UNION OF B.C. INDIAN CHIEFS
CHIEFS COUNCIL
NOVEMBER 22ND- NOVEMBER 23RD, 2011
VANCOUVER, B.C.

Draft Resolution no. 2011-61

RE: The Indian Land Question and the Columbia River Treaty

WHEREAS various Indian tribes, also known as "First Nations" in what is known today as British Columbia (B.C.), have never ceded their inherent and unextinguished Title and Rights to their lands, waters and resources as relates to the *Royal Proclamation of 1763* which established Lands Reserved for the Indians;

WHEREAS various First Nations people in what is known today as B.C., enjoy *Jay Treaty* (1794) Rights to freely cross by land or inland navigation, the United States/Canada Border and to carry on with their trade and commerce with other First Nations people in their usual customs;

WHEREAS the *Treaty of Peace* made at Ghent (1814 ratified in 1815), affirmed that all the possessions, rights, and privileges enjoyed or entitled to the First Nations shall continue;

WHEREAS various First Nations in what is known today as B.C., have never entered into any treaty or convention as it relates to the *Non-intercourse Act 1834* concerning such Lands Reserved for the Indians, which confirms the inalienability of Aboriginal Title and/or Lands Reserved for the Indians;

WHEREAS the *Constitution Act, 1867* established a division of powers including Federal jurisdiction over Indians, and Lands reserved for the Indians; Navigation and Shipping; and Inland Fisheries;

WHEREAS various First Nations in B.C. raised the Land Question as early as 1906 (if not sooner) with the British Crown, King Edward VII and later in 1910 with the Canadian Prime Minister, Sir Wilfred Laurier;

WHEREAS the United States Supreme Court in *Winter v. United States* (1908) established that when an Indian reservation is established that there is an implied reservation of water rights;

WHEREAS the International Joint Commission (IJC) was established in 1909 by the *Boundary Waters Treaty* with a mandate to settle all questions pending between the US and Canada involving the rights, obligations, or interests of either … or to the inhabitants … along their common frontier, and to make provision for the adjustment and settlement of all such questions as may arise;

WHEREAS the Supreme Court of Canada in *Burrard Power Co. v. R* (1910) stated, "In no sense can it be said that the land and the water were universally and uniformly supposed to depend upon separate rights of or in property"; thus, affirming the Indian water rights principles as set out in the Winter Rights doctrine;

WHEREAS the Supreme Court of Canada quoted Lord Watson in *Burrard Power Co. v. R.* (1910) in relation to the division of powers whereas Canada "… should be vested with such of these powers, property and revenues as were necessary for the due performance of its constitutional functions …";

WHEREAS certain First Nations in B.C., namely the Ktunaxa, Secwepemc, and Okanagan (Canadian Columbia River First Nations), have inherent Aboriginal Title and Rights in the Columbia Basin, including south of the 49th Parallel, also known as the Canada/USA Border;

WHEREAS the Canadian Columbia River First Nations have incidental Treaty and Aboriginal Rights such as salmon harvesting and trade at Kettle Falls, Washington;

WHEREAS the International Joint Commission (IJC) approved by Order, the construction of the Grand Coulee Dam (1941) which has caused the elimination of salmon and steelhead from passing beyond said dam including Kettle Falls and into B.C.;

WHEREAS the loss of salmon on the Columbia River basin as well as the impact of the dams, has unjustifiably infringed their Aboriginal, statutory and treaty rights, and has deprived the Columbia River First Nations of their integrity as distinct peoples, or of their cultural values or ethnic identities;

WHEREAS the Columbia River Treaty (CRT) (1964) is an international agreement between Canada and the United States to coordinate flood control and optimize hydroelectric power generation on both sides of the border which is *ultra vires* the Province of British Columbia, as per specific exclusions in *The Constitution Act, 1867* s. 92(10), Local Works and Undertakings;

WHEREAS the Canada – British Columbia Agreement (1964) which gives Federal control and revenues to the Province, is an absolute failure of the Federal Crown to exercise its fiduciary obligations and/or statutory powers;

WHEREAS both the United States of America and the Canadian governments have advised the Canadian Columbia River First Nations in 2006 that the IJC did not have jurisdiction over First Nations concerns dealing with damage caused by the dam including the elimination of salmon and steelhead runs to British Columbia in respect of the 1941 IJC Order;

WHEREAS the year 2024 is the earliest date either Canada or the U.S. may unilaterally terminate the current Columbia River Treaty (CRT), provided a minimum of 10 years' notice is given, and considering the importance of the issues, and the approaching date of 2014, both countries are now conducting studies and exploring future options for the CRT and, as a result the duty to consult is now triggered;

WHEREAS the *United Nations Declaration on the Rights of Indigenous Peoples*, provides in Article 37(1) that "Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements";

WHEREAS the considerations in this Resolution have the ability to have a direct impact upon all First Nations in British Columbia and elsewhere as it pertains to Land Reserved for Indians; Water Rights, *inter alia*.

THEREFORE BE IT RESOLVED the UBCIC Chiefs Council acknowledges that all of the relevant concerns of the Canadian Columbia River First Nations including Lands Reserved for the Indians, Water Rights, Compensation for Past Infringement, and Damages, should be reconciled within the context of the Columbia River Treaty;

THEREFORE BE IT RESOLVED that the UBCIC Chiefs Council directs the UBCIC Executive to take the following actions:

1) Provide written notice to Canada demanding that the Federal Government cause a Supreme Court of Canada, Judicial Review, forthwith, based on the standard of correctness, in respect of all of the constitutional issues in relation to, historic treaties, Canadian and US statutes, the Columbia River First Nations, the Columbia River Treaty, the loss of salmon and steelhead above the Grand Coulee Dam, and challenging the 2006 decision of the US and Canadian governments that the International Joint Commission did not have jurisdiction;

2) Demand that the Federal Government institute an immediate moratorium or writ of prohibition on the Canada – British Columbia Agreement;

3) Demand that the Federal Government provide relief by ordering an injunction preventing the Province of British Columbia from further participating in negotiations or further benefitting from the Columbia River Treaty and that all future downstream benefits are forthwith deposited into a non-taxable, interest-bearing, trust account for the benefit of the Canadian Columbia River First Nations or in the alternative divided evenly into three separate trust accounts on behalf of the Ktunaxa, Secwepemc, and Okanagan First Nations respectively until reconciled with the free prior informed consent of the First Nations;

4) Demand that the Federal Government provide relief by way of ordering an injunction which prevents Canada and/or British Columbia from providing ten-years' notice as identified within the Columbia River Treaty until a final reconciliatory decision is made with the free prior informed consent of the Canadian Columbia River First Nations;

5) Demand that the Federal Government provide relief by way of ordering a Writ of Quo Warrantor to oust BC Hydro from electrical generating and transmission operations within the Columbia Basin in British Columbia and that a declaration is made attesting that the assets in relation to the Columbia River Treaty situated in B.C. are the rightful property of the Canadian Columbia River First Nations;

6) Demand that the Federal Government provide relief by way of ordering a Writ of Mandamus for the Minister of Aboriginal Affairs and Northern Affairs Canada to perform its mandatory fiduciary obligations, to uphold s.35 Aboriginal rights, and to eliminate entirely, its extinguishment policy;

7) Demand that the Federal Government conduct a thorough valuation of damages on infringements to the Canadian Columbia River First Nations' Aboriginal, treaty, and equitable, statutory rights on both sides of the US – Canada border, as well as all of the downstream benefits and revenues as a result of the implementation of the Columbia River Treaty through such company as Price Waterhouse Coopers or other reputable organization capable of performing such work;

8) Demand that the Federal Government provide Declaratory Relief that all unceded lands are Lands Reserved for the Indians as per s. 91(24) *The Constitution Act*, 1867 (UK), 30 & 31 Victoria, c 3, which includes the expanded Winter's Rights;

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs Council directs the UBCIC Executive to deliver this resolution to the Federal Government, which will provide adequate notice of existing Aboriginal Rights, Treaty Rights and Statutory Rights so as to implement consultation and accommodation in respect of the Columbia River Treaty, *inter alia*;

THEREFORE BE IT FINALLY RESOLVED that the UBCIC Chiefs Council directs the UBCIC Executive, in accordance with Article 39 of the *United Nations Declaration on the Rights of Indigenous Peoples*, to lobby the Federal Government to provide the Canadian Columbia River First Nations with three million dollars per annum in order to fully participate in the Columbia River Treaty judicial reference, discussions, negotiations or otherwise, as they unfold and until finally conclude with the free prior informed consent of the Canadian Columbia River First Nations.

Moved: **Chief Wayne Christian, Splatsin**
Seconded: **Chief Fred Sampson, Siska First Nation**
Disposition: **TABLED**
Date: **November 23rd, 2011**