Split Lake Cree;
  - Capital of the Trust must be protected and maintained for future generations; and
  - the enhancement of investment returns, including the reasonable protection of the Trust from exposure to taxation, must be a factor in the operation of the Trust.




- 2) **Chief and Council** must accept, in writing, the obligations and duties imposed on them under the **Trust** and cannot undertake any such obligations or duties until a majority of **Chief and Council** execute such an acceptance (section 14.11).
- 3) **Chief and Council** may be personally liable for **Trust Funds** spent other than as approved, or without required disclosures and approvals, but are not liable for errors in judgement (section 14.8).
- 4) When proposing expenditures of **Trust Funds**, **Chief and Council** must affirm, in writing, that the proposed expenditure is reasonable, is supportive of the long term development of **Split Lake Cree**, and is expected to provide lasting benefits to **Split Lake Cree** (section 11.1).
- 5) **Split Lake Cree Trustees**, when considering a proposed expenditure from **Chief and Council**, must determine if the request is an **Appropriate Use**, was properly disclosed to the **Members** and must assess the lasting benefits likely to be derived by **Split Lake Cree** (section 11.2).
- 6) The tests in 4 and 5 above do not apply to compensation payments to **Elders** or, to individuals consistent with a **Tribunal's** decision in **Articles 8 and 9** (section 11.3).
- 7) Pursuant to section 11.6 of the **Indenture**, the **Trustees** can distribute **Income** from the **Trust** only if the **Corporate Trustee** confirms that:
  - there is sufficient **Income** on hand;
  - the documentation contemplated in 4 and 5 has been received;
  - **Chief and Council** have provided annual narrative and financial reports on the uses of the **Trust Funds**;
  - **Split Lake Cree Trustees** have determined that the expenditures have been approved by the membership; and
  - an unqualified audit has been received.
- 8) **Split Lake Cree Trustees** are appointed by **Chief and Council** and must be judged by them to be capable of performing the duties of **Split Lake Cree Trustees** and meet criteria for bonding as determined by the **Corporate Trustee** (section 7.1).
- 9) **Split Lake Cree Trustees** have the duty to act honestly and in good faith with a view to the best interests of **Split Lake Cree** and to exercise the care and skill that a prudent person would exercise in the same or similar circumstance (section 7.14).
- 10) **Split Lake Cree Trustees** must avoid conflicts of interest and must disclose any conflict to **Chief and Council** and fellow **Trustees** (sections 7.16 and 7.17).

- 11) **Split Lake Cree Trustees** must accept, in writing, the terms of the **Trust**, including the duties and liabilities incurred (section 7.15).
- 12) **Split Lake Cree Trustees** are liable for their own negligence, willful misconduct, breach of their duties, or breach of conflict of interest guidelines, but not for any error in judgement (section 14.1).
- 13) The other **Parties** are released with regard to any matter in the **Indenture** (section 18.1).
- 14) The **Trust** is to continue for the life of the **Project** (section 5.1) and may be amended with the approval of **Members**, the other **Parties** and, of a court (sections 16.2 - 16.6).

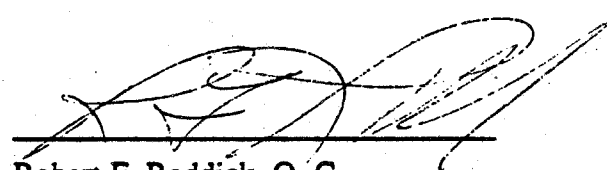
#### 4.16 Financial Schedule

- 1) The other **Parties** are paying a total of \$47.37 Million, consisting of past payments of \$5.95 Million and future payments of \$41.42 Million.
- 2) The past payments consist of the two (2) settlement advances and **Split Lake Cree's** share of the provincial loan. The future payments, spread out in yearly installments until 1997, consist of \$15.75 Million in cash paid by **Canada**, \$4.17 Million in cash from **Manitoba/Hydro** and \$21.50 Million in **Hydro** bonds, (bonds are debts which must be paid at future dates, with interest payable in the meantime).
- 3) Prior to the global negotiations, **Split Lake Cree** had received \$11.86 Million from **Canada, Manitoba** and **Hydro** related to the **NFA**. During the negotiating period, **Split Lake Cree** has received, or will receive, prior to the signing of the **Agreement**, \$5.95 Million. Also, **Split Lake Cree** will receive, after signing, \$41.42 Million. These moneys will be received over five years, and accordingly would have a somewhat lower value than if they were all received upon signing.
- 4) The payments are to be distributed into various **Accounts** of the **Tataskweyak Trust**, including: \$3.858 Million for the **Implementation Account**; \$1.508 Million for the **Environmental Monitoring Account**; \$2.581 Million for the **Commercial Fishing Compensation Account**; \$5.256 Million for the **Domestic Resource Compensation Account**; \$3.020 Million for the **Fur Trapping Compensation Account**; \$12.996 Million for the **Remedial Works and Measures Account**; and \$12.201 Million for the **Economic and Social Development Account**. The **Commercial Fishing Compensation Account**, the **Domestic Resource Compensation Account** and the **Fur Trapping Compensation Account**, taken together, comprise the **Resource Compensation Fund**.

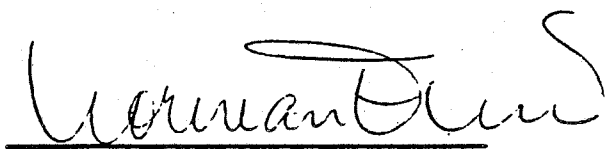
- 5) **The Resource Compensation Fund and the Remedial Works and Measures Account include Reserve Accounts to pay for damage claims. The Remedial Works and Measures Account also includes an O & M Reserve and an Asset Replacement Reserve.**
- 6) **There are detailed planning and approval processes which must be annually undertaken to spend the Trust moneys, (such processes have been explained throughout this warranty).**
- 7) **For the first five (5) years of operation of the Trust there are minimum amounts of money that must be maintained in each Account, in every year, including the Reserve Accounts, known as Minimum Nominal Capital Amounts. Trust moneys cannot be spent unless these minimum amounts are in place. The Minimum Nominal Capital Amounts for all Accounts, including the Reserve Accounts, at the end of the first five (5) years (i.e. 1996) is \$28.759 Million. Similarly, in the sixth year of the Trust and for every year thereafter, minimum amounts of money in each Account, including the Reserve Accounts, must be maintained, known as the Continuing Nominal Capital Amounts, which will total, in 1997, \$29.733 Million.**
- 8) **The Minimum Nominal Capital Amounts and the Continuing Nominal Capital Amounts, have been derived based upon an assumed distribution of the cash and bonds into the various Trust Accounts, less an assumed level of expenditures, including administration fees of Split Lake Cree Trustees and the Corporate Trustee, which are first charges on the Trust. All of these amounts are based on the assumption that the Trust will be income tax exempt. Should income tax become payable then these amounts would be decreased by the amount of tax paid and the consequent loss of investment income.**



Ernest E. Hobbs  
Senior Technical Advisor



Robert F. Roddick, Q. C.  
Senior Negotiator



Norman Flett  
Chief

## 5.0 CERTIFICATE OF INDEPENDENT LEGAL ADVICE

In April, 1991 Split Lake Cree retained the services of Campbell Marr, in particular the writer, to provide legal advice and support to the senior negotiator and senior advisor.

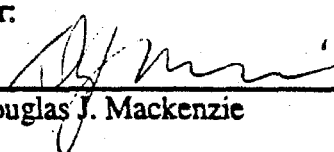
Campbell Marr, as represented by the writer, certifies as follows:

1. All members of Campbell Marr are members in good standing of the Law Society of Manitoba;
2. Campbell Marr has been retained by Split Lake Cree for the purpose of providing legal advice with respect to the Agreement;
3. I have received and reviewed the various drafts of the Agreement, since the engagement in April, 1991, and have thoroughly reviewed same;
4. I have advised Chief and Council, Split Lake Cree senior negotiator, Robert F. Roddick, Q. C., and Split Lake Cree senior advisor, Ernest E. Hobbs, on specific legal aspects of the provisions of the Agreement, as requested by them from time to time throughout negotiations;
5. I explained the legal implications of the Agreement, as requested by Chief and Council, the senior negotiator and senior advisor, to Members who attended membership meetings as convened by Chief and Council in accordance with the provisions of the Agreement.

Dated at Winnipeg, Manitoba, This 21<sup>st</sup> day of June, 1992.

Campbell, Marr

Per:

  
\_\_\_\_\_  
Douglas J. Mackenzie

---

**APPENDIX 1**  
**Community Consultation**  
**Process**  
**Information and**  
**Procedural Manual**

---

**Note:** This Manual was produced in February, 1991 and is reproduced here in its original state.

## **INTRODUCTION**

The purpose of this handbook is to provide information for the Community Consultation Process on the Split Lake Reserve. The Reference Group members need to know all the important facts about the NFA Implementation for their reserve. Learning, discussion and exchange of information will take place between the Reference Groups and the Consultants. It is very important that the completed implementation document contains the position of the members of the Split Lake Cree First Nation.

### **1.0 BACKGROUND**

#### **1.1 Documentation of the NFA Implementation**

The lead person for the Split Lake Cree First Nation in the meetings and discussions with the other Parties is Bob Roddick. Bob Roddick, as the Senior Negotiator appointed by the Split Lake Cree First Nation, meets with the Senior Negotiators from each of the other three Parties, Canada, Manitoba and Hydro.

The documentation period is a 90 day period from January 17, to April 17, 1991. There will be an additional 60 day period for the ratification process from April 17, to June 17, 1991.

#### **1.2 Consultants**

The consultants who have been hired by the Split Lake Cree First Nation to work to help the Split Lake Cree First Nation prepare the documentation for the NFA Implementation are E. E. Hobbs & Associates Ltd. These consultants have been chosen for their special knowledge in the different subject areas of the NFA implementation and their special knowledge about the NFA and the Other Parties positions concerning NFA implementation.

### **2.0 COMMUNITY CONSULTATION PROCESS**

#### **2.1 Community Consultation**

The Community Consultation Process is very important in helping the Technical Consultants and the Senior Negotiator put together a document for NFA implementation for the Split Lake Cree First Nation. The documentation must meet the needs not only of the Split Lake Cree First Nation but it must also meet the needs of Manitoba, Canada, and Manitoba Hydro.

The planning for the Community Consultation Process was a combined effort by the Split Lake Cree First Nation Chief and Council, their staff and the consultants who are working for the Split Lake Cree First Nation.

## **2.2 Community Consultation Process Staff Team**

The Split Lake Cree First Nation have put together a Staff Team of four people with an operational budget. This team will be responsible for administering and coordinating the Community Consultation Process. The Staff Team are responsible and accountable to the Split Lake Cree First Nation Chief and Council. The Staff Team consists of two Co-ordinators, a financial management officer and a secretary clerk.

The staff team will be located in the Split Lake Cree First Nation office on the Split Lake reserve.

## **3.0 REFERENCE GROUPS**

### **3.1 Role of Reference Groups**

Reference Groups have been organized for each of the subject areas.

The Reference Groups are made up of Split Lake Cree First Nation members who have special knowledge and skill in the subject area. There is/are one or more Split Lake Cree First Nation Councillor(s) members in each Reference Group.

There is a Chairperson and an alternate for each Reference Group. The Chairperson will be the contact person for the Reference Group. He will be responsible for ensuring that the Reference Group membership know about the place and time for meetings of his/her Reference Group.

The most important task of each Reference Group will be to provide feedback and to fill information gaps in their subject areas.

The Reference Group membership can do this most effectively by getting to know and to understand the work that the consultant has done. All the material should be available in the Community Consultation Process office in Split Lake.

Each Reference Group should meet on a regular basis to review and discuss the material. It is possible that some information may be inaccurate or incomplete. It is important that the consultants are informed about such matters immediately.

### **3.2 Overseeing Committee**

The Overseeing Committee for all of the Reference Groups are the Chief and Council.

The Co-ordinators are responsible for coordinating, organizing and administering the activities of the Reference Groups.

### 3.3 Allowances and Honoraria for Meetings

All members of the Reference Groups will receive travel expenses and honoraria for attendance at scheduled meetings.

Only the Chairperson of each Reference Group will be attending the meetings in Winnipeg.

The rates and rules are contained in the section of this handbook entitled PROCEDURES.

## 4.0 SUBJECT AREAS

### 4.1 Subject Areas and Consultants

The four subject areas, their separate parts and the technical consultant responsible are as follows:

#### 4.1.1 LAND

|                                 | CONSULTANT |
|---------------------------------|------------|
| Exchange Lands                  | B. Kennedy |
| Permit/Titled Lands             | B. Kennedy |
| Hydro Easements                 | B. Kennedy |
| Project Operations/Water Regime | B. Kennedy |

#### 4.1.2 RESOURCES

|                                    | CONSULTANT             |
|------------------------------------|------------------------|
| Joint Land and Resource Management | B. McPeake             |
| Mining and Forestry                | B. McPeake<br>J. Burch |
| Resource Compensation Fund         | B. McPeake             |
| Mercury Disability Fund            | M. Loney               |
| Environment                        | M. Loney               |



#### 4.1.3 COMMUNITY DEVELOPMENT

|                          | CONSULTANT   |
|--------------------------|--------------|
| Economic Development     | A. Hewat     |
| Cultural Development     | A. Hewat     |
| Social Development       | A. Hewat     |
| Employment and Training  | A. Hewat     |
| Hydro Project Employment | J. Lamoureux |

#### 4.1.4 IMPLEMENTATION

|                                   | CONSULTANT                |
|-----------------------------------|---------------------------|
| Four Party Structure              | A. Hewat                  |
| Trust Indentures                  | A. Hewat                  |
| Normal Government Programming     | J. Lamoureux              |
| Mercury Disability Fund           | M. Loney                  |
| Environmental Monitoring          | M. Loney                  |
| Remedial Works                    | B. Kennedy<br>P. Shanahan |
| Split Lake Owned Power Commission | B. Kennedy<br>P. Shanahan |

### 5.0 COMMUNICATION

#### 5.1 Communication Methods

There are a number of different methods for communicating the exchange of information between the different groups and individuals on the Split Lake reserve.

There will be:

5.1.1 MEETINGS - There are the General Meetings to share information with the members of the Split Lake Cree First Nation. These will be held from time to time, but no less than once a month.

5.1.2 There will be meetings between the Reference Groups and the technical consultants to get feedback and to share information.

5.1.3 Each Reference Group may hold separate meetings without the consultants to review and discuss the material being presented by the consultants.

5.1.4 Reference Group members may conduct house visits. This method takes time but it may be necessary in some cases.

## **5.2 Other Interest Groups**

The Chief and Council and the Community Consultation staff are examining ways to involve the women, the elders and the young people in the Community Consultation Process. One method is adding to the membership of the Reference Group where appropriate.

## **5.3 News Bulletins**

News bulletins with up to date information written in Cree and English will be prepared and circulated on a regular basis.

## **5.4 Video Production**

5.4.1 A VCR production of the slide show with a Cree commentary is being prepared. This video tape will be televised to the Split Lake Cree First Nation membership on a regular basis.

5.4.2 A VCR production of a panel discussion with four or five of the Split Lake Cree First Nation leaders participating has been proposed. A proposal is being prepared to produce this.

## **6.0 PROCEDURES**

### **6.1 Claims for Travel Expenses and Honoraria**

There will be forms provided for members of the Reference Groups for claiming travel expenses and honoraria. These claims must be filled out and signed by the Reference Group member.

Receipts must be obtained for Hotels and taxis. Ticket stubs must be kept from plane fares, bus tickets or train tickets. Mileage can be claimed for travel by car.

Lodging at a private home can be claimed for Thompson or Winnipeg. The government rate for staying at a private home is approximately forty dollars (\$40.00).

The other rates are:

|              | THOMPSON         | WINNIPEG         |
|--------------|------------------|------------------|
| - Meals      | \$36/day         | \$36/day         |
| Incidentals  | \$6/day          | \$6/day          |
| Hotels       | \$65/day         | \$80/day         |
| Taxis        | \$20/day         | \$48/day         |
| <b>TOTAL</b> | <b>\$127/DAY</b> | <b>\$170/DAY</b> |

The honoraria paid to each Reference Group member is \$200/day for attending scheduled meetings.

## **6.2 Administration**

The travel expenses and honoraria payments will be administered through the Community Consultation staff.

## **6.3 Written Material**

Written material may be obtained through the Community Consultation office on the reserve.

Each Reference Group member should have:

6.3.1 Handbook.

6.3.2 Agreement in Principle between the Split Lake Cree First Nation and the other Parties.

6.3.3 Consultants first presentation.

6.3.4 Overview document.

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**APPENDIX 2**

**Consultants**

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## 1.0 INTRODUCTION AND BACKGROUND

The consultants used in the community consultation process were chosen because of their special knowledge, expertise and experience in the subject areas and categories being addressed, and, in many instances, their continuing working relationship over time with Split Lake Cree.

The first task for each consultant was to familiarize themselves with the Proposed Basis of Settlement in its entirety and then to identify those issues that concerned their particular area of expertise. An important and necessary part of this initial exercise was the cross checking and examination of every other consultant's work in order that there was a clear understanding of the parameters of each subject area.

The key to utilizing the workshop process most productively is the ability to communicate clearly and effectively with the participants. The consultants used a combination of written presentations (handouts), slide show presentations, and overhead projectors. As stated before in this report, the presentations were used as the basis for a seminar process where a free flow of discussion took place.

The Cree speaking advisers and members of the Split Lake Cree consultation team played an effective and useful role as facilitators and enablers in this process.

Dependent upon the actual and/or perceived needs in a particular subject area there were as many as eight workshop sessions and as few as one.

In the area of land and resources particularly, there were several workshop sessions. It was necessary to have an iterative process because of the importance of these subject areas to Split Lake Cree. None of the other subject areas are as close to the hearts and minds of the Members as indicated in the discussions. These subject areas are also very important to the Province of Manitoba.

## 2.0 CONSULTANT AND SUBJECT AREAS

As part of this appendix, particulars as to qualifications and experience of the consultants are being provided.

| Name                        | Role   | Qualifications and Experience   |
|-----------------------------|--|---|
| Robert F. Roddick,<br>Q. C. | Senior Negotiator  | B.A., L.L.B., Member of Alberta Bar. Over twenty-five (25) years of experience as legal advisor to numerous Indian Bands. Assisted in the establishment and management of Peace Hills Trust, the first (1st) Indian owned trust company in Canada.  |
| Ernest E. Hobbs             | Senior Technical Advisor   | B.A. Over twenty (20) years of experience in Aboriginal community development. Held senior management position in Indian Affairs department in the area of economic development. Has headed national consulting firm since 1984, providing a range of strategic, management, technical advice, particularly with regard to Hydro disputes, to numerous Indian clients.  |
| Joseph I. Keeper            | Managed Community Consultation Process and Provided Overall Strategic and Negotiating Advice   | B.A. in Native Studies. Has thirty (30) years experience working with and for Indian organizations, both from within and outside government. Employed as a Community Development worker for both Provincial and Federal governments from 1960-1974. Worked in senior role for NFC from 1976-1990. Bilingual - Cree and English.   |
| William C. Kennedy          | Managed technical work re:<br><b>Compensation Lands, Selected Lands, Integrated Land and Resources Management, Water Regime, Distribution Company, Easements</b> | Registered Professional Engineer, Member Canadian Institute of Planning, M.Sc. in Environmental Planning. Twenty (20) years of experience in community and land use planning in public and private sectors. Former Chairman Environmental Council of Manitoba. Has participated in analyzing, assessing and evaluating environmental impacts and Hydro impacts and adverse effects of Hydro projects upon NFA communities including Split Lake. |
| Charles Howard              | Provided technical advice re:<br>Water Regime  | Registered Professional Engineer, M.S. in Civil Engineering from MIT. Over thirty (30) years experience in the field of hydraulic engineering. President of Charles Howard & Associates Ltd., since 1975.   |

| Name             | Role   | Qualifications and Experience  |
|------------------|--|--|
| Larry D. Moore   | Provided mapping and related technical advice re:<br><b>Compensation Lands, Selected Lands</b>           | Certified Engineering Technician: Over thirty (30) years of drafting experience. Specializes in design and drafting services and visual communication of technical data.   |
| Barry L. McPeake | Managed technical work re:<br><b>Integrated Land and Resource Management, Resource Compensation Fund</b> | B.A. in History and Economics. Development economist with over sixteen (16) years experience in economic research and analysis, and community development research and analysis. Involved with the NFA Bands in providing research and management assistance in relation to issues related to the implementation of the NFA.<br><br>Has prepared several papers from Indian Bands and governments in relation to a critical review of resource development agreements in Northwestern Ontario. |
| Douglas Sanders  | Provided legal advice re:<br><b>Integrated Land and Resource Management</b>                              | Law Professor, UBC - authority on Canadian Indian Law - has published numerous books and articles on Indian Law.   |
| Martin Loney     | Managed technical work re:<br><b>Environmental Monitoring</b>  | Ph.D. in Community Development. Over fifteen (15) years combined experience in teaching, writing and consulting. Extensive work in social and economic development with Indian Bands in Northern Manitoba.   |
| Sean D. Keating  | Provided technical advice re:<br><b>Environmental Monitoring, Dispute Resolution Mechanism</b>           | B.A. in Political Science. Law school graduate - Five (5) years experience as a consultant specializing in legal and policy issues concerning the Indian community, particularly in relation to Hydro projects.  |

| Name                   | Role   | Qualifications and Experience  |
|------------------------|--|--|
| Andrew R. Hewat        | Managed technical work re: Economic and Social Development, Implementation                           | B.A. in Administration. Over twenty (20) years experience in social and economic development initiatives. Served as a Director at Federal government level - has managed local employment assistance program and Indian employment program at national level. In private consulting, has prepared human resource development strategies and several corporate business plans. Has advised several Indian Bands in development of local Band government structures. |
| Jean L. Lamoureux      | Managed technical work re: Community Consultation, Hydro Project Employment, Funding and Programming | B.A. in Anthropology with over twenty (20) years of experience in community, economic and employment development in both public and private sectors with specialized experience in Indian concerns.  |
| E. C. Freeman-Attrwood | Provided technical advice re: Financial Schedule   | Chartered Accountant. Financial management specialist with over forty (40) years of experience, including extensive time at senior management level of large corporation.  |
| Paul C. Larocque       | Provided technical advice re: Trust Indenture  | B.A. in Financial Management specialist in the area of trust companies. Over twenty five (25) years of experience in the financial industry. Involved in Peace Hills Trust and its development.  |



| Name             | Role   | Qualifications and Experience   |
|------------------|--|---|
| Charles Joe Hart | Provided technical support re:<br><b>Community Consultation</b>                        | B.A. in Native Studies. Employed by the NFC for six (6) years as Community Coordinator in activities concerning the implementation of the NFA, spending large amounts of time in all five NFA communities. Bilingual in Cree and English. |
| Paul G. Shanahan | Provided technical advice re:<br><b>Hydro Project Employment, Distribution Company</b> | Registered Professional Engineer, B.E. (Chem) with over twenty (20) years of experience. Specialist in capital construction management, including the NFA Bands water and sewer infrastructure  |

**SCHEDULE 18.2**  
**FEDERAL DEPARTMENTS CONSULTED**

Department of Indian Affairs & Northern Development  
Department of Transport  
Department of the Environment  
Department of Fisheries & Oceans  
Department of Health & Welfare

**SCHEDULE 18.3**

**PROVINCIAL DEPARTMENTS CONSULTED**

Department of Highways and Transportation  
Department of Natural Resources  
Department of Environment  
Department of Finance  
Department of Energy and Mines  
Department of Urban Affairs  
Department of Industry Trade and Tourism  
Department of Health  
Clerk of the Executive Council

SCHEDULE 18.4

RELEASE AND CERTIFICATE OF INDEPENDENT LEGAL ADVICE

WHEREAS an Agreement has been entered into the day of \_\_\_\_\_, 1992 (hereinafter called the "Settlement Date") among Her Majesty the Queen in the Right of Canada, Her Majesty the Queen in the right of the Province of Manitoba, The Split Lake Cree First Nation and the Manitoba Hydro-Electric Board, which Agreement is referred to hereinafter as the "Split Lake Cree Implementation Agreement";

AND WHEREAS the terms "Adverse Effects", "Chief and Council", "Member", "Resources", "Split Lake Cree Based Business", "Controlled Institution", "NFA", "Split Lake Cree" and "Split Lake Cree Assets" are defined in Article 1 of the Split Lake Cree Implementation Agreement, and in this Release such terms are incorporated by reference and shall have the same meaning given to them in the Split Lake Cree Implementation Agreement;

NOW THEREFORE, Split Lake Cree (hereinafter referred to as the "Releasor") by its duly authorized officers, in consideration of the negotiation and settling of the Split Lake Cree Implementation Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged;

NOW THEREFORE, I \_\_\_\_\_, being Split Lake Cree Member no. \_\_\_\_\_, (hereinafter referred to as the "Releasor") in consideration of the negotiation and settling of the Split Lake Cree Implementation Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged;

NOW THEREFORE, \_\_\_\_\_, (hereinafter referred to as the "Releasor") being a Split Lake Cree Based Business or Controlled Institution, by its duly authorized officers, in consideration of the negotiation and settling of the Split Lake Cree Implementation Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged;

HEREBY RELEASE(S) Canada, Manitoba and Hydro, their successors and assigns, of and from any and all actions, causes of action, suits, claims and demands whatsoever, that I/it ever had, now have/has, or hereinafter can, shall or may have for or by reason or on account of all known and unknown adverse effects, losses, costs, damages or expenses whether direct or indirect, whether I/it have/has suffered, incurred or been put to, or may suffer, incur or be put to, or any cause, matter or thing whatsoever existing up to the Settlement Date, before the NFA Arbitrator for or in relation to compensation for Adverse Effects on Resources and on Split

Lake Cree Assets, including but not limited to claim # \_\_\_\_\_ detailed in Schedule 8.1 to the Split Lake Cree Implementation Agreement.

Except it is hereby understood and agreed in accordance with 15.4.1 of the Split Lake Cree Implementation Agreement and is a term of this Release, that the Releasor herein does not waive, release or indemnify Hydro from the following:

- (a) Personal Injury and death, past and future, caused by or attributable to the Project;
- (b) Adverse Effects, to the extent such Adverse Effects were caused by or attributable to the Project, and arose from or as a result of deviations in the post-Project water regime;
- (c) Adverse Effects of the Project that were, at the date of the Split Lake Cree Implementation Agreement, unknown and(or) unforeseen and not discernible or foreseeable with the exercise of due diligence and concern;
- (d) Human disabilities, illness or death resulting from the ingestion of methyl mercury caused by or attributable to the Project; or
- (e) Future obligations of Hydro under Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Project employment.

IT IS HEREBY ACKNOWLEDGED by the Releasor that prior to execution of the Release the nature of the Release was explained by independent legal counsel.

IN WITNESS WHEREOF \_\_\_\_\_ has/have here-  
unto executed this Release, by the hands of its proper of-  
ficers duly authorized in that behalf, the \_\_\_\_\_ day of  
, 1992.

\_\_\_\_\_  
Per:

\_\_\_\_\_  
Per:  
\_\_\_\_\_

IN WITNESS WHEREOF The Split Lake Cree First Nation  
has hereunto executed this Release, by the hands of its  
proper officers duly authorized in that behalf, the        day  
of                    , 1992.

THE SPLIT LAKE CREE FIRST  
NATION

Per:

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Per:

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IN WITNESS WHEREOF The Split Lake Cree First Nation  
Member No.                    ,  
Release the        day of                    , 1992.

\_\_\_\_\_  
Witness

I, \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ in the Province of Manitoba, Barrister and Solicitor, do hereby certify.

1. That I am a member in good standing of the Manitoba Bar.

2. That I was consulted in my professional capacity by \_\_\_\_\_ ("Releasor") named in the Release appended hereto as the Releasor, which Release is signed and dated the \_\_\_\_\_ day of \_\_\_\_\_, 199\_.

3. That I acted for the Releasor and advised the Releasor as to his rights, explaining fully the nature and effect of the Release.

4. The Releasor executed the Release in my presence and did acknowledge and declare that he was executing same of his own volition and without any fear, threat, compulsion or influence from any other person and that he fully understood his rights and the nature and effect of the Release..

Dated at \_\_\_\_\_, in Manitoba, this \_\_\_\_\_ day of \_\_\_\_\_, 199\_.

\_\_\_\_\_  
Barrister and Solicitor

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**SCHEDULE 1.1**

**FINANCIAL SCHEDULE**

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| Table 1: Payments By Party (Millions of Dollars) |                |                  |               |                        |                |              |         |
|--|----------------|------------------|---------------|------------------------|----------------|--------------|---------|
|  | Canada<br>Cash | Manitoba<br>Cash | Hydro<br>Cash | Manitoba/Hydro<br>Cash | Hydro<br>Bonds | Sub<br>Total | Total   |
| Past NFA Expenditures                            | \$11.86        | \$1.24           | \$3.16        | -                      | -              | \$16.26      | \$16.26 |
| Agreement  |                |                  |               |                        |                |              |         |
| Advance payments                                 | -              | \$1.70           | \$4.25        | -                      | -              | \$5.95       | -       |
| Future payments                                  | \$15.75        | -                | -             | \$4.17                 | \$21.50        | \$41.42      | -       |
| Subtotal   | -              | -                | -             | -                      | -              | \$47.37      | \$47.37 |
| Total Payments                                   | \$27.61        | \$2.94           | \$7.41        | \$4.17                 | \$21.50        | -            | \$63.63 |

| Table 2: Schedule of Cash Payments (Millions of Dollars) |         |                |
|--|---------|----------------|
|  | Canada  | Manitoba/Hydro |
| On ratification  | \$4.00  | -              |
| 30-Apr-92  | \$4.00  | -              |
| 30-Apr-93  | \$2.00  | \$0.25         |
| 30-Apr-94  | \$2.00  | \$1.00         |
| 30-Apr-95  | \$3.75  | \$1.00         |
| 30-Apr-96  | -       | \$1.00         |
| 30-Apr-97  | -       | \$0.92         |
| Total  | \$15.75 | \$4.17         |

| Table 3: Schedule of Manitoba Hydro Securities Payments (Millions of Dollars) |               |                |
|---|---------------|----------------|
| Issue Date  | Maturity Date | Face Value     |
| 30-Apr-91   | 30-Apr-97     | \$5.0          |
| 30-Apr-92   | 30-Apr-02     | \$5.0          |
| 30-Apr-94   | 30-Apr-08     | \$5.0          |
| 30-Apr-95   | 30-Apr-15     | \$6.5          |
| <b>Total</b>  |               | <b>\$21.50</b> |

Note: The first bond which is effective April 30, 1991 will now be delivered with accrued interest upon ratification. The second bond which is effective April 30, 1992 will also be delivered upon ratification.

| Table 4: Expenditures to Date of Agreement |                                 |         |                |
|--|---------------------------------|---------|----------------|
| Split Lake Cree Expenditures, by Article   |                                 |         |                |
| 1)   | Share of Provincial loan        | \$1.700 |                |
|  | Sub Total                       |         | \$1.700        |
| 2)   | Settlement Advance Dec '90      |         |                |
|  | Article 7 Economic/Social       | \$0.847 |                |
|  | (Per capita payment, Dec, 1990) |         |                |
|  | Article 9 Remedial Works        | \$0.494 |                |
|  | Article 7 Economic/Social       | \$0.269 |                |
|  | Article 8 Resource Compensation | \$0.400 |                |
|  | (Per capita payment, Dec, 1991) |         |                |
|  | Article 10 Implementation       |         |                |
|  | (Pre-Operational Expenses*)     | \$0.490 |                |
|  | Sub Total                       |         | \$2.500        |
| 3)   | Settlement Advance Aug '91      |         |                |
|  | Article 7 Economic/Social       |         |                |
|  | (Per capita payment, Aug, 1991) | \$1.540 |                |
|  | (In trust PCP's)                | \$0.035 |                |
|  | Article 10 Implementation       |         |                |
|  | (Pre-Operational Expenses*)     | \$0.175 |                |
|  | Sub Total                       |         | \$1.750        |
|  | <b>Total</b>                    |         | <b>\$5.950</b> |

\* Any residual amount of pre-operational expenses authorized pursuant to section 10.3 of this Agreement, not expended prior to the Date of this Agreement, will be available for expenditure from the Trust after the Date of this Agreement.

| Account                                     | Amount<br>(Millions of Dollars) |
|---|---------------------------------|
| Implementation                              | \$3.858                         |
| Environmental Monitoring<br>& Investigation | \$1.508                         |
| Commercial Fishing Compensation             | \$2.581                         |
| Domestic Resource Compensation              | \$5.256                         |
| Fur Trapping Compensation                   | \$3.020                         |
| Remedial Works & Measures                   | \$12.996                        |
| Economic and Social Development             | \$12.201                        |
| <b>Total</b>                                | <b>\$41,420</b>                 |

| Account                            | Minimum and Continuing Nominal Capital Amounts* |                   |                   |                   |                   |                   |
|------------------------------------|---|-------------------|-------------------|-------------------|-------------------|-------------------|
|                                    | 1992  | 1993              | 1994              | 1995              | 1996              | 1997              |
| Implementation**                   | 1,435,702                                       | 1,475,081         | 2,218,431         | 3,344,910         | 3,557,601         | 3,839,418         |
| Environmental Monitoring           | 538,958   | 493,139           | 756,782           | 1,157,972         | 1,188,176         | 1,231,574         |
| Commercial Fishing Compensation*** | 1,024,300                                       | 1,109,512         | 1,579,687         | 2,296,956         | 2,387,359         | 2,514,586         |
| Domestic Resource Compensation***  | 773,374   | 560,299           | 1,196,765         | 2,649,331         | 2,823,988         | 2,989,020         |
| Fur Trapping Compensation***       | 1,212,053                                       | 1,327,506         | 1,894,672         | 2,753,456         | 2,879,819         | 3,054,261         |
| Remedial Works & O&M Reserve***    | 3,088,913                                       | 3,730,859         | 4,515,813         | 8,434,923         | 8,678,601         | 8,855,810         |
| Economic & Social Development      | 3,536,171                                       | 3,572,255         | 5,027,689         | 7,455,816         | 7,243,040         | 7,248,620         |
| <b>Total</b>                       | <b>11,609,471</b>                               | <b>12,268,651</b> | <b>17,189,839</b> | <b>28,093,364</b> | <b>28,758,584</b> | <b>29,733,289</b> |

**Notes:**

\* The Minimum Nominal Capital Amounts, and the Continuing Nominal Capital Amounts, have been derived based upon the hypothetical distribution of cash and bonds into accounts during a six year period, less an assumed level of disbursements during the same period. All these amounts are based on the assumption that the Trust will be income tax exempt. Should income tax become payable then these nominal capital amounts would need to be decreased by the amount of the tax paid and the consequent loss of investment income.

\*\* In 1997 the Continuing Nominal Capital Amount is \$3,839,418. Thereafter, this amount is increased by an annual retention of 25% of the income of that Account.

\*\*\* The Reserves have been included in the Accounts from which they have been calculated.

|                              |                |
|------------------------------|----------------|
| Trapping Reserve Account     | 80,490         |
| Domestic Reserve Account     | 150,720        |
| Fishing Reserve Account      | 68,790         |
| Remedial Works O & M Reserve | 0              |
| Asset Replacement Reserve    | 0              |
| Asset Damage Reserve         | 50,000         |
| <b>Total</b>                 | <b>350,000</b> |

THE MANITOBA HYDRO-ELECTRIC BOARD  
Winnipeg, Manitoba, Canada

FR 00001

9.762% BOND SERIES 3P

DUE APRIL 30, 1997

(subject to prior redemption by the registered holder)

Issued under authority of The Manitoba Hydro Act  
and of an Order of the Lieutenant Governor in  
Council of the Province of Manitoba.

April 30, 1991

THE MANITOBA HYDRO-ELECTRIC BOARD, for value received, hereby promises to  
pay to the order of

TATASKWEYAK TRUST IN TRUST FOR SPLIT LAKE CREE

the sum of                     \*\* FIVE MILLION DOLLARS \*\*

on                     April 30, 1997

at           the Head Office of THE MANITOBA HYDRO-ELECTRIC BOARD

in lawful money of Canada with interest payable semi-annually at the rate  
of 9.762% per annum from the date hereof to the date of maturity, upon due  
presentation and surrender of this Bond, all in accordance with the Terms  
and Conditions endorsed hereon.

Countersigned on behalf of  
The Manitoba Hydro-Electric Board  
By

                    "SPECIMEN"  
Authorized Signing Officer

THE MANITOBA HYDRO-ELECTRIC BOARD  
By

                    "SPECIMEN"  
Chairman

                    "SPECIMEN"  
Secretary

This Bond shall become valid only when it shall be manually countersigned  
by a duly Authorized Signing Officer.

Dated April 30, 1991

Terms and Conditions

1. Interest on this Bond will be payable semi-annually on October 31 and April 30 of each year, prior to and including maturity, commencing October 31, 1991 at an interest rate of 9.762% per annum. Interest will no longer accrue after maturity. For yield comparison purposes, the 9.762% interest rate per annum payable semi-annually is the yield equivalent of 10.00% per annum payable annually.
2. This Bond will be issued in fully registered form only, in denominations of \$50,000.00 and integral multiples thereof. This Bond will be dated April 30, 1991 and will mature on April 30, 1997.
3. Interest will be payable to the order of the registered holder and will be paid by cheque forwarded to the registered address.
4. The Manitoba Hydro-Electric Board will maintain a register of the name and address of the registered holder of this Bond at its Head Office in the City of Winnipeg.
5. This Bond is non-transferable and non-assignable.
6. At the option of the registered holder only, this Bond, or any portion thereof, which is \$500,000.00 or an integral multiple thereof, may be redeemed at the fair market value six business days after delivery of notice of redemption in writing and upon due presentation and surrender of this Bond at the Head Office of The Manitoba Hydro-Electric Board in the City of Winnipeg. The fair market value will be determined by the middle of three bid price quotes, for a provincially guaranteed marketable Bond of The Manitoba Hydro-Electric Board, having the same interest rate and maturity date as this Bond. The bid price quotes will be supplied by three investment dealers used by the Province of Manitoba to underwrite its securities. The bid price for this Bond will be set one business day following receipt of the notice of redemption for value and settlement six business days following receipt of the notice of redemption. The settlement amount will include accrued interest, if any.
7. Market bid price quotes will be supplied upon request of the holder from time to time.
8. This Bond is repayable for the full principal amount upon due presentation and surrender, at the Head Office of The Manitoba Hydro-Electric Board in the City of Winnipeg during regular business hours on April 30, 1997.
9. Manitoba Hydro will not be bound to see the execution of a trust affecting the ownership of any Bond.
10. This Bond will rank equally with all other debt obligations of The Manitoba Hydro-Electric Board.

---

Notice of Redemption

The registered holder of this Bond serves notice to redeem \$ \_\_\_\_\_ of this Bond at the fair market value in accordance with the Terms and Conditions endorsed hereon.

---

Date

---

Authorized Signing Officer(s)

---

Signature and Authority to Sign Guaranteed  
Financial Institution: \_\_\_\_\_

**SCHEDULE 2.1**

**TRUST INDENTURE  
TATASKWEYAK TRUST**

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THIS INDENTURE made this 24<sup>th</sup> day of JUNE , 1992 among and between:

The Split Lake Cree First Nation as represented by Chief and Council, as Settlor and in other capacities,

Of the First Part,

- and -

CHIEF NORMAN FLETT of Split Lake, in the Province of Manitoba,

- and -

DUKE BEARDY of Split Lake, in the Province of Manitoba,

- and -

CHRISTINA GARSON of Split Lake, in the Province of Manitoba,

- and -

JOAN OUSKUN of Split Lake, in the Province of Manitoba,

- and -

RANDY BEARDY of Split Lake, in the Province of Manitoba,  
(hereinafter called the "Split Lake Cree Trustees"),

Of the Second Part,

- and -

Royal Trust Corporation of Canada,

(hereinafter called the "Corporate Trustee")

Of the Third Part,

- and -

Her Majesty The Queen In Right Of Manitoba, as represented by the Minister of Northern Affairs,

(hereinafter called "Manitoba")

Of the Fourth Part,

- and -

The Manitoba Hydro Electric Board,  
(hereinafter called "Hydro")

Of the Fifth Part,

- and -

Her Majesty the Queen in Right of Canada, as represented by  
the Minister of Indian Affairs and Northern Development,

(hereinafter called "Canada")

Of the Sixth Part,

Whereas, the Settlor will receive Settlement Proceeds from  
Hydro and Manitoba and Canada, in accordance with an Agree-  
ment (hereinafter called "the Agreement") dated the same date  
as this Indenture.

And Whereas, pursuant to the Agreement, the Settlor has  
agreed to settle a trust in favour of the beneficiaries set  
out in this Indenture and in the Agreement for the purposes  
of compensating for the Adverse Effects of the Project, and  
supporting the future development of Split Lake Cree and  
Members;

And Whereas, for this purpose, the Settlor desires to es-  
tablish a trust; and has requested the Trustees to receive  
the Trust Funds to be held by them in trust with, and subject  
to, the powers and provisions declared and contained in this  
Indenture;

Now Therefore This Indenture Witnesseth that, in consideration of the premises and the mutual covenants and agreements contained in this Indenture, and those in the Agreement, it is hereby mutually agreed and covenanted, by and among the parties to this Indenture, as follows:

#### ARTICLE 1

##### 1.0 Name of the Trust

1.1 Tataskweyak Trust. The Trust created by this Indenture shall be known as "Tataskweyak Trust".

1.2 Change of Name. The Trustees, with the formal consent of Chief and Council and a majority vote in a public meeting of Members, eighteen (18) years of age and older, convened in compliance with the notice requirements of subsections 11.5.2 and 11.5.3 of this Indenture, may change the name of the Trust to any name which is otherwise lawful under the federal and provincial laws in force in the Province of Manitoba.

ARTICLE 2

2.0 Endowment and Composition of the Trust

2.1 Initial Trust Capital. The Settlor irrevocably directs that the aggregate moneys and Manitoba Hydro bonds, when paid or delivered, be credited to the following Accounts, in accordance with the Financial Schedule, to be held and administered by the Trustees:

- 2.1.1 Implementation Account:  
\$3.858 Million;
- 2.1.2 Environmental Monitoring Account:  
\$1.508 Million;
- 2.1.3 Commercial Fishing Compensation Account:  
\$2.581 Million;
- 2.1.4 Domestic Resource Compensation Account:  
\$5.256 Million;
- 2.1.5 Fur Trapping Compensation Account:  
\$3.020 Million;
- 2.1.6 Remedial Works and Measures Account:  
\$12.996 Million;
- 2.1.7 Economic and Social Development Account:  
\$12.201 Million.

2.2 Credit to Accounts. In addition, the Settlor irrevocably directs that the aggregate moneys and Hydro Bonds, when paid or delivered, be credited in accordance with the Financial Schedule to the following Reserve

Accounts to be held and administered by the Trustees, with further allotments of funds thereto from the Income of the respective Accounts pursuant to the terms of Article 10 of this Indenture and Articles 8 and 9 of the Agreement;

- 2.2.1 Commercial Fishing Compensation Reserve:  
\$0.068790 Million;
  - 2.2.2 Fur Trapping Compensation Reserve:  
\$0.080490 Million;
  - 2.2.3 Domestic Resource Compensation Reserve:  
\$0.150720 Million;
  - 2.2.4 Asset Damage Reserve:  
\$0.050 Million;
  - 2.2.5 O & M Reserve:  
no initial funding;
  - 2.2.6 Asset Replacement Reserve:  
no initial funding.
- 2.3 Receipt of Moneys and Bonds. The Financial Schedule sets out the agreed settlement amounts and dates for money and bonds from Canada, Manitoba, and Hydro, transferable by the Settlor.
- 2.4 Deposit of all Funds to Trust by Payee. The Settlor agrees and irrevocably directs that all money and bonds will be held by the Trustees, in trust for Split Lake Cree and Members and subject to the terms of this

Indenture; and that all of the Agreement money and bonds set out in the Financial Schedule will be delivered by the respective payor, to the Corporate Trustee, at the time payment is due as defined in the Financial Schedule. With respect to the moneys, the cheque(s) shall be made payable to Split Lake Cree and shall be delivered to the Corporate Trustee, and Split Lake Cree hereby directs the Corporate Trustee, immediately upon receipt of such cheque(s), to deposit the cheque(s) forthwith into the Tataskweyak Trust. Hydro Bonds shall be issued in the name of the Tataskweyak Trust, in trust for Split Lake Cree and Members, and delivered to the Corporate Trustee.

### ARTICLE 3

#### 3.0 Definitions

3.1 Definitions from Agreement. In this Indenture, all defined terms provided in Article 1 of the Agreement, whether in the plural or singular, have the meaning so ascribed to them where used in this Indenture with a capital letter and in bold type face. For ease of reference, some of the more frequently used terms, defined in Article 1 of the Agreement, have been repeated in subsection 3.1 of this Indenture.

- 3.1.1 **Account** shall mean an account established pursuant to section 2.1 of this Indenture and under Articles 6, 7, 8, 9 and 10 of the Agreement in which the Trust Funds will be held and administered.
- 3.1.2 **Acting Chief** shall mean a Member who has been appointed by Council Resolution to perform the duties of the Chief, in the absence or incapacity of the Chief to perform said duties.
- 3.1.3 **Agreement** shall mean the Agreement, dated the same date as this Indenture, entered into among Split Lake Cree, Manitoba, Canada and Hydro, to which this Indenture is attached as Schedule 2.
- 3.1.4 **Appropriate Uses** shall mean those uses of Trust Funds which are set out in the Articles 6, 7, 8, 9 and 10 of the Agreement, for which the Trustees are permitted to make disbursements from this Trust to Eligible Beneficiaries and Eligible Compensation Beneficiaries, subject to applicable tests and terms and conditions, as set out in this Indenture and in the Agreement.
- 3.1.5 **Capital** shall mean, subject to section 11.10 of the Indenture, the amount settled upon the Trustees by the Settlor from time to time, plus any unallocated, unpaid or unappropriated Income of the Tataskweyak Trust which has not been appropriated, allocated or paid by the Trustees within six (6) months, next following the conclusion of the fiscal year, and is not then the subject of a dispute between the Trustees and Chief and Council.
- 3.1.6 **Continuing Nominal Capital Amounts** shall mean the minimum Net Value of each of the Accounts, as set out in the Financial Schedule, that must be achieved in the sixth year, upon receipt of Settlement Proceeds in that year, and that must be maintained thereafter during the life of the Trust.
- 3.1.7 **Corporate Trustee** shall mean the trustee in office, in accordance with Article 8 of this Indenture.



- 3.1.8 **Distribution Date** shall mean such date as the Trustees shall select as the date, if ever, on which all of the Trust Funds will be distributed, discharged of trust condition after distribution, to the beneficiaries, consistent with the provisions of Article 16 and section 17.2 of this Indenture.
- 3.1.9 **Eligible Beneficiary** shall mean Split Lake Cree and all Members, in the capacities of income beneficiary, capital beneficiary, and residual capital beneficiary.
- 3.1.10 **Eligible Compensation Beneficiary** shall mean any Member receiving compensation pursuant to Articles 7, 8 and(or) 9 of the Agreement.
- 3.1.11 **Income** shall mean all of the income derived from the Trust Funds, including any income from reinvested Capital and income arising from the reinvestment of Income which has fallen into, and become part of, the Capital of this Trust, less the aggregate of:
- (a) any and all expenses incurred or payable in respect of, or to protect, the Trust Funds, or incurred, or payable in connection with, the management and administration of the Trusts herein contained, subject to subsection 15.1.9 of this Indenture and as determined by the Corporate Trustee to be chargeable to Income;
  - (b) such further or other sums in each year or other period as the Corporate Trustee considers to be proper allowances, reserves, deductions, disbursements and(or) outgoings in accordance with Generally Accepted Accounting Principles; and
  - (c) without limiting the generality of the foregoing, but without hereby conferring on the Corporate Trustee any authority to make expenditures without the approval of the Split Lake Cree Trustees or otherwise not in accordance with this Indenture, such sum in each year or other period as the Corporate Trustee shall consider necessary and advisable, from time to time, to reflect depletion, or depreciation of any of the assets of this Trust;

- 3.1.12 **Minimum Nominal Capital Amounts** shall mean the minimum Net Value of each of the Accounts, as set out in the Financial Schedule, that must be achieved in the year specified upon receipt of Settlement Proceeds in that year, and that must be maintained during each of the first five (5) years of the Agreement.
- 3.1.13 **Net Value** shall mean the realizable value, being the lower of cost or market value, of the assets of the Accounts or any one of them, at valuation date, less the aggregate of liabilities, all in accordance with Generally Accepted Accounting Principles. Notwithstanding this valuation methodology, when determining Net Value for the purpose of establishing Income pursuant to subsection 11.6.1 of this Indenture, those bonds that are issued by Hydro in satisfaction of financial obligations pursuant to the Agreement, shall be valued at their face value but, for the purposes of valuations in accordance with sections 9.5, 10.5 and 11.12 and subsection 15.1.7 of this Indenture, such bonds will be valued at the lower of face or market value.
- 3.1.14 **Reserve Account** shall mean a reserve established pursuant to section 2.2 of this Indenture, in which Trust Funds will be held and administered.
- 3.1.15 **Resource Compensation Fund** shall mean selectively, the Commercial Fishing Compensation Account, the Domestic Resource Compensation Account, the Fur Trapping Compensation Account, and the related Reserve Accounts being that portion of the Tataskweyak Trust allocated for the purposes of resource compensation pursuant to Article 8 of the Agreement.
- 3.1.16 **Settlor** shall mean Split Lake Cree in its capacity as settlor.
- 3.1.17 **Split Lake Cree Trustees** shall mean the trustees in office, in accordance with Article 7 of this Indenture.
- 3.1.18 **Trust** shall mean the Tataskweyak Trust.
- 3.1.19 **Trust Funds** shall mean all property and assets of any nature or kind whatsoever, of which the Trustees in their capacities as Trustees may from time to time become possessed; all of which,

including the books and records, is to be held upon the trusts and with, and subject to, the powers and provisions of this Indenture.

3.1.20 Trustees shall mean collectively the Split Lake Cree Trustees and the Corporate Trustee.

#### ARTICLE 4

#### 4.0 Interpretation

#### 4.1 Guides to Interpretation. In this Indenture:

4.1.1 Any reference to a person shall include, and shall be deemed to be a reference to any person that is the successor to such person;

4.1.2 Words importing the singular number only shall include the plural, and vice versa;

4.1.3 Words importing one gender only shall include both genders;

4.1.4 The headings and the division of this Indenture into Articles, sections and subsections are for convenience of reference only, and shall not affect the construction or interpretation of this Indenture; and,

4.1.5 This Indenture shall be read in conjunction with the Agreement of which it forms a part.

5.0 Term of Trust

5.1 Life of the Project. The Tataskweyak Trust is expected to continue for the life of the Project, and shall prevail and continue, subject only to the provisions of Article 16 and section 17.2 of this Indenture.

5.2 Residence. It is intended that the residence of the Tataskweyak Trust always be on Reserve. Chief and Council, the Split Lake Cree Trustees and the Corporate Trustee shall take all reasonable actions, to ensure that the Tataskweyak Trust residence continues to be on Reserve.

ARTICLE 6

6.0 Guiding Principles

6.1 Principles. In carrying out their powers, authorities and discretions, the Trustees shall be guided by the

principles set out below, which shall be priority considerations.

6.1.1 The purposes of this Trust are to provide compensation with respect to Adverse Effects of the Project, and to support the development of Split Lake Cree, in accordance with the Agreement and this Indenture.

6.1.2 The Continuing Nominal Capital Amounts of the Accounts, are the amounts to be preserved to enable future generations to benefit from this Trust, and the investment policy of the Trust must be dedicated to maintenance of the Minimum Nominal Capital Amounts and Continuing Nominal Capital Amounts, as the case may be.

6.1.3 The enhancement of investment returns, including the reasonable protection of the Trust from exposure to taxation, must be a significant factor in the operation of the Trust.

## ARTICLE 7

### 7.0 Split Lake Cree Trustees

- 7.1 Qualifications. Split Lake Cree Trustees shall be persons eighteen (18) years of age or older; who are residents of Canada; who will have been judged by Chief and Council to be capable of performing the duties of Split Lake Cree Trustees, and meet eligibility criteria for fidelity bonding in Canada, as determined by the Corporate Trustee. Prior to appointing any Split Lake Cree Trustee, Chief and Council will give notice to Members in accordance with the notice provisions of subsection 11.5.3 of this Indenture.
- 7.2 Chief, a Split Lake Cree Trustee. The Chief or Acting Chief shall, subject to sections 7.1 and 7.8 of this Indenture, be a Split Lake Cree Trustee.
- 7.3 Other Split Lake Cree Trustee. In addition to the Chief or Acting Chief, there shall be four (4) Split Lake Cree Trustees, of which a sufficient number shall be Members ordinarily resident on Reserve, to ensure at all times that a majority of Trustees are Members ordinarily resident on Reserve. The inaugural Split Lake Cree Trustees, including the Chief or Acting Chief, at the Date of the Agreement, are parties to this Indenture.
- 7.4 Inaugural Split Lake Cree Trustees. The terms of office for Split Lake Cree Trustees, other than the Chief or

Acting Chief, shall be determined in accordance with the following conditions and such term shall be set out in the Council Resolution making the appointment as a Split Lake Cree Trustee.

7.4.1 Two (2) of the inaugural Split Lake Cree Trustees, are appointed for a term to expire October 31, 1993, and the other two (2) inaugural Split Lake Cree Trustees are appointed for a term to expire October 31, 1994;

7.4.2 Split Lake Cree Trustees who are appointed, or reappointed, at the expiry of a term or are appointed pursuant to section 7.5 of this Indenture, are appointed, or reappointed, for a term to expire October 31, two (2) years following the year in which the appointment is made; and,

7.4.3 Split Lake Cree Trustees who are appointed as a replacement pursuant to sections 7.8, 7.9 or 7.10 of this Indenture, are appointed for the remainder of the term of the Split Lake Cree Trustee being replaced.

- 7.5 New Chief and Council. Upon taking office, Chief and Council shall have the right, subject to sections 7.1, 7.2, and 7.3 of this Indenture, to replace two (2) Split Lake Cree Trustees, not including the Chief, who are the Split Lake Cree Trustees then with the shortest time remaining in their term of appointment. In addition, Chief and Council shall have the right, subject to sections 7.1, 7.2 and 7.3 of this Indenture to replace the other two (2) Split Lake Cree Trustees on the first anniversary date of their taking office. If such decision is made, Chief and Council, by Council Resolution, shall appoint a sufficient number of other persons to fill such vacancies, provided that, one (1) Split Lake Cree Trustee shall be the Chief or Acting Chief.
- 7.6 Continuation in Office. Unless the decisions contemplated in section 7.5 of this Indenture are made, within a period not longer than thirty (30) days from the permitted date, the incumbent Split Lake Cree Trustees shall continue as Split Lake Cree Trustees, for an additional term, with the current Chief or Acting Chief replacing the former Chief or Acting Chief.
- 7.7 Vacancies Must Be Filled. If at any time there are fewer than three (3) Split Lake Cree Trustees, three (3)



constituting a quorum, then any remaining Split Lake Cree Trustees shall be unable to act for the purposes of this Indenture, except in such circumstances as require actions or decisions to protect the Trust Funds, which shall be determined by the Corporate Trustee. The vacancies shall be duly filled by appointments made in accordance with sections 7.1, 7.2 and 7.3 of this Indenture.

7.8 Death, Bankruptcy, Mental Incompetency or Incapacity.

The office of a Split Lake Cree Trustee shall be deemed to have been vacated by the conviction of that Split Lake Trustee for an indictable offence, or other Criminal Code offense in relation to property, or by the death, undischarged bankruptcy or mental incompetency of that Split Lake Cree Trustee; and any vacancy so arising shall be filled in accordance with sections 7.1, 7.2 and 7.3 of this Indenture.

7.9 Resignation of Split Lake Cree Trustees. Any Split Lake

Cree Trustee shall be entitled to resign on thirty (30) days notice in writing to the remaining Trustees and to Chief and Council, or upon such shorter notice as the remaining Trustees and Chief and Council will accept as sufficient. Any Split Lake Cree Trustee who has been appointed, and at the time of appointment was ordinarily

resident on Reserve, shall submit his resignation to Chief and Council forthwith upon ceasing to be ordinarily resident on Reserve, which resignation may be accepted and a successor resident Split Lake Cree Trustee appointed, by Chief and Council, in order to ensure compliance with the conditions of section 7.3 of this Indenture. If such Trustee fails to resign within one hundred and twenty (120) days of ceasing to be ordinarily resident on Reserve, Chief and Council shall have the right, by Council Resolution, to remove such Trustee and to appoint a replacement Trustee in accordance with sections 7.1, 7.2 and 7.3 of this Indenture.

7.10 Successors to Split Lake Cree Trustees. If any Split Lake Cree Trustee should refuse, or be unable to act, or to continue to act, or shall resign, their position shall be deemed vacant, and Chief and Council shall appoint, in writing, some person to fill such vacancy, in accordance with sections 7.1, 7.2 and 7.3 of this Indenture.

7.11 Disputed Vacancy. If a dispute exists between Chief and Council and any Split Lake Cree Trustees as to whether a vacancy exists pursuant to the terms of sections 7.8, 7.9 and 7.10 of this Indenture, Chief and Council shall

only appoint any successor Split Lake Cree Trustee after the dispute has been resolved by the Split Lake Cree Arbitrator, upon application of Chief and Council.

7.12 Trustee Compensation. The Split Lake Cree Trustees shall be entitled to a reasonable fee for acting as Split Lake Cree Trustees, as determined by Chief and Council in a meeting convened in accordance with the provisions of subsection 11.5.3 of this Indenture. Such fee may be paid out of income of this Trust subject to subsection 15.1.9 of this Indenture. It is understood and agreed that the payment of fees under the provisions of section 7.12 of this Indenture, shall not be taken into account in determining eligibility for other benefits of any nature or kind arising out of this Trust. The amounts of payments to each individual Split Lake Cree Trustee, will be disclosed by the Corporate Trustee in the annual financial report.

7.13 Trustees Dealings With the Trust. The Split Lake Cree Trustees shall only act for this Trust in the capacity of Split Lake Cree Trustees, and shall not provide any other goods or services for consideration, and shall not receive any remuneration for discharging their duties as Split Lake Cree Trustees, save the fee allowed under section 7.12 of this Indenture.

7.14 General Duty of Split Lake Cree Trustees. Every Split Lake Cree Trustee, in exercising his powers, and discharging his duties, shall:

7.14.1 Act honestly and in good faith, with a view to the best interests of Split Lake Cree; and,

7.14.2 Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

7.15 Acceptance of Terms of the Trust. Each successor Split Lake Cree Trustee will undertake in writing, prior to his appointment taking legal effect, to uphold the terms of this Indenture. This acceptance of the terms of this Indenture, and of their appointment, shall contain explicit reference to the general duty of Split Lake Cree Trustees as set out in section 7.14 of this Indenture, to their personal liability as set out in sections 13.2, 14.1 and 17.4 of this Indenture, and to the fact that this Indenture and the Agreement either has been read by him, or explained to him, to his full satisfaction. Each acceptance when so signed will be witnessed by the Chief, or by a Councillor in the case

of the acceptance of the Chief or Acting Chief; and deposited with the Corporate Trustee.

7.16 Conflicts of Interests. It is recognized that Split Lake Cree Trustees who are Members, are both Split Lake Cree Trustees and beneficiaries. No Split Lake Cree Trustee will participate in the decision making process about disbursements to classes of Eligible Compensation Beneficiaries of which they are a member; nor will Split Lake Cree Trustees engage in any other activities that would constitute a conflict of interest.

7.17 Disclosure. Any Split Lake Cree Trustee with a direct involvement, or financial or beneficial interest, in programs, projects, enterprises or undertakings financed or to be financed, in whole or in part, by the Trust Funds, shall make full disclosure in writing of such interest(s), to the Trustees and Chief and Council, and shall not participate in any decision by the Trustees related thereto, under this Trust.

7.18 Loss of Quorum. If the Split Lake Cree Trustees are not able to produce a quorum because of the Trustees' declarations that they may be in positions of conflict of interest, pursuant to sections 7.16 and 7.17 of this Indenture, the Trustees shall request Chief and Council

to convene a special community meeting, in accordance with the terms of subsection 11.5.2 of this Indenture, at which time a majority vote of the Members eighteen (18) years of age or older, then present, shall determine the issue(s) on behalf of the Split Lake Cree Trustees. The notice of the said meeting shall disclose that the purpose of the meeting is to have the Members make the determination(s) normally required to be made by the Split Lake Cree Trustees, pursuant to section 11.2 of this Indenture. Chief and Council shall be responsible for the full and complete disclosures which are otherwise required by this Indenture and the Agreement, and shall maintain a list of all Members, eighteen (18) years of age and older, who participated in the decision.

7.19 Exceptions. Notwithstanding the provisions of section 7.16 of this Indenture, Split Lake Cree Trustees can vote in decisions with respect to payments of Trust Funds to individual Members, when such payments have been duly requested pursuant to the terms of the Agreement and this Indenture, and such payments are being made equally to at least all of those Members who are resident on Reserve.

7.20 Minutes and Procedural Rules. The Split Lake Cree Trustees shall cause minutes of meetings of the Split Lake Cree Trustees to be recorded and entered in books kept for that purpose, and at any such meetings the Split Lake Cree Trustees shall select from among themselves a Chair for such meeting. Minutes, signed by the Chair of the meeting at which the decisions were made, or proceedings were taken, shall be evidence of the proceedings. The Split Lake Cree Trustees may adopt, amend, or cancel any rules for the purpose of governing their own procedure.

7.21 Auditor. The Split Lake Cree Trustees shall appoint an independent chartered accountant, or firm of chartered accountants, to audit annually the books and records of this Trust, and to provide an opinion thereon.

## ARTICLE 8

8.0 Corporate Trustee

8.1 Inaugural Corporate Trustee and Qualifications. The inaugural Corporate Trustee is a party to this Indenture. The Corporate Trustee must be a trust company licensed to do business in Canada, and a member

in good standing with the Canada Deposit Insurance Corporation.

8.2 Corporate Trustee Duties. The Corporate Trustee, in addition to the other responsibilities set out in this Indenture, shall be responsible for the following matters, all of which powers and duties cannot be exercised by other than a Corporate Trustee:

8.2.1 To keep a complete and accurate set of books and accounts of this Trust;

8.2.2 To prescribe the form of any documents or other certifications required to be given to it pursuant to the terms of this Indenture;

8.2.3 To prepare financial transaction statements, on a monthly basis, in accordance with trust accounting principles and practices;

8.2.4 To discharge its duties in accordance with the terms and conditions set out in Article 11 of this Indenture, and to determine if payments can be made accordingly;



- 8.2.5 To arrange for the custody of all Trust Funds, and to cause all such assets to be registered in the name of the Trust, its name or that of its agent or nominee, until disbursed in accordance with this Indenture;
- 8.2.6 To prepare and deliver such reports and documentation in respect of the Trust as may be required by government agencies, from time to time;
- 8.2.7 To attend to the investment functions of this Trust, subject to the terms of Articles 9 and 15 of this Indenture, including the use of any brokerage services, or investment advice being provided to the Trust other than by the Corporate Trustee; and,
- 8.2.8 To provide such notices to Chief and Council, Eligible Compensation Beneficiaries, Split Lake Cree Based Businesses and Controlled Institutions as the Corporate Trustee deems necessary to meet the reasonable requirements of the implementation of the terms of the Agreement and this Indenture.
- 8.3 Successor to Corporate Trustee. The Corporate Trustee serves at the pleasure of Chief and Council and may be

discharged upon thirty (30) days notice to the Corporate Trustee. Prior to appointing or discharging any Corporate Trustee, Chief and Council will comply with the provisions of subsections 11.5.2 and 11.5.3 of this Indenture. In the event that the Corporate Trustee is discharged, or should refuse, or be unable to continue to act, or shall resign, or shall be removed by a court of law, Chief and Council shall appoint forthwith a new Corporate Trustee, and advise Canada, Hydro and Manitoba of such appointment within fourteen (14) days after the date of such appointment. In the event the Corporate Trustee is discharged, the indemnities in favour of the Corporate Trustee provided in the Indenture shall continue, and the Split Lake Cree shall indemnify the Corporate Trustee so discharged in the event of the dissolution of the Trust.

8.4 Vacancy. Should any vacancy occur in the office of Corporate Trustee, whether as a result of retirement, discharge or dissolution, any Member, any Split Lake Cree Trustee, Canada, Manitoba, or Hydro shall have the right to apply to a court of competent jurisdiction to have the court make the appointment of the Corporate Trustee.

8.5 Property Vests in Successor Trustee. The title to any property of the Trust Funds, held by any Corporate Trustee who is no longer in office, shall vest forthwith in the successor Corporate Trustee without further formality; but in any event, if requested, any Corporate Trustee who has resigned, been removed or otherwise retired, shall execute all instruments, and do all acts necessary, to vest such title as it may have had in the Trust Funds in any successor Corporate Trustee of record, without court proceeding or other formality.

8.6 Acceptance of the Trust Terms. Before it may exercise any powers under this Indenture, a new Corporate Trustee shall sign an acceptance of the terms of this Indenture and agree to be bound by the terms of this Indenture as if it were an original signatory, and originals of such acceptance shall be delivered to Canada, Manitoba and Hydro, and the parties to this Indenture agree, each with the other, to be bound by all of the terms and provisions of this Indenture, as if the new Corporate Trustee had been an original signatory.

8.7 Fee for Service. The Corporate Trustee shall be paid a reasonable fee, to be approved in advance for a prescribed period, from time to time by Chief and

Council and a majority of Split Lake Cree Trustees, from the income of this Trust.

## ARTICLE 9

### 9.0 Investment Provisions

9.1 Trustees Investment Committee. Split Lake Cree Trustees shall constitute the Investment Committee of this Trust.

9.2 Role of the Investment Committee. The Investment Committee shall meet with the Corporate Trustee, on a quarterly basis or more frequently if desirable, to consider and formulate recommendations to the Trustees with respect to the management of the Trust Funds and, in particular, recommendations with respect to:

9.2.1 income and growth objectives;

9.2.2 liquidity requirements;

9.2.3 short and long term market trends;

9.2.4 asset mixes and diversification; and,

9.2.5 other investment policy matters reflecting budgetary requirements for Income expenditure; consistent with the investment rules applicable under the terms of this Indenture.

9.3 Disclosure. The Corporate Trustee shall make sufficient disclosure of the relevant investment issues for Split Lake Cree Trustees to arrive at informed recommendations, with respect to those matters set out in section 9.2 of this Indenture.

9.4 Investments. During the life of the Implementation Account, Resource Compensation Fund, O & M Reserve, Assets Replacement Reserve and Asset Damage Reserve, the Trustees shall only make investments of any moneys or assets of these Accounts in bonds, debentures, mortgages, or other evidences of indebtedness, that are either guaranteed by the Government of Canada, or a Provincial government of Canada; or rated "R 1- middle" or better by Dominion Bond Rating Service, or rated equivalently by a recognized national or international debt rating service, designated in writing by the Corporate Trustee.

9.5 Other Investments. During the life of the Environmental Monitoring, Commercial Fishing Compensation, Domestic

Resource Compensation, Fur Trapping Compensation, Remedial Works and Measures, and Economic and Social Development Accounts, the Trustees shall make investments of any moneys or other assets of these Accounts in investments authorized pursuant to Sections 86 to 90 inclusive of the Canadian and British Insurance Companies Act, (Canada), as it exists and is in force and effect on November 30, 1991, provided that at no time do investments authorized by section 90, exceed seven percent (7%) of the Net Value of these Accounts.

9.6 Decisions of Corporate Trustee. The Corporate Trustee has the duty to take reasonable and proper care with respect to investments authorized pursuant to Article 9 of this Indenture; and to make or manage any investment of Trust Funds with the judgment and care that a person of prudence, discretion and intelligence would exercise in administering the property of others.

9.6.1 Nothing in this Indenture shall authorize the Corporate Trustee to make any investment of Trust Funds without the advance approval of the Split Lake Cree Trustees, other than investments in Government of Canada Treasury Bills.

9.6.2 Other than to allow a timely response to market changes, the Corporate Trustee shall hold or sell an investment of the Trust upon the direction of the Trustees.

## ARTICLE 10

### 10.0 The Reserve Accounts

10.1 Allocation to Reserve. Twenty percent (20%) of the annual Income of the Commercial Fishing Compensation Account, twenty percent (20%) of the annual Income of the Fur Trapping Compensation Account, and five percent (5%) of the annual Income of the Domestic Resource Compensation Account shall be transferred annually to the appropriate Reserve Account of the Resource Compensation Fund.

10.2 O & M Reserve. The Corporate Trustee shall transfer those amounts, pursuant to the terms of Article 9 of the Agreement, determined by both a Registered Professional Engineer and the Corporate Trustee to be required to be allocated from the Remedial Works and Measures Account to cover the Operation and Maintenance of Remedial Works, and the payments to the Asset Replacement Reserve and the O & M Reserve, at the time any project is

approved, and money committed, from the Remedial Works and Measures Account.

10.3 Asset Replacement. The Corporate Trustee shall transfer those amounts determined, consistent with section 10.2 of this Indenture, to be the annual payment required with respect to making provision for Replacement Remedial Works, from the O & M Reserve to the Asset Replacement Reserve.

10.4 Asset Damage Reserve. The Asset Damage Reserve, not to exceed fifty thousand dollars (\$50,000), will be established and maintained from the Income of the Remedial Works Account and Measures to pay individual claims with respect to damages to personal assets.

10.5 Limitation on Size of Reserve Accounts. Where the aggregate Net Value of the Reserve Accounts of the Resource Compensation Fund exceeds twenty per cent (20%) of the Net Value of the Commercial Fishing Compensation Account, Domestic Resource Compensation Account and Fur Trapping Compensation Account, as evaluated by the Corporate Trustee, any such excess amount may be transferred, in accordance with the process for Chief and Council decisions set out in subsection 11.5.3 of this Indenture, pro rata to the Commercial Fishing



Compensation, Domestic Resource Compensation and Fur Trapping Compensation Accounts, as requested by Chief and Council and approved by a majority of Split Lake Cree Trustees. Such moneys will be treated as Income in the year transferred.

10.6 Payments from Reserves. The balance in the Reserve Accounts of the Resource Compensation Fund and the Asset Damage Reserve, shall be deemed always to be Income available for disbursement, in accordance with the relevant tests and procedures set out in Articles 8 and 9 of the Agreement, and in this Indenture.

10.7 Income Disbursement. The Income derived from the O & M Reserve shall be available for disbursement in accordance with the provisions of Article 11 of this Indenture and Article 9 of the Agreement. The Capital of the O & M Reserve will not be available for encroachment.

10.8 Additions to Capital. The Income derived from the Asset Replacement Reserve shall be added into the Capital of this Reserve Account, as earned, until such time as it is required to finance a Replacement Remedial Work, at which time such expenditure must be approved consistent

with the terms of sections 11.5 and 11.6 of this Indenture.

## ARTICLE 11

### 11.0 Uses of Trust Funds

11.1 Proposals by Chief and Council. Chief and Council shall, when determining whether a proposed use of Trust Funds is an Appropriate Use, reach, and record, an affirmative judgment that the use is reasonable, is supportive of the long term development of Split Lake Cree, and is expected to provide lasting benefits to Split Lake Cree, prior to proposing expenditures to the Split Lake Cree Trustees.

11.2 Other Authorized Payments. The Split Lake Cree Trustees, when considering a request for Income distribution pursuant to sections 11.5 and 11.6 of this Indenture, or Capital pursuant to sections 11.5, 11.11 and 11.12 of this Indenture, shall determine if the request conforms to an Appropriate Use, and was disclosed to Members consistent with the relevant provisions of the Agreement and this Indenture; and shall assess the lasting benefits likely to be derived by Split Lake Cree. The Split Lake Cree Trustees shall

file with Chief and Council and the Corporate Trustee a statement of reasons for their approval or disapproval of a request for Income, or the use of Capital, including minority or dissenting opinions, if any. Split Lake Cree Trustees shall not make determinations with respect to the relative priority attached by Chief and Council to alternative Appropriate Uses.

**11.3 Compensation Payments.** Payments of compensation to individuals will not require compliance with the tests set out in sections 11.1 or 11.2 of this Indenture, but will be approved for payment consistent with:

11.3.1 the documented decision(s) of a Tribunal, established pursuant to the terms of Articles 8 and 9 of the Agreement;

11.3.2 the terms established in subsection 7.3.7 of the Agreement, with respect to monthly compensation for Elders; or,

11.3.3 with the decision of the Split Lake Cree Arbitrator

provided that payments, based upon a decision of a Tribunal or the Split Lake Cree Arbitrator, shall not be made until

the expiration of the time for appeal or the disposition of an appeal to the Court of Appeal of Manitoba.

11.4 Disbursements to a Separate Account. All receipts from this Trust by Chief and Council will be deposited into a separate account ("the Designated Bank Account"). All disbursements therefrom will be accounted for by Chief and Council, in a manner that distinguishes the use of Trust moneys from moneys from other sources. At the commencement of this Trust, and prior to the receipt of funds by Chief and Council, a system of records and reports will be established, which will, in the opinion of an independent chartered accountant engaged for this purpose, be an adequate system to provide a comprehensive accounting and reporting of funds from this Trust, consistent with the accountability requirements set out in this Indenture and in Article 10 of the Agreement. This opinion as to adequacy shall be filed with the Corporate Trustee. Any qualification, in the annual audit opinion required pursuant to subsection 10.7.3 of the Agreement, with respect to the adequacy of records and procedures, shall result in a requirement that Chief and Council rectify the deficiency so as to obtain the required opinion as to adequacy, as contemplated in section 11.4 of this Indenture, prior to further payment of funds by the Trustees.

11.5 Split Lake Cree Request for Income or Capital. Subject to the terms of this Trust, Chief and Council shall be entitled, from time to time, to request an amount out of, and from, the Income or Capital of this Trust, in accordance with sections 11.6 through 11.13 inclusive of this Indenture, in respect of one or more of the Appropriate Uses, in accordance with the procedure set out below.

11.5.1 Chief and Council shall provide the Trustees annually with a multi year forecast of estimated financial requirements from each Account of this Trust consistent with the strategic priorities of Split Lake Cree.

11.5.2 Chief and Council will certify to the Trustees:

- (a) that they have, on an annual basis, held at least one (1) public meeting of Members on Reserve, with notice of such meeting posted fourteen (14) days in advance at public locations on Reserve including the general administration office, to review their plans

for requests from this Trust during the succeeding twelve (12) months; and,

- (b) that the plan submitted to the Trustees is consistent with the requirements of section 10.6 of the Agreement, and, to the extent then possible, subsection 11.5.6 of this Indenture, and has been approved by a majority of Members eighteen (18) years of age and older, in attendance at such a public meeting called for the purpose.

11.5.3 After approval of the plan as contemplated in subsection 11.5.2 of this Indenture, Chief and Council, prior to submitting expenditure proposals to the Trustees, shall, in all cases, cause notice to be posted at least fourteen (14) days in advance, at public locations on Reserve including the general administration office, which notice shall specify the Specific Projects and Program Initiatives intended to be considered by Chief and Council, providing detail required by section 10.6 of the Agreement and the disclosures required by subsection 11.5.6 of this Indenture, and including the date, time and location of the public Council meeting, at which

such consideration shall be given. Posted notices will disclose where additional information can be obtained by Members prior to the said meeting.

11.5.4 Where, in the Agreement or this Indenture, approval by a meeting or meetings, in accordance with subsections 11.5.2 and 11.5.3 of this Indenture, is prescribed for a purpose other than a request for Income or Capital, the disclosures, notices and procedures required shall apply, with such reasonable modifications as may be required, to meet the purposes of the provisions for which any such meeting is required.

11.5.5 A certified copy of the Council Resolution will be provided to the Trustees, containing sufficient detail to permit the Split Lake Cree Trustees to make the judgments required, pursuant to section 11.2 of this Indenture.

11.5.6 Consistent with the principle that the Chief and individual Councillors will not receive benefits from the Trust in their role as Chief or Councillor, but that they may receive benefits from the Trust in connection with their other

capacities as Members and Eligible Beneficiaries or Eligible Compensation Beneficiaries, Chief and Council will provide certification to the Trustees that any requests for funds from this Trust which would be personally received, either directly or through an intermediary, by the Chief, Acting Chief, and any Councillor have been disclosed to a public meeting. Further, if a contract or payment to a supplier of goods or services not resident at Split Lake exceeds one thousand dollars (\$1,000.00), such contract or proposed payment must, prior to conclusion or payment, be disclosed and approved at a public meeting, which meeting shall be held in accordance with the provisions of subsection 11.5.2 of this Indenture.

11.6 Income Distributions. The Trustees shall pay, in each fiscal year of this Trust, and from time to time, all or part of the balance of the Income, as the case may be, to Chief and Council or the Eligible Compensation Beneficiaries, in accomplishing one or more of the Appropriate Uses, which payment shall be made not before, but immediately upon, the receipt of the confirmation and documentation set out below.



11.6.1 A written confirmation from the Corporate Trustee that:

- (a) it is then in receipt of the documents referred to in sections 11.1, 11.2, 11.4 and 11.5 of this Indenture, with respect to each amount requested;
- (b) there is sufficient Income on hand to comply with the request being made;
- (c) there are reasonable grounds for believing that this Trust is, or would after the payment be, able to pay its liabilities as they become due;
- (d) if a payment from this Trust is made during the first five (5) years, the Net Value of the pertinent Account, including the related Reserve Account would, after any payments, be equal to or greater than, the Minimum Nominal Capital Amounts set out in the Financial Schedule;
- (e) if a payment from this Trust is made from any Account except the Implementation Account during the sixth or any succeeding year, the Net Value of the pertinent Account, including the related Reserve Account, would, after the payment, be equal

to or greater than the Continuing Nominal Capital Amount, set out in the Financial Schedule;

(f) if a payment from this Trust is made during the sixth year from the Implementation Account, the Net Value of that Account would, after the payment, be equal to or greater than the Continuing Nominal Capital Amount, as set out in the Financial Schedule, and if a payment is made from that Account in any subsequent year, the Net Value, after the payment, would be equal to or greater than Continuing Nominal Capital Amount for the sixth year, plus the aggregate of twenty-five (25%) percent of the annual Income from that Account earned in the seventh and each subsequent year as the case may be; and,

(g) the use of the funds, as disclosed in the documents, does not entail any pledging, borrowing or other forward commitment of funds as prohibited by subsection 10.6.2 of the Agreement.

11.6.2 Evidence, in a form acceptable to the Corporate Trustee, that:

- (a) Chief and Council are not in default of the reporting requirements as set out in section 10.7 of the Agreement and Article 12 of this Indenture;
- (b) the annual audit opinion required pursuant to subsection 10.7.3 of the Agreement is not subject to a qualification as set out in section 11.4 of this Indenture, or such other qualification as would indicate a material breach of the Agreement or of this Indenture, which qualification or qualifications have not been remedied to the satisfaction of the Corporate Trustee in its sole discretion; and,
- (c) Split Lake Cree Trustees have then determined, consistent with the tests set out in section 11.2 of this Indenture, that the use of the said funds as disclosed in the documents referred to in section 11.5 of this Indenture, has been approved.

11.7 Restriction on Payment. The Trustees shall not pay out of the Income of the Environmental Monitoring, Commercial Fishing Compensation, Domestic Resource Compensation, Fur Trapping Compensation, Remedial Works and Measures and Economic and Social Development Accounts, in the aggregate, in each fiscal year during

the currency of this Trust, more than an amount equal to the Income, in that fiscal year.

11.8 Limitation on Payment. The Trustees shall not pay out of the Income of the Implementation Account, in the aggregate, in each fiscal year during the currency of this Trust, more than an amount equal to seventy-five percent (75%) of the Income, in that fiscal year.

11.9 Reserve Account Balances. The balances of the Reserve Accounts may be disbursed pursuant to the Appropriate Uses, and, if required, receipt of documentation of the decision(s) of a Tribunal, established pursuant to Articles 8 and 9 of the Agreement.

11.10 Power To Allocate and Apportion. The Corporate Trustee is hereby empowered to determine what is Capital and what is Income of this Trust, and to make required valuations, and to allocate or apportion receipts and expenses as between Capital and Income. In making such determination(s), the Corporate Trustee shall proceed upon, and be guided by principles of sound trust accounting practice.

11.11 Encroachment On Capital where such Capital is in Excess of the Minimum and Continuing Nominal

Capital Amounts. Subject to section 11.12 of this Indenture, in each year during the continuance of this Trust, and from time to time during the currency of this Trust, the Trustees shall be entitled to encroach upon the Capital of all Accounts, only to the extent that such Capital during the first five (5) years of this Indenture is in excess of the Minimum Nominal Capital Amounts, and in the sixth and succeeding years is in excess of the Continuing Nominal Capital Amounts. Such encroachment, however, shall only be possible, in the sixth and succeeding years, with respect to the Commercial Fishing Compensation, Domestic Resource Compensation, Fur Trapping Compensation, Remedial Works and Economic and Social Development Accounts.

11.12 Encroachment Provisions. The Trustees shall only be entitled to encroach on the Capital as permitted by section 11.11 of this Indenture, provided they are then in receipt of the confirmation and documentation set out below.

11.12.1 A written confirmation from the Corporate Trustee that:

- (a) it is then in receipt of the documents referred to in sections 11.1, 11.2, 11.4, and 11.5 of this Indenture, with respect to each amount requested;
- (b) it is then in receipt of a certification signed by Chief or Acting Chief, indicating that a meeting of Members was held, in compliance with the provisions of subsection 11.5.2 of this Indenture, at which the use of Capital was authorized;
- (c) there is sufficient Capital on hand to comply with the request being made under section 11.5 of this Indenture;
- (d) there are reasonable grounds for believing that this Trust is, or would after the payment be, able to pay its liabilities as they become due;
- (e) if a payment of Capital from this Trust is made during the first five (5) years, the Net Value of the pertinent Account, including the related Reserve Accounts, would, after any payments, be equal to or greater than the Minimum Nominal Capital Amounts set out in the Financial Schedule;

- (f) if a payment of Capital from this Trust is made during the sixth or any succeeding year, the Net Value of the pertinent Account, including the related Reserve Accounts, would, after the payment, be equal to or greater than the Continuing Nominal Capital Amount, as set out in the Financial Schedule; and,
- (g) the use of the funds, as disclosed in the documents, does not entail any pledging, borrowing or other forward commitment of funds as prohibited by subsection 10.6.2 of the Agreement.

11.12.2 Evidence, in a form acceptable to the Corporate Trustee, that:

- (a) Chief and Council are not in default of the reporting requirements as set out in section 10.7 of the Agreement and Article 12 of this Indenture;
- (b) the annual audit opinion required pursuant to subsection 10.7.3 of the Agreement is not subject to a qualification as set out in section 11.4 of this Indenture, or such other qualification as would indicate a material breach of the Agreement or of this Indenture, which qualification or

qualifications have not been remedied to the satisfaction of the Corporate Trustee; and,

- (c) Split Lake Cree Trustees have then determined, consistent with the tests set out in section 11.2 of this Indenture, that the use of the said funds as disclosed in the documents referred to in section 11.5 of this Indenture, has been approved.

11.13 No Encumbering. The Trustees shall not authorize, or allow, the pledging, committing or encumbering of future years' anticipated Income from any of the Accounts, for any purpose.

11.14 Hydro Demand. The Corporate Trustee shall meet the demand made by Hydro, if any, pursuant to subsection 8.2.12 or subsection 9.2.12 of the Agreement, and pay immediately to Hydro the entire Capital then paid and remaining, including all earned and undistributed Income thereon and related thereto with respect to the Resource Compensation Fund or the Remedial Works Account, respectively. Such demand made by Hydro, if any, shall be treated in priority to any unfunded proposals to the Trust from Chief and Council.



ARTICLE 12

12.0 Accounting and Reporting of the Trust

12.1 Reporting Requirements. As soon as practicable, and in any event not more than one hundred and twenty (120) days following the end of each fiscal year, the Trustees shall be required to provide to Chief and Council, Hydro, Canada, Manitoba, and any Member who so requests, a single annual report containing:

12.1.1 the financial accounting for the year, and the accompanying reports and opinions as required pursuant to section 7.21 of this Indenture, and section 10.7 of the Agreement;

12.1.2 a narrative description, prepared and signed by the Split Lake Cree Trustees, with respect to the uses of the Income and Capital distributions made under this Indenture;

12.1.3 the reports and opinions resulting from special audits, if any, that were commissioned by the Trustees; and,

12.1.4 a disclosure containing information provided to the Trustees by Chief and Council, setting out the nature and amounts of payments of Trust Funds, if any, to the Chief, and Acting Chief, and any Councillor, or to non-resident suppliers of goods and services, consistent with subsection 11.5.6 of this Indenture.

12.2 Members Meeting. Within thirty (30) days of the provision of the annual report required pursuant to section 12.1 of this Indenture, Chief and Council shall convene a meeting of Members in accordance with the provisions of subsection 11.5.2 of this Indenture, which the Trustees shall attend.

12.3 Non-compliance. In the event that Chief and Council do not comply with the reporting provisions set out in Article 12 of this Indenture, and section 10.7 of the Agreement, the Trustees shall suspend payments of moneys from the Trust until such deficiencies have been corrected.

### ARTICLE 13

#### 13.0 Disputes

13.1 Dispute with Chief and Council. In the event that the

Split Lake Cree Trustees shall deny Chief and Council's request for a distribution of, and from, the Income or Capital of this Trust, Chief and Council shall have the right to submit such matter for resolution, in accordance with the Dispute Resolution Mechanism established pursuant to Article 16 of the Agreement.

13.2 Dispute with Split Lake Cree Members. Any Member who believes that the Split Lake Cree Trustees have acted in a manner that is in conflict with their powers or duties shall have the right to submit the matter for resolution, in accordance with the Dispute Resolution Mechanism established pursuant to Article 16 of the Agreement. Notwithstanding the general powers of the Arbitrator to award costs to claimants set out in Article 16, Members will not have the right to reimbursement of costs in the event of a decision by the Arbitrator with respect to such a claim, which is unfavorable to the claimant. Nothing in this Indenture shall derogate from any common law remedies which may be available to Members.

#### ARTICLE 14

##### 14.0 Liability and Indemnification

14.1 Liability of Split Lake Cree Trustees. Split Lake Cree

Trustees shall be liable only for their own negligence, or willful misconduct, or breach of the provisions of Article 7 of this Indenture, but shall not be liable for any error in judgment.

14.2 Liability of Corporate Trustee. The Corporate Trustee shall be responsible for the competent and professional discharge of its duties required under this Trust, but shall not be liable for any error in judgment.

14.3 Reliance Upon Reports. The Split Lake Cree Trustees may rely and act upon the accuracy of any statement, certificate or report by the Corporate Trustee, and the Corporate Trustee may rely and act upon the accuracy of any statement, certificate or report by the Split Lake Cree Trustees. The Trustees may rely and act upon the accuracy of any statement, report, certificate or opinion from Chief and Council, or a Tribunal, or any solicitor for the Trust, or any person required to prepare a report or certificate under this Indenture, and shall not be responsible or held liable for any loss or damage resulting from acting, in good faith, upon such statement, certificate, opinion or report.

14.4.1 Each and every Trustee shall be deemed to have assumed office on the express understanding and

condition that every Trustee, and his heirs, executors, administrators and assigns respectively, shall be indemnified and saved harmless, at all times, out of the Trust Funds, from and against all costs, charges and expenses whatsoever, except such costs, charges or expenses as are occasioned by his own negligence, wilful misconduct or default which are brought, commenced or prosecuted against him, for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by him related to the duties set out in this Indenture and at law, and also from and against all other costs, charges and expenses which he sustains or incurs with respect to the Trust, but shall not be liable for any error in judgment.

14.4.2 No Trustee shall be liable for the acts, omissions, neglect or defaults of any other Trustee and no Trustee shall be deemed to have indemnified any other Trustee against any losses, costs, claims, charges or expenses brought against, incurred or suffered by any other Trustee who has guaranteed or is personally liable for any debt or obligation of the Trust, unless such indemnification is in writing executed by the Trustee so indemnifying the Trustee becoming liable.

14.5 Indemnity With Respect to Taxes. Should the Trustees fail to assess, or report, or pay, any taxes that may be subject to assessment or payment during the currency of this Trust, and for which the Trustees might be responsible, the Trustees shall not be liable for any such failure. In the event that the Trustees should be called upon to pay any such taxes or other charges thereon, any such money so paid out by the said Trustees shall be returned to them out of the income of this Trust, and if the income has been expended by the Trustees before such payment or disbursement, then there shall be refunded to the Trustees out of the Capital all such moneys paid out and expended by them. This provision for indemnity and other reimbursement shall also extend to, and apply to, any other fines, levies, penalties, assessments, and damages levied against the Trustees, whether by a court or otherwise, in respect of, or arising out of, any matter or thing done, or omitted to be done, in connection with the management, operation, administration and carrying out of this Trust, except for breach of the provisions of Article 7 of this Indenture.

14.6 Successor Trustee Duties. No successor Trustee shall be required, or be under any duty, to examine, question,

verify or audit the books, records or accounts of any predecessor Trustee, except if so requested by Chief and Council, and then only to the extent reasonably possible.

14.7 Payment Absolute Discharge. Any moneys, advanced by the Trustees pursuant to and in accordance with the provisions of this Trust:

14.7.1 to an Eligible Compensation Beneficiary, shall be paid to such Eligible Compensation Beneficiary or if such Eligible Compensation Beneficiary is legally incompetent to receive such moneys then, to the lawfully appointed legal representative or guardian of such Eligible Compensation Beneficiary; and the receipt of such money by the Eligible Compensation Beneficiary, or by the legal representative or guardian of such Eligible Compensation Beneficiary, for and on behalf of the Eligible Compensation Beneficiary, shall be a sufficient discharge to the Trustees, who, subject to Article 12 of this Indenture, shall not be bound to see to the further application of any such moneys so paid; and,

14.7.2 to Split Lake Cree as Eligible Beneficiary, shall

be paid to Chief and Council as the representative, for such purposes, of the Eligible Beneficiary; and the receipt of any such moneys by Chief and Council, for and on behalf of the Eligible Beneficiary, shall be a sufficient discharge to the Trustees with respect to the further application of any such moneys so paid, other than with respect to ensuring compliance with Article 12 of this Indenture. The Trustees will not be held liable for the expenditure priorities of Chief and Council with respect to the funds from this Trust.

14.8 Liability of Chief and Council. Chief and Council in acting as the representative, for and on behalf of the Eligible Beneficiary, do not receive moneys advanced by the Trustees as a beneficiary, but as the representative, for and on behalf of, the Eligible Beneficiary. Chief and Council shall comply in all respects with the purposes for, and approvals under which the moneys were advanced; and shall use such moneys only for, and in accordance with the approved purposes for which they were advanced. In this regard, Chief and Council, and(or) individual chiefs and councillors, may be personally liable for any moneys spent other than as approved, or without required disclosures



and approvals, with respect to all money advanced by the Trustees to Chief and Council as the representative, for and on behalf of, the Eligible Beneficiary. Notwithstanding the foregoing, Chief and Council shall not be liable for honest errors in judgment in making any decisions; or when exercising any discretion that Chief and Council are authorized to make or exercise pursuant to the Agreement and this Indenture.

14.9 Dispute Resolution. The Trustees or any Member, who believes that Chief and Council, as a group or individually, has or have breached any condition or duty imposed on Chief and Council, as representative for and on behalf of the Eligible Beneficiary, or Eligible Compensation Beneficiary, whether such condition or duty is imposed by the Agreement or this Indenture, or has or have spent any moneys advanced to Chief and Council in such capacity, other than as approved or without required disclosures and approvals, shall have the right to submit the matter for resolution, in accordance with the Dispute Resolution Mechanism established pursuant to Article 16 of the Agreement. Notwithstanding the general powers of the Split Lake Cree Arbitrator to award costs to claimants under Article 16 of the Agreement, Members will not have a right to reimbursement of costs in the event the Split Lake Cree

Arbitrator's decision is unfavorable to the claimant. Nothing in this Indenture shall derogate from any common law remedies which may be available to Members.

14.10 Court of Competent Jurisdiction. Where any action or submission to dispute resolution with respect to any Chief, or Councillor, or Split Lake Cree Trustee involves, or could potentially involve personal liability or criminal sanction, such individual may at his option, at the time of first notice of such action, revoke his agreement to submit to arbitration, in which case the action or submission may only be proceeded with in a court of competent jurisdiction, consistent with subsection 16.7.8 of the Agreement.

14.11 Chief and Council Acceptance. Prior to fulfilling or undertaking any duty or obligation, or exercising any right pursuant to this Indenture, the Chief and each member of Council shall execute an acceptance and undertaking, accepting the obligations imposed on Chief and Council pursuant to this Indenture, and undertaking to uphold the terms of this Indenture. Chief and Council shall not fulfill or undertake any such duty or obligation until a majority of Chief and Council have executed such an acceptance and undertaking. The acceptance and undertaking shall contain explicit

reference to the duties, obligations and rights of Chief and Council set out in this Indenture; their personal potential liability as set out in sections 14.8, 14.9 and 14.10 of this Indenture; and, the fact that this Indenture and the Agreement have either been read by him, or explained to him, to his full satisfaction.

## ARTICLE 15

### 15.0 Rights and Powers of Trustees

15.1 Power and Authorities. Subject to Article 6 of this Indenture, without in any way limiting or derogating from the powers, authorities, and discretions otherwise available to the Trustees, and without application to, or approval by, any court, the Trustees, acting jointly, by a majority of the Trustees, which majority must include the Corporate Trustee, unless otherwise stated, or the Corporate Trustee, as the case may be, shall have, and be invested with, the following powers, authorities and discretions; and no person dealing with them shall be charged with any duty to enquire into the propriety of their action, except as set out in this Indenture.

15.1.1 The Trustees, in carrying out their duties and

exercising their rights and powers under this Indenture, and in all matters related to this Trust shall decide, and act, as follows:

- (a) where the reference is to Trustees, such decision shall be made jointly, by the majority of all Trustees, which majority must include the Corporate Trustee; and,
- (b) where the reference is to the Split Lake Cree Trustees, such decision shall be made by a simple majority of Split Lake Cree Trustees.

Notwithstanding the foregoing requirement, where there is any provision in this Indenture or in law that the Trustees, or any class of Trustees, shall act as a whole or unanimously, then, the said Trustees shall not be entitled to act in such matter other than unanimously. Moreover, there shall be no delegation of the powers and authorities of the Split Lake Cree Trustees.

15.1.2 The Trustees, pursuant to Article 9 of this Indenture, are empowered, subject to any specific direction set forth elsewhere in this Indenture concerning any of the Trust Funds, to use their

discretion in the realization of any property, and to sell, call in and convert into money, any part of this Trust not consisting of money, at such time or times, and in such manner and upon such terms, and either for cash or credit or for part cash and part credit, as the Trustees may decide upon; or to postpone such conversion of any property, or any part or parts thereof, for such length of time as they consider advisable. The Trustees may retain, pursuant to Article 9 of this Indenture, as an authorized investment of the Trust, for all purposes of this Trust, for such length of time as they consider necessary or advisable, any cash or other property originally transferred to the Trustees pursuant to this Indenture, or hereafter assigned, transferred or appointed to or acquired by the Trustees pursuant to this Indenture or hereafter assigned, transferred or appointed to the Trustees by the Settlor, or by any other person or persons.

15.1.3 The Corporate Trustee may in the exercise of its authority, purchase and pay the premiums on policies of insurance against fire, other casualty or public liability, or other insurance of a similar character.

15.1.4 The Trustees may vote all shares and stocks forming part of the Trust, and exercise all rights incidental to the ownership of shares, stocks, bonds, debentures or other securities or investments forming part of the Trust, and issue proxies appointing one of their number, and(or) some other person or persons, their proxy to vote for the election of themselves, or any other candidate, to any executive or other board or committee of any such company or corporation or association; and serve in any such office or on any such board or committee, and sell or exercise any subscription rights, and in connection with the exercise of subscription rights, use any portion of the Trust for such purpose; consent to, and join in, any plan for reconstruction, reorganization, amalgamation, consolidation, readjustment, liquidation, dissolution or winding-up, in respect of any company or corporation whose shares, stocks, bonds, debentures, notes or other securities for the time being form part of the Trust Funds, or for the sale of the assets and undertaking, or a substantial portion thereof, of any such company or corporation; and in pursuance of any such plan,

accept any shares, stocks, bonds, debentures, or other securities in exchange for the shares, stocks, bonds, debentures or other securities then forming part of the Trust; and generally, act in respect of any securities or investments forming part of the Trust in such manner as the Trustees shall in their discretion consider to be in the best interest of the persons entitled under this Indenture.

15.1.5 The Trustees shall be required to register any assets forming part of this Trust, whether real or personal property, in the name of the Trust, the Corporate Trustee, or the Corporate Trustee's agent or nominee, without thereby increasing their liability as Trustees, it being understood and agreed that the Trust Fund shall be held to the extent practicable on an Indian Reserve.

15.1.6 The Trustees shall be authorized to carry out any transactions, and enter into any contracts or agreements, with any person or corporation, concerning any asset forming part of this Trust, where the Trustees consider such agreement to be in the best interests of this Trust; and in

connection therewith, the Trustees may make, execute, acknowledge and deliver any and all instruments that may be necessary, proper or desirable.

15.1.7 The Corporate Trustee, upon the approval of the Split Lake Cree Trustees, or otherwise as provided in this Indenture, may make any payments, provisions, apportionments, or distributions which may be authorized or required under the terms of this Trust, in whole or in part, in moneys, securities or other property comprising the Trust Funds; and subject to Article 11 of this Indenture, every apportionment and distribution, and valuation therefor, which in the discretion of the Trustees shall seem equitable, shall be final, conclusive and binding upon all persons interested under this Indenture. In those cases in which payments are made other than in cash, such payments shall be valued as if they represented an encroachment on Capital as set out in section 11.11 of this Indenture.

15.1.8 The Trustees shall be authorized to open and operate a bank account or bank accounts as may be expedient in the opinion of the Trustees, and to



deposit any cash balances in the hands of the Corporate Trustee, at any time, in any chartered bank or trust company which is a member in good standing with the Canada Deposit Insurance Corporation.

15.1.9 The Trustees are authorized, in the discharge of their duties, to employ other trust companies, professional investment counsellors, counsel, solicitors, auditors, accountants and agents, and to determine the amount of their reasonable compensation, and to pay the same from out of the income of this Trust as they, in their discretion, consider proper, for all expenses necessarily and properly incurred in the administration of this Trust, subject to the limitation that such costs, exclusive of the costs of Corporate Trustee and costs related to subsection 15.1.10 of this Indenture, will be no greater than four percent (4%) of the annual income of this Trust.

15.1.10 The Trustees are authorized, in the discharge of their duties, to institute, prosecute and defend any suits or actions or other proceedings affecting them or the Trust or any

part thereof; to compromise, or settle, any matter of difference, or to submit any such matters to arbitration; to compromise, or compound, any debts owing to or by this Trust, upon evidence that to them shall seem sufficient; to make partition, in whole or in part, at public auction or private sale or otherwise, and upon such terms as they deem advisable, with any co-owners or joint owners having any interest in any properties comprised in the Trust, and to make such partition either by sale, or by set-off, or by agreement, or otherwise (including where deemed desirable, provision for equality of exchange).

The Trustees may make, or refrain from making, in their discretion, any election or elections, any determination or determinations, and any designation or designations, permitted by any statute or statutes or regulation or regulations, enacted by the Parliament or government of Canada, by the Legislature or government of any province of Canada, or by any other legislative or governmental body of any other country, province, state or territory, and such exercise of discretion by the Trustees shall be conclusive and binding upon all the beneficiaries of

this Trust. The Trustees shall have discretion, from time to time and at any time or times, to exercise the powers and authorities conferred in this subsection 15.1.11.

No contract, document, instrument, promissory note, bill of lading, commercial instrument or other similar commercial or legal document made on behalf of this Trust and, purporting to bind this Trust, shall, in fact, be binding upon this Trust, unless the same is executed by the Corporate Trustee or the person or persons designated from time to time by the Trustees; and only those contracts, documents, instruments, promissory notes, bills of lading, commercial instruments or other similar commercial or legal documents required to be signed, which are executed in the foregoing manner shall be valid and binding upon this Trust without further authorization or formality; provided however, that the Trustees for the time being, shall be entitled in any specific instance to authorize any one or more of their number, or any other appropriately qualified person, firm or corporation, to execute contracts, documents and instruments in writing, and cheques, drafts, or orders for payment of money, and notes, and acceptances, and bills of exchange in relation to any bank accounts, operated on behalf of

this Trust, at any chartered bank or trust company or other financial institution; and shall not be responsible for any loss arising therefrom, by reason only of their having made such appointment.

This Indenture need not be placed on record, or filed in any Court, or anywhere else in any jurisdiction where property belonging to this Trust is situated; and all persons dealing with the Trustees shall be entitled to rely on the authority of them to do and perform any and all acts or things, and to execute any and all instruments necessary, or proper, to carry out, and consummate, any and all transactions between such persons and the Trustees; provided that such acts and instruments and transactions are executed in the proper manner as provided by this Indenture.

15.1.14 The Trustees shall:

- (a) receive and hold the Declaration and Acceptance of Trust set forth in Schedule 4.2 of Article 4 of the Agreement, together with the endorsed share certificate in the Land Corporation, in accordance with the provisions of the Declaration and Acceptance of Trust, but shall not vote such share;

- (b) execute a Pledge Agreement in form and content as set forth in Schedule 4.3 of Article 4 of the Agreement, and accept and hold under the provisions set forth in such Pledge Agreement the duplicate certificate(s) of title and transfer(s) of land referred to in such Pledge Agreement, and shall file or cause to be filed caveat(s) evidencing the interests created by the Pledge Agreement;
  
- (c) release duplicate title(s) and withdraw caveat(s) filed under paragraph 15.1.5(b) of this Indenture upon the obligations set forth in subsection 4.3.4 of the Agreement being met; and,
  
- (d) when considering a determination by the Directors of the Land Corporation under subsection 4.3.3 of the Agreement, determine if the disclosure of the Proposed Transaction would jeopardize the interests of a Third Party referred to in subsection 4.3.3 of the Agreement, such that the Third Party might reasonably be expected not to proceed with any such Proposed Transaction, and that the

Proposed Transaction is for the benefit of  
Split Lake Cree.

ARTICLE 16

16.0 Amendment and Variation

16.1 Trust Irrevocable. Except as provided in this Indenture, the Trusts set forth in this Indenture are intended, and are declared, to be irrevocable by the Settlor.

16.2 Amending Powers. Notwithstanding section 16.1 of this Indenture, and subject to sections 16.3, 16.4, 16.5 and 16.6 of this Indenture, at any time during the term of this Trust, Split Lake Cree as represented by Chief and Council, as the Settlor, and the Trustees acting unanimously, with the prior written approval of Canada, Manitoba and Hydro, and the approval of a court of competent jurisdiction, may dissolve, amend, vary, add to, revise or modify the terms and conditions of this Indenture, or pay, or transfer the whole of the Trust Funds then remaining, on the Distribution Date.

16.3 Consent of the Court. The Trustees, together with Split Lake Cree as represented by Chief and Council as the

Settlor, may apply to any Court having jurisdiction over this Trust, to dissolve, amend, vary, add to, revise or modify this Trust, after ninety (90) days public notice to Split Lake Cree, and having received, in writing, the approval of Canada, Manitoba and Hydro. Such application shall be in the following form:

16.3.1 A plan or proposal for the interpretation and construction, and meaning and implementation of this Trust, and this Indenture, and of their rights, obligations and discretions under this Indenture or for any change or amendment to this Indenture, accompanied with such other affidavits or other evidence as will aid the said Court in reaching its decision, including evidence of the required prior approval of Canada, Manitoba and Hydro.

16.4 Consent of Split Lake Cree. Notwithstanding and in addition to those matters contained in subsection 3.1.8 of this Indenture and sections 16.2 and 16.7 of this Indenture, the Trustees shall not be entitled to make application pursuant to section 16.3 of this Indenture to dissolve, amend, vary, add to, revise or modify this Trust, or to pay or transfer the whole of the Trust Funds then remaining on the Distribution Date, unless and until the following condition has been fulfilled and

(or) performed:

16.4.1 Split Lake Cree have duly authorized Chief and Council to consent to such dissolution, amendment, variation, addition, revision, modification, payment or transfer, in accordance with the procedures established under sections 16.5 and 16.6 of this Indenture.

16.5 Public Meeting. For the purpose of complying with section 16.4 of this Indenture, Chief and Council shall hold a public meeting of Members, consistent with the procedures set out in subsection 11.5.2 of this Indenture, save and except that such meeting shall be announced at least ninety (90) days in advance. Chief and Council shall cause to be explained to the Members attending at such meeting, the nature and significance of the said dissolution, amendment, variation, addition, revision, modification, payment or transfer.

16.6 Vote by Secret Ballot. Chief and Council shall be deemed to have authorized Split Lake Cree to consent to such dissolution, amendment, variation, addition, revision, modification, payment or transfer, by formal Council Resolution; but only following a vote by secret ballot in favour of such authorization, by a majority of



Members eighteen (18) years of age and older attending at a meeting convened in accordance with section 16.5 of this Indenture. A list of such Members in attendance at the said meeting shall be compiled and be provided to the court, along with the results of the vote.

**16.7 Distribution to Split Lake Cree on Distribution Date.**

The Trustees shall, where dissolution of the Trust has been approved pursuant to the provisions of Article 16 of this Indenture, pay or transfer the whole of the Trust Funds remaining on the Distribution Date to Split Lake Cree, and, for greater certainty, in so distributing the Trust Funds, the Trustees shall not be required to follow the requirements of paragraphs 11.6.1(d), 11.6.1(e), 11.6.1(f) and 11.6.1(g) and 11.12.1(e) and 11.12.1(f) of this Indenture.

**ARTICLE 17**

**17.0 Miscellaneous**

**17.1 Proper Law of Trust.** This Trust is established under the laws of Manitoba, and the rights of all Parties, and the construction and effect of each and every provision of this Indenture, shall be according to the federal and provincial laws in force in Manitoba.

17.2 Perpetuities. Should any rule of law relating to remoteness of vesting apply to this Trust; which rule of law provides that, as a result of the happening of any death, matter or thing of any nature or kind whatsoever, this Trust shall be deemed to be void or shall otherwise offend the said rule or law; each Trust created under this Indenture, shall in any event terminate immediately prior to the end of the prospective period permitted for vesting, and thereupon, the property held in Trust shall be distributed, discharged of trust, to Split Lake Cree.

17.3 Accumulations. Should any rule of law against accumulations be deemed to apply to this Trust, then, notwithstanding anything contained in this Indenture, the Trustees shall not be entitled to accumulate any of the Income received by, or derived from, this Trust, or the Accounts, for a period exceeding the period of time permitted by such rule, and until such time, the Trustees shall be entitled, according to the discretionary provisions of this Indenture, to accumulate Income from the Trust Funds; but thereafter, the Trustees may not accumulate any further Income from the Trust Funds and must allocate and distribute all Income thereafter received from the Trust Funds according to the disposition provisions of this

Indenture, in each year after the said accumulation period has ended.

17.4 Enforcement of Trust. Notwithstanding anything contained in this Indenture, and subject to other rights of enforcement at law, and the rights of others at law, to enforce the terms of this Indenture, in the event of the non-performance by the Trustees of their obligations and duties under this Indenture, Chief and Council on behalf of Split Lake Cree and(or) Members, shall have the right to apply to the appropriate court of law to enforce this Trust, according to its terms.

17.5 Assignment. Except as expressly provided for in this Indenture, neither this Indenture, nor the rights and obligations under this Indenture, may be assigned.

17.6 Enurement. This Indenture, except as specifically or impliedly limited, shall enure to the benefit of, and be binding upon, the Parties to this Indenture, the beneficiaries, and the heirs, executors, administrators, successors and assigns of all of them.

17.7 Hydro Ceasing to be Agent. In the event that Hydro should cease to be an agent of Her Majesty in Right of Manitoba, all of its rights under this Indenture shall

devolve upon Manitoba.

17.8 Fiscal Year of the Trust. The fiscal year end of the Tataskweyak Trust shall be December 31.

17.9 Entire Agreement. This Indenture, together with the Agreement including the documents referred to in the Agreement, constitute the entire agreement between and among the Parties pertaining to the subject matter of this Indenture, and, except as expressly provided, supersede all prior agreements, understandings, negotiations and discussions whether oral or written, among or between the Parties with respect to the subject matter of this Indenture. There are no representations, warranties, collateral agreements or conditions, except as expressed in this Indenture.

17.10 Modifications. This Indenture shall be read with such modifications as may be required by Article 11 of the Agreement.

#### ARTICLE 18

18.0 Finality and Release

18.1 Finality and Release. Split Lake Cree hereby releases

and forever discharges Canada and Manitoba and Hydro from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, including any claims of a fiduciary character, if any, which Split Lake Cree has had, now has, or hereafter can, shall or may have, for, or in respect of Canada's, or Manitoba's or Hydro's obligations to Split Lake Cree for anything done or omitted to be done by Canada, or Manitoba, or Hydro to and from the date of this Indenture, with respect to any of the matters or arrangements provided for in this Indenture including the substitution of these Trust arrangements for the provisions of the Indian Act (Canada) pertaining to Indian moneys. This section 18.1 of this Indenture does not limit the obligations assumed by Canada, Manitoba and Hydro pursuant to the Agreement and this Indenture. Nothing in this section 18.1 of this Indenture shall relieve Canada, Manitoba or Hydro of liability for breaches of this Indenture or the Agreement, future negligent acts, or omissions, or willful misconduct, on their own part, or on the part of those for whom they are respectively responsible at law.

Signed, sealed and delivered  
in the presence of:

Split Lake Cree First Nation  
as Settlor

Alfred B...  
Witness as to Chief and  
Councillors

Lawman Oub  
Chief

Walter Mast  
Councillor

Emile...  
Councillor

SAM GARSON  
Councillor

Joseph Keeper  
Councillor

[Signature]  
Councillor

[Signature]  
Councillor

Thomas Beatty  
Councillor

Vats Spencer  
Councillor

William Beatty  
Councillor

Joseph Mowen  
Councillor

Joseph Hame  
Councillor

John Beatty  
Tataskweyak Trustees

Alfred B...  
Witness

[Signature]  
Trustee

Alfred B...  
Witness

[Signature]  
Trustee

Alfred B...  
Witness

[Signature]  
Trustee

Alfred B...  
Witness

[Signature]  
Trustee

Alfred P. [Signature]  
Witness

Norman [Signature]  
Trustee

The Corporate Trustee  
Royal Trust Corporation of  
Canada

Per: [Signature]

Witness

Per: [Signature]

Her Majesty the Queen in the  
Right of the Province of  
Manitoba

[Signature]  
Witness

Per: [Signature]

The Manitoba Hydro Electric  
Board

Per: [Signature]

Witness

Per: [Signature]

Her Majesty the Queen in The  
Right of Canada

[Signature]  
Witness

Per: [Signature]