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NOTICE OF ARBITRATION AND STATEMENT OF CLAIM
UNDER THE ARBITRATION RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
AND
THE NORTH AMERICAN FREE TRADE AGREEMENT

ABITIBIBOWATER INC.,
Claimant/Investor,

v.

GOVERNMENT OF CANADA,
Respondent/Party

February 25, 2010

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Washington, D.C. 20004
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1. Pursuant to Articles 3 and 18 of the United Nations Commission on International Trade Law (“**UNCITRAL**”) Arbitration Rules¹ and Articles 1116, 1117, and 1120 of the North American Free Trade Agreement (“**NAFTA**”), the disputing Investor, AbitibiBowater Inc. (hereinafter “**AbitibiBowater**” or “**the Company**”), hereby initiates recourse to arbitration, both on its own behalf and on behalf of three investment enterprises that it owns or controls directly or indirectly, Abitibi-Consolidated Company of Canada, Abitibi-Consolidated Inc. and AbitibiBowater Canada Inc. (hereinafter collectively the “**AbitibiBowater Canadian Entities**”), by submission of this Notice of Arbitration and Statement of Claim.²

I. CONSENT AND WAIVERS

2. Pursuant to Article 1121 of NAFTA, AbitibiBowater on its own behalf, as the disputing Investor, and on behalf of the AbitibiBowater Canadian Entities, consents to arbitration in accordance with the procedures set out in NAFTA.
3. AbitibiBowater and the AbitibiBowater Canadian Entities, also pursuant to Article 1121 of NAFTA, waive their right to initiate or continue before any administrative tribunal or court under the laws of any Party, or any other dispute settlement procedures, any proceedings with respect to the measures of the Government of Canada (hereinafter “**Canada**”) and/or the Government of Newfoundland and Labrador described herein that are alleged to be breaches of NAFTA obligations referred to in Articles 1116 and 1117 of NAFTA, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the laws of Canada and/or of the Province of Newfoundland and Laborador.

¹ Resolution 31/98, adopted by the General Assembly on December 15, 1976.

² Pursuant to Article 3(4) of the UNCITRAL Arbitration Rules, AbitibiBowater has included its Statement of Claim with its Notice of Arbitration.

4. Executed declarations of consent and waivers of AbitibiBowater and the three AbitibiBowater Canadian Entities are attached to this Notice of Arbitration and Statement of Claim as **Exhibit 1** and have also been submitted to Canada, in accordance with Article 1121(3). The Company has taken all necessary internal actions to authorize the submission of the dispute, on its own behalf and on behalf of the three AbitibiBowater Canadian Entities, to international arbitration under Chapter 11 of NAFTA. The corresponding Board Resolutions that contain such authorization are on file with AbitibiBowater's counsel in Washington, D.C.

II. DEMAND THAT THE DISPUTE BE REFERRED TO ARBITRATION

5. Pursuant to Article 1120(1)(c) of NAFTA, AbitibiBowater hereby demands that the dispute between it and Canada, through the actions of the provincial Government of Newfoundland and Labrador, be referred to arbitration under the UNCITRAL Arbitration Rules.
6. Pursuant to Article 1119 of NAFTA, AbitibiBowater delivered a Notice of Intent to Submit a Claim to Arbitration to Canada on April 23, 2009 (attached hereto as **Exhibit 2**), at least ninety days before the submission of this claim to arbitration. Submission of this dispute to arbitration is timely as over six months have elapsed since the events giving rise to AbitibiBowater's claim, as required by Article 1120(1) of NAFTA. In addition, not more than three years have elapsed from the date on which AbitibiBowater and the AbitibiBowater Canadian Entities first acquired, or should have acquired, knowledge of Canada's breach of its obligations under Section A of Chapter Eleven of NAFTA, as required by Article 1117(2) of NAFTA.
7. Since the date its assets and rights were expropriated, AbitibiBowater has held numerous meetings with representatives of Canada in an effort to find an amicable resolution of this matter. This has included meetings with the Department of Foreign Affairs and International

Trade (hereinafter “DFAIT”), the entity responsible for coordinating Canada’s defense to NAFTA claims, both separately and together with representatives of the Government of Newfoundland and Labrador. In addition, AbitibiBowater has attended meetings with the Prime Minister’s Office; the Privy Council Office; and the Departments of Finance, Defence, Environment and Industry of the Government of Canada. AbitibiBowater has thus amply satisfied the NAFTA Article 1118 recommendation that “[t]he disputing parties should first attempt to settle a claim through consultation or negotiation.”

III. NAMES AND ADDRESSES OF THE PARTIES

8. Claimant/Investor: ABITIBIBOWATER INC.
1209 Orange Street
Wilmington, Delaware 19801
United States of America

9. Enterprises: ABITIBI-CONSOLIDATED COMPANY OF CANADA
ABITIBI-CONSOLIDATED INC.
ABITIBIBOWATER CANADA INC.
1155 Metcalfe Street, Suite 800
Montréal, Québec
Canada, H3B 5H2

10. Respondent/Party: GOVERNMENT OF CANADA
Office of the Deputy Attorney General of Canada
Justice Building
284 Wellington Street
Ottawa, ON K1A 0H8

IV. REFERENCE TO ARBITRATION CLAUSE OR THE SEPARATE ARBITRATION AGREEMENT THAT IS INVOKED

11. AbitibiBowater invokes Section B of Chapter Eleven of NAFTA, and specifically relies upon Articles 1116, 1117, 1120 and 1122 of NAFTA as authority for this arbitration.

AbitibiBowater proceeds under Section B of Chapter Eleven of the NAFTA, which sets out the provisions concerning settlement of disputes between a Party and an investor of another Party.

V. REFERENCE TO THE RELATIONSHIP OUT OF WHICH THE DISPUTE ARISES

12. The dispute concerns AbitibiBowater's investment in Canada, described in more detail below, and the damages that have resulted out of the measures undertaken by Canada, through the actions of its constituent political subdivision the provincial Government of Newfoundland and Labrador (hereinafter "**the Province**"). Canada is internationally responsible for these measures, which are in breach of its obligations under Section A of Chapter Eleven of NAFTA.

VI. THE GENERAL NATURE OF THE CLAIM AND AN INDICATION OF THE AMOUNT INVOLVED

13. As explained in the Notice of Intent, on December 16, 2008, the Newfoundland and Labrador House of Assembly enacted Bill 75, "An Act to Return to the Crown Certain Rights Relating to Timber and Water Use Vested in Abitibi-Consolidated and to Expropriate Assets and Lands Associated With the Generation of Electricity Enabled by Those Water Use Rights" (hereinafter the "**Abitibi-Consolidated Rights and Assets Act**" or the "**Act**").³ The Act received Royal Assent the same day. This Act was expressly directed at the expropriation of most of AbitibiBowater's investments in Newfoundland and Labrador, including its property and facilities and various vested rights and legal entitlements,⁴ and the denial to AbitibiBowater of appropriate compensation and of the usual judicial avenues of legal redress. Canada is responsible for the Province's acts under NAFTA and applicable principles of international law. As a result of this Act, and related measures, Canada breached its

³ A copy of the Act is attached as **Exhibit 3**.

⁴ A comprehensive list of the rights and assets expropriated by the Act, organized by site, is attached as **Annex A**. Each of these rights and assets had its separate "fair market value ... immediately before the expropriation took place," for purposes of calculating the compensation properly due to AbitibiBowater pursuant to NAFTA Article 1110. A map of the expropriated rights and assets, illustrating the sweeping range and impact of the Act, is attached as **Annex B**.

obligations under Articles 1110, 1105, 1102 and 1103 of NAFTA, as explained in Section VII below.

14. Below is a description of the underlying facts of this case, including:

- an overview of AbitibiBowater, its rights and investments in the Province, and its important contribution to the development of local communities over the last century (Section VI.A);
- AbitibiBowater's announcement in early December 2008 of the planned closure of one of its interests in the Province, the pulp and paper mill in Grand Falls-Windsor (hereinafter the "**Grand Falls Mill**"), as a result of an economic downturn and market decline in the industry and the collapse of negotiations with the unions and consultations with the Province over a renewal plan aimed at reducing operating costs at the Mill (Section VI.B); and
- the Province's precipitous decision, through the enactment of the Act, to strip AbitibiBowater of most of its rights and interests in the Province, in retaliation for its planned closure of the Grand Falls Mill (Section VI.C).

A. The Investor and Its Investment

15. AbitibiBowater is a limited liability company organized under the laws of the State of Delaware, United States of America. AbitibiBowater was created in 2007 through the merger of two other forest products companies, the U.S. company Bowater Inc. and the Canadian company Abitibi-Consolidated Inc.

16. AbitibiBowater produces a wide range of newsprint, commercial printing papers, market pulp and wood products. It is the eighth largest publicly traded pulp and paper manufacturer in the world. AbitibiBowater owns or operates 23 pulp and paper facilities and 27 wood products facilities located in the United States, Canada, the United Kingdom and South Korea. Marketing its products in more than 90 countries, the Company is also among the world's largest recyclers of old newspapers and magazines, and has third-party certified 100% of its managed woodlands to sustainable forest management standards. AbitibiBowater's shares

trade over-the-counter on the Pink Sheets and on the OTC Bulletin Board under the stock symbol ABWTQ.

17. AbitibiBowater has been operating in Canada for over a century, through its Canadian subsidiaries (the AbitibiBowater Canadian Entities) and their predecessors. Aside from its activities in Newfoundland and Labrador, AbitibiBowater also owns and/or operates enterprises in other parts of Canada, including British Columbia, New Brunswick, Nova Scotia, Ontario, and Québec.
18. In Newfoundland and Labrador, AbitibiBowater holds a broad range of rights that can be traced in part back to grants in various forms by the provincial government and its predecessors and agents (such as the January 12, 1905 Charter Lease), but also in part to other arm's length agreements made with private third parties, for which valuable consideration was likewise given. These transactions provided AbitibiBowater with extensive land rights, timber rights, water use rights and various other related rights, established through a wide array of deeds, leases, easements and other contractual agreements. AbitibiBowater's various rights are described in Section VI.A(1) below.
19. In addition to the substantial sums AbitibiBowater expended to acquire these various rights, the Company invested many hundreds of millions of dollars more in the Province over the course of the last century. These investments served as the catalyst for the birth and development of communities throughout the Province, and reinforced the Company's position as a good corporate citizen and strong local partner in the community since 1905. Examples of these major investments are provided in Section VI.A(2) below.
20. Based on these rights and investments, AbitibiBowater established, owned and operated (with its partners) two major hydroelectric generation facilities in the Province, the Star Lake Hydro

Project and the Exploits River Hydro Project—the latter encompassing both the Bishop’s Falls and Grand Falls generating facilities. AbitibiBowater also owned and operated a smaller hydroelectric generating facility in Buchans. These assets are described in Section VI.A(3) below.

(1) The Sources of AbitibiBowater’s Rights

21. AbitibiBowater’s involvement in the Province dates back to January 7, 1905, when its predecessor the Anglo-Newfoundland Development Company, Limited (hereinafter “ANDC”) was incorporated as a Newfoundland corporation. ANDC was incorporated with a listed capital of CDN \$5 million, a vast sum at the turn of the 20th century, equivalent to approximately US \$100 million in today’s currency.⁵ Its formation was the result of a confluence of events and forces. The colonial Government of Newfoundland was determined to attract industrial enterprises to the island, to expand the region’s economic base as its fishery industry collapsed and in the wake of a major fire causing losses above CDN \$20 million.⁶ Newfoundland heavily promoted its development efforts in the United Kingdom, eventually catching the attention of the Harmsworth Brothers, publishers of the *Daily Mail* and several other leading newspapers. Traditionally, the Harmsworths had obtained pulp and newsprint from Scandinavia, but increasing worries about German expansionism led them to look westward to North America for alternative supplies.
22. The Harmsworths entered into discussions with the colonial government in 1904 to acquire the necessary lands and rights, and began also purchasing assets from other forestry operators in

⁵ The 2009 values of historical investments included in this Notice of Intent were calculated using an inflation calculator for Canadian dollars available at http://www.bankofcanada.ca/en/rates/inflation_calc.html and a similar calculator for U.S. dollars available at <http://www.westegg.com/inflation>. The resulting figures were converted to U.S. dollars at the exchange rate prevailing on December 31, 2009.

⁶ Government of Canada, Newfoundland: An Introduction to Canada’s New Province, published by authority of the Right Honourable C. D. Howe, Minister of Trade and Commerce, prepared by the Department of External Affairs in Collaboration with the Dominion Bureau of Statistics, Ottawa, at page 29 (1950).

arm's length transactions. From 1905 and over the next century, AbitibiBowater and its predecessor companies including ANDC (hereinafter referred to collectively as "AbitibiBowater") made a broad range of significant investments in the Province, acquiring numerous valuable rights and contributing significantly to the region's economic development.

(a) The Charter Lease

23. AbitibiBowater's first significant transaction with the Province⁷ was the January 12, 1905, Charter Lease ("**Charter Lease**"), a perpetually renewable 99-year lease of 2,000 square miles of surface, timber and water rights in the Exploits River watershed in the southwest interior of the Province. The Charter Lease was issued by the Province and thereafter ratified by legislation, the Pulp and Paper Act of June 15, 1905. Under the Charter Lease, AbitibiBowater was required to pay the Province annual rentals and timber royalties, which it continued to do until the enactment of the Act.
24. In addition to promising regular payment of rents and royalties, AbitibiBowater covenanted in the Charter Lease to spend at least CDN \$250,000 within four years of the date of the Charter Lease, and a further CDN \$750,000 within twenty-five years, in connection with "the erection of one or more pulp and paper mills and their equipment, including water power development, on or in connection with the demised premises."⁸ There is no dispute that AbitibiBowater honored this commitment. In fact, during its first five years of operation alone, AbitibiBowater invested more than CDN \$6 million in the colony of Newfoundland,⁹ a phenomenal sum at the time (equivalent to more than US \$120 million today) and many times

⁷ The term "Province" in this Notice of Intent includes its predecessor colonial and provincial governments. In 1905, when ANDC commenced its pulp and paper business, Newfoundland was a colony of the United Kingdom. It remained thus until April 1, 1949, when it joined Canada as a Province.

⁸ Charter Lease, Section 12.

⁹ See "Fifty Years of Progress at Grand Falls: The Impact of the Anglo-Newfoundland Development Company Limited on the Economy of Newfoundland," published by the Pulp and Paper Magazine of Canada," at 18 (F. A. Price, ed., 1959).

the amount it was required to invest under the Charter Lease. This massive investment by AbitibiBowater, which was merely the opening step in an ongoing investment process that continued for another century, was instrumental in the economic, social and sustainable development of the region, as discussed further in Section VI.A(2) below.

25. As part of the Charter Lease, AbitibiBowater surrendered to the Province certain preexisting timber licenses and leases that it had acquired independently from other forestry operators in arm's length transactions. For example, in 1905 AbitibiBowater had acquired considerable timber holdings from Newfoundland Timber Estates, Limited, for consideration of CDN \$400,000, which in today's dollars would equate roughly to US \$8 million. The Charter Lease recitals refer to these and other valuable leases and licenses acquired independently from "various parties." AbitibiBowater surrendered these interests to the Province in connection with issuance of the Charter Lease.

26. Notably, the surface, timber and water rights conferred by the Charter Lease were not conditional on the continued operation of the planned paper mill at Grand Falls. Rather, they were perpetually renewable as a matter of right, under Section 14(b), which provided that

the Government will, at the request and cost of the Lessee, at the expiration of the term hereby granted and again at the expiration of every further term of ninety-nine years which may be hereinafter granted under this covenant, grant to the Lessee at the same rents and royalties ... a new lease of the demised premises together with all rights and privileges hereby granted.¹⁰

27. Regarding water use rights, the Charter Lease stated as follows:

The Lessee shall be entitled (so far as the Government can, *consistently with any grants heretofore made and actually subsisting* grant the same) to have, use and enjoy for its milling and logging business all streams, lakes, watercourses, springs or water in, upon under or intersecting the

¹⁰ Charter Lease, Section 14(b).

demised premises, and all water power or powers in and upon Exploits River down to and excluding Bishops Falls and particularly, but not by way of limitation, the entire water power of Grand Falls on said Exploits River.¹¹

While the water use rights conferred by the Charter Lease may therefore appear to be use-specific, the qualification respecting “grants heretofore made” in the opening language of the clause is significant. AbitibiBowater already had broad rights to all “water-courses” on the lands at Grand Falls, without any conditions on use, through Reid Lot 59 (discussed further in paragraph 31 below).

28. In any event, as discussed further in Section VI.A(1)(b), the interpretation of the Charter Lease at this point may be entirely academic, as it is not AbitibiBowater’s sole source of water rights at Grand Falls. In 2002, the Province required AbitibiBowater to acquire additional concurrent 50-year water use licenses (the “50-Year Licenses”), which licenses themselves conferred broad rights to AbitibiBowater to use the water powers of the Exploits River at Grand Falls and Bishop’s Falls “for the purpose of water power generation and subsequent sale to Newfoundland and Labrador Hydro and/or third parties in the Province of Newfoundland and Labrador.” These licenses contain no language whatsoever linking AbitibiBowater’s water use rights to continued operation of the Grand Falls Mill.

29. The Grand Falls Mill was officially opened in 1909. The mill historically has been powered by energy generated from the Bishop’s Falls and Grand Falls hydroelectric generation facilities. Both of these hydroelectric generating facilities are located on the Exploits River and form part of the Exploits River Hydro Assets, discussed further below.

¹¹ Charter Lease, Section 3 (emphasis added).

30. In late 2003, in anticipation of the expiry of the initial 99-year term of the Charter Lease, AbitibiBowater exercised its right to renew the lease. Despite initial verbal indications that the Province would honor its renewal obligation, however, the Province ultimately declined to do so. It insisted in writing that any renewal would have to be separately negotiated—on much more restrictive terms—and issued under different legislation. The Province nonetheless continued thereafter to accept rental and other payments from AbitibiBowater under the Charter Lease, indicating its tacit acknowledgment of the Company’s continuing legal rights.

(b) Other Land, Water and Timber Rights

31. Independently of the Charter Lease, AbitibiBowater acquired substantial other land, water and timber rights in the Province, most of them from other forestry operators in arm’s length transactions for valuable consideration. For example, in addition to the timber licenses and leases acquired independently in 1905 (discussed above in paragraph 25):

- AbitibiBowater acquired from the Newfoundland Pine and Pulp Company Limited, in 1911, its interest in a 999-year lease dated 1907 for five parcels of timber land (the “**1907 Lease**”);
- AbitibiBowater acquired, from the Albert E. Reed Company (Newfoundland) Limited, in 1919, its interest in a 999-year grant dated 1907 of water use rights for Badger Brook, together with lands for erection of dams and associated control structures (the “**Badger Brook Grant**”);
- AbitibiBowater acquired, in the early 20th century, 33 additional non-renewable timber licenses issued under the Crown Lands Act, originally with variable expiry dates but later agreed to expire on December 31, 2010 (hereinafter the “**Non-Renewable Licenses**”);
- AbitibiBowater acquired from the Reid Newfoundland Company, at various times during the 20th century, substantial additional timber lands in 16 different freehold grants, specifically including all the “water-courses” on the lands, a term which conferred freehold water use rights (the “**Private Reid Lots**”).¹² One of the Private Reid Lots, “**Reid Lot 59**,” included the

¹² While AbitibiBowater had leased some of the Reid Lot lands as early as 1905, in return for rents and royalties (the “**1905 Reid Lease**”), it later acquired full freehold interests in these lots through various deeds executed later in the
[FOOTNOTE CONTINUED ON NEXT PAGE]

lands on which the Grand Falls Mill was constructed, and the reference to “water-courses” included that portion of the Exploits River which traversed the Reid Lot 59 lands, including Grand Falls itself;¹³

- AbitibiBowater acquired from the Alexander Bay Pulp and Paper Company Limited (in liquidation), in 1928, “the exclusive right to cut timber in and over” eight additional “**Crown Reid Lots**,” until the expiration of a 99-year term (subject to certain rights of renewal) that had started in 1919 with original licenses made by the Reid Newfoundland Company;
- AbitibiBowater acquired from the Bishop’s Falls Pulp and Paper Company Limited, in 1929, two large freehold parcels of land on the Exploits River at Bishop’s Falls, together with the right to erect and maintain a dam (the “**Bishop’s Falls Deed**”). The Bishop’s Falls Deed included “the right to use the waters of the said Exploits River at Bishop’s Falls” for a 999-year term beginning in 1907 (“**Crown Grant No. 55**,” also known as the “**Bishop’s Falls Waterpower Lease**”); and
- AbitibiBowater also acquired, in the early 1930s, 20 additional parcels of freehold land (known as the “**Stock Pipe-Line Lands**”).

32. AbitibiBowater paid valuable consideration for these freehold, leasehold and timber license rights acquired from third parties independent of the Charter Lease. For example, Abitibi Bowater paid more than CDN \$2.5 million in 1929 (a sum exceeding US \$29 million today) for the Bishop’s Falls Deed.

33. In 2002, the Province required AbitibiBowater to obtain additional and concurrent water use licenses (the 50-Year Licenses addressed above) in connection with the Exploits River Hydro Project, even though AbitibiBowater already held sufficient water use rights for the Project under the Bishop’s Falls Waterpower Lease, Reid Lot 59 and the Charter Lease.

AbitibiBowater contested the Province’s actions in 2003 to require AbitibiBowater to obtain these licenses, at an annual cost of approximately CDN \$150,000. On April 7, 2003,

AbitibiBowater filed suit against the Province in the Supreme Court of Newfoundland and

[FOOTNOTE CONTINUED FROM PREVIOUS PAGE]

century, including in 1962 and 1975. Many of these transactions involved the payment of valuable consideration to the Reid Newfoundland Company.

¹³ AbitibiBowater acquired Reid Lot 59 in part by the 1905 Reid Lease, in part by a new deed in 1929, and in part by a further new deed in 1933, for valuable consideration.

Labrador, Trial Division, challenging the company's need for the 50-Year Licenses and seeking a refund of all license fees paid.

34. Notably, only a few of the many rights AbitibiBowater assembled during its century of operations in the Province were even arguably conditioned on continued operation of the Grand Falls Mill. The Non-Renewable Licenses admittedly depended on operation of at least two paper-making machines at the Grand Falls Mill, and as to these licenses, AbitibiBowater acknowledges that the closure of the Mill in March 2009 would result in early termination, 21 months prior to the licenses' scheduled expiration. But most of AbitibiBowater's other land, water and timber rights contained no such condition. For example, the 50-Year Licenses described AbitibiBowater's rights in the broadest possible terms, as involving the grant of water rights at Grand Falls and at Bishop's Falls on the Exploits River, and in respect of their watershed areas, "for the purpose of water power generation and subsequent sale to Newfoundland and Labrador Hydro and/or third parties in the Province of Newfoundland and Labrador." Each license expressly provided that nothing therein would operate to limit any of AbitibiBowater's historic real property and water and waterpower rights pursuant to any pre-existing "grant, lease, license or other instrument." There is no way that these licenses, which by their terms run until 2052, could be read as conditioning AbitibiBowater's water use rights on continued operation of the Grand Falls Mill.
35. As discussed further in Section VI.C, however, the Province completely ignored the broad scope of most of AbitibiBowater's rights, in its rush to expropriate those rights as retaliation for the planned closure of the Grand Falls Mill. This complete disregard of the differing legal provisions applicable to different rights demonstrates the wholly arbitrary and indiscriminate nature of the Province's acts. In utter disregard for the rule of law, and as an arbitrary and discriminatory further seizure of property rights from AbitibiBowater without compensation,

the Province also expropriated AbitibiBowater's lawsuit against the Province concerning the 50-year Licenses. Paragraph 9 of the Act provides that AbitibiBowater's action against the Province "is discontinued without costs."

(2) AbitibiBowater's Additional Investments in and Contributions to the Province

36. In addition to the substantial amounts AbitibiBowater spent to acquire these various rights, the Company invested enormous sums in the Province over the course of the last century. These investments help place into context AbitibiBowater's broader involvement in the Province which, to the benefit of many hundreds of local employees, small businesses and public authorities, has hardly been the kind of "one-way street" that Provincial authorities later claimed to justify the sweeping expropriation of AbitibiBowater's rights.

37. Since 1996 alone, AbitibiBowater invested (or caused to be invested through its partnerships) approximately CDN \$145 million in the Grand Falls Mill and approximately CDN \$135 million in the hydro-electric projects. And these investments were simply the latest in a long line of historical investments. For example, AbitibiBowater invested CDN \$50 million (worth somewhere in the range of US \$350 million today) in modernization and rehabilitation of Grand Falls Mill operations between the end of World War II and 1972, including conversion of the Bishop's Falls pulp and paper mill to a hydro-electric generating facility and installation of a new paper machine. Between 1985 and 1995, the Company made improvements valued at more than CDN \$162 million (roughly US \$220 million today), including among other things a new effluent treatment system and the modernization of the wood-room. Over the next five years (1996-2000), AbitibiBowater allotted more than CDN \$97 million to additional improvements, including upgrade of hydro-electric generation capabilities, pulping systems,

computer systems, dams, and other projects. The Company undertook CDN \$25 million worth of further upgrades to the Grand Falls Mill in 2005.

38. AbitibiBowater's investments in the Province, over the last century, were instrumental in building entire communities that had not existed prior to AbitibiBowater's arrival, and in developing the institutions necessary to support community growth. Indeed, as a strong local partner and corporate citizen, AbitibiBowater built the entire town of Grand Falls. In addition to its mill and hydroelectric operations, AbitibiBowater built and repaired roads and bridges on its timber lands, and replanted forest lands to ensure sustainability. In the last five years prior to enactment of the Act, the Company spent more than CDN \$26 million on such improvements, which the Province has now expropriated along with the lands on which they lie.

39. The Company contributed in numerous other ways to the local community to which it belonged. Starting in 1909, it established a trust fund for the operation of the hospital and schools in Grand Falls, and by 1929 AbitibiBowater had expended more than CDN \$100,000 (roughly US \$1.2 million today) on school construction. The Company spent another CDN \$150,000 (also roughly US \$1.2 million today) by 1950 on construction of a new high school in Grand Falls.¹⁴ AbitibiBowater allocated significant sums to scholarship funds and other educational programs throughout the Province, and by 1967, it was contributing more than CDN \$100,000 (approximately US \$600,000 today) each year to education.¹⁵ In recent years, AbitibiBowater has continued to support education, for example donating CDN \$100,000 in

¹⁴ Grand Falls-Windsor Heritage Society Inc., Grand Falls-Windsor: The Place and Its People, published by Transcontinental Community Newspapers, Grand Falls-Windsor, NL, at 65 and 91 (2005).

¹⁵ "Moby Joe: Commemorating the Official Opening of the New Machine Room Housing Price (Nfld.) Pulp & Paper Limited's Modern High-Speed Paper Machine 'Moby Joe'," published by Price (Nfld.) Pulp and Paper Limited, unnumbered (1968).

1997 to Memorial University of Newfoundland's Opportunity Fund.¹⁶ The Company also donated CDN \$650,000 in the 1980s (more than US \$1.1 million today) to help purchase new medical equipment for the Central Newfoundland Regional Health facility in Grand Falls-Windsor, and another \$350,000 (almost US \$600,000 today) to purchase medical equipment for the hospital in nearby Stephenville. These major monetary contributions do not begin to capture the Company's social commitment to its employees and the community, for example in annual assistance grants to town-sponsored athletic and arts programs and local festivals.

(3) AbitibiBowater's Major Hydro Assets

40. Based on the rights and investments detailed above, AbitibiBowater established, owned and operated (with its partners) two major hydroelectric generation facilities in the Province, the Star Lake Hydro Project and the Exploits River Hydro Project, along with a smaller hydroelectric generating facility in Buchans. Because these assets were captured by the Province's sweeping expropriation, they are described below.

(a) The Exploits River Hydro Assets

41. As discussed in paragraph 31, AbitibiBowater acquired title in 1929 to the land and water rights at Bishop's Falls. From that year until 1951, AbitibiBowater's dam and pulp mill at Bishop's Falls supplied liquid pulp to the Grand Falls Mill. In the early 1930s, AbitibiBowater partly converted the Bishop's Falls Mill to generate hydroelectricity, and constructed a transmission line upon the Stock Pipe-Line Lands so the Mill could also be supplied with energy generated by the Bishop's Falls power station. In 1951 AbitibiBowater fully converted

¹⁶ "Abitibi-Price contributes \$100,000 to Memorial University's *Opportunity Fund*," <http://www.mun.ca/opfund/news4.html>, 1997.

the Bishop's Falls plant to a hydroelectric generating facility dedicated to the supply of energy to the Grand Falls Mill.

42. AbitibiBowater's pulp and paper mill at Grand Falls continued to be powered principally by energy generated from the Bishop's Falls and Grand Falls hydroelectric generation facilities, which together form part of what is hereafter referred to as the "**Exploits River Hydro Assets.**" The rights structure for the Exploits River Hydro Assets is a complex one, but the assets include among other things:

- the Millertown dam (to which AbitibiBowater obtained rights in 1905);
- the water use and hydroelectric generation rights at Grand Falls (which may be traced to Reid Lot 59, the Charter Lease, and a 2002 water use license, one of the 50-Year Licenses referenced above);
- the Grand Falls power house and dam (which are located within Reid Lot 59);
- the water use and hydroelectric generation rights at Bishop's Falls (which can be traced to the Bishop's Falls Deed, including the Bishop's Falls Waterpower Lease and a 2002 water use license, one of the 50-Year Licenses referenced above); and
- the Bishop's Falls power house and dam (which rights were conferred by the Bishop's Falls Deed).

43. In 2001, AbitibiBowater, together with Central Newfoundland Energy Inc. (a subsidiary of Fortis Properties Corporation), formed the Exploits River Hydro Partnership to finance and develop the Exploits River Hydro Project, a 31 megawatt upgrading of the Exploits River Hydro Assets. The Exploits River Hydro Project was constructed at a capital and start-up cost of CDN \$74 million and was commissioned in 2003. Since the commissioning, and pursuant to a 2001 power purchase agreement with Newfoundland and Labrador Hydro, the first 54 megawatts of power generated by the Exploits River Hydro Assets have been supplied to the

Grand Falls Mill, with AbitibiBowater supplying the incremental power generated above that level to the provincial power grid.

44. In addition to its substantial ownership interest in the Partnership itself,¹⁷ AbitibiBowater was entitled to payment from the Partnership for the use of various rights and assets. For example, under the Exploits River Hydro Partnership Lease and Easement of 2002, AbitibiBowater was entitled to receive an adjustable base rental of CDN \$800,000 per year for lease and easement rights respecting the Exploits River Hydro Assets. Under the Restated Operations and Maintenance Agreement of 2002, AbitibiBowater was entitled to receive an adjustable base fee of CDN \$250,000 per year from the Exploits River Hydro Partnership. These income streams formed an additional part of the value of AbitibiBowater's investment, which has now been expropriated.

(b) The Star Lake Hydro Assets

45. In 1997, together with CHI Hydroelectric Company Inc. (a subsidiary of Enel SpA), AbitibiBowater formed the Star Lake Hydro Partnership to develop and construct the Star Lake Project, a 15 megawatt hydroelectric generation project located in western Newfoundland and Labrador. The Star Lake Project was constructed at a capital cost of CDN \$59 million, in response to a request for proposals for the supply of power to the provincial power grid. Since its commissioning in 1998, the Project has continued to provide power to the Province, pursuant to a power purchase agreement with Newfoundland and Labrador Hydro.

¹⁷ Under well-established NAFTA precedent, AbitibiBowater may assert claims in these proceedings for the full extent of its expropriated interests in the Exploits River Hydro Partnership and the Star Lake Hydro Partnership, regardless of the nationality of other shareholders in the Partnerships or of the Partnerships themselves.

46. Prior to passage of the Act, Abitibi-Consolidated Company of Canada had, with the Government's knowledge, entered into an agreement to sell its interest in the Star Lake Project to its partner Enel Atlantic Canada Limited Partnership ("Enel"), for net proceeds of CDN \$26 million. It did so after rejecting a lower offer from the Province for these assets. The Province has now obtained through legislation what it unsuccessfully sought earlier through a commercial negotiation. The Enel transaction has been frustrated by the Act's expropriation of AbitibiBowater's rights in the Star Lake Hydro Assets.

(c) The Buchans Hydro Assets

47. In addition to its interests in the Exploits River Hydro Assets and the Star Lake Hydro Assets, AbitibiBowater also had land and water use interests in a 1.8 megawatt hydroelectric generating facility and associated infrastructure and water rights in Buchans (the "**Buchans Hydro Assets**"). AbitibiBowater's rights in the Buchans area derived from the Charter Lease, and have also been expropriated by the Act.

48. The Buchans Hydro Assets had been developed in connection with AbitibiBowater's interest in a former base metals mine at Buchans. The Buchans mine was operated by AbitibiBowater's joint venture partner, Asarco Incorporated, from the early 1900s until 1984, when the mine was closed and substantial portions of the former mine rights thereafter were transferred to the Province of Newfoundland and Labrador and to local municipal authorities. On November 12, 2009, the Province's Minister of Environment and Conservation purported to issue comprehensive environmental remediation orders directed to AbitibiBowater respecting the former Buchans mine site and four other AbitibiBowater operating locations in the Province; these Ministerial Orders are under appeal. These environmental claims are currently being considered by the bankruptcy courts of Canada, pursuant to the bankruptcy

filing discussed in Section VI.D below, and will be addressed in an orderly fashion through that process.

49. For purposes of this NAFTA proceeding, it suffices to state that any environmental liabilities associated with the Buchans property at most would reduce or eliminate the fair market value of *that* property, for purposes of compensating AbitibiBowater under NAFTA Article 1110 for the expropriation of that property. The Province's voluntary decision to expropriate the Buchans property notwithstanding potential liabilities on the site cannot be invoked by Canada to relieve it of responsibility, under NAFTA, for compensating AbitibiBowater for the *separate* fair market value of each of the *other* rights and assets also expropriated by the Act. The fair market value of such assets is not affected by liabilities not attached to those assets.

B. The Planned Closure of the Grand Falls Mill

50. The pulp and paper industry has been enduring difficult times as a result of declining newsprint demand and high delivery costs, a problem not unique to AbitibiBowater. According to a report commissioned by the Province in late 2008, North American newsprint demand declined by almost five million tonnes (or almost 40%) since 2000, as the newspaper industry struggled to compete against the Internet. In the international markets traditionally served by the Grand Falls Mill, demand all but flattened in the same period.¹⁸ In the last quarter of 2008, demand fell even further, and 2009 saw continued reductions in worldwide and North American demand.

51. AbitibiBowater's global operations were devastated by these trends. In 2007, AbitibiBowater suffered operating losses of some US \$400 million.

¹⁸ "Provincial Report Forecast Paper Mill Closure," <http://www.thetelegram.com/index.cfm?sid=205435&sc=82>, 30 December 2008 (discussing November 2008 report on the Newfoundland Forest Sector Strategy, submitted to the Province by the Nova Scotia-based management consulting firm Halifax Global).

52. The Company was proactive in managing this crisis. In late 2007, one month after completing the merger, AbitibiBowater announced “Phase 1” of an action plan to address Company challenges, including reduction of paper production capacity by 1 million metric tonnes during the first quarter of 2008. Phase 1 involved the permanent closure of several mills, as well as the indefinite idling of others, among other initiatives. AbitibiBowater announced that it would undertake a comprehensive “Phase 2” review of all aspects of its business to further reduce costs.¹⁹
53. As part of the comprehensive Phase 2 review, attention turned to the Grand Falls Mill, where the consequences of the industry downturn were particularly severe. The Mill had the highest labor costs of any of AbitibiBowater’s operations in North America. This fact, coupled with industry-wide trends of declining North American demand and rising competition on international markets from several North American mills, meant that the Grand Falls Mill had to reduce costs to stay competitive and remain in operation.
54. In response to these economic realities, and in conjunction with the broader review of AbitibiBowater’s assets worldwide, AbitibiBowater management devised an economic and structural renewal plan for the Grand Falls Mill, to provide it with a more sustainable future through an improved competitive status. The Company consulted regularly with provincial government officials about the renewal plan and a range of other issues, and also negotiated directly with the Province about a possible sale of certain AbitibiBowater surface rights to obtain additional capital for significant re-investment in the Grand Falls Mill, subject to reaching agreement with the employees on a new operating model.

¹⁹ “AbitibiBowater Announces Phase 1 of Action Plan to Address Company Challenges,” AbitibiBowater Latest News (Nov. 29, 2007), <http://www.abitibibowater.com/media/latest-news.aspx?id=636&detail=true&reqid=11082781>.

55. Meanwhile, AbitibiBowater management launched extensive negotiations with union representatives and other local interests, to try to reach agreement on the cost cuts and other initiatives necessary to make the Mill competitive on a long term basis. The Company held many dozens of meetings with union representatives, over a period of more than three months in 2008. Unfortunately, the outcome of the negotiations was unsuccessful: members of the unions voted overwhelmingly against the Company's restructuring proposals, in September 2008 and again in November 2008. The votes were in stark contrast to the approach of union members at other AbitibiBowater facilities in Canada, who generally supported the Company's renewal efforts and worked constructively with management to adopt changes that improved the competitiveness of their respective operations.

56. Despite its aggressive efforts during 2008 to manage the impacts of a devastating economic and market environment, the Company's fortunes continued to fall, due to the volatility in exchange rates, energy and fiber pricing, as well as structural challenges and declining consumption in the North American newsprint industry. In the first three quarters of 2008, AbitibiBowater suffered further operating losses of some US \$371 million. The Company's stock fell by 96% in 2008,²⁰ and in December of 2008, the New York Stock Exchange warned AbitibiBowater of a possible delisting, because its shares had traded for less than an average of one dollar for thirty consecutive days.²¹

57. On December 4, 2008, AbitibiBowater reluctantly announced a further action plan to address continuing economic and market challenges. The Company announced that it would be

²⁰ See <http://stocks.forbes.com/stocks/ABH>; compare "U.S. voices concern over Canadian expropriation," Yahoo! Finance, December 22, 2008 (suggesting 2008 decline of 97%); <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a2f3LgkfzJVM> (suggesting shares have fallen 99%).

²¹ Christopher Donville and Sarah Rabil, "AbitibiBowater aims to Refinance Debt in Early 2009," available at <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a2f3LgkfzJVM>.

cutting its North American production through several steps, most of them involving operations in the United States. In addition to the permanent closure of the Grand Falls Mill by the end of March 2009, AbitibiBowater announced the permanent closure of a facility in Covington, Tennessee, along with the immediate idling of an Alabama newsprint mill and of two paper machines in Calhoun, Tennessee. AbitibiBowater also announced a program of rolling downtime at other facilities across the organization until market conditions improved. President and Chief Executive Officer David J. Paterson noted that “[s]takeholders made efforts to develop viable solutions to keep these operations running, however, after careful deliberation, these decisions were necessary given current market and economic realities.”²²

58. The decision to close the Grand Falls Mill was thus not taken lightly. AbitibiBowater management would have preferred to try to save the plant, had that been genuinely feasible. But lacking any meaningful progress in reshaping the mill’s fundamental economics, the Company ultimately opted to close the Mill. This was not, however, a sign of withdrawal from the Canadian marketplace. AbitibiBowater remains committed to maintaining economically viable operations in Canada.

59. AbitibiBowater did not just announce the closures and walk away from the communities that it had helped build. Instead, as Mr. Paterson emphasized in his December 4, 2008 announcement, the Company was committed to “make every effort to help mitigate the effects of these capacity reductions, as we are mindful of the impact they will have on affected employees and communities.”²³ In furtherance of this objective, AbitibiBowater management reached out to provincial officials the very day of the announcement, to propose the formation

²² “AbitibiBowater Announces Action Plan to Address Market Challenges,” AbitibiBowater Latest News (Dec. 4, 2008), <http://www.abitibibowater.com/media/latest-news.aspx?id=636&detail=true&reqid=1232536>.

²³ *Id.*

of a collaborative working group to address all issues arising from the planned closure and the Company's overall presence in the Province. The Company's outreach demonstrates that the public interest could have been served by cooperative discussions. Instead, the Province opted for unilateral action, in violation of Canada's clear obligations to AbitibiBowater under NAFTA.

C. The Abitibi-Consolidated Rights and Assets Act

60. Provincial authorities wasted no time in penalizing AbitibiBowater for its planned closure of the Grand Falls Mill. The same day the company announced the closure and approached officials about forming a joint working group, the Province's deputy premier rejected this outreach, and declared instead that the Province would attempt to expropriate AbitibiBowater's hydro and timber rights.²⁴

61. Then, on Friday December 12, 2008—a mere week after the Company announced the planned closure—Minister Kathy Dunderdale faxed a letter to AbitibiBowater after business hours, demanding that the Company “*forthwith surrender* to the Province its entitlement to [the Province's natural] resources.” The letter was not an invitation to discussions; it was an ultimatum. Minister Dunderdale demanded to receive written confirmation of AbitibiBowater's intentions to surrender all of its natural resource interests “by noon of 15 December 2008.”²⁵ Since the letter was delivered after business hours on a Friday, without any prior notice, this meant that the response was due by noon the very next business day. AbitibiBowater responded on Monday December 15, 2008, reiterating its request to establish a

²⁴ “N.L. to expropriate Abitibi assets in the province,” Yahoo! Canada Finance, December 16, 2008.

²⁵ Letter from Kathy Dunderdale, Minister, Department of Natural Resources, Government of Newfoundland and Labrador, to Pierre Rougeau, Senior VP North American Newsprint, AbitibiBowater, December 12, 2008 (emphasis added).

joint working group to address issues related to the Mill closure and the Company's overall presence in the Province.

62. AbitibiBowater's sensible proposal was ignored. Instead, on December 16, 2008—the day after the “high noon” ultimatum expired—the Province hastily enacted the Act, without any attempt to consult with AbitibiBowater and without any public hearings or other responsible policy dialogue and review. Premier Danny Williams issued a number of statements to the press, articulating three basic justifications for the Province's precipitous act.
63. First, Premier Williams expressed concern about the impact of the Grand Falls Mill closure on the local workforce. He has not explained how expropriation of AbitibiBowater's other investments in the Province would serve a goal of protecting jobs, nor has the Province to this day announced any plans to save the Mill or to create jobs for former mill workers. To the contrary, while the terms of the Act expropriated the Grand Falls Mill along with historic Grand Falls House and all other Reid Lot 59 lands and structures, the Province took no formal steps to assume responsibility for the Mill or these other structures, and to the contrary it initially asserted that it had not *intended* to expropriate the Mill itself, despite the Act's provision explicitly expropriating the Mill.²⁶ The Province's apparent disinterest in any plan whatsoever with respect to the Mill or its workforce cannot even arguably be justified by a rationale of job protection. The realities of the Act are thus starkly in contrast with Premier

²⁶ As a result of the Province's failure responsibly to take possession of the Mill in accordance with its expropriation, AbitibiBowater was forced to continue expending additional valuable resources to secure and ensure the continued good condition of what was now the Province's asset and thus its legal responsibility. On February 2, 2010, AbitibiBowater gave formal notice to the Province that it would vacate the expropriated Grand Falls-Windsor Mill, Grand Falls House and the Mill manager's residence on February 5, 2010, and would no longer perform those security and caretaking tasks on the Province's behalf, and instead would turn over all keys to the Province, consistent with the terms of the Act. AbitibiBowater reserves the right to claim for recovery of the costs it has expended in looking after the Province's asset for more than a year, in the absence of any responsible effort by the Province to assume responsibility for the site.

Williams' professed concern for the Grand Falls community. The Act in no way served the public interest.

64. Second, Premier Williams accused AbitibiBowater of breaking an alleged "covenant" between AbitibiBowater and the Province, in which the Company's entitlement to enjoy its accumulated investments, rights and interests was supposedly contingent on perpetual operation of the Grand Falls Mill.²⁷ Premier Williams did not point to any particular legal provisions supposedly demonstrating this covenant, except for one passage in Section 3 of the Charter Lease. But the issue is not as simple as pointing to one interpretation of a single line in a document prepared by a colonial government over 100 years ago. As discussed above, even that passage—which did not on its face state any clear conditions on use—acknowledged that AbitibiBowater's predecessor had significant grants *prior* to the Charter Lease, which were not even arguably tied to mill operations. Moreover, AbitibiBowater's rights in the Province were based on much more than just the Charter Lease. As demonstrated in Section VI.A above, they rested on a wide array of other deeds, leases, licenses and contracts, the vast majority of which—including the 50-Year Licenses on which the Province insisted in 2002—in no way were conditioned on Grand Falls Mill operations. The Act was therefore fatally overbroad, according to Premier Williams' own stated rationale.

65. Third, Premier Williams trumpeted the Act's importance in returning natural resources to provincial management and control. "[F]inally lands that had been ours and had been given away are back," he said, "back in our hands where they belong, in the hands of the people of the province."²⁸ But the Act did not reflect any kind of grand policy scheme for centralizing timber, land and water assets in government hands. Other private companies operating in the

²⁷ "Abitibi vows NAFTA lawsuit," TheStar.com, December 20, 2008, <http://www.thestar.com/article/556699>.

²⁸ "N.L. to expropriate Abitibi assets in the province," Yahoo! Canada Finance, December 16, 2008.

Province continue to enjoy valuable deeds, leases and licenses involving natural resources.

The Act simply singled out one such company for retaliatory expropriation, and dressed up its punitive actions with populist rhetoric designed to loosely suggest (but not really reflect) rational public policy goals.

66. The real motivation, and the real consequence of the Act, was simple. It was to kick a foreign investor out of the Province, because that investor had angered Premier Williams and some of his constituents. As Premier Williams announced to the press, upon the passage of the Act, “we’re willing to tell [AbitibiBowater] to go and do their business in *other* parts of the country and *other* parts of the world.”²⁹

67. The scope of the Act was sweeping. It effected the immediate expropriation of most of AbitibiBowater’s interests in the Province, including not only interests originally granted by provincial authorities, but also interests obtained from third parties in arm’s length transactions for valuable consideration.

68. To begin, Section 3 of the Act (and its Schedule A) terminated the AbitibiBowater Canadian Entities’ “timber rights and rights to lands” in the Province, and provided for the reversion of such rights and lands to the Province.³⁰ With the exception of the Non-Renewable Licenses, none of the timber lands grants, leases and licenses expropriated through the Act were conditional upon AbitibiBowater’s operation of the Grand Falls Mill.

²⁹ “‘We wish you well’: Williams to AbitibiBowater,” CBC News, last updated Dec. 17, 2008, http://www.cbc.ca/canada/newfoundland-labrador/story/2008/12/17/williams-abitibi.html?ref=rss&loomia_si=t0:a16:g2:r4:c0.101616:b20263633 (emphasis added).

³⁰ This included the 1907 Lease, the Non-Renewable Licenses, the various Private Reid Lots, the Crown Reid Lots, and three other Special Leases/Grants, which included lands located in the vicinity of Red Indian Lake and Exploits River.

69. Section 4 of the Act (and its Schedule B) expropriated the AbitibiBowater Canadian Entities' water use rights in the Province.³¹ The expropriation fundamentally undercut both the Exploits River Hydro Project and the Star Lake Hydro Project, which depended on continuation of these rights. None of the expropriated water rights was conditional upon AbitibiBowater's continued operation of the Grand Falls Mill or the use of its timber holdings in the Province.
70. Section 5 of the Act (and its Schedule C) expropriated the AbitibiBowater Canadian Entities' lands and assets associated with hydroelectric generation in the Province, including all of AbitibiBowater's interests in the Exploits River Hydro Assets and the Star Lake Hydro Assets.³² Notably, since it was commissioned, the Star Lake Project has provided power to the Province's power grid only and *not* to the Grand Falls Mill, but this fact did not spare it from seizure by the Province.
71. Section 6 of the Act (and its Schedule D) expropriated easements in favor of the AbitibiBowater Canadian Entities in the Province.³³
72. Section 7 of the Act (and its Schedule E) unilaterally repudiated various agreements between the Province and its agent the Newfoundland and Labrador Hydro Corporation, and AbitibiBowater and other interested parties.³⁴

³¹ This included the 50-Year Licenses, Crown Grant No. 55 (the Bishop's Falls Waterpower Lease), the Final Water Power License, the Star Lake Project water use license, and the water use rights conferred by Reid Lot 59, which included all water-courses pertaining to the lands at Grand Falls.

³² Schedule C also expropriated AbitibiBowater's interests in the Millertown Dam, the Grand Falls power plant and dam, the Bishop's Falls power house and dam, the Star Lake power plant and dam, the Buchans power plant and dam, and the infrastructure associated with all of these projects, including numerous control structures.

³³ This included easements and lease rights for AbitibiBowater's transmission lines for the hydroelectric generating projects owned by the Exploits River Hydro Partnership (the Bishop's Falls-Grand Falls transmission line) and by the Star Lake Hydro Partnership (Easement No. 111480), in each of which AbitibiBowater is a partner.

³⁴ This included a number of agreements involving the Exploits River Hydro Project and the Star Lake Hydro Project, including their respective power purchase agreements with Newfoundland and Labrador Hydro.

73. Section 8 of the Act revoked the 1905 Charter Lease and repealed the 1905 Pulp and Paper Act, expropriating all lands, timber and water rights granted under them. Yet nothing in the Charter Lease or the Pulp and Paper Act makes these rights conditional on continued operation of the Grand Falls Mill. To the contrary, Section 14(b) of the Charter Lease makes them renewable as a matter of right.
74. Section 14 of the Act grants full discretion to the Lieutenant Governor in Council, for all of the many AbitibiBowater rights expropriated by the Act, to “issue a license or other permission,” under whatever “terms and conditions that it sees fit,” to any other third party “for the occupation, use, access to or another right” associated with assets that until recently belonged to AbitibiBowater. The Province has apparently transferred many of these valuable rights and interests to its own recently established Crown corporation, Nalcor Energy. Of course, the Province in future may attempt to sell off these valuable rights to third parties—essentially allowing it to arrogate to itself the very benefits for which AbitibiBowater already paid valuable consideration, in earlier transactions with the Province or with independent third parties.
75. Section 13 of the Act purports to impose continuing liabilities on the AbitibiBowater Canadian Entities for environmental remediation on the expropriated properties. The Act does not explain how AbitibiBowater is expected to fulfill these responsibilities at sites that it no longer owns, controls or is allowed to access.
76. Section 9 of the Act unilaterally extinguishes a pending lawsuit by Abitibi-Consolidated Inc. and Abitibi-Consolidated Company of Canada against the Province (Action 2003 01T No.

2113).³⁵ The Province was evidently unwilling to allow the courts to decide whether AbitibiBowater's position in the pending lawsuit was correct or not. Through the self-help of discontinuing the judicial inquiry by legislative fiat, the Province has ensured that it wins no matter what.

77. Section 11 of the Act demonstrates an even more sweeping disregard for due process and the right to be fairly heard in courts of law. The provision on its face bars AbitibiBowater from bringing any action or proceeding against the Province, resulting from or incidental to the Act's operation. In other words, the Province purports to shield itself, unilaterally, from any judicial review of its actions. At the same time, it singles out AbitibiBowater—and no other investors in the Province—for the unprecedented penalty of preclusion from any access to the courts.

78. Section 10 of the Act purports to exclude any possibility of compensation for AbitibiBowater for the myriad expropriations suffered under the Act, with one minor exception. The Province appears to have intended to grant the Lieutenant-Governor in Council the discretion to pay compensation to AbitibiBowater for the expropriation of the Hydro Generation Properties under Schedule C, but for none of the assets, rights or entitlements expropriated under any of the other schedules to the Act. As to the hydro assets in Schedule C, the amount of compensation appears intended to be entirely discretionary, not bounded by any principles of law or conventional valuation. As Premier Williams announced to the press, “[i]f there's no agreement [on valuation], we will in fact impose an agreement. . . . Under the legislation,

³⁵ In this pending “Water Rights” litigation, the AbitibiBowater Canadian Entities contended that the Province had improperly required them to obtain additional water use licenses (the 50-Year Licenses addressed above) in connection with the Exploits River Hydro Project, even though AbitibiBowater already held sufficient water use rights for the Project under the Bishop's Falls Waterpower Lease, Reid Lot 59 and the Charter Lease. The AbitibiBowater Companies argued that by reason of the Province's position, the Exploits River Hydro Partnership had unnecessarily incurred additional water use fees of approximately CDN \$150,000 per year, which fees have been paid since 2003.

cabinet will have the power to say, ‘Here’s the formula, here’s what the compensation is, here’s your check.’”³⁶ AbitibiBowater’s rights to fair compensation are thus entirely subordinated to the political will of the Province—and Premier Williams has made clear what he considers to be a fair valuation. The “honourable thing,” Premier Williams stated publicly, would have been for the Company to have handed over all of its assets “free of charge.”³⁷

79. As of this date, no compensation whatsoever has been paid to AbitibiBowater or the AbitibiBowater Canadian Entities.

D. AbitibiBowater’s Recent Bankruptcy Filing

80. In recent years, due to a number of contributing factors—including a highly competitive market for its products; the highly cyclical nature of the forest products industry; significant annual declines over the past several years in the demand for newsprint, its principal product; a weak U.S. housing market; the capital-intensive nature of its operations; the weakened global economy; and cost pressures resulting from the volatility of currency exchange rates and costs for raw materials and energy—AbitibiBowater experienced considerable recurring losses, which resulted in significant negative operating cash flows. The Company took vigorous steps to address these issues, including actions to curtail its production capacity, such as permanent closures or indefinite idling of certain facilities, as well as market-related downtime at other facilities. In addition, AbitibiBowater divested non-core assets as an additional source of liquidity, took a disciplined approach to capital spending and implemented cost reduction initiatives to achieve improved operational efficiencies. However, these restructuring measures did not provide adequate relief from the significant liquidity pressure the Company

³⁶ “AbitibiBowater vows to defend Canadian assets,” Yahoo! Finance, December 17, 2008.

³⁷ “Williams shrugs off any Abitibi challenge,” Globe and Mail, December 17, 2008.

was experiencing. As global economic conditions dramatically worsened beginning in 2008, AbitibiBowater experienced significant pressure on its business and a deterioration of its liquidity. The extreme volatility in the global equity and credit markets further compounded the situation by limiting the Company's ability to refinance its debt obligations. In early 2009, AbitibiBowater made several unsuccessful attempts to refinance its significant indebtedness.

81. After extensive consideration of all other alternatives and after thorough consultation with its advisors, AbitibiBowater determined, with the consent of its Board of Directors, that a comprehensive financial and business restructuring could be most effectively and quickly achieved within the framework of creditor protection proceedings in both the United States and Canada. Therefore, on April 16, 2009, AbitibiBowater and certain of its U.S. and Canadian subsidiaries filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") for relief under the provisions of Chapter 11 of the United States Bankruptcy Code, as amended. Since that time, AbitibiBowater has proceeded with the appropriate steps of bankruptcy. In addition, on April 17, 2009, AbitibiBowater and certain of its Canadian subsidiaries sought creditor protection under the Companies' Creditors Arrangement Act (the "**CCAA**") with the Superior Court of Quebec in Canada (the "**Canadian Court**"). On April 17, 2009, Abitibi and its wholly-owned subsidiary, Abitibi-Consolidated Company of Canada ("**ACCC**"), each filed a voluntary petition for provisional and final relief in the U.S. Court under the provisions of Chapter 15 of the United States Bankruptcy Code, as amended, to obtain recognition and enforcement in the United States of certain relief granted in the CCAA proceedings. (The Chapter 11 cases, the Chapter 15 cases and the CCAA proceedings are collectively referred to as the "**Creditor Protection Proceedings.**")

82. AbitibiBowater initiated the Creditor Protection Proceedings in order to enable it to pursue reorganization efforts under the protection of Chapter 11 of the United States Bankruptcy Code and the CCAA, with a view to developing a comprehensive financial and business restructuring plan. The Company remains in possession of its assets and properties and will continue to operate its business and manage its properties as “debtors in possession” under the jurisdiction of the U.S. Court and the Canadian Court and in accordance with the applicable provisions of Chapter 11 of the United States Bankruptcy Code and the CCAA. In general, AbitibiBowater and its subsidiaries are authorized to continue to operate as ongoing businesses, but may not engage in transactions outside the ordinary course of business without the approval of the relevant court(s).

83. Hence, AbitibiBowater’s bankruptcy filing was instigated with the hope that such action would best allow it to continue its operations and meet its obligations to its creditors in the short term, as well as allow it to restructure for the longer term. The bankruptcy filing has no impact on AbitibiBowater’s standing to vindicate its rights under NAFTA Chapter Eleven for the significant harm it suffered, prior to the filing, at the hands of Canada and the Province of Newfoundland and Labrador. All assets of AbitibiBowater—including this claim for the fair market value of other expropriated assets immediately before the expropriation took place—remain in the hands of the Company, and may properly be asserted by it in these NAFTA proceedings.

84. Subsequent to AbitibiBowater’s bankruptcy filing, the Province unilaterally and voluntarily decided to make severance payments to former workers at the Grand Falls Mill, in an act of political grandstanding to position itself as honoring commitments that AbitibiBowater allegedly had declined to honor. AbitibiBowater understands that the Province has paid, or

committed to pay, over CDN \$30 million to such Newfoundland workers. Some of these payments were to workers not even covered by collective bargaining agreements providing for severance payments, and thus on their face were not required by law. However, even as to the workers covered by such collective bargaining agreements, the Province still was under no legal obligation to make these payments, as a result of obtaining assets it had expropriated or otherwise. Under the applicable bankruptcy rules, AbitibiBowater *itself* was not legally permitted to make severance payments to former workers following its bankruptcy filing, and under no circumstances would have been required (or even allowed) to make preferential payments only to former workers in Newfoundland, because doing so would have improperly compensated one group of creditors ahead of others, including workers at other facilities. The Province's decision to *itself* offer severance payments, when AbitibiBowater had no such obligation at that time, was thus entirely voluntarily, and moreover undertaken without consultation with AbitibiBowater. Indeed, the Province's severance payments may not even have relieved AbitibiBowater of any obligation to its former Newfoundland workers: the Province did not secure releases from the workers, and unions representing the workers have filed claims for severance in AbitibiBowater's bankruptcy proceeding.

85. The Province has recently acknowledged that any claim it may have to recover its voluntary payments to workers must be dealt with in an orderly fashion through AbitibiBowater's bankruptcy proceedings.³⁸ These payments are utterly irrelevant to this arbitration proceeding. They certainly cannot be invoked by Canada as grounds for reducing the fair market value of assets expropriated by the Province in violation of its international treaty obligations.

³⁸ See *St. Johns-The Canadian Press*, Dec. 10, 2009 ("Newfoundland and Labrador Premier Danny Williams says the province is no longer interested in pursuing legal action against AbitibiBowater" with respect to the Province's payments to former Grand Falls Mill workers, since "the money would be considered an unsecured debt, and therefore, far down on the list of what the company owes to its creditors").

VII. Breaches of NAFTA Chapter Eleven Obligations

86. Canada, through the actions of the Province, is responsible for measures inconsistent with its commitments under NAFTA Chapter Eleven. These measures clearly breach its obligations under Articles 1110, 1105, 1102 and 1103 of NAFTA, as explained below. As a result of Canada's breach of its NAFTA obligations, AbitibiBowater has incurred damages, including in relation to the AbitibiBowater Canadian Entities, and must therefore be duly compensated.

A. Canada's Breach of Obligations Under Article 1110—Expropriation

87. NAFTA Article 1110 prohibits Canada from directly or indirectly nationalizing or expropriating the investments of a U.S. company in its territory, except (a) for a public purpose; (b) on a non-discriminatory basis; (c) in accordance with due process of law and the minimum standard of treatment under international law; *and* (d) on payment of compensation.
88. Canada, through the Province, has clearly violated its obligations under NAFTA Article 1110 by enacting legislation that (a) provides explicitly for the direct expropriation of an extensive list of important rights, assets, licenses, and other interests held by AbitibiBowater in the Province through its Canadian subsidiaries, as detailed above, but (b) does not meet *any* of the criteria specified under Article 1110 for such expropriations to be lawful.
89. First, there exists no valid public purpose for the expropriation. As detailed above in Section VI.C, none of the Province's stated rationales can even arguably explain its actions. Premier Williams has referred to the job losses occasioned by closure of the Grand Falls Mill, but the Act does nothing to protect jobs at the Mill or in the surrounding community. Premier Williams has invoked a supposed "covenant" between AbitibiBowater and the Province, but in fact, most of the rights expropriated by the Act were in no way conditioned on continued operation of the Grand Falls Mill. Premier Williams has also invoked the Province's right to

control natural resources, but the Act was not part of any overarching policy initiative designed to repudiate all private use of such resources. To the contrary, its careful targeting of the rights of only one investor suggest that the *true* motivations of the Province were political and punitive, not based on rational public policy at all.

90. Second, the expropriation was discriminatory. On its face, the Act expropriates the rights and assets of a single investor, even though other investors in the Province have also been forced to shut down operations in hard economic times. The Province has publicly stated that AbitibiBowater's business partners and lenders will be compensated for the consequential hardships befalling them,³⁹ while offering no parallel compensation to AbitibiBowater. And the Act singles out AbitibiBowater for preclusion from the courts, leaving all other investors in the Province fully entitled to judicial review of their grievances while denying the same rights to AbitibiBowater.

91. Third, the expropriation violates international standards of due process. The legislation appears to have been rushed through parliamentary processes in a single day, without meaningful prior consultation with AbitibiBowater and in total disregard of the Company's proactive outreach to try to resolve jointly with the Province all issues related to its assets, rights and interests. Indeed, the only attempt by the Province to communicate with AbitibiBowater, before stripping it of most of its rights, was an ultimatum providing AbitibiBowater with a weekend in which to voluntarily "surrender" precisely the same rights. The authoritarian nature of this ultimatum and the subsequent legislation is reminiscent of much less democratic systems elsewhere in the world. The Province's unilateral decision to

³⁹ "Newfoundland to Expropriate Hydro and Trees from AbitibiBowater," NewNewsledger.com, 16 December 2008.

strip AbitibiBowater of its right to access the courts, while terminating a pending case, similarly makes a mockery of any notion of due process.

92. Finally, the Act does not even remotely comply with the full compensation requirements of NAFTA Article 1110. That Article requires that such compensation be “equivalent to the fair market value of the expropriated investment immediately before the expropriation took place.” Article 10 of the Act clearly violates this “fair market value” compensation requirement, by purporting to authorize compensation limited on its face to certain hydroelectric assets and by providing no compensation whatsoever for the confiscation of AbitibiBowater’s other rights and assets. Even with respect to the hydroelectric assets, the Act leaves compensation determination and timing entirely to the discretion of the Lieutenant-Governor in Council, which violates NAFTA Article 1110(3)’s requirements of payment “without delay” by valuation standards recognized under international law and “fully realizable.”
93. There is no question, under these circumstances, that the expropriations effected by the Act are illegal under NAFTA Article 1110. This illegal expropriation entitles AbitibiBowater to full reparation for its losses, including (a) restitution of the assets expropriated or compensation at their fair market value, as well as (b) payment of any additional consequential damages suffered as a result of the Province’s illegal actions.

B. Canada’s Breach of Obligations Under Article 1105 - Minimum Standard of Treatment

94. NAFTA Article 1105(1) obliges Canada to “accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.”

95. The Act's seizure of AbitibiBowater's timber, water, land and other contractual rights violates the principle of fair and equitable treatment under Article 1105. As detailed above, the illegal expropriation under the Act clearly was arbitrary, irrational and discriminatory, in violation of AbitibiBowater's legitimate expectations of a stable business and legal environment and of equal treatment vis-à-vis other investors. It was accompanied by a textbook "denial of justice" (the preclusion of all access to the courts), which qualifies as a further violation of the principle of fair and equitable treatment included in Article 1105. The "full protection and security" requirement of Article 1105(1) likewise includes basic requirements of legal security and access to the courts.

**C. Canada's Breach of Obligations Under Articles 1102 and 1103—
National Treatment and Most-Favored Nation Treatment**

96. NAFTA Chapter Eleven prohibits discrimination against investors of the other State Parties, vis-à-vis both nationals or investors of other States. Under Article 1102(2), "[e]ach Party shall accord to investments of investors of another Party treatment no less favorable than it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments." The same principle is found in Article 1103(2), but in reference to "investment of investors of any other Party or of a non-Party."

97. In effect, these NAFTA provisions make it illegal for Canada, through the Province, to discriminate against a U.S. investor's activities in Canada, whether by comparison to a local investor or to an investor from any other country. The Act undoubtedly breaches NAFTA's non-discrimination guarantees, by explicitly targeting and singling out the Canadian operations of AbitibiBowater, a single foreign investor, rather than serving as a measure of general

applicability. Although the Province may have a right under NAFTA to expropriate in the public good subject to certain conditions, it cannot discriminate as between the owners of such assets by unilaterally imposing acts of retaliation on one investor, while treating other investors more favorably. Certainly, AbitibiBowater is not the first employer in the Province to close a facility in hard economic times. Where the Province has not attempted in other cases to penalize companies by unilaterally seizing their remaining assets and cancelling their remaining legal rights, it is clearly discriminating against AbitibiBowater.

98. Discrimination is also apparent in the Province's approach to compensation for the expropriation. The Act limits AbitibiBowater's rights to be made whole while the Province has publicly stated that it plans to insulate AbitibiBowater's lenders and independent business partners from any adverse effects on their business interests. Discrimination is further apparent, as previously discussed, in the Act's attempt to preclude AbitibiBowater from accessing the courts or continuing with pending claims, while all other investors in the Province still retain the full panoply of judicial options as recourse for any ill treatment.

VIII. POINTS AT ISSUE

99. AbitibiBowater submits that the following issues arise out of this claim:

- (a) Has Canada, through the Province's actions, expropriated AbitibiBowater's investment in Canada without providing "fair market value" compensation, in violation of any or all of the requirements for lawful expropriation stipulated under NAFTA Article 1110, including that the expropriation be "for a public purpose"; "on a non-discriminatory basis"; "in accordance with due process of law and Article 1105(1)" (whereby a NAFTA Party must "accord to investments of investors of

another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security”); and “on payment of compensation in accordance with” Article 1110?

- (b) Has the Province’s treatment of AbitibiBowater’s investment in Canada fallen below the standard required of Canada under international law, including “fair and equitable treatment” and “full protection and security,” in breach of NAFTA Article 1105?
- (c) Has the imposition of these measures had the effect of according treatment to AbitibiBowater or its investments that is less favorable than that which is accorded to comparable domestic and foreign investors in Canada, in breach of NAFTA Articles 1102 and 1103?
- (d) If the answer to any of the above questions is “yes”, what is the measure and quantum of compensation that should be paid to AbitibiBowater as a result of Canada’s breach of its obligations under NAFTA?

IX. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED

100. AbitibiBowater claims damages for the following:

- (a) damages in an amount to be proven in these proceedings, currently estimated at CDN \$500 million (equivalent to some US \$467.5 million today),⁴⁰ as compensation for the direct losses caused by the measures of the Province that are inconsistent with Canada’s overarching obligations contained within Part A of NAFTA Chapter Eleven;

⁴⁰ See U.S. Treasury quarterly Reporting Rates of Exchange (June 30, 2009), available at <http://fms.treas.gov/intn.html#rates>].


- (b) additional consequential damages arising as a result of the illegal measures, in an amount to be proven in these proceedings;
- (c) the full costs associated with these proceedings, including all professional fees and disbursements, as well as the fees of the arbitral tribunal and any administering institution;
- (d) pre-award and post-award interest at a rate to be fixed by the Tribunal;
- (e) payment of a sum of compensation equal to any tax consequences of the award, in order to maintain the award's integrity; and
- (f) such further relief that counsel may advise and that this Arbitral Tribunal may deem just and appropriate.

X. NUMBER AND APPOINTMENT OF ARBITRATORS

101. Pursuant to Article 1123 of NAFTA, AbitibiBowater proposes that this dispute shall be decided by three arbitrators, with one arbitrator appointed by each of the disputing parties. AbitibiBowater proposes that the third (presiding arbitrator) be appointed by agreement of the parties, or failing such agreement, by the two-party appointed arbitrators.

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Respectfully submitted,

for/ 

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Annex A

Rights and Assets Expropriated by the Act

Location/Description of Expropriated Rights and Assets	Source of Expropriated Rights and Assets	Expropriating Section under the Act
<i>A: Hydro Assets (Real Property Rights)</i>		
(1) Millertown dam on the Exploits River (at the outlet of Red Indian Lake into Exploits River)	Charter Lease	Section 8; Section 5, Schedule C, Property A
(2) Goodyears dam on the Exploits River (west of Grand Falls on Exploits River)	Reid Lot 59	Section 3, Schedule A, Item No. 3; Section 5, Schedule C, Property E
(3) Grand Falls hydroelectric generation assets (dam, power canal, power house and generating facilities)	Reid Lot 59	Section 3, Schedule A, Item No. 3
	Charter Lease ⁴¹	Section 8; Section 5, Schedule C, Property G
(4) Bishop's Falls hydroelectric generation assets (dam, power house and generating facilities)	Bishop's Falls Deed ⁴²	Section 5, Schedule C, Property B

⁴¹ The Grand Falls hydroelectric generation assets form part of the Exploits River Hydro Assets. AbitibiBowater was the owner and user of the first 54 megawatt tranche of power and energy produced from these assets, with incremental power and energy produced above that level owned by Exploits River Hydro Partnership and sold to Newfoundland and Labrador Hydro. Exploits River Hydro Partnership acquired rights to these assets pursuant to the August 2, 2002 Roll 2309 Frame 837 Exploits River Hydro Partnership Lease and Easement Agreement. Section 7(2) of the Act further expropriates all of the Province's obligations respecting the Charter Lease and the Bishop's Falls Waterpower Lease pursuant to the August 2, 2002 Acknowledgement and Consent Agreement made among the Exploits River Hydro Partnership, Lenders to the Exploits River Hydro Project, Abitibi-Consolidated Inc and Abitibi-Consolidated Company of Canada, and the Province.

⁴² The Bishop's Falls hydroelectric generation assets form part of the Exploits River Hydro Assets. AbitibiBowater was the owner and user of the first 54 megawatt tranche of power and energy produced from these assets, with incremental power and energy produced above that level owned by Exploits River Hydro Partnership and sold to Newfoundland and Labrador Hydro. Exploits River Hydro Partnership acquired rights to these assets pursuant to the August 2, 2002 Roll 2309 Frame 837 Exploits River Hydro Partnership Lease and Easement Agreement. Section 7(2) of the Act further expropriates all of the Province's obligations respecting the Charter Lease and the Bishop's Falls Waterpower Lease pursuant to the August 2, 2002 Acknowledgement and Consent Agreement made among the Exploits River Hydro Partnership, Lenders to the Exploits River Hydro Project, Abitibi-Consolidated Inc and Abitibi-Consolidated Company of Canada, and the Province.

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|-----|--|--|---|
| (5) | Bishop's Falls – Grand Falls transmission line | August 12, 1969 Volume 3, Folio 166 (Registry of Special Grants) Crown Lease ⁴³ | Section 8(3); Section 6, Schedule D, Property A |
| (6) | Star Lake Hydro Project assets: | | |
| | (a) dam, forebay and penstock | May 9, 2001 Roll 2062 Frame 1313 Star Lake Infrastructure Crown Grant No. 41897 | Section 5, Schedule C, Property P |
| | (b) power house and generating facilities | April 25, 1997 Roll 1518, Frame 1254 Conveyance of Star Lake Hydro Project Parcel G Revised | Section 5, Schedule C, Property N |
| | (c) control structure | May 9, 2001 Roll 2062 Frame 1342 Star Lake Final Water Power License No. 120281 | Section 4, Schedule B, Item No. 5; Section 5, Schedule C, Property M and Property Q |
| | (d) saddle dam | May 9, 2001 Roll 2062 Frame 1307 Star Lake Saddle Dam Crown Grant No. 41896 | Section 5, Schedule C, Property O |
| | (e) lands licensed pursuant to May 9, 2001 Roll 2062 Frame 1342 Star Lake Final Water Power License No. 120281 | May 9, 2001 Roll 2062 Frame 1342 Star Lake Final Water Power License No. 120281 | Section 4, Schedule B, Item No. 5; Section 5, Schedule C, Property Q |
| (7) | Star Lake Hydro Project transmission line | April 24, 1997 Roll 1518 Frame 1332 Star Lake Crown Easement No. 111480;
April 25, 1997 Roll 1518 Frame 1489 Star Lake Project Lease of Infrastructure Parcel H and Transmission Line Parcels B and D (Reid Lots 230 and 232) | Section 6, Schedule D, Property B

Section 3, Schedule A, Item No. 3 |
| (8) | Buchans hydroelectric generation assets: | | |

⁴³ This Crown Lease was issued on the same terms and conditions as the Charter Lease. Exploits River Hydro Partnership acquired rights to these leased lands pursuant to the August 2, 2002 Roll 2309 Frame 837 Exploits River Hydro Partnership Lease and Easement Agreement.

	(a) upper dam (at Buchans Lake)	Charter Lease	Section 5, Schedule C, Property C; Section 8
	(b) dam, intake, penstock, power house and generating facilities	Charter Lease	Section 5, Schedule C, Property D; Section 8
(9)	First Falls, Exploits River (west of Grand Falls on Exploits River)	Reid Lot 59	Section 3, Schedule A, Item No. 3; Section 5, Schedule C, Property F
(10)	North Twin Lake control structure (north of Badger)	April 26, 1907 Volume 2, Folio 59 (Registry of Special Grants) Crown Lease No. 59 Badger Brook Grant	Section 5, Schedule C, Property H
(11)	South Twin River control structure (north of Badger)	April 26, 1907 Volume 2, Folio 59 (Registry of Special Grants) Crown Lease No. 59 Badger Brook Grant	Section 5, Schedule C, Property I
(12)	Trouble Pond control structure (north of Badger)	April 26, 1907 Volume 2, Folio 59 (Registry of Special Grants) Crown Lease No. 59 Badger Brook Grant	Section 5, Schedule C, Property J
(13)	Rocky Pond control structure (north of Badger)	April 26, 1907 Volume 2, Folio 59 (Registry of Special Grants) Crown Lease No. 59 Badger Brook Grant	Section 5, Schedule C, Property K
(14)	Long Lake control structure (within Charter Lease lands)	Charter Lease	Section 8; Section 5, Schedule C, Property L

B: Water and Waterpower Rights

(1)	Grand Falls	Reid Lot 59	Section 3, Schedule A, Item No. 3; Section 4, Schedule B, Item No. 6 and Item No. 8
		Charter Lease	Section 4, Schedule B, Item No. 8; Section 8
		August 1, 2002 Roll 2309 Frame 781 Water Use License No. WUL-02-044	Section 4, Schedule B, Item No. 1 and Item No. 8
(2)	Bishop's Falls	Bishop's Falls Waterpower Lease ⁴⁴	Section 4, Schedule B, Item No. 3
		August 1, 2002 Roll 2309 Frame 795 Water Use License No. WUL-04-045	Section 4, Schedule B, Item No. 2
(3)	Star Lake Hydro Project	Charter Lease	Section 8
		May 9, 2001 Roll 2062 Frame 1342 Star Lake Final Water Power License No. 120281	Section 4, Schedule B, Item No. 5; Section 7, Schedule E, Item No. 2 ⁴⁵
		May 10, 2004 Water Use License No. WUL-04-036	Section 4, Schedule B, Item No. 4; Section 7, Schedule E, Item No. 1
(4)	Buchans	Charter Lease	Section 8
(5)	Potential hydroelectric generation sites, including sites at Red Indian Falls (estimated 44MW capacity) and the Badger Chutes (estimated 22 MW capacity) on Exploits River	Charter Lease	Section 8
(6)	Water Rights Litigation	Reid Lot 59	Section 9

⁴⁴ Section 4, Schedule B, Item No. 7 references a "Deed of Conveyance to George J. Baker, Grant No. 19, Dated 18 July, 1905 [ff. 19-23, Crown Lands Registry]". It is believed that this reference is incorrect, and is intended to be to Crown Lease No. 19 (Special Grants Volume 2, Folio 19) to George J. Barker dated July 18, 1905, which Crown Lease was expressly superseded by and in the language of the Bishop's Falls Waterpower Lease.

⁴⁵ This Acknowledgement and Consent Agreement related to the August 23, 1996 Star Lake Project Water Use Authorization No. WUA-96-05, as amended, which was subsequently superseded and replaced by the May 10, 2004 Water Use License No. WUL-04-036 issued to Star Lake Hydro Partnership.

C: Hydro Agreements

- | | | | |
|-----|---|---|--|
| (1) | Exploits River Hydro Project power purchase agreement | Exemption orders issued under the <i>Public Utilities Act</i> and <i>Electrical Power Control Act</i> | Section 7, Schedule E, Item No. 3 and Item No. 4 |
| (2) | Star Lake Hydro Project power purchase agreement | Section 3.1, <i>Public Utilities Act</i> | Section 7, Schedule E, Item No. 5, Item No. 6 and Item No. 7 ⁴⁶ |

D: Timber Rights and Rights to Lands

- | | | | |
|-----|---|------------------------|-----------------------------------|
| (1) | 2000 square miles generally comprising the Red Indian Lake watershed in west-central Newfoundland (exclusive of Reid Lots 227, 228, 229, 230, 231, 232, 233, 234, 235, and 247) | Charter Lease | Section 8 |
| (2) | 1619 hectares in the vicinity of Badger | 1907 Lease | Section 3, Schedule A, Item No. 1 |
| (3) | 965,585 hectares at various locations in central Newfoundland | Non-Renewable Licenses | Section 3, Schedule A, Item No. 2 |
| (4) | 111,163 hectares located in central and western Newfoundland, including in particular the Reid Lot 59 lands (including the Grand Falls Mill, Grand Falls House, the AbitibiBowater Mill Manager's House, the Ambient Air Monitoring Station, and considerable additional lands suitable for residential and commercial development) | Private Reid Lots | Section 3, Schedule A, Item No. 3 |
| (5) | 72,782 hectares located in central Newfoundland | Crown Reid Lots | Section 3, Schedule A, Item No. 4 |
| (6) | 725 hectares comprised of: | | |

⁴⁶ It is believed that this (Section 7, Schedule E, Item No. 7) Acknowledgement - Power Purchase Agreement is in error and is duplicative of the Section 7, Schedule E, Item No. 6 April 25, 1997 Acknowledgement and Consent Agreement made among Star Lake Hydro Partnership, the Mutual Life Assurance Company of Canada and Newfoundland and Labrador Hydro, as amended.

(a) Two lots at Victoria River	Volume 3 Folio 41 (Registry of Special Grants) Crown Lease No. 19787A ⁴⁷	Section 3, Schedule A, Item No. 5
(b) One lot at Victoria River	Volume 2 Folio 307 (Registry of Special Grants) Crown Lease No. 307 ⁴⁸	Section 3, Schedule A, Item No. 5
(c) One lot on (and including a portion of) the Exploits River	Volume 2 Folio 311 (Registry of Special Grants) Crown Lease No. 311 ⁴⁹	Section 3, Schedule A, Item No. 5

⁴⁷ This Crown Lease was issued on the same terms and conditions as the Charter Lease.

⁴⁸ This Crown Lease was issued on the same terms and conditions as the Charter Lease.

⁴⁹ This Crown Lease was issued on the same terms and conditions as the Charter Lease.

Annex B

Location of Rights and Assets Expropriated by the Act