



BRITISH COLUMBIA ENERGY REGULATOR

Guidance for BRFN Implementation Agreement Form

VERSION 1.0: June 2023

Guidance Document for the BRFN Implementation Agreement Form

Introduction

The Blueberry River First Nations Implementation Agreement (Agreement) responds to a B.C. Supreme Court decision on June 29, 2021, that found the Province had infringed upon Blueberry River's Treaty 8 rights due to the cumulative impacts of decades of industrial development.

The purpose of the Agreement is to develop a new approach to natural resource management and the protection of treaty rights, with the goal to enhance restoration to heal the land, create new protected areas and set new rules for development activities. There are new interim approaches identified for activities of the oil and gas sector with longer-term commitments of comprehensive planning processes. The Agreement and anticipated Watershed Management Basin and High Value area plans seek to establish a new balance among treaty rights and healing of the environment, with a sustainable regional economy.

What is this Form?

The BRFN Implementation Agreement Form (Form) was jointly created by the British Columbia Energy Regulator (BCER) and Blueberry River First Nations (BRFN) with the intent of capturing information required to implement the approaches and rules identified in the Agreement and aid in BRFN's and BCER's review of applications.

When does it need to be completed?

This Form is required to be submitted with all applications that fall within BRFN's territory. Applicants and permit holders can use the Province's [First Nation Consultation Areas](#) Public Map to identify if the area within the application overlaps with BRFN's consultation boundary. Permit holders can also contact the BCER directly for any required contact information.

The Form should be completed for each Application submitted to the BCER within BRFN's territory. However, each application can include ancillary activities to the application (i.e., borrow pits, temporary workspace, etc.). Applicants are strongly encouraged to group applications by Project.

Project and Activity Components (grouped Applications encouraged)

Applicants are encouraged to group applications related to a single project. A single project description can be prepared in a separate document and provided with all Applications, provided there is a clear link between the subject application and the project description.

This Form should be completed after pre-application engagement with BRFN but it can also be used as a guide for what information should be made available to BRFN, to facilitate pre-application engagement discussions. As applications differ in their level of impact, a new term “Minor Application” was created to reduce information requirements in the form. If an application meets the definition of a Minor Application, only sections A, B & I will need to be completed.

Examples of a Minor Application:

Minor Applications are exempt from parts of the BRFN-B.C. Implementation Agreement Form on the basis that completing the form will not provide information needed to understand the potential impacts of the Application. Minor Applications will still be subject to consultation between BCER and BRFN.

The following are examples of applications considered to be Minor Applications, on the basis they are not anticipated to have new impacts within the Civil Claim Area or result in, or are justified by, changes in upstream production or development plans. BCER has discretion to determine whether an application is appropriately a Minor Application and may require Applicants to complete all sections of the Form if the Minor Application definition is not appropriately applied.

Examples of Minor Applications include:

Well Authorizations (no new land required):

- Changes to drilling permit for Total Depth, Terminating Formation, Expected H₂S, and Horizontal /Vertical designation.

Pipeline Amendments (no new land required and is not justified by or intended to support change in upstream operations, production capacity or development plans (i.e., no change in pipeline capacity):

- Changing the number of pipelines within an approved Right of Way prior to construction.
- Line spit or adding a riser / valve installation within an existing Right of Way.
- Changing pipeline size (OD or WT).
- Changing line pipe grade or material.
- Increasing or decreasing Maximum Operating Pressure.
- Decreasing H₂S concentration.
- Flow reversal.
- Substance change.
- Liner installation or removal.

- Piping changes to an existing riser/header.

Well Site Facility (no new land required and no capacity change):

- Acquiring well site facility equipment permits for an existing Well Authorization for purposes of being able to flow the well through existing infrastructure.
- Adding/removing production equipment to an existing well site facility, apart from compressors or production storage tanks, provided there is no change in the capacity of the well site facility.
- Adding/removing/changing production accounting meters

Facility Amendments (no new land required and no capacity change):

- Adding/removing/changing production accounting meters.
- Adding/removing processing equipment that does not increase the waste discharge limits of an existing site and does not change the current capacity of the facility.

Lease Construction (no new land required):

- Amending borrow pits to change the soil withdrawal volume without taking any new lands, but with no change to the term of the existing authorization.

Will an application induce other development activities?

For applications on private land but within the BRFN Civil Claim area and/or outside of the Civil Claim area, applicants will need to consider if the subject application will depend upon, induce or justify any additional development on Crown land or within the Civil Claim area.

An example of an activity that could induce or depend upon additional development is a new gas plant, road or major pipeline system that will require a new wellsite, or multiple wellsites, to support it. Where a new activity is justified by future development, it is likely inducing or requiring development that should be identified in the present application.

Intent of the Form

The intent of this Form is to document how applications meet the requirements and objectives outlined in the Agreement. Proponents should ensure the Form is completed to clearly demonstrate how their application is meeting these approaches, including, sections 9.2 and 14.4 of the Agreement.

Setbacks and Other Matters

Applicants are expected to do fieldwork necessary to ensure compliance with setbacks set out in the Agreement and outlined in section G of the Form. Note these requirements do not replace more stringent setback requirements that may apply under provincial regulation (i.e., *Environmental Protection and Management Regulation*).

The Current Condition Reports for Old Growth Forest and Moose Habitat are currently not publicly available. These setbacks continue to apply and the BCER will evaluate application components against the Current Condition Reports.

Wherever possible, applicants are strongly encouraged to group related applications, to enable review and consultation with BRFN on all components of an activity or project at the same time, providing for potential efficiencies in both consultation and decision making.

Section 9.2 (a-c) of the Agreement discusses the consolidation of New Disturbance, identifying related authorizations and pre-application engagement. The applicant needs to utilize the Form to clearly document what efforts were taken to consolidate any New Disturbance, any options to reduce New Disturbance that were considered, along with rationale on why they were or were not implemented and how pre-application engagement with BRFN guided their decisions.

Along with this, the applicant must demonstrate how the application fits into their greater development plan, including its annual New Disturbance allocation, and providing any related applications currently with the BCER or that will be applied for in the future. These details are essential to have broader understanding of effects management within an area. Please ensure all components of this project are considered and provide the best information available regarding future plans and development in the project area the subject application relies on. Provide as much detail as possible. You can submit a separate document with your application to provide this information. BRFN also requests that GIS compatible spatial data, be provided where possible, including 3D models if available (.kmz preferred).

Ensuring fulsome and accurate information in the Form will likely require collaboration across proponent departments, including Indigenous relations, development and surface lands teams. It is best practice to complete this Form in-house, rather than having it completed by a third-party broker.

Pre-Application Planning to Limit New Disturbance

Questions related to BRFN expectations regarding limiting New Disturbance can be raised during pre-application engagement.

It is expected applicants will specifically quantify and identify the New Disturbance areas being applied for, including for temporary workspaces in the Form, and how they relate to each company's annual New Disturbance allocation. Applicants should outline what efforts have been made to consolidate with existing disturbance, including existing and planned disturbance by other companies.

Applicants should identify how impacts to functional characteristics have been avoided, including avoiding impacts to:

- Large contiguous undisturbed areas.
- Interior habitat, by ensuring any disturbance has a low edge-to-interior ratio or low edge: area ratio (i.e., a circle) as compared to a high edge-to-interior ratio (i.e., a convoluted and elongated patch). However, some linear forest patches may be valuable if they are wide enough to provide landscape connectivity and meet the interior habitat requirements of smaller animals.
- HV1 areas, particularly New Disturbance adjacent to HV1As and protected areas within HV1B and Cs.
- Adjacent to non-productive land that is relatively intact.

Water Applications

Over-extraction of water is a concern identified in Schedule P of the Agreement. To begin to address this, an Environmental Flow Needs approach is being developed within Priority Water Management Basins (WMB). Over-extraction of water and impacts to water quality also remain concerns outside of these Priority WMBs. Any applications that include a withdrawal from a stream* needs to have details provided of efforts taken to minimize water use and any consideration of alternative sources of water, such as dugouts or borrow pits. Also, if there are barriers to water use from dugouts, such as excessive trucking requirements, these should be noted.

Water applications within Priority Water Management Basins are subject to the comptroller's [interim guidance](#). Applicants are encouraged to review this guidance, and all updates or amendments to it, to ensure the application is consistent with it, before submitting their application.

*As defined in the *Water Sustainability Act*

Pre-application Engagement with BRFN

The Agreement requires changes in the way consultation on oil and gas activities takes place.

1.1.1 Pre-Application Engagement

Pre-Application Engagement with BRFN is needed, to obtain views on proposed development early in the planning phase, including to identify acceptable locations for Oil and Gas Activities and conditions under which new development may occur.

Pre-Application engagement meetings should be scheduled with BRFN Lands Department well before applications are prepared. These meetings will need to include full information required to:

- Identify all project and activity components requiring authorization on a short and long-term basis and how they relate to annual New Disturbance allocations. BRFN expects to be made aware of the whole project, not just individual applications. As an example, if a new piece of infrastructure is justified by or will require future development, BRFN will want to understand what this future development is, where it may take place and under what conditions.
- Demonstrate and discuss steps that will be taken to minimize New Disturbance and consolidate new activities with existing or planned disturbance, including disturbance planned by other companies. Avoidance of Old Growth Forest and other areas of ecological and cultural importance to BRFN is also important, particularly within Priority WMBS, including the Cameron River.

Seeking BRFN input into strategic level, landscape-level plans, to guide broader and longer-term project and program development, can avoid or minimize impacts to BRFN. These discussions should occur at the initial planning stage. Proponents are strongly encouraged to advise BRFN Lands Department of all projects or potential applications expected within the next two to three years, consistent with annual New Disturbance allocations and provide an overview of full field development (5-10 year objectives), where possible.

Shapefiles (.kmz preferred), 3D digital models and high quality and detailed maps are helpful tools for explaining project plans and activity components. These can also be provided to support completion of the BRFN Implementation Agreement Form, in Part C (Project and Activity Components).

Applicants are required to submit a pre-application engagement report in support of applications to the BCER, outlining the process used to engage BRFN, including descriptions of any support, objections or concerns raised during the engagement and the manner in which the application addresses them (s. 9.2). At this time, Applicants can complete a [Pre-engagement Record](#) to fulfill this reporting requirement. BRFN expects to receive a draft of the Pre-engagement Record for review and comment before it is submitted to BCER, with BRFN's comments demonstrably integrated to the Pre-engagement Record prior to submission.

Proponents can rely on pre-application engagement that discussed the project as a whole, to fulfill these requirements, provided the specific location and impacts of the subject application was discussed with BRFN.

Individual meetings on each component of an applied for project are not required when a meeting to discuss the project as a whole occurs (i.e., a single pre-application engagement process can discuss a facility and associated well pads, roads and associated infrastructure, individual meetings on each project component are not required).

The above guidance supplements BCER's [Guidance for Pre-engaging with Indigenous First Nations](#).

1.1.2 Requirement to Engage Trapline Holders via BRFN

Section 14.5 of the Agreement states third parties must engage trapline holders to identify acceptable locations for Oil and Gas Activities before making an application to the BCER, which should occur in advance and in addition to the current RCNR ([Requirements for Consultation and Notification Regulation](#)) requirements. Trapline Holder pre-application engagement, as required in the agreement, will be coordinated as a part of the BRFN pre-application engagement referenced above. BRFN Lands Department will coordinate Trapline Holder engagement where required. This pre-application engagement through the BRFN Lands department supports, but does not fulfil, the obligations of the RCNR to consult and/or notify people who hold a registered trapline under the *Wildlife Act*.

To meet the requirements under the Agreement, Trapline holder engagement must be coordinated through the BRFN Lands department. Applicants should contact the BRFN Lands Department to arrange meetings with BRFN and relevant trapline holders for particular traplines. When meetings are necessary, the BRFN Lands Department will facilitate these meetings. Companies that make direct contact with individual trapline holders outside of the Lands Department facilitated process (e.g., RCNR requirements), will not be recognized as meeting the engagement requirements under s. 14.5 of the Agreement in respect of BCER Applications.