

Blueberry River First Nation and British Columbia Sign Implementation Agreement; A New Chapter in Resource Development

Authors: John Stefaniuk, K.C.

published 03/31/2023

On January 18, 2023, the Province of British Columbia (BC) and the Blueberry River First Nation (“BFN”) signed a ground-breaking implementation agreement that provides a framework for collaboration and joint decision-making on a range of issues, including resource development, environmental protection, and economic and cultural development within BFN’s traditional territory.



In 1899 BFN became a signatory to Treaty 8, one of Canada’s “Numbered Treaties”. BFN’s reserve and traditional territory are located in northeastern BC. BFN has a long history of advocacy for its rights and interests in the face of resource development and resulting impacts. Its representatives repeatedly raised concerns about the impacts of industrial activities, such as logging, mining, and oil and gas development, affecting BFN’s traditional lands, waters, and associated wildlife, and the ability of its members to exercise their Treaty rights. The identified impacts included loss of habitat and biodiversity, contamination of water and soil, and disruptions to traditional hunting, fishing, and gathering practices.

Yahey v. Blueberry River First Nation

The implementation agreement is a product of the British Columbia Superior Court’s June 2021 decision in *Yahey v. British Columbia*. (For a more detailed discussion on the case and its implications, see my previous article, *Death by a Thousand Clearcuts – Cumulative Impacts on Treaty Rights; Yahey v. British Columbia*.)

To recap, in 2017 BFN filed a lawsuit against the BC alleging that the government’s failure to protect BFN’s lands and resources violated its Treaty and Aboriginal rights. Treaty 8 includes recognition of the rights of BFN’s members and those of other signatories to hunt, fish, and trap on their respective traditional lands. Treaty 8 promised that these activities would not be disrupted by settlement or development. Over the years since Treaty 8 was signed, BC allowed the development of various industrial activities that encroached upon BFN’s traditional lands and waters, historically without consultation or consent. Most notable of these disruptive activities were oil and gas development and forestry.

Madam Justice Burke of the British Columbia Supreme Court found that BC had breached its obligations under Treaty 8 by allowing industrial activities to proceed without adequate consideration of their cumulative impacts on BFN's rights. She found that permitting of industrial development required consideration of more than just the individual project's impacts, and that the cumulative effects of industrial development in the region had significantly impacted BFN's ability to exercise its Treaty and Aboriginal rights. She ordered that BC must cease permitting activities that would result in further impairments of BFN's rights. She ordered BC to diligently consult and negotiate an enforceable agreement with BFN for the assessment and management of industrial developments such that Blueberry's treaty rights would be respected. BC elected not to appeal the decision.

The Initial Agreement

On Oct. 7, 2021, BFN and BC signed an initial agreement to provide some interim stability and certainty for forestry and oil and gas permit holders in BFN's traditional territory. The initial agreement provided for "investments in healing the land, cultural renewal, wildlife management and land protection while finding a way forward for projects that were already permitted or authorized prior to the court decision, and where activities have not yet started."

Highlights of the initial agreement included a \$35-million fund for land, road and seismic restoration; river, stream and wetland restoration; habitat connectivity; native seed and nursery projects; and training for restoration activities. Three separate \$10-million funds were established for: rebuilding and renewing trapline and hunting cabins, restoring cultural areas, building trails, developing educational materials, and teaching of traditional skills and language advisors; hiring land management staff, data management and mapping, training and communications; and predator control, habitat enhancement, and wildlife protection.

The Implementation Agreement

The implementation agreement signed on January 18, 2023 is a more permanent response to the Court's direction. It represents a commitment by BC to work with BFN on a range of issues related to resource development and environmental protection. The implementation agreement recognizes the importance of collaboration and community-led decision-making in addressing complex issues related to resource development and environmental protection. It also includes important measures for protecting and restoring the Blueberry River watershed, which has been heavily impacted by industrial activities in the region.

The implementation agreement is intended to change the way that BC and First Nations manage land, water and resources. It addresses cumulative effects in BFN's traditional lands through restoration, establishing protected areas, and limiting development activities until a cumulative effects management system is implemented. Specific measures include:

- establishing a \$200-million restoration fund;
- taking an ecosystem-based management approach for future land-use planning;
- limiting new petroleum and natural gas development and implementing a new planning regime for future approvals;
- protection for old forest and traplines;
- setting aside 650,000 hectares of protected area; and
- wildlife co-management.

BFN will receive a further \$87.5 million as a financial package over three years, with an opportunity for increased benefits based on PNG revenue-sharing and provincial royalty revenues in the next two fiscal years.

One of the key provisions of the Implementation Agreement is the commitment to co-develop a land use plan for the BFN's traditional territory. This plan is to be guided by the UNDRIP principles of free, prior, and informed consent, and will be based on BNF's vision for its lands and resources.

The implementation agreement recognizes both BNF's cultural and economic interests. It includes provisions for supporting economic development initiatives that are aligned with the BFN's values and priorities, and for providing access to training and employment opportunities for BFN's members.

The implementation agreement signifies a significant stride in the reconciliation of historical encroachments on Indigenous Peoples' Treaty Rights. It remains to be seen whether it will form the basis for the development of new working relationships among other provincial and territorial governments and other First Nations (under other Numbered Treaties) whose Aboriginal and Treaty Rights may be adversely affected by natural resource development and other encroachments. Not all First Nations are in the same position as BFN, where the level of historic encroachment has rendered meaningful consultation, mitigation, and accommodation at least impracticable, if not virtually impossible.

This article was written for Mid-Canada Forestry and Mining magazine and is reproduced with permission.

John Stefaniuk is a Manitoba-based lawyer who practises environmental and natural resource law.

*If you have an environmental or natural resources law matter, contact John or any one of our **natural resources and energy law** lawyers.*

DISCLAIMER: *This article is presented for informational purposes only. The content does not constitute legal advice or solicitation and does not create a solicitor client relationship. The views expressed are solely the authors' and should not be attributed to any other party, including Thompson Dorfman Sweatman LLP (TDS), its affiliate companies or its clients. The authors make no guarantees regarding the accuracy or adequacy of the information contained herein or linked to via this article. The authors are not able to provide free legal advice. If you are seeking advice on specific matters, please contact Keith LaBossiere, CEO & Managing Partner at kdl@tdslaw.com, or 204.934.2587. Please be aware that any unsolicited information sent to the author(s) cannot be considered to be solicitor-client privileged.*

While care is taken to ensure the accuracy for the purposes stated, before relying upon these articles, you should seek and be guided by legal advice based on your specific circumstances. We would be pleased to provide you with our assistance on any of the issues raised in these articles.