

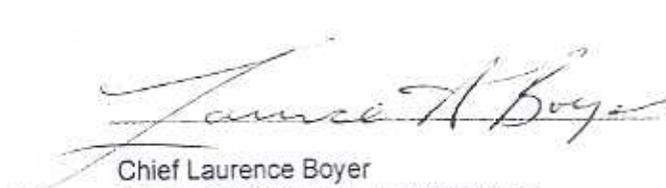
APPENDIX I

FIRST NATION PARTICIPATION PROTOCOL

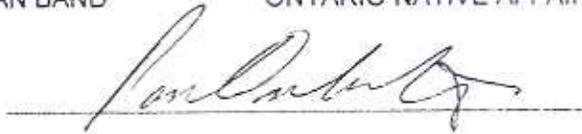
SUPPLEMENTARY AGREEMENT TO ESTABLISH
A CONSULTATION PROTOCOL IN RESPECT OF ARTICLE 3.11
OF THE MISSISSAUGA LAND CLAIM SETTLEMENT AGREEMENT
DATED FOR REFERENCE THE 27TH DAY OF APRIL 1994

1. This protocol is made pursuant to Article 3.11, entitled "Minerals and the Control of Water Quality and Water Flow on the Blind River", of the Mississauga Land Claim Settlement Agreement ("Agreement") between The Mississauga Band ("Mississagi"), Her Majesty the Queen in Right of Ontario ("Ontario") and Her Majesty the Queen in Right of Canada ("Canada"), dated for reference 27th April, 1994. A copy of Article 3 is attached.
2. Generally, Ontario and Mississagi agree to consult in respect of proposals or requests involving Articles 3.6 to 3.10 inclusive and related matters, including the establishment of special standards to be applied to the Blind River System. This protocol does not extend to the appointment of persons by Ontario under Articles 3.7 and 3.8 of the Agreement.
3. Pursuant to Articles 3.4 and 3.9 of the Agreement where Ontario requests the consent of the Mississagi, Mississagi agrees to provide a written response to Ontario in respect of such consent within a period of fifteen (15) days of receipt of Ontario's request, or such period as may be mutually agreed upon. Mississagi shall be deemed to have given its consent if a written response has not been received within the 15 day period or mutually agreed period. Further, Mississagi agrees to consult with Ontario in respect of such request and shall in determining whether to give its consent apply reasonable environmental standards. If consent is refused, Mississagi shall in its response to Ontario provide written reasons for its refusal.
4. Where Ontario under Article 3.6 or Mississagi under Articles 3.4 or 3.9 intends not to give approval or consent, as the case may be, they shall arrange a meeting to discuss the matter and shall in good faith seek a mutually acceptable resolution. If a resolution cannot be reached, Ontario or Mississagi may request the appointment of an independent mediator who shall seek a resolution acceptable to Ontario and Mississagi. Should mediation fail, the decision of Ontario or Mississagi not to give its approval or consent, as the case may be, will stand.
5. In respect of any consultation undertaken pursuant to Article 3.11, Mississagi, Ontario and Canada agree that the following officials shall be designated as the first level of contact:
 - i. For the Mississauga Indian Band, the Chief of the Mississauga Indian Band;
 - ii. For Ontario, the Ontario Ministry of Natural Resources District Manager, Sault Ste. Marie District; and
 - iii. For Canada, the Manager of Lands and Trust Services, Sudbury Business Centre, Sudbury, Ontario.

DATED AT _____, Ontario, this _____ day of February, 1999.


Chief Laurence Boyer
THE MISSISSAUGA INDIAN BAND


Jocelyne Samson-Gauthier
ONTARIO NATIVE AFFAIRS SECRETARIAT


Pam Ombramonti
DEPARTMENT OF INDIAN AFFAIRS AND
NORTHERN DEVELOPMENT

BLIND RIVER SYSTEM
WATER MANAGEMENT PLAN
MISSISSAUGA FIRST NATION
PARTICIPATION/PROTOCOL

Mississauga First Nation agrees to participate in the planning and development of the Blind River water management plan as requested with the MNR. The method and process for dialogue with Aboriginal peoples is well depicted in Appendix D of the Water Management Planning Guidelines.

Appendix I: Water Management Planning and First Nations – Need to dialogue

Mississauga First Nation agrees that dialogue/protocol needs to begin with the management planning of the Blind River to ensure that water power facilities on the Blind River creates a balance of economic, social, cultural/traditional and environmental values. Ontario waterpower facilities will be required to develop Water Management Plans (WMP) to provide certainty and clarity regarding how waterpower facilities are to be operated. Mississauga First Nation also agrees that these discussions/planning will not interfere with nor impact in any way with the Governments obligations to protect/preserve traditional lands within the Water Management areas.

General Principles

- **Need should be determined early in the planning process, followed by the identification of the Aboriginal communities affected, and – if applicable – other parties.**
- **Process should be carried out in an objective and open manner, within a mutually agreed, reasonable time, and with consideration of costs to government and others.**
- **Internal dialogue within departments and agencies should normally occur prior to external dialogue.**
- **Consultations with industry partners should follow internal dialogue.**
- **Detailed plan outlining the objectives, scope and funding arrangements including the estimated cost of developing the protocol should be prepared.**
- **Dialogue with industry partners should occur following internal dialogue.**
- **Dialogue/protocol plan and detailing the objectives, scope and funding arrangements including estimated costs of dialogue should be prepared.**
- **Provision of adequate, accurate and timely information to participate enabling their effective participation.**
- **Parties to the dialogue/protocol kept up to date with process, and their contributions acknowledged.**

- **As decisions are made, explanations of the nature and implications of decisions and their relationship to the process given to the participants.**
- **Good record keeping throughout the process, bearing in mind that native values be respected and in some cases kept in confidence.**

I.1 Dialogue/Protocol Methods

Mississauga First Nation participation is fundamental to develop this water management plan. The main format of discussions will be in the form of meetings with the elders of the community followed by Community Information Sessions held at the Mississauga First Nation. There will be at least two of these sessions held at the stages identified in Appendix I.2. Notifications will be made by announcement at Council and Community meetings, a notice in the community newsletter, and by notices placed at prominent locations at the First Nation.

Roger Daybutch is the Aboriginal representative on the Planning Team/Steering Committee as well as the Public Advisory Committee (RMAC), and is also a representative of Council. In addition to the representation from these committees, Mississauga First Nation will utilize the existing Elder's Advisory Committee to function as a First Nation Advisory Committee. Informal meetings will be scheduled to discuss Water Management Planning with this group. Also a two day Cross-Cultural Training and Water Values to First Nations Session will be conducted by the Mississauga First Nation for all members of the Steering Committee, Planning Team and Public Advisory Committee.

I.2 General Principles for Aboriginal Participation

During the planning process the MNR and water power industry will plan to hold at least two meetings with the Mississauga First Nation: 1) Initiation of Planning 2) the draft plan review. Additional meetings will be scheduled if a need is identified by Mississauga First Nation. The First Nation will have the final opportunity to comment when the final draft of the WMP is produced. Flexibility will be required to continue discussions where Mississauga First Nation needs more time to work with the planning process.

Documenting these meetings provides an essential record of the interests and issues identified for a particular facility or system and the analysis of tradeoffs associated with operating alternatives.

- **Aboriginal dialogue/protocol with Ontario should not be viewed as a separate entity but included with all parties. First Nations by virtue of their heritage, traditional relationship with the land, in essence should be viewed as the traditional experts of values/traditional sites.**
- **Ideally, protocol requires building a relationship in which one party engages in a dialogue with another party for the purpose of achieving a specific goal. This dialogue should be viewed as a reciprocal relationship in which parties arrive at a consensus-based decision for the purpose of achieving a stated goal. When consensus is not reached, an appropriate process is agreed upon to arbitrate and resolve the areas of disagreement and that compromise is mutually acceptable. Dialogue to be meaningful, requires that all parties to the discussion keep an open mind. Economic, social and environmental progress requires a stable working relationship that can only flow from ongoing mutual respect.**
- **The obligation to dialogue with First Nations rests with the MNR.**
- **Providing information via a letter or phone call to the Chief and council or select members of the community does not constitute protocol. Protocol with a First Nation includes the provision of information and the answering of questions over a series of meetings, both public and with the leadership so that the decisions can be made and implemented.**
- **The information provided to First Nations must be sufficient to allow them to make a reasonable assessment of the impact of the proposed decision on their community, their land and the exercise of their rights. Protocol should commence in advance of the decision being made so that First Nation input can be considered before shaping the decision. In the case of waterpower, this means at the beginning of the water management planning process.**
- **A place will be reserved at the Steering Committee table for First Nation representation so that Aboriginal interests be included in the decision making process. First Nations may form their own advisory committee as well as seek representation on local community advisory committees if they so choose.**
- **If a First Nation lacks the technical resources and financial resources that would enable it to adequately assess and research the issues under discussion, financial assistance will be provided by the MNR to compile this information.**
- **When a First Nation in the watershed area needs to research and document traditional environmental knowledge for the planning process, financial assistance will be provided for to develop such a model base. The sharing of this information will be conditional on agreed guidelines to protect sensitive information.**

- **Communication should be open, ongoing and accessible (including language translation when needed) at the community level. Wherever possible the First Nation should participate in planning and delivering the communications messages.**
- **Allowing sufficient time to engage the community in the discussion process is important. To allow the planning process to proceed, some flexibility may be necessary to permit some aspects to be deferred allowing further dialogue that may resolve First Nation concerns.**

I.3 Approaches for Protocol/Dialogue

This list of elements of dialogue is neither exhaustive, nor prescriptive and should be considered in the context of treaty and Aboriginal rights, and existing case law as they apply to particular circumstances.

- 1. Preliminary determination: With respect to the various approaches, for dialogue as suggested, these gatherings should include parties affected by the agreement (choice of meeting place not an issue).**
- 2. Dialogue/protocol proposal: Need parties to develop proposal.**
- 3. Initial meeting: First Nation can facilitate from First Nation perspective, all parties included.**
- 4. Second meeting: Hear the First Nations views on the degree of impact on the exercise of their treaty/aboriginal rights (meeting should be on First Nation territory to accommodate and sensitize information shared).**
- 5. Consider the views of the First Nation: MNR/MFN-Council-other parties included (First Nation territory).**
- 6. Third meeting: Inform the First Nation about all possible options/alternatives (First Nation territory).**
- 7. Fourth meeting: Draft Plan inspection – (First Nation territory).**
- 8. Access to approved plan.**
- 9. Written confirmation (BCR Chief and Council approval).**
- 10. Proceed.**

I.4 Information Required from First Nation

In order to determine whether an Aboriginal or treaty right exists, and if so, to determine how the proposed activity will affect the exercise of those rights, MNR must seek some or all of the following information:

- **Extent of the First Nation's traditional territory (First Nations must have ownership of this process).**
- **Whether it claims Aboriginal or treaty rights or both, in respect of the territory.**

- **The practices, customs and traditions in relation to the territory which are integral to its distinctive culture which have continuity with its customs, traditions and culture pre-European contact.**
- **Facts (including Oral History) that support the significance of the customs, practices and traditions of the Mississauga First Nation.**
- **The treaty or treaties to which the First Nation is a party.**
- **Any cultural/traditional/sacred/ceremonial site to which the Mississauga First Nation has identified.**
- **Any views or perspectives of the Mississauga First Nation that are relevant and which the Mississauga First Nation wishes to bring to the attention of the Minister.**

In addition to the above rights-based questions, questions more specific to the Mississauga First Nation relationship to and in the watershed will present themselves in each forum. Allow enough flexibility to tailor questions to each situation.