

**AGREEMENT IN PRINCIPLE REGARDING THE POTENTIAL FUTURE  
DEVELOPMENT OF THE GULL RAPIDS HYDRO-ELECTRIC  
GENERATING STATION**

BETWEEN:

SPLIT LAKE CREE FIRST NATION,  
(hereinafter referred to as "**Split Lake Cree**"),

OF THE FIRST PART,

- and -

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

OF THE SECOND PART,

**WHEREAS:**

- A. **Split Lake Cree** is a First Nation located in northern Manitoba. It is growing rapidly, with over 2600 **Members** at present.
- B. **Hydro** is a Crown Corporation established in 1949 and continued by *The Manitoba Hydro Act*, C.C.S.M., as amended from time to time, for purposes, among others, of:
  - (a) providing for the continuance of a supply of power adequate for the needs of the Province of Manitoba;
  - (b) providing and marketing products, services and expertise related to the development, generation, transmission, distribution, supply and end use of power within and outside of the Province; and
  - (c) marketing and supplying power to persons outside the Province.

- C. Since time immemorial **Split Lake Cree** has used and occupied, lands and waters adjacent to what is now Hudson Bay and inland throughout the area of the lower Nelson and Churchill Rivers. **Members** now live mainly on **Reserve Lands** at Split Lake, upstream of Gull Rapids on the Nelson River.
- D. Since the early part of the 20th century the Federal Government, and after *The Natural Resources Transfer Act*, the Provincial Government, were interested in the significant potential for the development of water power in northern Manitoba, including sites in the **Resource Management Area**.
- E. Throughout the 1940's, 1950's and 1960's the Federal and Provincial Governments jointly financed a number of studies of the hydro-electric power potential in northern Manitoba.
- F. Electrical development by **Hydro** in the **Resource Management Area** began with the Kelsey generating station upstream of Split Lake.
- G. In the late 1960's, Manitoba and Canada determined that it would be in the Provincial and National interest to expand the planning and development of hydro-electric generating facilities in northern Manitoba. Canada and the Province of Manitoba entered into an agreement dated February 15, 1966, to develop the water power of the Nelson River and transmit it south using high voltage direct current ("HVDC") transmission lines. These transmission lines have now been built and are known as Bipoles I and II.
- H. The 1966 agreement envisaged the development of the Lake Winnipeg Regulation and Churchill River Diversion, a two part plan consisting of:
  - (a) impoundment of the waters of the Churchill River on Southern Indian Lake by the construction of the Missi Control Structure at the outlet of the lake, and the diversion of the impounded waters through South Bay, and the Notigi Control Structure, into the Rat-Burntwood River system and ultimately through Split Lake and the Nelson River("CRD"); and
  - (b) the construction and operation of works and measures to regulate, within certain natural and licensed limits, flows from Lake Winnipeg for hydro-electric generation and mitigation of floods and droughts on Lake Winnipeg ("LWR").

- I. The **Project** could not be built or operated without the taking and using of certain Cree Reserve lands including **Reserve Lands** of the **Split Lake Cree**.
- J. In 1974, in order to protect Cree rights and interests from impacts of the **Project**, five northern Manitoba Cree Nations - **Split Lake Cree**, Nelson House, Norway House, Cross Lake and York Factory - incorporated the Northern Flood Committee.
- K. Negotiations then commenced among Canada, Manitoba, **Hydro** and the Northern Flood Committee to define the terms for using Cree Reserve lands required for the **Project** and for addressing **Project** impacts.
- L. Negotiations resulted in the signing of the **Northern Flood Agreement ("NFA")**, dated December 16, 1977. The five First Nations ratified the **NFA** in March of 1978.
- M. Generating stations were completed and came into operation along the Nelson River at Kelsey, Kettle, Long Spruce and Limestone in 1960, 1970, 1977 and 1990 respectively. These generating stations and many other **Hydro** works were constructed in, or impacted on, the **Resource Management Area**, permanently altering the water regimes of the Nelson and Churchill Rivers and causing impacts on the landscape and ecosystem of the **Resource Management Area**.
- N. In the decade following the ratification of the **NFA**, it became apparent that there were significant differences of view among the signatories as to the nature and scope of the **NFA**, and as to the meaning of certain of its terms. The signatories had difficulty finding and agreeing upon practical ways and means of implementing the **NFA**. Implementation measures were incomplete, fragmented and largely inconsistent with **Split Lake Cree** understandings of the **NFA**.
- O. Negotiations started in the mid 1980's, among the signatories, to reach a mutually agreed way to implement the **NFA**.
- P. On June 24, 1992, **Split Lake Cree** entered into a **NFA Implementation Agreement** with Canada, Manitoba and **Hydro** (the "**1992 Agreement**").
- Q. The **1992 Agreement**:
  - (a) established the terms of an easement governing the use by **Hydro** of certain **Reserve Lands**;

- (b) provided compensation for past and future **Adverse Effects** caused by **Existing Development** and operations within a defined water regime;
  - (c) arranged for the transfer of **NFA** exchange lands, and additional compensation lands;
  - (d) established ongoing mechanisms among the parties to implement **NFA** obligations;
  - (e) defined land and resource management, and environmental monitoring processes within the **Resource Management Area**; and
  - (f) established and funded the Tataskweyak Trust for many purposes, including community development support.
- R. The **1992 Agreement** also contains provisions to address **Impacting Future Development**, including processes to determine compensation, and provisions to address training, employment, and business opportunities related to such **Impacting Future Development**.
- S. On May 14, 1996, **Split Lake Cree** and **Hydro** signed the **Article 2 Implementation Agreement**.
- T. One of the priority sites for future hydro-electric development, to take advantage of export market opportunities, is at Gull Rapids on the Nelson River, in the **Resource Management Area** downstream of Split Lake. The **Parties** understand that consultation and engineering, economic and environmental studies are required to enable a decision to be made as early as February 2001, whether to continue to maintain the **Gull Project** as one of the next options for **Future Development**.
- U. In 1998, the **Parties** began discussions to explore whether a mutually beneficial business relationship, as co-proponents of the **Gull Project**, could be agreed upon.
- V. The **Parties** continue to be interested in exploring potential mutual benefits of hydro-electric development in the **Resource Management Area**, including the concept of a shared ownership interest.

- W. Neither **Party** has decided to proceed with the **Gull Project**, and no approvals have been sought or received from any governmental or regulatory authority.
- X. The **Parties**, however, have developed certain understandings and principles relevant to such potential hydro-electric development, their future relationship and their ongoing dialogue.

**NOW THEREFORE** the **Parties** agree to begin the negotiation of a **Joint Gull Development Agreement** in accordance with the principles hereinafter set out:

## **SECTION 1 DEFINITIONS**

- 1.1 **"Adverse Effects"** means 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**.
- 1.2 **"Adverse Effects Arrangements"** means those arrangements contemplated in Section 6 of this **AIP** to address the **Gull Project Adverse Effects**.
- 1.3 **"Agreement in Principle"** ("**AIP**") means this non-legally binding Agreement relating to certain aspects of the proposed development of the **Gull Project**, as more particularly described in this document.
- 1.4 **"Article 2 Implementation Agreement"** means the agreement signed on May 14, 1996 by the **Parties**, whereby **Hydro** agreed to pay additional compensation to **Split Lake Cree** in the event of deviations from specified levels and flows on waterways within the **Resource Area**.
- 1.5 **"Canadian Geodetic Datum"** means Canadian Geodetic Vertical Datum (CGVD) 1928 - 1929 Adjustment.
- 1.6 **"Community Employment and Training Program"** ("**CETP**") means those initiatives described in the **Split Lake Cree** document, entitled "Community Employment and Training Program and 1999 Article 12 Submission", and dated November 30, 1999, which contemplates implementation by **Split Lake Cree** with the active participation of Canada, Manitoba and **Hydro**.

- 1.7 **"Costs"** include, but are not limited to, costs of attendance at meetings, costs of consultants and legal advisors, and travel expenses incurred in the meetings leading up to, and including the negotiation of this **AIP** and the **Joint Gull Development Agreement**.
- 1.8 **"Existing Development"** means all those physical works related to the **Project** which have been fully or partially constructed, by or on behalf of **Hydro** to June 24, 1992; and, without limitation to the generality of the foregoing, will include specifically all dams, dykes, 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.
- 1.9 **"Future Development"** means the construction of any portion or portions of the **Project** that have not been physically constructed to June 24, 1992, and all major redevelopment or reconstruction of any **Existing Development**.
- 1.10 **"Gull Project"** means the proposed hydro-electric generating station, and related works, to be located at Gull Rapids. The **Gull Project**, if built, will be part of, and will contribute about 600 megawatts to, the **Integrated Power System**. The **Gull Project** does not include **Gull Project Related Transmission Facilities**.

- 1.11 **"Gull Project Adverse Effects"** means the negative consequences of the **Gull Project** on **Split Lake Cree** and its **Members**, 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 its **Members**, and impacts on interests in lands, pursuits, activities, opportunities, lifestyles and assets of **Split Lake Cree** and its **Members**. Subject to section 6.11, **Gull Project Adverse Effects** are to be dealt with under the arrangements contemplated in this **AIP** and the **Joint Gull Development Agreement**, and are not to be addressed as a continuing liability of **Hydro** under the **1992 Agreement** or the **NFA**.
- 1.12 **"Gull Project Cost Base"** means all **Hydro** and **Split Lake Cree** expenditures, attributable to the development of the **Gull Project**, as may be agreed between the **Parties**, including, without limitation, the following:
- (a) all expenses incurred before the **Joint Gull Development Agreement**, including **Costs**; and
  - (b) appropriate **Integrated Power System** expenditures.
- 1.13 **"Gull Project Description"** means the primary features of the **Gull Project** as set out in Section 4 of this **AIP**.
- 1.14 **"Gull Project Related Transmission Facilities"** means a complex of transmission related facilities constructed to incorporate the **Gull Project** into the **Integrated Power System**, including all AC and HVDC transmission lines, converter stations, switching stations and the construction power line.
- 1.15 **"Hydro"** means the Manitoba Hydro-Electric Board.
- 1.16 **"Impacting Future Development"** means 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**.
- 1.17 **"Integrated Power System"** means **Hydro's** integrated system of hydraulic and thermal electric generation and power transmission facilities located within the Province of Manitoba. The **Integrated Power System** is interconnected with other power utilities.

- 1.18 **"Joint Gull Development Agreement"** means the final agreement and arrangements addressing the matters set out in this **AIP**, as **Split Lake Cree** and **Hydro** may agree in accordance with their respective decision making processes.
- 1.19 **"Land and Environmental Overview"** means the **Split Lake Cree** framework for broad land and resource use planning. It includes the assessment of the impacts of the **Gull Project** on the harmony and balance of the ecosystem of the **Resource Management Area**.
- 1.20 **"Maximum Static Water Level"** means a wind eliminated elevation, which will not exceed 159.1 metres (522 feet), immediately upstream of the main dam of the **Gull Project**.
- 1.21 **"Member"** means any individual person who is, from time to time, a member of **Split Lake Cree** pursuant to the *Indian Act* (Canada).
- 1.22 **"NFA Implementation Agreements"** means the **1992 Agreement**; the York Factory Comprehensive Implementation Agreement dated January 11, 1996; the Nelson House Comprehensive Implementation Agreement dated March 18, 1996; and the Norway House Master Implementation Agreement dated December 31, 1997.
- 1.23 **"Northern Flood Agreement" ("NFA")** means the Agreement, dated December 16, 1977, among Manitoba, **Hydro**, the Northern Flood Committee, and Canada, including all schedules annexed thereto, and, for the purposes of this definition in this **AIP**, shall include the 1977 Economic Development Agreement, among the same parties dated September 1, 1977.
- 1.24 **"Ownership and Operation Arrangement"** means a commercial relationship between **Hydro** and **Split Lake Cree**, to be developed for the sole purposes of planning, designing, constructing, owning and operating the **Gull Project**, as contemplated in Section 8 of this **AIP**.
- 1.25 **"Party"** means either **Split Lake Cree** or **Hydro**.

- 1.26 **"Parties"** means the parties to this **AIP** and after the **Joint Gull Development Agreement** will include **Split Lake Cree**, **Hydro**, and the future entity, or entities, which may be established by **Split Lake Cree** and **Hydro** for the purposes of implementing the **Joint Gull Development Agreement** and constructing and operating the **Gull Project**.
- 1.27 **"Post Project Water Regime"** means, subject to amendment pursuant to subsection 2.8.1 (h) of the **1992 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 June 24, 1992, 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 the **1992 Agreement**.
- 1.28 **"Project"** means and includes 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**.
- 1.29 **"Project Influenced Waterways"** means and shall 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**.
- 1.30 **"Regulatory Matters"** means those matters relating to environmental or other approvals and licences, as contemplated in Section 5 of this **AIP**.
- 1.31 **"Reserve"** means and shall have the same meaning as contained in the *Indian Act* (Canada), but shall be restricted in this **AIP** to that **Reserve**, or those **Reserves**, set apart for the use and benefit of **Split Lake Cree**.
- 1.32 **"Reserve Lands"** means the land contained within a **Reserve**.
- 1.33 **"Resource Area"** means 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.

- 1.34 **"Resource Management Area"** means the area described in and shown on Schedule 5.1 of the **1992 Agreement** and includes the rivers and lakes therein, and the **Reserve Lands** which, from time to time, may be included in the area.
- 1.35 **"Resource Management Board"** means the Board established pursuant to subsection 5.3.1 of the **1992 Agreement**.
- 1.36 **"Split Lake Cree"** means Split Lake Cree First Nation, a "band" within the meaning of the *Indian Act* (Canada).
- 1.37 **"Split Lake Cree Training, Employment and Placement Agency"** means an agency to be created by **Split Lake Cree** to contribute to the development of a sustainable, self-reliant economy through the establishment of training and employment opportunities for **Members**.
- 1.38 **"Training, Employment & Business Opportunities"** means those opportunities for training, employment and business arising out of the **Gull Project** as contemplated in Section 7 of this **AIP**.
- 1.39 **"1992 Agreement"** means the 1992 **Split Lake Cree NFA Implementation Agreement** entered into among **Split Lake Cree**, Canada, Manitoba and **Hydro** on June 24, 1992.

## **SECTION 2 PURPOSE OF THIS AGREEMENT IN PRINCIPLE**

### **2.1 Purpose**

This **AIP** sets out certain fundamental principles and understandings to govern a new relationship between **Split Lake Cree** and **Hydro** with respect to the **Gull Project**. This **AIP** is a framework to guide the negotiation of a **Joint Gull Development Agreement**, which will address the planning, design, construction, ownership and operation of the **Gull Project**.

### **2.2 AIP Includes**

This **AIP** includes sections dealing with the following matters:

- (a) **Project Description** (Section 4);
- (b) **Regulatory Matters** (Section 5);

- (c) **Adverse Effects Arrangements** (Section 6);
- (d) **Training, Employment and Business Opportunities** (Section 7); and
- (e) **Ownership and Operation Arrangements** (Section 8);

### 2.3 Opportunities

This **AIP** will provide an opportunity for the **Parties** to work together to understand and address **Gull Project Adverse Effects**, and to share potential benefits of the **Gull Project**.

## **SECTION 3 CONTEXT OF THIS AGREEMENT IN PRINCIPLE**

### 3.1 Not Legally Binding

Neither **Party** will have any legally binding obligation to the other with respect to any of the matters described herein, until such time as each has expressly agreed in writing to be legally bound to each other, including through the **CETP** arrangements and the **Joint Gull Development Agreement**. Neither the existence of this **AIP**, nor any work done pursuant to this **AIP**, will in any way be interpreted or construed as creating or evidencing any legal obligation on either **Party**.

### 3.2 No Commitment

Neither **Split Lake Cree** nor **Hydro** is in any way legally bound or irrevocably committed to the **Gull Project** at this time.

### 3.3 Interim Relationship

Although this **AIP** is not a legally binding document, it reflects basic principles upon which both **Split Lake Cree** and **Hydro** intend to proceed with the **Gull Project**. Until the **Joint Gull Development Agreement** is concluded and approved, the final basis for that relationship will not be certain. In the interim, to the extent appropriate and practicable, **Split Lake Cree** and **Hydro** will conduct themselves as if the new relationship exists. This **AIP** has been drafted to reflect that intent.

## **SECTION 4 GULL PROJECT DESCRIPTION**

### **4.1 Primary Features**

Section 4 outlines the primary features of the **Gull Project** as contemplated by the **Parties**. The referenced Drawings are attached as Schedule "A". The **Parties** acknowledge that a final description of the primary features of the **Gull Project** will be subject to change by the **Parties** based on engineering, economic and environmental criteria, and all Federal and Provincial regulatory requirements.

### **4.2 Facilities and Infrastructure**

#### **4.2.1 Location of the Main Dam and Powerhouse**

The main dam will be located at axis G3 at the foot of Gull Rapids, as shown on Drawing A1. It is contemplated that the powerhouse will be situated on the south end of the main dam.

#### **4.2.2 Access Roads, Rail Spur and Permanent River Crossing**

- (a) The access road from PR 280, on the north side of the Nelson River, will be located along the Gull esker, where shown in the corridor on Drawing A2. The access road to Gillam will be located where shown in the corridor on Drawing A2. Both access roads will be constructed to meet or exceed Provincial Road standards, and will be connected by a permanent river crossing over the dam.
- (b) Following completion of the construction of the **Gull Project**, the **Parties** agree to request the Province of Manitoba to assume ownership of these roads and to officially designate them as Provincial Roads linking the communities of Split Lake and Gillam. After the **Gull Project** is in service, the **Parties**, as a cost of the **Gull Project**, will maintain the roads and, subject to reasonable rules, permit the public to use the roads until such time as the Province of Manitoba assumes ownership. At this time, the **Parties** have no assurances that the Province of Manitoba will assume ownership of, or responsibility for, the roads.
- (c) The rail spur from the south will be located where shown in the corridor on Drawing A2.

#### 4.2.3 Temporary River Crossings

Consistent with section 7.2.1, construction access by way of a causeway and an all-weather construction bridge will be located as shown on Drawing A3 to accommodate construction traffic, including employee transports but not public access, until the permanent river crossing referred to in section 4.2.2 is completed. As part of the **Joint Gull Development Agreement**, **Split Lake Cree** will require recognition of its need for access, for **Members** employed in construction, to all parts of the **Gull Project**, from the start of the **Gull Project** construction until the completion of the all-weather construction bridge.

#### 4.2.4 Location of Temporary Construction Camp and Work Area

A temporary construction camp and work area will be located on the north side of the river for the purpose of constructing the causeway and all-weather construction bridge contemplated in section 4.2.3.

#### 4.2.5 Location of Main Construction Camp

Subject to finalizing arrangements acceptable to Split Lake Cree as contemplated in section 4.2.3, the main construction camp will be located on the south side of the river, approximately as shown on Drawing A3.

#### 4.2.6 Location and Height of Dykes

The dykes will be constructed along the centre lines shown on Drawing A3. The top of the dykes will be about 3.0 metres (10 feet) above the maximum water level at that location. Dykes built on permafrost soil will be somewhat higher initially, to allow for settling over a number of years.

#### 4.2.7 Spillway Discharge

The **Gull Project** will be designed to pass the probable maximum flood, which has been determined to be 12,700 cubic metres (450,000 cubic feet) per second at a forebay level of 159.1 metres (522 feet). The spillway discharge would be 10,200 cubic metres (360,000 cubic feet) per second, with the balance of the flood being passed through the powerhouse and a fuse plug.

#### 4.2.8 Emergency Fuse Plug

An emergency fuse plug is currently under study as a means of reducing the cost of the **Gull Project**. The economics, environmental impact, and overall acceptability of an emergency fuse plug concept have yet to be determined. If an emergency fuse plug is not incorporated in the **Gull Project**, the spillway design discharge will be increased to 11,200 cubic metres (396,000 cubic feet) per second.

#### 4.2.9 Turbine Flow Capacity

When producing maximum electrical output, the turbines will be designed to pass a total of about 4,000 cubic metres (141,000 cubic feet) per second.

### 4.3 **Water Levels and Flows**

#### 4.3.1 Flooding

The construction and operation of the **Gull Project** will not aggravate flooding on Split Lake or Clark Lake during the open water season. This is demonstrated in the estimated water profiles on Drawing A4, which show that the **Gull Project** will have no effect on the level of Clark Lake and Split Lake under open water conditions when the water level at the main dam is at the **Maximum Static Water Level**.

#### 4.3.2 Datum

The **Gull Project** will be constructed and operated using **Canadian Geodetic Datum**, and where required by the **Parties** for any purpose, adjusted to Local Datum as defined in the **1992 Agreement**. All water levels in this **AIP** are to be inferred as being measured in terms of elevation above sea level (A.S.L.). All elevations contained in this **AIP** are reported using the **Canadian Geodetic Datum**.

#### 4.3.3 Height of Main Dam and Maximum Static Water Level

The maximum elevation of the top of the main dam will be 162.2 metres (532 feet) to create 3.0 metres (10 feet) of freeboard to accommodate wind set up and wave up rush above the **Maximum Static Water Level**.

#### 4.3.4 Water Level Profiles - Open Water Conditions

Estimated water level profiles from the main dam to Split Lake for open water conditions are shown on Drawing A4 for high, average and low flow conditions. These profiles have been developed using the best available data and calculations.

#### 4.3.5 Fluctuation in the Levels of Gull Lake

The fluctuations of levels of Gull Lake will depend on river flows and the requirements of the power system. The efficiency of power generation of the **Gull Project** will decrease as the level of the forebay decreases. The plant will normally be operated as close to the **Maximum Static Water Level** as is reasonably possible. Daily fluctuations in level will occur. Experience in similar plants indicates that such daily fluctuations are generally less than 0.3 metres (one foot), but daily fluctuations of up to 0.9 metres (3.0 feet) would not be considered abnormal. Daily fluctuations of up to 2.4 metres (8.0 feet) could occur in emergencies or abnormal conditions. The level of Gull Lake may be drawn down by as much as 1.8 metres (6.0 feet) over several days, and raised by this amount over the subsequent several days. There will be no seasonal pattern to the operation of Gull Lake. The anticipated levels, flows and fluctuations will be specified in more detail in the **Joint Gull Development Agreement**.

#### 4.3.6 Water Levels Downstream from Main Dam

Water levels downstream from the main dam will depend on the discharge from the **Gull Project** and the level of Stephens Lake. Under most conditions, there will be an approximate 0.3 metres (one foot) decline in the water level downstream from the main dam to the main body of Stephens Lake.

#### 4.3.7 Flooded Areas and Clearing

Subject to the accuracy of available contour maps, the **Maximum Static Water Level** will result in flooding as indicated, approximately, on Drawing A5. The forebay will be cleared. The standards for such clearing, including the location and extent of areas where merchantable timber is to be harvested and areas where standing and fallen timber and brush is to be cleared, subject to license conditions, will be finalized by the **Parties** in the **Joint Gull Development Agreement**.

#### 4.3.8 Minimum Flows

Subject to license conditions, the **Parties** intend that the **Gull Project** will be designed and operated so that, except under emergency circumstances and/or as specified in the license conditions, there will always be flows through the main dam of not less than 510 cubic metres (18,000 cubic feet) per second.

#### 4.3.9 Operation of Upstream and Downstream Generating Stations, Lake Winnipeg Regulation, and the Churchill River Diversion

No changes in the terms and conditions of existing water power licences are required to accommodate the development and operation of the **Gull Project**. The **Gull Project** will not physically cause or require any material changes in the **Post-Project Water Regime**, except between the outlet from Clark Lake and the main body of Stephens Lake.

#### 4.4 **Ice**

##### 4.4.1 Upstream

- (a) Compared to present conditions, higher water levels in Gull Lake will normally result in an earlier and more stable ice cover extending approximately 15 kilometres (9.4 miles) upstream from the proposed dam. Ice cover formation through Birthday Rapids, which cannot begin until Gull Lake is ice-covered, will therefore occur earlier than at present, but the upstream progression of the ice cover from that point will be similar to present conditions.
- (b) When the ice cover progresses upstream as far as the head of Birthday Rapids, it may cause a reduction in the flow capacity out of Split Lake and Clark Lake. This would, in turn, increase the levels of Clark Lake and Split Lake in a way similar to what happened in the winter of 1999-2000. About once every four years, the resulting increased levels of Split Lake and Clark Lake will be greater than the levels that would occur if the Gull Project is not built. The amount of any such increases in level will be different from year to year, depending on temperatures, flows and other conditions.

- (c) In most years, the winter levels of Clark Lake and Split Lake will be several centimetres (inches) higher than at present. Under some combination of flows, temperatures and other conditions, the levels of Clark Lake and Split Lake will be as much as 0.6 metres (2 feet) higher, if the **Gull Project** is built, compared to what would have occurred, if it had not been built. Even with the higher winter levels, the levels of Split Lake are expected to exceed, only rarely, the upper levels of the Fully Compensated Zone shown as Zone 1 on Schedule "A" to the **Article 2 Implementation Agreement**. If winter levels do exceed the upper levels of the Fully Compensated Zone, they will be treated as either **Gull Project Adverse Effects** and dealt with as provided for in the **Joint Gull Development Agreement**, or as **Adverse Effects** of the **Project** and addressed under the **NFA**, the **1992 Agreement**, or the **1996 Article 2 Implementation Agreement**.

#### 4.4.2 Downstream

There will be areas of open water intermixed with slush and broken ice from the main dam to the main body of Stephens Lake, with variable ice conditions depending on flows, flow variations, temperatures and other factors.

#### 4.5 **Gull Project Related Transmission Facilities**

- 4.5.1 Construction power will be brought to the **Gull Project** construction site along a corridor as shown on Drawing A2. The construction power line will be a permanent line for later use as a source of emergency power.
- 4.5.2 The **Gull Project Related Transmission Facilities** within the **Resource Management Area** are in the conceptual stage and their final extent and location will be clarified and mapped.
- 4.5.3 This **AIP** does not purport to address any issues in relation to **Gull Project Related Transmission Facilities** except to note:
  - (a) the rights and interests of **Split Lake Cree** will be respected in planning and developing such facilities;
  - (b) the **Gull Project** cannot proceed without such facilities; and

- (c) subject to section 4.5.3(a), **Hydro** will be responsible for conducting site selection and Environmental Impact Assessment studies, and for developing the submissions of applications to Federal and Provincial regulatory authorities for approval of such facilities.

## **SECTION 5 REGULATORY MATTERS**

- 5.1 As an essential part of the planning process, the **Parties** have a mutual interest in the development of a comprehensive Environmental Impact Statement with respect to the proposed **Gull Project**. The Environmental Impact Statement is a document prepared by the proponent of a project, based upon an Environmental Impact Assessment undertaken by the proponent, including consultation, environmental investigation and public review.
- 5.2 At the earliest feasible date, consistent with protocols to be developed to address the issues raised in section 5.12, the **Parties** intend to approach Federal and Provincial regulatory authorities to clarify the informational and procedural requirements necessary to complete the regulatory review and approval processes.
- 5.3 The **Parties** will clarify with Manitoba and **Split Lake Cree** the responsibility of the **Resource Management Board** in advising on land and resource use issues pertaining to the **Gull Project**.
- 5.4 The **Parties** will coordinate environmental activities required in relation to the **Gull Project**, as contemplated in Article 6 of the **1992 Agreement**.
- 5.5 The **Parties** will define the work to be undertaken jointly, and the work to be undertaken by each of the **Parties** respectively, in relation to the Environmental Impact Assessment of the **Gull Project**.
- 5.6 **Split Lake Cree** will be responsible for and will facilitate community and other consultation processes with **Members**, required to prepare the Environmental Impact Statement. Where mutually agreed by the **Parties**, **Split Lake Cree** will consult with other people and entities within the **Resource Management Area**.
- 5.7 The **Parties** will document all consultation processes for the purpose of demonstrating fulfillment of requirements under various agreements and legislation. The **Parties** will report on these consultation processes in the Environmental Impact Statement.

- 5.8 **Split Lake Cree** has developed and is in the process of implementing its **Land and Environmental Overview**. It will form the basis upon which the **Split Lake Cree** will decide whether to proceed with the **Gull Project**. Subject to the requirements of Federal and Provincial regulatory authorities, the **Parties** will consider and decide upon the use of the **Land and Environmental Overview** in the **Gull Project** Environmental Impact Statement.
- 5.9 The **Parties** will share with each other all information necessary to conduct and complete the Environmental Impact Assessment process, and to assess the viability of the **Gull Project**.
- 5.10 The **Parties** will provide all required information to Federal and Provincial regulatory authorities, with the objective of facilitating a coordinated, consistent and timely review process.
- 5.11 The **Parties** will proceed with their consultation process and the development of the Environmental Impact Statement in a manner consistent with all legal and constitutional requirements of the regulatory review and approval processes.
- 5.12 The **Gull Project Description** is restricted to the **Gull Project**, but it is anticipated that the project description required for Environmental Impact Assessment and Environmental Impact Statement purposes will be required to include **Gull Project Related Transmission Facilities**. The **Parties** will formulate a protocol for an approach to Federal and Provincial regulatory authorities, which will permit the full participation of **Split Lake Cree** as a party with an ownership interest in the **Gull Project** as contemplated in the **AIP**, while participating on a different basis with respect to **Gull Project Related Transmission Facilities** and other options for **Future Development**.

## **SECTION 6 GULL PROJECT ADVERSE EFFECTS**

- 6.1 The **Gull Project** is an **Impacting Future Development** and will result in the flooding of about 42 square kilometres (16 square miles) of land located in the **Resource Management Area** immediately upstream of the dam. The **Gull Project** will alter the **Post Project Water Regime** between the outlet from Clark Lake and the main body of Stephens Lake, and is expected to cause negative impacts to **Split Lake Cree** and **Members**. The processes set out in subsection 2.8.1 of the **1992 Agreement**, as modified in this **AIP** and in the **Joint Gull Development Agreement**, will be used for identifying, mitigating and compensating **Gull Adverse Effects**.

- 6.2 The **Joint Gull Development Agreement** will identify all potential **Gull Adverse Effects** on **Split Lake Cree** that can reasonably be anticipated based on the processes outlined in subsection 2.8.1 of the **1992 Agreement**, as modified in this **AIP**, and the information, experience and judgment provided by the **Land and Environmental Overview**, and the environmental management representatives of the **Parties**.
- 6.3 To the extent reasonably practicable, in addressing **Gull Project Adverse Effects**, the priorities of the **Parties** will be in the order set out below:
- (a) to prevent or avoid works or measures which will cause **Gull Project Adverse Effects**;
  - (b) to lessen or reduce unavoidable **Gull Project Adverse Effects**;
  - (c) to provide appropriate replacements, substitutions or opportunities to offset any **Gull Project Adverse Effects**; or
  - (d) to pay fair compensation for the loss or damage suffered as a consequence of **Gull Project Adverse Effects**, to the extent such effects have not been fully addressed by measures taken under sections 6.3 (a),(b) or (c).
- 6.4 The **Parties** acknowledge that the protection of traditional, sacred and burial sites is of fundamental importance to **Split Lake Cree**. All such known sites will be protected or moved, if necessary, and the appropriate spiritual ceremonies, approved by **Split Lake Cree**, will be performed. As soon as reasonably practicable, **Split Lake Cree** will advise **Hydro** about the location of all traditional, sacred and burial sites, of which it is aware.
- 6.5 The **Joint Gull Development Agreement** will specify other remedial and/or mitigatory works and measures, which the **Parties** may agree are to be undertaken. These will be subject to any required Federal or Provincial regulatory approvals.
- 6.6 The **Joint Gull Development Agreement** will specify the total amount of compensation to be paid for anticipated **Gull Project Adverse Effects** on **Split Lake Cree**, which cannot be remedied or mitigated.

- 6.7 Subject to receipt of agreed documentation the **Parties** will pay to **Split Lake Cree** the following:
- (a) \$1,000,000.00 upon signing of the **Joint Gull Development Agreement**;
  - (b) the balance of the compensation for **Gull Project Adverse Effects** identified and quantified by the **Parties** in the **Joint Gull Development Agreement**, after the **Parties** have received all required licences and Federal and Provincial regulatory approvals, and before the commencement of construction of any permanent dam or generating facility constituting part of the **Gull Project**; and
  - (c) any further compensation necessary to address **Gull Project Adverse Effects**, which were not identified or known before construction and operation of the **Gull Project**.
- 6.8 Compensation for loss or damage suffered by individual **Members** as a consequence of **Gull Project Adverse Effects** will be paid by **Split Lake Cree**, in accordance with the processes established under the **1992 Agreement** for compensating individual **Members** for **Adverse Effects**.
- 6.9 Appropriate releases and indemnities will be provided by **Split Lake Cree**, with respect to anticipated **Gull Project Adverse Effects** identified in the **Joint Gull Development Agreement**.
- 6.10 The **Parties** shall execute an amendment to the **Post Project Water Regime**, as contemplated by subsection 2.8.1(h) of the **1992 Agreement**.
- 6.11 The relationship between ongoing liability for **Adverse Effects** under the **1992 Agreement** and the arrangements for **Gull Project Adverse Effects** will be addressed in the **Joint Gull Development Agreement**.
- 6.12 The **Parties** acknowledge that the construction and operation of the **Gull Project** may also adversely impact other First Nations and communities, and addressing those impacts will be a cost of the **Gull Project**.
- 6.13 With respect to the **Gull Project**, **Split Lake Cree** have advised that the following issues have been identified at this time as being of concern to its **Members**:

- (a) the deterioration of the respectful relationship that people should have for the lands and waters according to Cree culture;
- (b) the deterioration of the capacity of the ecosystem of the **Resource Management Area** to provide products of the land and water to **Split Lake Cree**;
- (c) the potential for methyl mercury contamination;
- (d) the inability of **Split Lake Cree** to continue using traditional, sacred and burial sites affected by the **Gull Project**;
- (e) the disruption of seasonal rhythms of water flow and ice formation;
- (f) the loss of opportunity to experience a traditional lifestyle that is critical to the culture of **Split Lake Cree**; and
- (g) debris in the potential **Gull Project** forebay interfering with navigation, fishing and the aquatic ecosystem.

6.14 **Split Lake Cree** have also advised that its **Members** are concerned about the influx of non-resident workers into the **Resource Management Area**. These concerns include, but are not limited to:

- (a) increased hunting and fishing pressure on limited resources;
- (b) environmental impacts arising from the creation and operation of the construction camps; and
- (c) potential conflicts and social stress arising from a large number of people with different backgrounds and cultures coming into the **Resource Management Area**.

6.15 The **Parties** agree to review the concerns of **Members** outlined in Section 6.14, and to the extent that the **Gull Project** might aggravate such concerns, endeavour to find measures to alleviate them. These measures will include:

- (a) provision of resources, reasonably required, for Aboriginal employment support;

- (b) cross-cultural support workshops for all **Gull Project** employees, to ensure, among other things, that they are informed as to the rights and interests of **Split Lake Cree** and **Members**;
- (c) counselling support for Aboriginal employees; and
- (d) facilitation of the resolution of problems and conflicts.

## **SECTION 7 TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES**

### **7.1 General**

7.1.1 The **Parties** will provide opportunities for **Members** to participate in the **Gull Project** as a beneficial development in their midst. To this end, the **AIP** includes provisions which:

- (a) contemplate job targets for **Members** in the construction of the **Gull Project**, consistent with sections 7.1 and 7.3;
- (b) contemplate job targets in **Hydro** ongoing operations, consistent with sections 7.1 and 7.4;
- (c) propose mechanisms to encourage meeting these employment targets;
- (d) propose training programs, employment preferences and a First Nation employment agency as practical ways to increase employment of **Members**; and
- (e) contemplate providing resources for Aboriginal employment support, including cross-cultural workshops.

7.1.2 In establishing job and business preferences to implement the provisions of this **AIP**, it is necessary to consider all legal and constitutional requirements, including, without limitation:

- (a) existing obligations of **Hydro** under the **NFA** (and in particular Article 18.4 and 18.5 and related provisions of the **NFA**), the **1992 Agreement**, other **NFA Implementation Agreements**, and other **Project** impact agreements;

- (b) applicable human rights legislation;
- (c) applicable labour and employment legislation, including successor rights of labour unions; and
- (d) provisions of any relevant collective agreements to which **Hydro** is a party.

7.1.3 The responsibility of the **Parties**, in relation to the **Gull Project** construction job targets, and **Hydro**, in relation to **Hydro** ongoing operations job targets, will be to hire job applicants, for vacancies or new positions, who have the appropriate skills and competencies to perform the functions relevant to the job description, in accordance with agreed upon preference policies.

7.1.4 The significant job opportunities associated with the **Gull Project** will be primarily during construction, with contractors working on the **Gull Project**, and in order to meet agreed targets appropriate contractual arrangements will have to be negotiated with contractors and unions. Direct employment by the **Parties** in the **Gull Project**, if any, will be very limited.

7.1.5 The responsibility of **Split Lake Cree** through the **Split Lake Cree Training, Employment and Placement Agency** and the **CETP**, is to train **Members** and refer job-qualified, or for apprentice positions, apprentice eligible, **Members** who are ready and willing to fill vacancies and new positions as they become available.

7.1.6 The job targets in the **AIP** are estimates only. Agreed targets will only be set after a full review of actual job requirements of the **Gull Project** and **Hydro** ongoing operations. The **Parties** anticipate the agreed targets will be set in the **Joint Gull Development Agreement**.

## 7.2 **Gull Project Construction - General**

7.2.1 As recognized in sections 4.2.3 and 4.2.4, in order to implement many of the principles relating to **Training, Employment and Business Opportunities** in relation to the construction of the **Gull Project**, it will be necessary for a causeway and an all-weather construction bridge to be developed to accommodate construction traffic, including employee transport but not public access, as an early step in the development of the **Gull Project**.

7.2.2 The **Parties** will review any collective agreement relevant to the **Gull Project**, and specifically, the provisions relating to employment preference, recruitment, referral, placement and on-the-job training, and find appropriate ways in which preferential arrangements designed to foster and encourage the employment of **Members** in the **Gull Project** can be incorporated.

7.2.3 The **Parties** intend, if reasonably possible, that the **Gull Project** will proceed with a collective agreement in place to protect the **Gull Project** by means of a "no strike, no lock out" clause. In negotiating any new collective agreements the **Parties** will endeavour to secure the measures referred to in section 7.2.2.

### 7.3 **Gull Project Construction - Job Preferences and Targets**

7.3.1 The actual number and type of jobs will vary over the course of construction. The **Parties** will, to the extent possible in conjunction with the relevant contractors, develop a schedule of employment requirements at various stages of construction. The agreed job targets will realistically reflect such schedule. The **Parties** have identified, as an estimated **Gull Project** job target, during peak employment periods, the training and employment of 100 **Members** in **Gull Project** construction.

7.3.2 Subject to section 7.1.2, the job preference provisions in the tender/contract documents for the construction of the **Gull Project** shall be structured so that contractors will be required to provide first preference for jobs to **Members** who apply and who are job-qualified or, for apprentice positions, to **Members** who apply and who are apprentice eligible, until the agreed job target has been met.

7.3.3 Consultations will occur with other interested parties in relation to job targets and preferences that may be made available to them.

### 7.4 **Hydro Ongoing Operations - Job Preferences and Targets**

7.4.1 As a mechanism to increase the number of **Members** employed in **Hydro** ongoing operations, **Split Lake Cree** and **Hydro** are contemplating an estimated 20 year target of approximately 100 permanent jobs for **Members** in **Hydro** ongoing operations.

7.4.2 Although the **Gull Project** is to be owned by the **Parties**, and not by **Hydro**, jobs in the ongoing operation of the **Gull Project** will be counted as part of **Hydro** ongoing operations for the purposes of the relevant job target.

7.4.3 **Hydro**, with the participation of **Split Lake Cree**, will undertake a study of existing job qualifications standards, related to **Hydro** ongoing operations, for the purposes of:

- (a) determining if the standards are appropriate for the job description and making any changes which are warranted; and
- (b) providing to **Split Lake Cree** the number, description and qualification standards of jobs in **Hydro** ongoing operations.

7.4.4 Neither **Hydro** nor **Split Lake Cree** intend that any job qualification standard that is reasonable to require of applicants for, or employees filling, any job in **Hydro** ongoing operations, will be reduced to accommodate the employment of **Members**.

7.4.5 **Members** employed by **Hydro** are eligible to participate in **Hydro** training and performance support programs.

7.4.6 Upon signing of the **AIP**, **Split Lake Cree** will undertake the development of an accredited curriculum that encompasses the academic upgrading required to enable any interested **Member** to meet post-secondary admission standards. This curriculum will be tailored to draw on the actual experience of **Members** in the **Resource Area**, integrating math, science and English requirements. **Hydro** will co-operate with **Split Lake Cree** in this undertaking.

7.4.7 **Hydro** will co-operate with **Split Lake Cree** in:

- (a) identifying a 20 year schedule of annual targets for permanent jobs in **Hydro** ongoing operations that could be available to job qualified **Members**; and
- (b) convening, at least quarterly, the Joint Committee under Article 13 of the **1992 Agreement**, to consider measures to meet the annual targets and to identify ways and means, including additional training and other incentives, to improve results, if necessary;

all of which will be more specifically dealt with in the **Joint Gull Development Agreement**.

## 7.5 **Gull Project Business Preferences**

7.5.1 **Gull Project** contractors must be qualified and financially capable of completing **Gull Project** work, in accordance with **Hydro** standards.

7.5.2 The **Parties** intend to use open competitive tendering for any major **Gull Project** contracts.

7.5.3 The **Parties** will review and where consistent with **Hydro's** Northern Purchasing Policy, intend to use measures for the purchase of goods and services for the construction, operation and maintenance of the **Gull Project**, including:

- (a) the timely provision of information to **Split Lake Cree** and **Members**;
- (b) the use of scoping initiatives, meaning the breaking up of contract packages into smaller work packages to suit the capability of **Split Lake Cree** and **Members**;
- (c) the use of negotiated contracts or restricted tendering; and
- (d) the waiving of bid bond and performance bond requirements.

7.5.4 Consultations will occur with other interested parties in relation to business preferences that may be made available to them.

## 7.6 **Community Employment & Training Program (CETP) - General**

7.6.1 The **Split Lake Cree CETP** is a multi-year initiative developed by **Split Lake Cree**, which is aimed at creating a sustainable, self-reliant **Split Lake Cree** economy through the establishment of employment and training opportunities on the **Reserve**, in the **Resource Management Area**, and elsewhere. **Split Lake Cree** has planned the **CETP** to be implemented with the active participation of governments and agencies, including **Hydro**.

7.6.2 Under the **CETP** the Tataskweyak Development Corporation and the planned **Split Lake Cree Training, Employment and Placement Agency** will be the primary institutions overseeing the achievement of these objectives.

- 7.6.3 As contemplated in the **CETP**, it will be beneficial to implement educational upgrading and skills training as soon as possible. The **Parties** will co-ordinate and implement their continuing responsibilities, under the **NFA** and the **1992 Agreement**, in a timely fashion, in an effort to facilitate this process. Representatives of the **Parties** will work with contractors, unions and other stakeholders to participate in the pre-job apprenticeship process.
- 7.6.4 Under the **CETP** the **Split Lake Cree Training, Employment and Placement Agency** is to be the institution responsible for the educational upgrading and skills training of **Members**. It is planned that the **Split Lake Cree Training, Employment and Placement Agency** will be the referral agency for **Members** with respect to **Gull Project** employment. The **Split Lake Cree Training, Employment and Placement Agency** will be paid a market rate for the provision of workers during construction of the **Gull Project**.
- 7.6.5 The responsibilities of **Hydro** in relation to the **CETP** are restricted to providing the funding and assistance specifically agreed. **Hydro** makes no undertaking or warranty as to the effectiveness of the **CETP**.

## 7.7 **CETP Funding and Other Matters**

- 7.7.1 The **Parties** will co-operate to identify access to sources of multi-year funding and training from Canada, Manitoba and the construction industry to facilitate accomplishing the goals of the **CETP**.
- 7.7.2 **Hydro** will contribute to, and work with, **Split Lake Cree** in their implementation of the **CETP** in 2000, within the limits of its legislative mandate and corporate policies.
- 7.7.3 The following framework will guide **Hydro** action:
- (a) **Split Lake Cree** has the principal responsibility for enhancing the skills and knowledge of **Members**;
  - (b) all **Hydro** support of **Split Lake Cree** training and employment activities will be linked to **Hydro** business operations and future development; and
  - (c) **Hydro** cannot give assurances the **Gull Project** will proceed. Based on existing conditions, **Hydro** evaluations consistently indicate that the **Gull Project** is significantly less attractive than other power resource options.

7.7.4 Within this framework, **Hydro** will:

- (a) provide technical advice on issues such as curriculum enhancement, education and skills upgrading, apprenticeship training and **Hydro's** pre-placement training program;
- (b) purchase debris management services, consistent with the recent \$342,000.00 joint First Nation debris management proposal for Stephens Lake in 2000, that would enable the employment of a number of **Members**;
- (c) employ a number of **Members** in:
  - (i) a contract for rail spur maintenance;
  - (ii) a contract for environmental services to the Kelsey Generating Station;
  - (iii) three (3) term positions in **Hydro** Generation North operations; and
  - (iv) the Environmental Impact Assessment and consultation linked to potential development of the **Gull Project**;
- (d) contribute \$395,000.00, subject to agreed terms, to an Assean Lake Traditional Camp as an early mitigation measure in advance of further hydro-electric development in the **Resource Management Area**.

7.7.5 **Hydro** will make a financial contribution of \$350,000.00 to the **CETP** activities, by way of a separate agreement. Such agreement will address:

- (a) the use of such contribution;
- (b) the terms under which the contribution will be credited against, or repaid by, **Split Lake Cree**;
- (c) the sources of repayment, or credit which may include any of the following:

- (i) future net income due to **Split Lake Cree** from the **Ownership and Operation Arrangement**; or
  - (ii) predetermined compensation; or
  - (iii) compensation that may become due to **Split Lake Cree** as the result of **Impacting Future Development**; or
  - (iv) future obligations under Articles 18.4 or 18.5 of the **NFA**; or
  - (v) other sources;
- (d) agreement on the nature and extent of program monitoring and evaluation.

7.7.6 The contribution will not oblige **Hydro** to participate in future programs, or involve any commitments related to the **Gull Project**.

7.7.7 The contribution will be made following approval of the **AIP**.

7.7.8 **Hydro** will discuss with **Split Lake Cree** the requirements of the **CETP** in 2000, and may, but is in no way obliged, to make a further contribution to the **CETP**, by way of funds or programs. If any further contribution is made, it will be similarly advanced through a separate agreement or agreements. The maximum contribution, which **Split Lake Cree** is seeking from **Hydro** in 2000, including all funds and programs, does not exceed in aggregate \$2,100,000.00. **Hydro** will not contribute more than 25% of the aggregate amount contributed by Canada, Manitoba and **Split Lake Cree** in 2000 to the **CETP**.

## 7.8 **Conflict of Interest**

7.8.1 It is contemplated that the **Parties** will be principals in the **Gull Project**, and will be bound by confidentiality agreements and requirements. As principals, the **Parties** will have access to all relevant **Gull Project** development information, access to potential contractors, engineers and related construction entities, and the right to participate in any institutional arrangements, including all committees.

7.8.2 If either of the **Parties** decides to bid for any contract work, or to joint venture with any other party and bid for contract work, related to the **Gull Project**, arrangements will have to be put in place to safeguard against conflicts of interest. Once under contract, clear protocols for giving instructions or seeking information from the contractor, with respect to its operations, will be established. The **Joint Gull Development Agreement** will identify and clarify such situations in order to avoid the concerns that would otherwise arise from potential conflicts of interest.

#### 7.9 **Acquisition of Gull Project Assets**

**Split Lake Cree** will have the first right of refusal to acquire, under terms agreed to with the **Parties**, any **Gull Project** assets, which the **Parties** have the right and intention to sell or to dispose. Such **Gull Project** assets may include equipment and recreational facilities that the **Parties** determine are no longer required for their purposes.

### **SECTION 8 OWNERSHIP AND OPERATION ARRANGEMENTS**

8.1 The **Parties** will negotiate in good faith with a view to entering into an **Ownership and Operation Arrangement**, which will achieve the objectives set out in Section 8.

8.2 The receipt of income by **Hydro** from the **Gull Project** will be exempt from income tax and the **Ownership and Operation Arrangement** will accommodate, to the extent reasonably possible, the desire of **Split Lake Cree** that the receipt of income by **Split Lake Cree** from the **Gull Project** be exempt from income tax.

8.3 The development of the **Gull Project** by the **Parties** will be accomplished by means of a contract(s) with **Hydro**. Under such contract(s), **Hydro** will have ultimate control of planning, design, construction and operation of the **Gull Project**, but the **Ownership and Operation Arrangement** will provide **Split Lake Cree** with such participation in the decision making as is reasonably necessary to protect its own interest in the **Gull Project**.

8.4 Any **Ownership and Operation Arrangement** will be based on a sharing of business risks and rewards, in proportion to the relative ownership interests of the **Parties**.

- 8.5 **Split Lake Cree** will have, at its option, the right to acquire an ownership interest in the **Gull Project** assets or the entity owning such assets which interest is not to exceed 25%.
- 8.6 The **Ownership and Operation Arrangement** will not prohibit the participation of other parties in the ownership of the **Gull Project**, provided such participation is acceptable to the **Parties**.
- 8.7 There will be appropriate provisions and restrictions relating to the **Parties'** respective rights to deal with their respective interests in the **Gull Project**, or the entity owning the **Gull Project**, as the case may be, including the transfer of any such interest.
- 8.8 The **Ownership and Operation Arrangement** will be governed by, and comply with, the provisions of *The Manitoba Hydro Act*.
- 8.9 The **Ownership and Operation Arrangement** will permit the borrowing by the **Parties** of money, and the pledging of their respective ownership interests, if necessary, to finance any part of their respective ownership interests in the **Gull Project** assets.
- 8.10 Either **Party's** decision to participate, or not to participate, financially will depend upon the ability of the **Gull Project** to provide a long term cash flow sufficient to cover reasonable debt servicing requirements and provide a reasonable return on investment. Before and after the signing of the **Joint Gull Development Agreement**, **Hydro** and **Split Lake Cree** will each independently assess their risks and rewards in relation to the **Gull Project**.
- 8.11 The **Ownership and Operation Arrangement** will clarify the respective liabilities of each owner.
- 8.12 The **Ownership and Operation Arrangement** will clarify the representation of each owner with respect to the governance and decision making of the entity owning and managing the **Gull Project**.
- 8.13 It is intended that the power generated from the **Gull Project** will be bought by **Hydro** pursuant to a power purchase agreement.

## **SECTION 9 PRE-AGREEMENT EXPENDITURES**

- 9.1 Upon the execution of a **Joint Gull Development Agreement** contemplating the financial participation of the **Parties**, all **Costs** and prior expenditures of the **Parties** attributable to the **Gull Project** will be added as part of such **Party's** contribution to the **Gull Project Cost Base**.

## **SECTION 10 APPROVAL AND IMPLEMENTATION**

- 10.1 Before the signing of this **AIP**, at least one public meeting of the **Members** will be held, on reasonable notice, to review and explain its terms. Provided a majority of **Members** voting approve the **AIP** by way of a vote conducted by secret ballot, **Split Lake Cree** Chief and Council will pass a Council Resolution approving the **AIP** and authorizing the Chief and Council to sign the **AIP** on behalf of **Split Lake Cree**.
- 10.2 Before signing the **AIP**, it will be presented to the members of the Board of **Hydro**, and the Minister responsible for **Hydro**, for consideration and approval.
- 10.3 **Hydro** and **Split Lake Cree** will make reasonable efforts to complete the negotiation of the **Joint Gull Development Agreement** by February 28, 2001.
- 10.4 The **Joint Gull Development Agreement** will be considered for approval by each of the **Parties** as follows:
- (a) by the Manitoba Hydro Electric Board on behalf of **Hydro**;
  - (b) by **Split Lake Cree** in accordance with sections 10.5 and 10.6; and
  - (c) by the Province of Manitoba, by Order-in-Council.
- 10.5 Throughout the course of negotiations, and following completion of a **Joint Gull Development Agreement**, **Split Lake Cree** Chief and Council will convene such meetings of **Members** as may be reasonably required, at which its consultants and legal advisors will explain the nature and significance of the **Joint Gull Development Agreement**.

- 10.6 When the **Joint Gull Development Agreement** has been approved by **Hydro, Split Lake Cree** Chief and Council will submit the **Joint Gull Development Agreement** for the consideration of **Members**. **Members** will vote by secret ballot. **Members** will be asked to authorize signing of the **Joint Gull Development Agreement** by Chief and Council on behalf of **Split Lake Cree**. If a majority of **Members** voting approve, the **Joint Gull Development Agreement** will be formally approved by **Split Lake Cree** Chief and Council, by Council Resolution, and signed.

## **SECTION 11 PUBLIC INFORMATION AND CONFIDENTIALITY**

- 11.1 The **Parties** agree, to the extent possible, to coordinate with each other all public information and media communications concerning all matters addressed in this **AIP**.
- 11.2 Information of a confidential or proprietary nature, will be dealt with under the provisions of existing confidentiality agreements exchanged between the **Parties**.

## **SECTION 12 GENERAL**

- 12.1 Nothing in this **AIP** or any other arrangements or agreements contemplated in this **AIP** is intended to alter aboriginal or treaty rights recognized and affirmed under section 35 of the *Constitution Act, 1982*.
- 12.2 Nothing in this **AIP** or other arrangements or agreements contemplated in this **AIP** is intended to relieve **Hydro** of its continuing obligations under the **1992 Agreement**.
- 12.3 Provisions of the **NFA**, the **1992 Agreement**, **NFA Implementation Agreements**, and other applicable Project impact settlements with all relevant parties, will be respected in all stages of the **Gull Project**.
- 12.4 No portion of the monies payable by **Hydro** to **Split Lake Cree** under the **AIP** in relation to **Costs, Gull Project Adverse Effects**, or the **CETP**, will be used to pay contingency fees or bonuses.
- 12.5 Where there is any inconsistency between metric and imperial measurements, the metric notation will prevail.

**SECTION 13 ACKNOWLEDGMENTS**

13.1 **Split Lake Cree** acknowledges that it has received all necessary independent technical and legal advice in respect of the negotiation and completion of this **AIP**. **Hydro** has not intentionally withheld from **Split Lake Cree** any information, which has been requested by **Split Lake Cree**, or any information, which **Hydro** believed was relevant to the issues being addressed in the **AIP**. **Hydro** believes that it has provided to **Split Lake Cree** all relevant information within its possession or control that may be required by **Split Lake Cree** to consider the issues addressed in this **AIP**.

**SECTION 14 VALIDITY**

14.1 Nothing in the **AIP** or any other arrangements or agreements described in this **AIP** is intended to alter or limit the jurisdictions and rights of Canada, Manitoba or **Split Lake Cree** pertaining to matters dealt with herein.

**SECTION 15 TERM**

15.1 Unless extended in writing by **Hydro** and **Split Lake Cree** Chief and Council, this **AIP** will lapse upon the earlier of:

- (a) the entering into of the **Joint Gull Development Agreement**; or
- (b) March 31, 2001.

In witness whereof the **Parties** have executed this **Agreement in Principle** on the dates indicated below.

**SPLIT LAKE CREE FIRST NATION**

Per: \_\_\_\_\_  
Chief Duke Beardy

\_\_\_\_\_  
Councillor Douglas Spence

---

Councillor Nelson Spence

---

Councillor Sally Beardy

---

Councillor Melvin Cook

---

Councillor Mary Flett

---

Councillor Lazarus Kitchikesick

On the \_\_\_ day of \_\_\_\_\_, 2000.

**THE MANITOBA HYDRO-ELECTRIC  
BOARD**

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

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

On the \_\_\_ day of \_\_\_\_\_, 2000.

## Schedule "A"

### Gull Project Drawings

Drawing	A1	Main Dam and Powerhouse
Drawing	A2	Access Road and Rail Spur Corridors
Drawing	A3	Location of Dykes, Construction Camps and All Weather Construction Bridge
Drawing	A4	Water Level Profile
Drawing	A5	Flooded Areas