

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 354

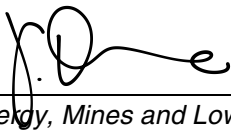
, Approved and Ordered June 16, 2023


~~Lieutenant Governor~~
Administrator

Executive Council Chambers, Victoria

Administrator

On the recommendation of the undersigned, the ~~Lieutenant Governor~~, by and with the advice and consent of the Executive Council, orders that the attached Blueberry River First Nations Implementation Agreement Regulation is made.



Minister of Energy, Mines and Low Carbon Innovation



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Oil and Gas Activities Act, S.B.C. 2008, c. 36, s. 95*

Other:

R10676317

BLUEBERRY RIVER FIRST NATIONS IMPLEMENTATION AGREEMENT REGULATION

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PART 1 – INTERPRETATION

Interpretation

- 1 (1) In this regulation:
 - “**Act**” means the *Oil and Gas Activities Act*;
 - “**agreement**” means the Blueberry River First Nations Implementation Agreement entered into by the government and the Blueberry River First Nations on January 18, 2023, as it stands on that date;
 - “**direction on allocation**” means the direction attached as Schedule 3 to this regulation;
 - “**disturbance cap**” means an area-based or linear cap established by or in accordance with Section 14.1 of the agreement;
 - “**regulator**” means the British Columbia Energy Regulator continued under section 2 of the Act;
 - “**specified instrument**” means a permit or authorization that authorizes an oil and gas activity or related activity to be carried out in the Claim Area.

- (2) Unless a contrary intention appears, words and expressions used in this direction have the same meaning as in the agreement.
- (3) For the purposes of this regulation, the regulator must read the agreement as though the plans contemplated by the agreement have not been made.

PART 2 – DIRECTIONS, POLICIES AND PROCEDURES

Division 1 – General Policies and Procedures

General policies and procedures

- 2** The regulator must conduct its affairs, exercise its powers and discretion, carry out its functions and duties and discharge its responsibilities consistently with the following provisions of the agreement:
 - (a) Article 9;
 - (b) Section 11.2, as it relates to continuing collaboration;
 - (c) Sections 14.5 and 14.7.

Division 2 – Disturbance Caps

Disturbance caps

- 3** (1) The regulator may not, by issuing or amending a specified instrument, authorize New Disturbance in excess of the disturbance caps.
 - (2) For the purposes of subsection (1), the regulator must administer the disturbance caps in accordance with the rules set out in Section 14.1 of the agreement.

Allocation within disturbance caps

- 4** (1) Subject to subsections (3) and (4), the regulator must allocate the disturbance caps in accordance with the direction on allocation.
 - (2) For the purposes of subsection (1), the regulator must calculate the percentage of tenure holdings in hectares.
 - (3) For the 2023 calendar year, the regulator must reserve 110 ha of the disturbance caps for the applications listed in Schedule 1.
 - (4) For certainty, subsection (3) does not require the regulator to issue a specified instrument in relation to an application listed in Schedule 1.
 - (5) If the regulator considers that a portion of the 110 ha reserved under subsection (3) will not be required in the 2023 calendar year, the regulator must allocate the portion in accordance with the rules for discretionary allocation set out in the direction on allocation.

Division 3 – Protection of High Value Areas

HV1A areas

- 5** The regulator may not, other than in accordance with subsections 7.3 (a), (d), (e) and (f) of the agreement, issue a specified instrument that authorizes an oil and gas activity or related activity to be carried out in an HV1A area.

HV1B and HV1C areas

- 6** (1) The regulator may not issue a specified instrument that authorizes New Disturbance to be carried out in an HV1B or HV1C area.
- (2) Subsection (1) does not apply in relation to a specified instrument that
- (a) is issued in relation to an application listed in Schedule 2, or
 - (b) authorizes New Disturbance that is approved by the Blueberry River First Nations.

Division 4 – Other Protective Measures

Setbacks and other matters

- 7** The regulator may not issue a specified instrument unless the instrument is consistent with Section 14.4 of the agreement.

Linear disturbance measures

- 8** The regulator may not issue a specified instrument that authorizes a seismic line or a pipeline right of way unless the instrument contains conditions that require the access management measures and line of sight mitigations specified in Section 14.6 of the agreement.

Division 5 – Other Matters

Limitation on amendments

- 9** Sections 5 to 8 apply in relation to an amendment of
- (a) a specified instrument issued on or after January 18, 2023, and
 - (b) a specified instrument issued before that date insofar as the amendment authorizes New Disturbance.

Section 14.9 of agreement

- 10** This regulation does not apply in relation to a requirement in Section 14.4 or 14.6 of the agreement or a requirement to count New Disturbance against a disturbance cap if the requirement is waived or modified, in accordance with Section 14.9 of the agreement, by the Blueberry River First Nations.

SCHEDULE 1

Item	Column 1 Application number
1	100114999
2	100113257
3	100114734
4	100116187

SCHEDULE 2

Item	Column 1 Application number
1	100114722
2	100113954
3	100114719
4	100114141
5	100114222
6	100113427
7	100114296
8	100113904
9	100114930
10	100113807
11	100113649
12	100113606
13	100113503
14	100113612
15	100113771
16	100112448
17	100115298
18	100110722
19	100116378
20	100113799
21	100116224
22	100112994
23	100114426
24	100114530
25	100115268
26	100115025
27	100115479
28	100116500
29	100114533
30	100113796
31	100112710
32	100114297
33	100113943
34	100114058

35	100114790
36	100115478
37	100111530
38	100111434
39	100111534
40	100111537
41	100111984
42	100110684
43	100115129
44	100113450
45	100113477
46	100113517
47	100113520
48	100114428
49	100113284
50	100114589
51	100114591
52	100115058
53	100108618
54	100113287
55	100114117
56	100113487
57	100109569
58	100115252
59	100113849
60	100114354
61	100114355
62	100115382
63	100112903
64	100114473
65	100114529
66	100114076
67	100114213
68	100114051
69	100113766
70	100114596
71	100115251
72	100114436
73	100115465
74	100114301
75	100115294
76	100115567
77	100115735
78	100113576
79	100113917
80	100114302
81	100113928
82	100112367

83	100114168
84	100113618
85	100113130
86	100115512
87	100114189
88	100112587
89	100113457
90	100115362
91	100113573
92	100113620
93	100115641
94	100113915
95	100114027
96	100113822
97	100114926
98	100115100
99	100112693
100	100112784
101	100116113
102	100116117
103	100113860
104	100115805
105	100116174
106	100116175
107	100116192
108	100116277
109	100116441
110	100116494
111	100114300
112	100113507
113	100113843
114	100114402
115	100114282
116	100113068
117	100113597
118	100112671
119	100115373
120	100113227
121	100113241
122	100114268
123	100114630
124	100113219
125	100115270
126	100115780
127	100116761
128	100115447

SCHEDULE 3

Proposed Allocation of New Disturbance

Disturbance Allocation Concepts

The Blueberry River First Nations Implementation Agreement (Agreement) established a cap on New Disturbance as a component of managing cumulative effects while planning is undertaken. The allocation of the cap is not set out in the Agreement. Allocation under the New Disturbance cap (as referenced in the Agreement) will be based on the following:

- 1) A portion of the cap or sub-cap for an area will be allocated proportionally to all companies holding at least 2% of the Montney tenure in that area.
- 2) The remaining portion will be allocated at the discretion of the BC Energy Regulator (BCER) following the principles outlined below.

The BCER will work with individual companies regarding their priorities and in determining which applications will be adjudicated in a given year, as well as which applications will be bundled together or dependent, and what the required timing of each application is. This discussion will include a consideration of each company's applicable applications that have already been submitted to the BCER for review, as well as the applications or bundles of applications not yet submitted. This discussion with each applicant is proposed to occur early in the calendar year and will be ongoing via quarterly reviews regarding processing progress and priority shifts for applicants.

Notional allocations will be given to applicants on a rolling two-year schedule; they are subject to the approval and implementation of "Other Treaty 8 Restoration and Development Plans"¹ and confirmed through quarterly meetings. Applicants will work with the BCER to determine the appropriate volume of applications to have in progress at any given time and regular discussions regarding progress and priority will ensure that the BCER is adjudicating on the highest priority permits for each company within their allocation cap.

The permitted New Disturbance against the cap will be reported out to Blueberry River First Nations per the terms of the Agreement.

Quarterly Reviews

The BCER will meet regularly, at least quarterly, with companies to confirm application processing priorities and applications in the adjudication process to be advanced against their cap allocations.

¹ "Other Treaty 8 First Nation Restoration and Development Plan" has the same meaning as in the Agreement.

1) Tenure-based allocation: 50%

- All tenure holders with greater than 2% tenure interest (i.e. hold at least 2% of the existing Montney tenure within the North Montney and Heritage Montney fields and the applicable cap application area) will get an initial allocation based on the proportion of their tenure holdings: proportional holding % of the 50% of the total area cap.
- Tenure-based allocation is to be measured on tenure holdings at the beginning of the calendar year. Tenures purchased or transferred after the allocation period in a given year will not be reconciled for allocation adjustments until the following calendar year.
- Companies will work with the BCER to identify priority applications and determine which will be applied to their tenure-based allocation early in the year (conversations to be ongoing via quarterly reviews or more frequently as may be required).
 - If a company does not identify priority applications that utilize their tenure allocation, the remaining allocation will be added to the discretionary allocation envelope for the area in which the tenure is held.
- Where an “Other Treaty 8 Restoration and Development Plan” is approved mid-year, and that plan modifies or replaces the cap for that area, the tenure-based allocation for companies affected by the plan will be adjusted proportionally, where the adjustment will result in greater than 5% change to the tenure-based allocation. This will be done under the same formula that pertains to these plans and their removal from the overall cap scheme in the Agreement.
- Companies that have questions regarding the calculation for their tenure-based allocation should direct those questions to the Ministry of Energy, Mines and Low Carbon Innovation.

2) Discretionary allocation: 50%

The remaining 50% (and any unutilized tenure-based allocation) will be allocated in a principled way. The BCER will determine discretionary allocation within the area considering the following under the overarching objective of minimizing the impacts to ecological and cultural areas important to treaty rights (in no particular order):

- The extent to which the overall development plan (and application bundle) seeks to minimize cumulative effects (as indicated by total New Disturbance of each application or application bundle) and utilizes existing proximate disturbances. This will include a

quantification of the ratio of New Disturbance to available proximate existing disturbance for the development.

- The extent to which an applicant can demonstrate how outcomes of pre-engagement with First Nations has been incorporated or addressed in the development proposal or application bundle, including rationale why feedback from First Nations may have been unable to be addressed or incorporated.
- Consideration of the economic significance, investment, and dependencies related to the development proposal as measured by capital investment dollars per hectare of New Disturbance associated with the applicant's overall development plan for the area. Consideration of dependencies will include the sunk costs as measured by the infrastructure investment dollars per hectare of permitted or tenured surface land associated with the development.
- Consideration of alignment of applications with three-year development interests and overall plan (e.g., prioritize applications for common infrastructure over a one-off development).