

ANNEX ONE TO SETTLEMENT AGREEMENT

THE MACKENZIE GAS PROJECT AND CONNECTING FACILITIES CONSULTATION PROTOCOL

BETWEEN:

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

AND:

THE DENE THA' FIRST NATION, as represented by its Chief and Council

(collectively, "the Parties")

PREAMBLE:

WHEREAS the Dene Tha' First Nation (DTFN) has *Treaty 8* rights that are protected by section 35 of the *Constitution Act, 1982* and assert aboriginal rights and title in and to certain lands within the southern portion of the Northwest Territories, as indicated on the map in Appendix "A" to this Protocol;

WHEREAS Imperial Oil Resources Ventures Limited, on behalf of the Mackenzie Gas Project co-venturers wishes to construct the MGP as defined in this Agreement which consists of a gathering system, pipeline and related facilities that terminate at a point just south of the Northwest Territories-Alberta border to transport natural gas throughout the NWT to southern markets in Canada and the United States;

WHEREAS NOVA Gas Transmission Ltd. ("NGTL") wishes to construct the Connecting Facilities as defined in this Agreement which consist of a pipeline and related facilities – the Dickins Lake and Vardie River Projects – to connect the MGP to NGTL's existing facilities in northern Alberta to facilitate the shipment of natural gas from the MGP to southern markets;

WHEREAS the DTFN filed an application for judicial review in the Federal Court of Canada on May 17, 2005, seeking, among other things, declarations from the Court that the Minister of the Environment, Minister of Fisheries and Oceans, Minister of Indian and Northern Affairs and Minister of Transport had a duty to consult with the DTFN in respect of the establishment of the environmental and regulatory review process for the Mackenzie Gas Project and that the Ministers breached that duty;

WHEREAS on November 10, 2006, Justice Phelan handed down his reasons for judgment in respect of the above described judicial review, *Dene Tha' First Nation v. MOE et al.* (Fed Ct. No. T-867-05) and Canada has appealed that judgment;

WHEREAS Justice Phelan’s judgment states that the Crown in Right of Canada has a duty to consult with the DTFN in respect of the MGP and the Connecting Facilities;

WHEREAS the MGP and Connecting Facilities may have an adverse impact upon the existing or asserted Treaty or Aboriginal rights of the DTFN;

WHEREAS the DTFN has communicated its concerns to date respecting potential adverse effects of the MGP and Connecting Facilities on its rights and interests to Canada (including written and oral presentations to the Crown Consultation Unit), and the relevant regulators (such as through written and oral submissions to the Joint Review Panel and through the filing of evidence to the National Energy Board and the Alberta Energy and Utilities Board);

WHEREAS the Parties differ on whether or not Canada has consulted with the DTFN prior to the establishment of this Protocol;

WHEREAS the Parties have developed this Protocol to implement any consultation obligations Canada may have with respect to the MGP and Connecting Facilities;

WHEREAS the Parties have an interest in ensuring that Consultation carried out pursuant to this Protocol is done in a timely manner in order to facilitate passage of the MGP and Connecting Facilities applications through Canada’s regulatory process in respect of the MGP and Connecting Facilities;

WHEREAS the Parties wish to establish a clear and effective mechanism by which the Parties will seek to reconcile their respective rights and interests in relation to the MGP and Connecting Facilities.

THE PARTIES AGREE AS FOLLOWS:

1.0 DEFINITIONS AND INTERPRETATION

1.1 Unless defined in this Protocol, words and phrases shall have the same meaning as provided for in article 1 of the Settlement Agreement.

1.2 With the exception of an express reference to an article found in the Settlement Agreement, a reference in this Protocol to an article shall be a reference to the article found in this Protocol.

1.3 The following definitions apply to this Protocol:

“Claim” means the claim made by the DTFN to aboriginal rights and title in and to certain lands within the southern portion of the Northwest Territories (“NWT”), as indicated on the map in Appendix “A” to this Protocol.

“Connecting Facilities” means the pipeline and related facilities, known as the Dickins Lake and Vardie River Projects proposed by NOVA Gas Transmission Ltd. (NGTL) in north-western Alberta to facilitate the shipment of natural gas from the MGP to southern markets and includes any connecting facilities proposed by successors or assigns of NGTL.

“Consultation and Consultations” means the process and activities set out in articles 6, 7 and 8 of this Protocol.

“Disagreement” means a disagreement over the amendment, interpretation or application of this Consultation Protocol or a disagreement over the existence of a legal duty to consult.

“Federal MGP Authorization” means any lease, licence, permit, regulatory decision, or other approval made or issued by a Federal Decision-Maker in respect of the MGP and Connecting Facilities.

“Federal Decision-Maker” means:

- (a) any Federal Minister or Federal Department, or
- (b) Crown Corporation, Federal Board, Regulatory Agency, or other body empowered by Canada to make or issue a Federal Authorization for which a notice has been issued in accordance with article 2 of this Protocol.

“Joint Review Panel” and “JRP” means the Panel appointed by the federal Minister of Environment and the Mackenzie Valley Environmental Impact Review Board (“MVEIRB”) on August 22, 2004, to conduct the environmental impact review of the MGP and Connecting Facilities.

“Mackenzie Gas Project” and “MGP” means the gathering system, pipeline and related facilities to transport natural gas through the NWT to Northern Alberta and includes any of the following:

- (a) three onshore natural gas fields known as Taglu, Parsons Lake and Niglintgak in the Mackenzie Delta area of the Northwest Territories;
- (b) the Mackenzie gathering system, including gathering pipelines to transport production from the three fields, an Inuvik area facility to process production from the three fields into gas and natural gas liquids (NGL), and a 480 kilometre (298 mile) NGL pipeline to transport natural gas liquids to Norman Wells, Northwest Territories to a point of interconnection with the Enbridge Pipeline (NW) Inc. Norman Wells Pipeline;

- (c) the 1220 kilometre (758 mile) Mackenzie Valley Pipeline to transport gas from the Inuvik area to a point of interconnection with the NOVA Gas Transmission Ltd. System in northern Alberta;
- (d) other related facilities associated with the Mackenzie Valley Pipeline, including compressor stations at Little Chicago, Norman Wells, Blackwater River and Trail River, Northwest Territories and a heater station at Trout River Northwest Territories; and
- (e) pipeline related facilities such as looping, emergency response systems, safety enhancements, and vegetation management measures,

as proposed by the project proponents led by Imperial Oil Resources Ventures Limited (IORVL) and any successors and assigns who become project proponents subsequent to IORVL.

“Treaty or Aboriginal Rights” means any right held by the DTFN under the Alberta Schedule to the *Constitution Act, 1930*, Treaty 8 or under section 35 of the *Constitution Act, 1982*.

2.0 APPLICATION OF THIS PROTOCOL

1. This Protocol applies to Federal Ministers and Federal Departments but only applies to a Crown Corporation, Federal Board or Regulatory Agency, or other body empowered by Canada to make or issue a Federal Authorization that has been identified through a written notice sent by Canada to the DTFN.

3.0 GEOGRAPHIC AREA OF CONSULTATION

1. Subject to articles 3.2 and 3.3 below the Parties agree that, as of the Effective Date, Consultations under this Protocol will take place in relation to the geographic area set out in the map attached as Appendix “A” to this Protocol.
2. If Canada accepts in whole or in part the Claim, Canada will advise whether the geographic area of Consultation shall be adjusted within the geographic area set out in the map attached as Appendix “A” to this Protocol.
3. If Canada rejects the Claim as set out in article 4 of the Settlement Agreement, Canada will advise whether the geographic area of Consultation shall be confined to within the boundaries of Treaty 8, remain as set out in the map attached as Appendix “A” to this Protocol or be within another defined geographic area.

4.0 PURPOSE

1. The purpose of this Protocol is to establish a clear and effective mechanism for Canada to consult with the DTFN where Canada contemplates a Federal MGP Authorization that may have an adverse impact on DTFN's existing or asserted Treaty or Aboriginal Rights.

5.0 PRINCIPLES

1. This Protocol will be guided by the following principles:
 - (a) Consultation and accommodation involve duties of reciprocity, specificity and responsiveness by the Parties;
 - (b) Consultation must be conducted in good faith; and
 - (c) This Protocol is not intended to create, recognize, affirm, limit, deny, derogate from or abrogate any treaty or aboriginal rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
2. The Parties will work with the Government of Alberta and the Government of the Northwest Territories to avoid duplication and overlap of consultation processes. The Parties may invite the Government of Alberta, the Government of the Northwest Territories, the Proponents of the MGP and Connecting Facilities or other interested parties, to participate in discussions of any issues of mutual interest relating to the MGP and Connecting Facilities.
3. The Parties agree that this Protocol does not substitute for or replace, nor is it intended to duplicate any other process that has been or will be commenced pursuant to federal or provincial statutes in respect of the MGP and Connecting Facilities, including but not limited to the JRP process. The Parties agree that Consultations under this Protocol shall take such other processes, and the DTFN participation in such processes, into account in order to avoid duplication and promote efficiency of the process under this Protocol.
4. Canada's obligation to disclose information as provided in this Protocol shall be subject to federal laws relating to confidentiality, access to information and privacy.

6.0 CONSULTATION PROCESS – ESTABLISHMENT OF CONSULTATION TABLE

1. The Parties agree that a Consultation table is established as of the Effective Date to facilitate and coordinate Consultation in respect of the MGP and Connecting Facilities.

2. Until representatives are identified under article 6.3, Tim Christian shall be Canada's representative at the Consultation table and Shakir Alwarid shall be the representative of the DTFN.
3. Within fifteen days of the Effective Date of this Protocol:
 - (a) Canada shall identify as its representative at the Consultation table at least one senior level government official who shall facilitate and coordinate Consultation by Federal Decision-Makers; and
 - (b) the DTFN shall identify as its representative at the Consultation table a person who is knowledgeable of the DTFN and who has authority to make decisions in communication with the DTFN band council to facilitate and coordinate the DTFN responsibilities in respect of this Protocol.
4. If Canada or the DTFN wish to change their representatives, they may identify one or more persons, who have the qualifications provided for in article 6.3 to act as their representatives at the Consultation table.

7.0 CONSULTATION PROCESS- FIRST PHASE

1. **Within fifteen** days after the Effective Date, the DTFN shall provide to Canada a list summarizing all of their concerns with respect to alleged adverse impacts of the MGP and Connecting Facilities on their existing and asserted Treaty and Aboriginal rights in relation to the geographic area provided for in article 3.0; such concerns to be limited to those the DTFN have previously tabled with Canada, the Crown Consultation Unit, the Proponents, Federal Decision-Makers and provincial regulators.
2. **Within fifteen** days of the receipt of the DTFN concerns in article 7.1, Canada, through the Consultation table, shall provide the DTFN with a list summarizing the following studies and reports concerning the impacts of the MGP and Connecting Facilities within the geographic area provided for in article 3.0:
 - (a) all socio-economic and environmental studies and reports that have been commissioned by Canada itself, or that have been done by third parties and are within the possession of Canada; and
 - (b) any studies or reports done by Canada in response to Information Requests pursuant to the JRP Information Request Process.
3. Canada agrees to provide the DTFN, upon their request, with copies of the reports or studies set out in article 7.2 subject to the confidentiality requirements of article 5.4.

4. As soon as practicable after the information in articles 7.1 and 7.2 is delivered to the other party, and not more than thirty days after such delivery, the Consultation table, as well as any other technical advisors that they deem necessary, shall meet to review that information and they shall jointly determine:
 - (a) with respect to the identified concerns in article 7.1, which potential adverse impacts on the DTFN's existing or asserted Treaty or Aboriginal Rights are within Canada's jurisdiction to address; and
 - (b) what information gaps exist in relation to the information in article 7.2, with respect to the potential adverse impacts on the DTFN's existing or asserted Treaty or Aboriginal Rights in respect of a Federal MGP Authorization within the geographic area provided for in article 3.0.
5. The Parties shall develop a work plan to address any outstanding concerns under article 7.4(a) and any information gaps under article 7. 4(b). The work plan shall identify the subject matters to be addressed, who will deal with each outstanding item and the timelines for completing this work. The work plan will be developed within thirty days after the first meeting of the Consultation table as set out in article 7. 4.
6. The Parties shall take all reasonable steps to ensure that the outstanding concerns and information gaps referred to in article 7.4 are addressed within sixty days after the development of the work plan in article 7.5, or such other time as may be agreed upon by the Parties after the approval of the necessary work plan.
7. If there remain any outstanding issues, concerns or information gaps after the process in article 7.6 is completed, which have not been resolved, the matters shall be dealt with under article 15.

8.0 CONSULTATION PROCESS- SECOND PHASE

1. The Parties agree that the Consultation table will continue to facilitate and coordinate Consultation where Canada contemplates a Federal MGP Authorization which may have an adverse impact on the existing or asserted Treaty or Aboriginal Rights of the DTFN. The Consultation table will consider, in the manner provided for in this article, DTFN concerns which were not previously tabled in article 7. During this second phase of the Consultations, Canada will, to the extent appropriate:
 - (a) Ensure that the DTFN is provided with relevant and sufficient information that is reasonably required to assess potential adverse impacts of the Federal MGP Authorization on their existing or asserted Treaty or Aboriginal Rights in a timely and ongoing manner;

- (b) Engage the DTFN so that the DTFN has an opportunity to articulate any of its concerns regarding the potential adverse impacts of the Federal MGP Authorization on their existing or asserted Treaty or Aboriginal Rights;
- (c) Seriously consider the concerns of the DTFN expressed in relation to the potential adverse impacts of the Federal MGP Authorization on their existing or asserted Treaty or Aboriginal Rights;

and, if appropriate,

- (d) Seriously consider ways in which to mitigate any potential adverse impacts that the Federal MGP Authorization might have on the existing or asserted Treaty or Aboriginal Rights; and
 - (e) Accommodate the concerns of the DTFN, taking into account the public interest in respect of responsible pipeline development.
2. With respect to article 8.1(b), the DTFN will express their concerns with clarity, focusing on the alleged adverse impacts on their existing or asserted Treaty or Aboriginal Rights by carrying out all reasonable efforts to provide details, including, but not limited to, the following:
- (a) the type of activity which forms the basis of the right;
 - (b) the location where the right is exercised; and
 - (c) the means of exercising the right.

9.0 FUNDING

1. No other funds will be provided by Canada to the DTFN for MGP and Connecting Facilities Consultation other than the funds provided pursuant to the Settlement Agreement.

10.0 CONFIDENTIALITY

1. Subject to article 5.4:
- (a) The Consultations set out in this Protocol are intended to be on the record and are not subject to settlement privilege;
 - (b) This Protocol is not confidential and may be made public and may be tendered in evidence in any legal, regulatory or environmental assessment proceeding; and

- (c) A party may tender records or information received during Consultations as evidence in any legal or regulatory or environmental assessment proceedings;
- 2. By agreement in writing, the parties may engage in off the record, without prejudice discussions that do not constitute Consultation.

11.0 TERM OF THIS PROTOCOL

- 1. This Protocol comes into effect on the Effective Date of the Settlement Agreement.
- 2. This Protocol shall be terminated without notice:
 - (a) If the MGP and Connecting Facilities have been constructed and the NEB has granted leave to open the gas pipeline contemplated under the MGP and Connecting Facilities in accordance with s. 47 of the *National Energy Board Act* R.S.C. 1985, c. N-7; or
 - (b) If the MGP and Connecting Facilities are no longer under active consideration in accordance with article 9 of the Settlement Agreement,whichever comes first.
- 3. This Protocol may be amended from time to time, with the written agreement of the Parties. The Parties may agree to amend this Protocol in light of changes to the law with respect to Canada's duty to consult. If the Parties cannot agree on amendments, such Disagreement shall be dealt with in accordance with article 15.
- 4. No later than three years after the Effective Date of this Protocol, the Parties will review this Protocol to determine whether amendments to or termination of this Protocol are appropriate.
- 5. If the MGP and Connecting Facilities subsequently come under active consideration in accordance with article 9 of the Settlement Agreement, the Parties agree that this Protocol will apply.

12.0 MEETINGS

- 1. The Consultation table shall set meeting dates, prepare agendas, determine the participants at meetings, record minutes of meetings, and record the results of any Consultations.
- 2. The Consultation table shall make available the results of Consultations to Federal Decision-Makers and the DTFN.

13.0 NOTICES

1. All notices, communications and steps required to implement this Protocol, and to facilitate the carrying out of the obligations hereunder, shall be through the Consultation table, unless otherwise provided for in this Protocol or unless either of the Parties advises otherwise in writing.
2. Where, in this Protocol, any notice, information or other communication is required to be given by any of the Parties, it will be made in writing. It will be effectively given:
 - (a) By delivery to the address of the parties in article 13.3, on the date of delivery;
 - (b) By pre-paid registered mail to the address of the party, in article 13.3I, on the date the registered mail is delivered; or
 - (c) By facsimile, to the facsimile number of the party, in article 13.3I, on the date the facsimile is sent.
3. The address, email, and facsimile numbers of the Parties are:

The Deputy Minister of Indian Affairs and Northern Development:

Deputy Minister
Indian and Northern Affairs
Deputy Minister's Office
10 Wellington Street, Room 2101
Gatineau, Quebec
K1A 0H4

Tel: 819-997-0133
Fax: 819-953-2251

Chief of the DTFN:

Dene Tha' First Nation
P.O. Box 120
Chateh, AB T0H 0S0

Tel: 780-321-3774
Fax: 780-321-3886

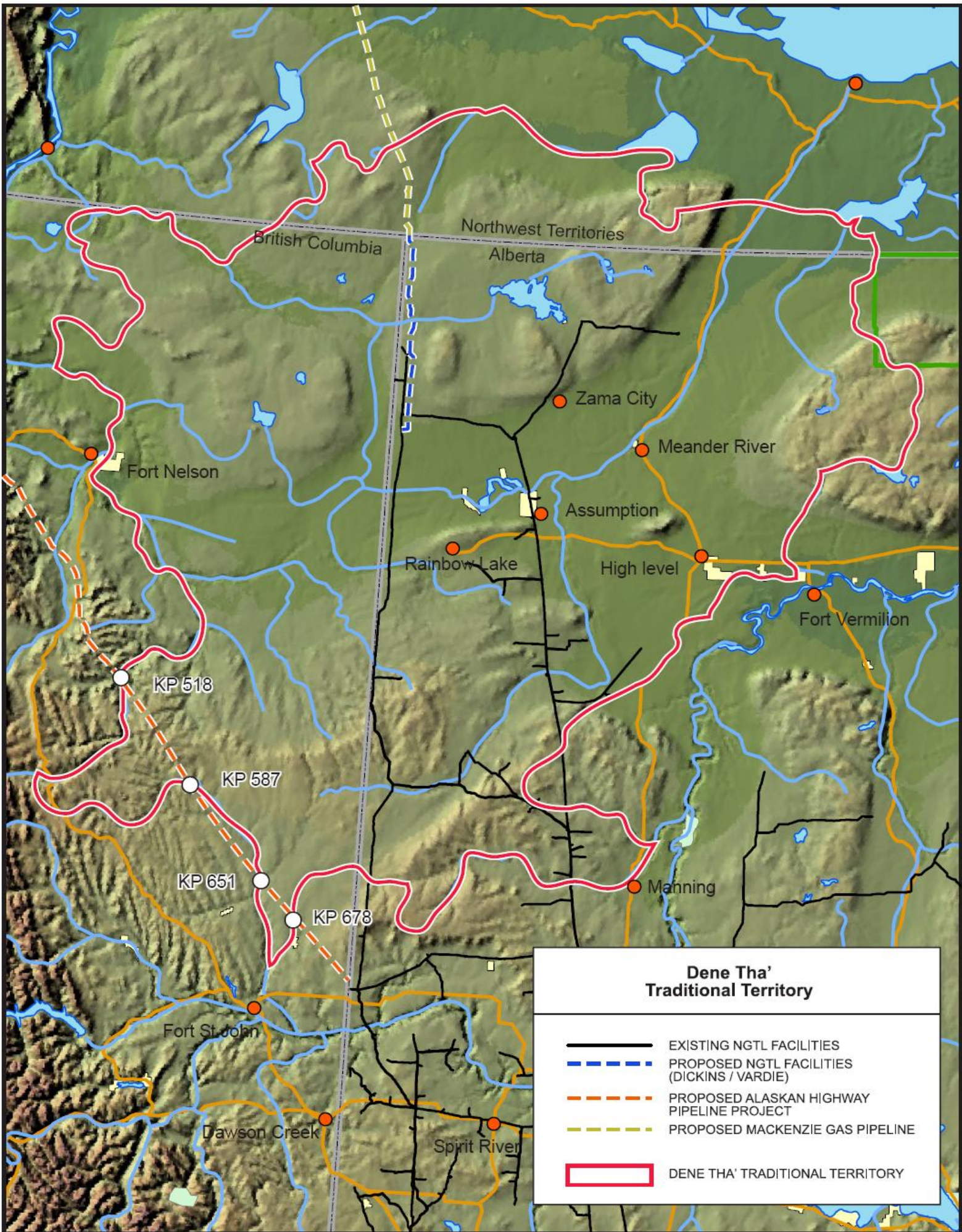
14.0 TIME

1. The Parties agree that where this Protocol provides for a time within which a step is to be taken:
 - (a) time is not of the essence;
 - (b) that the obligation requires the Party taking the step to make reasonable efforts to comply with the obligation; and
 - (c) that a Party may at any time request an extension of that time and that the other Party will not unreasonably refuse a request for such an extension.

15.0 DISAGREEMENT RESOLUTION

1. If a disagreement arises between the Parties in respect of the amendment, interpretation or application of this Protocol, the disagreement shall be dealt with in accordance with articles 15.3 to 15.5 as the sole and exclusive methods of resolving the disagreement.
2. If a disagreement arises between the Parties in respect of the existence of a legal duty to consult and that disagreement is not resolved in accordance with articles 15.3 to 15.5, the DTFN may commence a proceeding against Canada in a court of competent jurisdiction.
3. The DTFN Chief and a senior level government official identified by the Minister will seek informal ways to resolve disagreements under articles 15.1 or 15.2 which may be referred to them by either party.
4. If the disagreement remains unresolved after the process in article 15.3, the DTFN Chief and senior level government official may agree to appoint a mediator or facilitator to assist in resolving the disagreement.
5. If the disagreement remains unresolved after the processes in article 15.3 and any consideration by a mediator or facilitator under article 15.4, either party may refer the disagreement to a third party who will hear the submissions of the Parties regarding the disagreement and will provide formal written recommendations to the Parties for resolution of the disagreement.
6. Recommendations under article 15.5 are not binding on either party.
7. Each party will bear its own costs of the process set out in article 15.3 and the Parties will share equally the costs of the processes set out in articles 15.3 to 15.5.

8. The Parties will keep confidential and will not rely on, or introduce as evidence in any Proceeding, any views expressed or suggestions made by either Party in respect of a possible settlement of the Disagreement. Nothing in this article prevents either Party from disclosing in public or in any Proceeding the existence of a Disagreement.



British Columbia

Northwest Territories
Alberta

Fort Nelson

Zama City

Meander River

Assumption

Rainbow Lake

High level

Fort Vermilion

KP 518

KP 587

KP 651

KP 678

Manning

Fort St. John

Dawson Creek

Spirit River