

# Agreement for an Environmental Impact Review of the Mackenzie Gas Project

**Between: The Mackenzie Valley Environmental Impact Review Board**

**And: The Inuvialuit** as represented by the Inuvialuit Game Council

**And: The Minister of the Environment**

hereinafter referred to as the Parties

## PREAMBLE

**WHEREAS** the Proponents have filed a Preliminary Information Package and applications for land use permits and water licenses in the Mackenzie Valley and has indicated its intention to file the necessary applications for the Mackenzie Gas Project;

**AND WHEREAS** the Parties have participated in the development of the *Cooperation Plan for the Environmental Impact Assessment and Regulatory Review of a Northern Gas Pipeline Project through the Northwest Territories* (Cooperation Plan);

**AND WHEREAS** the Inuvialuit Game Council (IGC) represents the collective interests of the Inuvialuit under the *Inuvialuit Final Agreement* (IFA) in the environment and wildlife;

**AND WHEREAS** the Minister of the Environment has the statutory responsibility for administering the *Canadian Environmental Assessment Act* (CEAA);

**AND WHEREAS** the Mackenzie Valley Environmental Impact Review Board (MVEIRB) has the statutory responsibility for administering Part 5 of the *Mackenzie Valley Resource Management Act* (MVRMA), including environmental assessment and environmental impact review;

**AND WHEREAS** the Parties wish to discharge their respective responsibilities respecting the review of the Project while meeting the needs and protecting the interests of the residents of the Northwest Territories and the rest of Canada;

**AND WHEREAS** the Parties wish to establish an Environmental Impact Review process consistent with the spirit and intent of their respective authorities;

**AND WHEREA** the Parties agree that development should occur in a manner that protects the

environment from significant adverse environmental impacts unless justified; and protects the social, cultural, and economic well-being of affected residents and communities;

**AND WHEREAS** the Parties wish to ensure that the biophysical; and social, cultural and economic effects of the Project will be thoroughly evaluated;

**AND WHEREAS** the Parties acknowledge the importance of incorporating traditional knowledge in the Environmental Impact Review of the Project;

**AND WHEREAS** on 17 July 2003, the Mackenzie Gas Project was referred to the Minister of the Environment for the establishment of a review panel under the CEAA;

**AND WHEREAS** on 21 August 2003, the Minister of the Environment referred the Mackenzie Gas Project to a review panel under the CEAA;

**AND WHEREAS** the Environmental Impact Screening Committee has made a determination, pursuant to subsection 11(15) of the IFA, that the Project could have significant negative impacts and has referred the Project to a review panel;

**AND WHEREAS** the Minister of the Environment has determined that a Joint Review Panel should be established pursuant to sections 40 and 41 of the CEAA with the MVEIRB;

**AND WHEREAS** the MVEIRB has ordered a environmental impact review of the Project and the Minister of Indian Affairs and Northern Development has granted the MVEIRB permission to enter into an agreement with the Minister of the Environment to establish a joint review panel pursuant to paragraph 141(2)(a) of the MVRMA;

**AND WHEREAS** the Parties have made a firm commitment through this Agreement and otherwise to ensure that the Joint Review Panel will have the authority and capacity to address the requirements of Sections 11 and 13 of the IFA as contemplated by subsection 11(15) of the IFA and will do so;

**AND WHEREAS** the Parties have considered comments received from the public on the draft Agreement;

**AND WHEREAS** the Parties wish to avoid the unnecessary duplication that might arise from carrying out the environmental impact review requirements separately under the IFA, the MVRMA and the CEAA.

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

## **1. DEFINITIONS**

For the purposes of this Agreement and the Schedule:

### Environmental Impact Review

means the examination of the Project undertaken by the Joint Review Panel in accordance with the process set out in this Agreement.

### ISR

means the Inuvialuit Settlement Region as defined in section 2 of the IFA.

### Joint Review Panel

means the panel established pursuant to this Agreement to conduct the Environmental Impact Review.

### Project

means the proposed development described in Annex 1 of the Schedule to this Agreement.

### Proponents

include, in respect of the Project or any part of it, Imperial Oil Resources Ventures Limited, the Aboriginal Pipeline Group, ConocoPhillips Canada (North) Limited, ExxonMobil Canada Properties, Shell Canada Limited and any other entity proposing to carry out a portion of the Project.

## **2. PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to establish an Environmental Impact Review that meets the requirements of the CEAA, the MVRMA and the IFA.

## **3. RELATIONSHIP OF AGREEMENT TO REGULATORY PROCESSES**

This Agreement is in furtherance of the relationship described in the Cooperation Plan.

## **4. THE JOINT REVIEW PANEL**

- a. The Joint Review Panel will have the authority and capacity to meet the requirements of the relevant provisions of sections 11 and 13 of the IFA as contemplated by subsection 11(15).

- b. The Joint Review Panel will carry out its duties and conduct the Environmental Impact Review according to the mandate set out in the Schedule to this Agreement.

### **Joint Review Panel Membership:**

- c. The Joint Review Panel shall consist of 7 members, including a chairperson, appointed according to the following process:
  - i. the MVEIRB will select 3 members;
  - ii. the Minister of the Environment will select 4 members, 2 of whom will be nominated by the IGC according to the Memorandum of Understanding for Inuvialuit participation in the environmental review of the Project between the Minister of the Environment and the Inuvialuit; and
  - iii. the Minister of the Environment, the MVEIRB, and the IGC shall approve the selection of the chairperson.
- d. The members shall be unbiased, free from any material conflict of interest relative to the Project, and have knowledge, including, as appropriate, traditional knowledge, or experience relevant to the anticipated impacts of the Project on the environment.
- e. The members shall be cross-appointed under the CEAA and the MVRMA concurrent with the execution of this Agreement.
- f. The Parties will consider appointing a member of the National Energy Board (NEB) as one of the 7 members of the Joint Review Panel, so as to allow that member to submit a report on environmental matters within the NEB's jurisdiction to the NEB pursuant to section 15 of the *National Energy Board Act*.

### **Replacing a Panel member**

- g. In the event that a member of the Joint Review Panel is incapable of continuing to act as such, the Parties shall determine whether a replacement member should be appointed. Any such replacement member will be selected by the Party whose member has withdrawn, pursuant to subsection (c).

### **Joint Review Panel Orientation**

- h. The Parties will provide the Joint Review Panel with an orientation.

### **Powers of the Joint Review Panel**

- i. The Joint Review Panel shall have the powers provided for in section 35 of the CEAA, and section 25 and subsection 133(1) of the MVRMA.
- j. Joint Review Panel members shall enjoy the protection from liability outlined in section 35 of CEAA and section 20 of the MVRMA.

## **5. REPORTING AND DECISION MAKING**

- a. The Joint Review Panel shall prepare and submit a report in accordance with subsection 4.8 of the Schedule to this Agreement.
- b. The Joint Review Panel report shall be made available to the public.
- c. Following the submission of its report, the Joint Review Panel shall remain available for further consideration and for consultation, as may be required under sections 135 and 137 of the MVRMA, or for clarification of any of the recommendations set out in the report, as may be required under subsection 37(1.1) of the CEAA.

### **Effect of the Decision**

- d. In accordance with subsections 136(2) and 137(3) of the MVRMA, a first nation, local government, regulatory authority or department or agency of the federal or territorial government in the Mackenzie Valley and the NEB shall act in conformity with any recommendation accepted by the Minister of Indian Affairs and Northern Development or the NEB.
- e. In accordance with subsection 37(1.1) of the CEAA, responsible authorities shall act in conformity with the approval by the Governor-in-Council of their response to the Environmental Impact Review report.

## **6. OTHER**

### **Secretariat**

- a. A Secretariat to support and assist the Joint Review Panel will be established by the MVEIRB, the IGC and the Canadian Environmental Assessment Agency (Agency).

### **Public Registry**

- b. A public registry will be established and maintained in accordance with the requirements of the CEAA, the IFA and the MVRMA to allow the public continued access to documents related to

the Environmental Impact Review. Public registry locations will include Yellowknife, Inuvik, Calgary and any other location deemed appropriate by the Joint Review Panel. There will be electronic access to the public registry to the extent possible.

## **Change to the Project**

- c. Upon reference from the Joint Review Panel pursuant to subsection 4.7 of the Schedule to this Agreement, the Parties may reconsider and amend this Agreement and may provide new directions to the Joint Review Panel as to changes to the Environmental Impact Review.

## **Participant Funding**

- d. Participant funding will be provided by the Government of Canada.

## **Schedules and Annexes**

- e. The Schedule and Annexes attached to this Agreement form a part of the Agreement.

## **7. FINANCIAL RESPONSIBILITY AND LIABILITY UNDER THE IFA**

For greater certainty, the establishment of the Environmental Impact Review pursuant to this Agreement does not diminish any financial responsibility or liability for damages Canada or the Proponents may have under sections 13(13) to 13(16) of the IFA.

## **8. NOTICES**

Notices with respect of any matter included in this Agreement shall be provided to:

**For the Inuvialuit:** the Executive Director, Joint Secretariat

**For the MVEIRB:** the Executive Director, MVEIRB

**For the Minister of the Environment:** the Director, Regional Liaison and Guidance, Agency

## **9. TERM OF THE AGREEMENT**

- a. This Agreement may be signed in counterpart.
- b. The Agreement comes into force on the day it is signed by the last Party.
- c. This Agreement may be amended by the written consent of the Parties.

d. The Agreement terminates upon agreement of the Parties.

**IN WITNESS WHEREOF**, the Parties have signed this Agreement.

**The Mackenzie Valley Environmental Impact Review Board**

Original signed by Todd Burlingame, Chairperson, on July 28, 2004

_____	_____
Signature	Date

**The Minister of the Environment**

Original signed by the Honourable Stéphane Dion on August 3, 2004

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Signature	Date

**The Inuvialuit as Represented by the Inuvialuit Game Council**

Original signed by Frank Pokiak, Chair, on July 27, 2004

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Signature	Date

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## **SCHEDULE: JOINT REVIEW PANEL MANDATE**

### **1.0 DEFINITIONS**

Environment

means the components of the Earth and includes:

- a. land, water and all layers of the atmosphere;
- b. all organic and inorganic matter and living organisms; and
- c. the interacting natural systems that include components referred to in (a) and (b).

Environmental Impact Statement (EIS)

means a report prepared by the Proponents according to the direction in the terms of reference referred to in section 4.3.

Impact on the environment

includes cumulative impacts and means, in respect of a project

- a. any change that the project may cause on the environment, and includes
  - i. any effect of any such change on health and socio-economic conditions, on physical and cultural heritage, on the current use of lands and resources for traditional purposes by aboriginal persons, or on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;
  - ii. any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2 (1) of the Species at Risk Act;
  - iii. any change to present or future wildlife harvesting;
  - iv. any change to the social and cultural environment or to heritage resources; and
- b. any change to the project that may be caused by the environment.

#### Mitigation

means action for the control, reduction, or elimination of an adverse impact of the Project on the environment and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation, remedial measures or other means.

#### Public Registry

means the registry established pursuant to subsection 6(b) of the Agreement.

## **2.0 SCOPE OF THE ENVIRONMENTAL IMPACT REVIEW**

In carrying out the review, the Joint Review Panel will address the factors outlined in the Annex 2 to this Schedule. The Environmental Impact Review shall have regard to the protection of the environment from the significant adverse impacts of proposed developments, and to the protection of the existing and future social, cultural and economic well-being of residents and communities.

## **3.0 SPECIALIST INFORMATION TO THE JOINT REVIEW PANEL**

The Joint Review Panel shall obtain relevant scientific, technical, traditional knowledge, social, and economic expert information, as available from government agencies and departments, in accordance with subsection 12(3) of the CEEA and section 22 of the MVRMA.



The Joint Review Panel shall make best efforts to promote and facilitate the contribution of traditional knowledge to the environmental impact review.

In addition, the Joint Review Panel may also retain the services of any other independent experts to provide advice on certain subjects within the Joint Review Panel's mandate.

## **4.0 STEPS IN THE REVIEW PROCESS**

The main steps in the review by the Joint Review Panel are as follows:

### **4.1 Project Description**

The Project is as described in the Project Description, as per Annex 1 to this Schedule.

### **4.2 Conduct of the Environmental Impact Review**

#### **Rules of Procedure**

The Parties will submit rules of procedure to the Joint Review Panel concurrent with the execution of this Agreement. The conduct of the environmental impact review will be governed by the Joint Review Panel rules of procedure.

#### **Public Participation**

The Joint Review Panel will conduct its review in a manner that will promote and facilitate public participation and ensure that the concerns of aboriginal people and the general public are taken into account in that process.

#### **Public Information**

All information received during the conduct of the environmental impact review of the EIS will be placed on the public registry.

### **4.3 EIS Terms of Reference**

The Parties will issue, concurrent with the execution of this Agreement, Terms of Reference for the Environmental Impact Statement (EIS). The Proponents will prepare an EIS in accordance with the Terms of Reference and submit the EIS to the Joint Review Panel.

### **4.4 Initial Review of EIS**

The Joint Review Panel will make the EIS available for public review and comment. The EIS will be placed in the public registry.

The Joint Review Panel will expeditiously conduct a conformity check to determine whether the EIS contains sufficient information to proceed to the technical analysis. If the Joint Review Panel determines that the EIS does not contain sufficient information, it will issue instructions to the Proponents for the submission of the additional information.

The Proponents will submit any additional information necessary to satisfy the Joint Review Panel.

#### **4.5 Technical Analysis**

The Joint Review Panel will issue instructions, set a timetable for and supervise the conduct of a process of written Information Requests in order to secure any clarification, explanation or additional technical analyses required of the EIS.

The Joint Review Panel will review the information available on the public registry and comments received from the public and determine whether the information available is sufficient to proceed to the public hearing phase of the process. Once the Joint Review Panel has decided to proceed to public hearings, it will schedule and announce the hearings.

A 4 month period is provided for the initial review of the EIS, technical analysis and the completion of the public notice period for the public hearings, in addition to the time taken for responses to any information requests.

The Joint Review Panel may arrange for a prehearing conference in order to assist it in structuring and conducting the public hearings.

#### **4.6 Public Hearings**

The Joint Review Panel will hold public hearings, including community hearings, in a manner that ensures a thorough examination of matters relevant to its mandate. The Joint Review Panel will ensure that the public hearings afford an opportunity for the communities and people in the project area to present their views about the potential impacts of the Project on the environment.

To the extent possible, the Joint Review Panel will coordinate its hearings in time and place with those of the NEB.

The total time allowed for the public hearings process and submission of the Joint Review Panel's report is 10 months.

#### **4.7 Changes to the Project**

If, in the opinion of the Joint Review Panel, the Proponents have made a significant change to the Project, the Panel shall refer the change to the Parties as per subsection 6c) of the Agreement.

#### **4.8 Interpretation, Translation and Transcription Requirements**

During the Joint Review Panel's proceedings, interpretation services will be provided by the Panel where necessary.

The Joint Review Panel may require the Proponents to translate some documents into French and Aboriginal languages.

The EIS will be submitted to the Joint Review Panel by the Proponents in English. Key sections of the EIS, will be translated by the Proponents and made available in French and in Aboriginal languages, as determined by the Joint Review Panel. The Joint Review Panel will determine whether translated documents will be provided in audio and/or visual or in written form.

The Joint Review Panel's rules of procedure, public notices pertaining to its meetings and hearings, and any decision statements issued by the Joint Review Panel will be available in English, French, and Aboriginal languages and in audio and/or visual form, as it determines. Issuance of these documents will not be delayed more than one week for translation purposes.

The Joint Review Panel will make best efforts to use and encourage the use of, plain language suitable to the general public in the Project area.

The Joint Review Panel shall arrange for preparation of transcripts of its proceedings.

#### **Reporting Requirements**

The Joint Review Panel will prepare and provide the Minister of the Environment, the Minister of Indian Affairs and Northern Development, Responsible Ministers, the National Energy Board, the MVEIRB, the Inuvialuit and the Responsible Authorities, a report including, but not limited to, the following:

- a description of the public review process
- a summary of any comments and recommendations received from the public
- a rationale, conclusions and recommendations regarding the nature and significance of impacts on the environment including any mitigation measures and follow-up program, and
- any other matter as required under the CEAA, the MVRMA and the IFA.

# ANNEX 1 TO THE SCHEDULE: PROJECT DESCRIPTION

For the purposes of the Joint Review Panel process the Project includes the construction, operation, maintenance, decommissioning and abandonment of:

## Production Facilities at the Taglu, Parsons Lake and Niglintgak natural gas fields

- approximately 15 production wells at Taglu
- approximately 15 production wells at Parsons Lake
- approximately 10 production wells at Niglintgak
- connection facilities
- drilling waste disposal facilities including sumps and/or injection wells
- natural gas production top side facilities e.g. conditioning, dehydration and compression facilities, including temperature control, flare system, separators, control valves and piping, communications systems.

## Gathering System

The gathering system consists of a network of pipelines and facilities to collect natural gas and Natural Gas Liquids (NGL) from the three fields and move them to the Inuvik Area Facility, including:

- approximately 15 kilometres (km) of pipeline to transport natural gas and associated liquids from the Niglintgak field to the Taglu junction
- approximately 82 km of pipeline to deliver natural gas and associated liquids from the Niglintgak and Taglu fields to the Parsons Lake junction
- approximately 28 km of pipeline to deliver natural gas from the Parsons Lake field to the Parsons Lake junction
- approximately 51 km of pipeline from the Parsons Lake junction to the Inuvik Area Facility
- valves, compression, connection and custody transfer meter facilities

## Inuvik Area Facility

- a NGL facility to process and separate natural gas and NGLs from the gas stream, recover NGLs and process the natural gas and NGLs to the specifications of the transmission and NGL pipelines.
- Associated facilities including inlet slug catcher, pumps, liquids handling equipment, meters, flare systems, natural gas handling equipment, control room, storage, maintenance areas, buildings

## Natural Gas Liquids Pipeline

- approximately 480 km of single phase pipeline to transport natural gas liquids from the Inuvik Area Facility to the existing Enbridge Pipelines (NW) Inc. facilities at Norman Wells
- up to 4 pumping stations and associated facilities
- connection, custody transfer and metering facilities

## **Natural Gas Transmission Pipeline**

- approximately 1300 km of natural gas transmission pipeline from the outlet of the NGL facility near Inuvik to a connection with Nova Gas Transmission Limited (NGTL) pipeline facilities approximately 15 metres south of the Northwest Territories-Alberta border
- up to 15 compressor stations and associated facilities
- interconnect facilities, including temperature and pressure control, metering, custody-transfer, system isolation and in-line inspection

## **Nova Gas Transmission Limited Facilities**

- Dickins Lake Section - approximately 65 km of pipeline from the existing Bootis Hill junction on the NGTL Northwest Mainline to interconnection facilities with the natural gas transmission pipeline
- Northwest Mainline (Vardie River Section) - a loop of a portion of the existing Northwest Mainline. This loop will occur between the Bootis Hill junction and the existing Thunder Creek Compressor Station (a distance of approximately 35 km)

## **General**

- construction camps
- line heaters and block valves
- compression, connection and custody transfer meter facilities
- pipeline inline inspection facilities including receivers and launchers
- cathodic protection
- safety equipment, safety control systems, isolation and shutdown systems, and flare systems
- power generation facilities
- utilities, such as fuel gas, electrical power and instrument air
- service and accommodation buildings
- transportation infrastructure including access roads, barge landing sites, helicopter pads and airstrips
- various temporary construction workspace, construction lay down areas and access roads

The Project also includes any other undertakings in relation to the physical works identified above that are proposed by the Proponents or that are likely to be carried out, including:

- transport of material and personnel

- storage of material at locations in the vicinity of the Project
- construction and operation of various temporary construction work spaces, storage and work areas, borrow pits and quarries
- operation of various existing access roads and trails
- testing of the facilities prior to their being authorized for use
- inspection, maintenance and repair activities associated with the proposed facilities
- maintenance and use of existing access roads for the proposed facilities

Specific details in respect of the Project shall be provided by the Proponents, as required, including information to be provided in the Environmental Impact Statement.

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## **ANNEX 2 TO THE SCHEDULE: FACTORS TO BE CONSIDERED DURING REVIEW**

The Environmental Impact Review will have regard to the protection of the existing and future social, cultural and economic well-being of residents and communities and will include a consideration of the following factors:

1. The impact of the Project on the environment, including the impact of malfunctions or accidents that may occur in connection with the Project and any cumulative impact that is likely to result from the Project in combination with other projects or activities that have been or will be carried out;
2. The significance of any such impact;
3. Any comments from the public that are received during the Environmental Impact Review;
4. Measures that are technically and economically feasible and that would mitigate any significant adverse impact of the Project on the environment;
5. The purpose of the Project;
6. The need for the Project;
7. Alternatives to the Project;
8. Alternative means of carrying out the Project that are technically and economically feasible and the impact on the environment of any such alternative means;

9. The need for any follow-up program in respect of the Project, and the requirements of such a program;
10. The capacity of renewable resources that are likely to be significantly affected by the Project to meet existing and future needs;

In respect of the Inuvialuit Settlement Region, the Joint Review Panel will recommend:

- a. Terms and conditions relating to mitigation measures that would be necessary to minimize any negative impact on wildlife harvesting, as referred to in paragraph 13(11)(a) of the IFA, including, as far as is practicable, measures to restore wildlife and its habitat to its original state and to compensate Inuvialuit hunters, trappers and fishermen for the loss of their subsistence or commercial harvesting opportunities;
- b. An estimate of the potential liability of the Proponents, determined on a worst case scenario, taking into consideration the balance between economic factors, including the ability of the Proponents to pay, and environmental factors, as referred to in paragraph 13(11)(b) of the IFA.