

**IN THE MATTER OF  
THE ENVIRONMENTAL ASSESSMENT ACT, S.B.C. 2002, c. 43 (THE "ACT")**

**AND**

**IN THE MATTER OF  
AN APPLICATION FOR AN ENVIRONMENTAL ASSESSMENT CERTIFICATE  
(THE "APPLICATION")**

**BY**

**WANETA EXPANSION POWER CORPORATION  
(THE "PROPONENT")**

**FOR THE**

**WANETA HYDROELECTRIC EXPANSION PROJECT (THE "PROJECT")**

**ENVIRONMENTAL ASSESSMENT CERTIFICATE #E07-04**

**Whereas:**

- A. The Project is a 435 megawatt hydroelectric power generation facility that includes an intake approach channel, two power tunnels, surface powerhouse containing two turbine-generator units, tailrace channel, 10 km 230 kilovolt transmission line, construction site and temporary facilities, excavation materials disposal areas, and access roads;
- B. The Proponent proposes to design, construct and operate the Project adjacent to the Waneta Dam and Waneta Generating Station (WGS) owned by Teck Cominco Metals Ltd. ("TCML") on the Pend d'Oreille River near its confluence with the Columbia River in southern British Columbia, approximately 800 metres north of the Canada-United States border;
- C. The Project constitutes a reviewable project pursuant to Part 4 of the Reviewable Project Regulation (B.C. Reg. 370/02);
- D. On December 30, 2002, the Executive Director of the Environmental Assessment Office (EAO), in accordance with section 4(1)(a) of the Act, delegated certain statutory and regulatory powers to a Project Assessment Director;
- E. On June 12, 2003, the Project Assessment Director issued an Order under section 10(1)(c) of the Act, stating that the Project requires an Environmental Assessment Certificate (Certificate);

- F. On September 22, 2003, the Project Assessment Director issued an Order under section 11 of the Act, setting the scope, procedures and methods for the environmental assessment of the Project;
- G. On March 21, 2006, the Executive Director, in accordance with section 4(1)(a) of the Act, delegated certain statutory and regulatory powers to another Project Assessment Director;
- H. On April 26, 2006, the Project Assessment Director issued an Order under section 13 of the Act, amending certain provisions of the section 11 Order;
- I. On June 8, 2006, the Project Assessment Director accepted for review the Application filed by the Proponent for a Certificate for the Project, and established a public comment period for the Application;
- J. On June 8, 2006, the Project Assessment Director determined that the notification and consultation measures undertaken and proposed by the Proponent for both the public and First Nations were adequate;
- K. On June 8, 2006, the Project Assessment Director accepted for concurrent review under the Act, the applications filed by the Proponent for a water licence under the *Water Act* and Crown land tenure under the *Land Act*;
- L. On November 16, 2006, the Project Assessment Director suspended the 180-day time limit for completion of the review of the Application under section 24(2) of the Act, and required the Proponent to provide additional information to complete the review;
- M. On February 5, 2007, the Project Assessment Director resumed the 180-day time limit for completion of the review of the Application under section 24(2) of the Act;
- N. On February 6, 2007, the Minister of Environment issued an Order under section 30 of the Act, suspending the assessment of the Project, the 180-day time limit referred to in section 3 of the Prescribed Time Limits Regulation, B.C. Reg. 372/2002, and the time limit referred to in section 6(2)(b) of the Public Consultation Policy Regulation, B.C. Reg. 373/2002;
- O. In October 2007, the Minister of Environment repealed the Order under section 30 of the Act, thus resuming the assessment of the Project, the 180-day time limit referred to in section 3 of the Prescribed Time Limits Regulation, B.C. Reg. 372/2002, and the time limit referred to in section 6(2)(b) of the Public Consultation Policy Regulation, B.C. Reg. 373/2002;

- P. The Application was made available for review by the public and by representatives from federal, provincial and local government agencies, American federal and state agencies, and the Ktunaxa Nation Council and Okanagan Nation Alliance;
- Q. The Project Assessment Director prepared a report on the potential effects of the Project, entitled the "Waneta Hydroelectric Expansion Project Assessment Report" (Assessment Report);
- R. The Executive Director has referred the Application, the Assessment Report, and Recommendations of the Executive Director and Reasons for Recommendations pursuant to section 17 of the Act, to the Minister of Environment (Minister) and the Minister of Energy, Mines and Petroleum Resources, (hereafter the Ministers); and,
- S. The Ministers have considered the Application, the Assessment Report, and the Recommendations of the Executive Director and Reasons for Recommendations.

**Now Therefore,**

The Ministers, pursuant to section 17(3) of the Act, hereby issue this Certificate to the Proponent for the Project, subject to the following conditions (Conditions):

**Conditions**

1. The Proponent must cause the Project to be designed, located, constructed and operated in accordance with the Conditions of this Certificate, the documents listed in Schedules A and B, and must comply with all of the Conditions of this Certificate to the reasonable satisfaction of the Minister.
2. Where in the reasonable opinion of the Minister, there is a conflict or inconsistency between any of the documents listed in Schedule A, Condition 1 must be interpreted so that the contents of the later dated document will vary, repeal, rescind, or supersede, as the case may be, the contents of earlier dated documents listed in Schedule A.
3. Where, in the reasonable opinion of the Minister, there is a conflict or inconsistency between any of the documents listed in Schedule A and the documents listed in Schedule B, Condition 1 must be interpreted so that Schedule B will vary, repeal, rescind or supersede, as the case may be, the earlier dated documents listed in Schedule A.
4. Where, in the reasonable opinion of the Minister, there is a conflict or inconsistency between Schedules A or B and the Conditions which follow, these Conditions must take precedence over and supersede the relevant provision(s) of Schedules A or B.

5. Despite Condition 1 above, if prior to one year following the commencement of commercial power production from the Project, the Proponent proposes a material change to the design, location, construction or operation of the Project as described in the documents listed in Schedules A or B, and the change may, in the opinion of the Executive Director, have the potential for significant adverse effects, the Proponent must then provide to the Executive Director:
  - a) an application in writing to amend the Certificate pursuant to section 19(1) of the Act; and,
  - b) plans, analysis, records and other information necessary for an effective assessment by the Executive Director of the proposed change.
6. Prior to start of construction of the Project, the Proponent shall enter into an agreement, acceptable to the Comptroller of Water Rights ("Comptroller"), with TCML to use water in the Project that is licensed for use in WGS.
7. Further to the agreement referenced in Condition 6, whenever water licensed for use in WGS is used in the Project, the Proponent shall ensure water discharges shall be as follows:
  - a) for mean daily flows below 566 cms, a minimum continuous 6-hour night time flow from June 1 to July 31 of 142 cms, and a minimum continuous day-time flow of 283 cms; and,
  - b) for mean daily flows above 566 cms, a minimum continuous flow from June 1 to July 15 of 566 cms.
8. The water discharges referred to in Condition 7 may be adjusted or modified to the satisfaction of the Comptroller and Fisheries and Oceans Canada for the following reasons:
  - a) the cumulative duration of low flows falling to 142 cms is longer than predicted, or the observed near-bottom velocities are on average less than modeled predictions based on the accuracy of flow pattern predictions for the Project monitored through one complete spawning/incubation season after commencement of commercial power production;
  - b) a statistically significant increase in egg predation related to the change of flows after commencement of operations based on egg predation field sampling during the annual white sturgeon spawning period, monitored for six years;
  - c) the results of the Proponent's monitoring program show negative project related effects on white sturgeon not predicted in the Application; or
  - d) new scientific data demonstrates presently unknown harm to white sturgeon from Boundary Release flow-through associated with the Project; and,
  - e) written notice is provided by either the Proponent, the Comptroller or Fisheries and Oceans Canada of a reasonable basis to conclude that unexpected harm may occur to white sturgeon as a result of the water discharge in Condition 7 and a change in these water discharges can be expected to mitigate or remedy unexpected effects or harm.

9. The Proponent must participate to the satisfaction of the Comptroller in Water Use Plans, and Plan revisions, involving all power licensees on the Pend d'Oreille River in British Columbia.
10. Further to Condition 9, the Proponent must implement changes to Operating Procedures directed by the Comptroller in accordance with Water Use Plans and Plan revisions.
11. The Proponent must prepare or cause to be prepared an Environmental Management Plan (EMP), Environmental Work Plans (EWPs) and Task Plans (TPs) in the Owner's Commitments and Owner's Environmental Requirements for Construction (OERC), in accordance with the commitments made in the documents listed in Schedule B.
12. The Proponent must provide the EMP to the Comptroller and the Regional Managers, Environmental Protection and Stewardship Divisions, Ministry of Environment, for approval prior to the start of construction of the Project.
13. Further to Condition 12, the Proponent must provide any amendments to the approved EMP and the OERC to the Comptroller, the Regional Managers, Environmental Protection and Stewardship Divisions, Ministry of Environment, and with respect to the OERC, Section B, the District Manager, Ministry of Transportation, for approval prior to construction of those portions of the Project related to the amendments sought.
14. The Proponent upon request by the Comptroller or the Regional Managers, Environmental Protection and Stewardship Divisions, Ministry of Environment, or the District Manager, Ministry of Transportation, for specific EWPs must provide the EWPs to them for information prior to the start of construction activities related to those EWPs.
15. The Proponent must implement the EMP, EWPs and TPs to the satisfaction of the Regional Managers, Environmental Protection and Stewardship Divisions, Ministry of Environment, the Comptroller and the District Manager, Ministry of Transportation.
16. Notwithstanding wording in the documents listed in Schedule B, the Proponent must perform or cause to be performed to the satisfaction of the Executive Director, EAO, each and every commitment or requirement in Schedule B.
17. The Proponent must submit to the Executive Director reports on the status of compliance with the Conditions of this Certificate, and the Owner's Commitments made in Schedule B, at the following points in Project development:
  - a) one month prior to the start of construction of the Project, for all Conditions and commitments;

- b) one month after commercial power production commences, for all Conditions and commitments;
- c) one year after commercial power production commences, for all Conditions and commitments; and,
- d) at other times, if required by the Executive Director, either for all Conditions and commitments, or for selected Conditions and commitments, as specified by the Executive Director.

- 18. This Certificate is of no force or effect until signed by the Ministers.
- 19. This Certificate does not constitute a permit, licence, approval or any other authority required under any other enactment.
- 20. The Proponent, except in connection with granting security to Project lenders or other financing entities or financing facilities, must obtain the written consent of the Minister, such consent not to be unreasonably withheld or delayed, prior to disposing, whether legally, beneficially or otherwise, of:
  - a) this Certificate, or any right, title or interest conferred by this Certificate; or
  - b) the Project.

#### **Duration of Certificate**

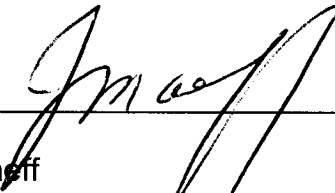
- 21. The Proponent must have, in the reasonable opinion of the Minister, substantially started the construction of the Project within five years of the date of issue of this Certificate, otherwise this Certificate expires.

#### **Suspension, Cancellation and Amendment of Certificate**

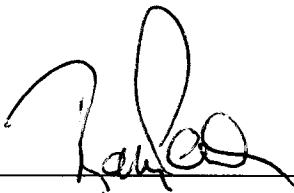
- 22. This Certificate may be subject to cancellation, suspension in whole or in part, amendment, or the attachment of new Conditions, for any of the following reasons:
  - a) the Minister has reasonable and probable grounds to believe that the Proponent is in default of:
    - i. an Order of the Courts under section 35(2), 45 or 47 of the Act;
    - ii. an Order of the Minister made under section 34 or 36 of the Act; or,
    - iii. one or more requirements or Conditions of this Certificate; or
  - b) the Proponent or its officers or employees, when acting on behalf the Proponent, have been convicted of an offence under the Act, with respect to the Project.

The Conditions of this Certificate are agreed to by the Proponent this

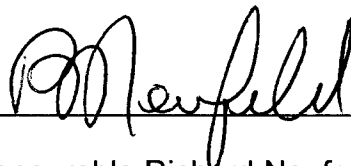
4<sup>th</sup> day of October, 2007



Victor Jmaeff  
Vice President, Power Supply and Marketing  
Waneta Expansion Power Corporation



Honourable Barry Penner  
Minister of Environment



Honourable Richard Neufeld  
Minister of Energy, Mines and  
Petroleum Resources

Issued this 13<sup>th</sup> day of November, 2007, in Victoria, British Columbia.