

**Subject:** FW: Submission Industry standards for Aboriginal Engagement

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**From:** Beth Bedard <email address removed>

**Sent:** Friday, April 30, 2010 7:58 AM

**To:** Spagnuolo, Colette [CEAA]

**Subject:** Submission Industry standards for Aboriginal Engagement

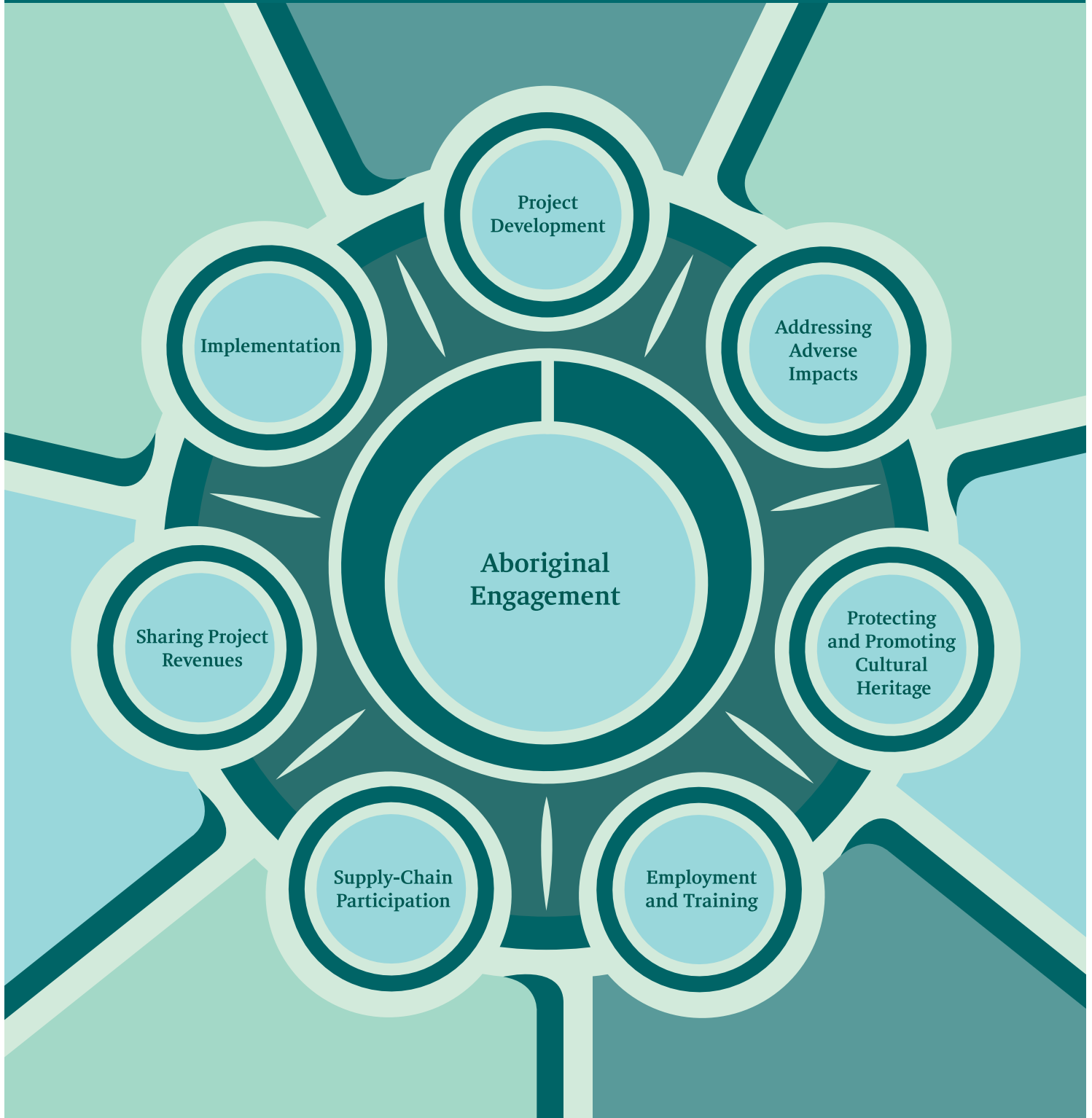
Colette,

Attached please find a document for the panel. This document highlights some examples of First Nations/Aboriginal co-management and partnerships with industry. This is to inform the panel of the industry standards and the current gap between Taseko's approach to First Nation and the current industry standards.

Beth

# Aboriginal Engagement in Resource Development Industry Leading Practices

October 2008



Prepared by



Commissioned by

**RioTinto**

## **EXECUTIVE SUMMARY**

In recent years, the stakes have been raised with regard to the types of benefits that must be provided by resource developers operating in the vicinity of Aboriginal interests. Preferential access to employment and business opportunities, in addition to training initiatives, are no longer sufficient on their own. A mutually beneficial, working relationship through positive engagement with Aboriginal groups has become a pre-requisite for advancing a project. Leading practice developers are increasingly seeking to develop and implement a broad spectrum of benefits for Aboriginal groups in the vicinity of their operations, including early and joint involvement in project development, community involvement in addressing adverse impacts, protecting and promoting cultural heritage and sharing of project revenues. The Diavik Diamond Mine, various Cameco and AREVA operations in Saskatchewan and the Red Dog Mine in Alaska stood out as the most all-encompassing leading practice examples during the research for this report.

This report outlines industry leading practices with respect to Aboriginal engagement in resource development in Canada and Alaska. It was initiated in July, 2007 and has drawn from the data collected and lessons learned from a previous research project undertaken for Cameco Corporation and AREVA Resources. These two uranium producers are widely regarded as industry leaders in Aboriginal engagement.

Aboriginal peoples' basis for influence over resource development varies between Canada and Alaska due to different histories, constitutions, attitudes, and land and resource tenure environments. Increasingly, resource developers have had to find ways of involving Aboriginal people in their projects, and the nature of these efforts depends on several different drivers. These drivers can be related to the following: Aboriginal tenure over land and resources, the political and regulatory circumstances of particular projects, legal considerations, Aboriginal socio-economic imperatives, Aboriginal community capacity, and Aboriginal cultural and environmental aspirations.

In Canada, the nature of Aboriginal engagement depends on the circumstances surrounding land and resource tenure; specifically, whether or not one is dealing with reserve land, land-claim settlement areas or Traditional territory (Treaty or non-Treaty). In Alaska, the land and resource may be Native-owned, Native settlement areas (or other involvement) on government or privately-owned lands, or small Allotment Lands. Increasingly, even in the case of land that is not Aboriginal-owned (for example, Traditional territory that may be government-owned) developers have to seek the support of local Aboriginal groups.

### *Report structure*

This report uses a case-study approach, with key findings and conclusions framed by data, insights and perspectives from industry and community personnel that participated in the research.

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The approach to this research was as follows:

- Drawing from previous research – Similar research undertaken for Cameco and AREVA (and a study on Aboriginal equity participation in Canada commissioned by Rio Tinto).
- Research review – Extensive use of the internet, supplemented with existing internal documentation, to identify operators or operations that might be characterized as leading practice in Aboriginal engagement in resource development in Canada and Alaska.
- Personal interviews – Personal interviews, both in person and over the telephone, to obtain further information from a wide range of Aboriginal participants, government and industry personnel in both Canada and Alaska.
- Document drafting and review process – Peer review process with participants representing the Canadian Aboriginal Minerals Association, Rio Tinto, Rio Tinto Alcan, Diavik, a selected group of Alaska stakeholders and the North Star Group.

Case studies were constructed for approximately 25 operators/operations in mining, hydroelectric generation, infrastructure, and oil and gas using the categories identified below. The majority of case studies reviewed were greenfield operations (proposed project on undeveloped site) as it tends to be more feasible to implement leading practice in a new project rather than modifying the policies and practices of a mature operation. The following categories correspond to the report chapters:

- a. Project Development
- b. Addressing Adverse Impacts
- c. Protecting and Promoting Cultural Heritage
- d. Employment and Training
- e. Supply Chain Participation
- f. Sharing Project Revenues
- g. Implementation

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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### **a. Project Development**

Four key elements of Aboriginal engagement in project development include:

1. Empower – Place the decision to move forward on the project (or parts of the project) in the hands of Aboriginal participants.<sup>1</sup>
2. Collaboration/partnership – Partner with Aboriginal participants in project decision-making.
3. Consult/involve – Work with the Aboriginal participants to ensure concerns are understood, discussed and incorporated, and to obtain feedback.
4. Inform – Provide information to Aboriginal participants to facilitate their understanding of the project and its benefits.

Leading practice provides increasing opportunities for Aboriginal involvement in project development that are moving towards the 'empower' end of the Aboriginal engagement spectrum. This reflects an increasing level of control on the part of Aboriginal groups involved in project development processes.

Today's leading practices provide Aboriginal groups with an equal say in determining project design features that affect them, and also provide them with strong influence over policies related to the sharing of economic benefits. While not as advanced in Alaska, the scope of Aboriginal involvement in project development in Canadian jurisdictions occurs early and extends deeply into the project planning process, giving Aboriginal participants a greater degree of influence over project decisions.

Developers engaged in leading practices seek to ensure that there is common understanding and incorporation of Traditional Knowledge into project development, that Aboriginal groups are given an opportunity for input regarding project design and policies (ideally through provision of participatory funding), and that an opportunity is given to the Aboriginal group to serve as co-proponent in Environmental Impact Assessment analysis, permitting and licensing. In some cases, developers are providing Aboriginal groups with an opportunity to approve (or reject) projects through referenda or other means.

An essential aspect of leading practices in project development is effective leadership, both on the part of Aboriginal groups and project proponents. Relationships should be treated and structured so they are sufficiently robust and remain viable during the inevitable hand-offs (both personnel and project transitions) anticipated over the life of a project. Interactions should be institution to institution, led by respective leaders and with all parties involved having well-defined and mutually agreed-upon roles and responsibilities.

Developers engaged in leading practices recognize that consultation with Aboriginal groups is collective in nature. The level of consultation required is tied to the type of claim, or the nature of the Aboriginal

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<sup>1</sup> International Association for Public Participation, 2007.

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group's relationship to the land in the vicinity of a development. Leading practice developers work with Aboriginal groups to arrive at a joint definition of consultation, including what it incorporates, when it should happen, who should be involved and how it should take place.

Developers engaged in leading practices consult Aboriginal groups early and often; arrive at consensus regarding the definition of this consultation, research the circumstances of the specific Aboriginal groups that they are engaging as part of their due diligence, engage with honesty and respect, recognize the central importance of leadership; provide opportunities for real input to decision-making (while providing participatory funding), and recognize the value of Traditional Knowledge.

### **b. Addressing Adverse Impacts**

Local Aboriginal communities are more likely support a proposed project if concerns about adverse effects have been satisfactorily addressed. These concerns are often based on environmental considerations but also go beyond this to include the incorporation of Traditional Knowledge into adverse impact measurement, monitoring and reporting mechanisms. Developers now also dedicate more resources and attention to socio-economic impacts associated with projects. Their efforts have often been quite substantive in nature and include a wide range of topics, such as employment, business, migration to and from local communities and resulting impacts on infrastructure and services, community health and well-being, and culture.

In recent years, with strengthening of Aboriginal rights, increasing political capacity and stronger regulatory requirements intended to take into account Aboriginal concerns on projects; developers are entering into adverse impacts agreements, often before construction activities commence. Where a previous development in the vicinity of a proposed project has left a legacy of damage to local Aboriginal groups and unresolved issues and grievances, the developer may have to resolve the past in order to move forward. Leading practices in Aboriginal engagement related to addressing adverse impacts can be characterized according to Aboriginal involvement in the assessment of environmental impacts, monitoring and management of ongoing adverse impacts and the significance of resourcing and capacity of Aboriginal groups within this context.

#### *Assessing environmental impacts*

Protection of the environment is of paramount importance for Aboriginal people. Developers engaged in leading practices must not only be prepared to minimize damage to the environment through changes in project design and mitigative measures, but also be willing and able to address any anticipated and unexpected impacts that remain through joint contingency arrangements, offset programs and compensation.

The use of Traditional Knowledge in the assessment of environmental impacts is becoming more widespread and accepted. Specifically, there has been:

- More prescriptive treatment of Traditional Knowledge in environmental assessment legislation/policy/guidelines.

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- Equal treatment given to Traditional Knowledge along with western science.
- A move from a 'consideration' to 'integration' of this Knowledge into the Environmental Impact Statement process.
- A move toward protection of Traditional Knowledge within the context of intellectual property rights.

### *Monitoring and managing ongoing adverse impacts*

Leading practice operators have worked closely with potentially affected communities to jointly define and measure impacts while developing mitigation and compensation policies and protocols in the event of adverse impacts. The latter may involve making finances available in the form of trust funds or the incorporation of various levels of Traditional Knowledge into these protocols.

The most effective processes for adverse impact monitoring and management are those that use advisory committees with representation from interested and affected Aboriginal groups or resource users as well as other stakeholders. Incorporating a wide range of participants from various backgrounds minimizes the chances of potential impacts being overlooked, while maximizing the likelihood that some form of contingency plan can be successfully implemented to manage them.

### *Resourcing and capacity of Aboriginal groups*

Involvement in the Environmental Impact Statement process and negotiation of adverse effects (and broader) agreements represents a valuable opportunity for communities to build capacity. Leading developers are increasingly providing participation funding to Aboriginal groups to facilitate this type of involvement.

Key aspects of leading practices in addressing adverse impacts include recognition of Aboriginal peoples' relationship to the land, addressing negative legacy issues, agreements prior to construction, incorporation of Traditional Knowledge, joint Environmental Impact Assessment and adverse effect management development, flexibility and adaptability, advisory committees with decision-making authority and monitoring health impacts.

### **c. Protecting and Promoting Cultural Heritage**

Protection of culture (while seeking other project benefits) is important in all cases. Leading practice developers are approaching Aboriginal participants with an open mind and willingness to learn more about their culture and how it might be protected and promoted. Efforts undertaken by developers can be placed into the following four categories, with leading practices falling into the last two:

1. Avoiding/minimizing damage to culturally important locations.

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2. Accommodating cultural needs.
3. Promoting and recognizing culture.
4. Cultural continuation.

Leading practices in cultural heritage protection and promotion for a given project will typically reflect the interests of particular Aboriginal participants. For example, if development is taking place in relatively remote areas where there is increased prevalence of subsistence activities, efforts aimed at the protection and promotion of cultural heritage will likely be heavily weighted towards the sustainability of subsistence activities. Otherwise, activities are more likely to take other forms such as ceremonies and cross-cultural awareness training.

Leading practice recognizes that cultural heritage protection and promotion serve the business interests of the operation. For example, effective site rehabilitation and long-term monitoring managed by Traditional land owners, as described in a closure plan, requires the preservation of ethno-botanical knowledge and the cultural framework within which it sits.

Leading practice developers are sponsoring and becoming directly engaged in Traditional Knowledge studies. These are often undertaken as part of the Environmental Impact Statement process and provide a valuable means of obtaining Aboriginal input into project decision-making processes while also serving to protect and promote Aboriginal culture.

Key aspects of leading practices in the area of cultural heritage protection and promotion include ongoing open dialogue between developers and Aboriginal groups about culture; sponsorship or direct involvement in Traditional Knowledge studies; support to cultural retention programs; wide scope of topics related to cultural awareness training, from Aboriginal history to ceremonies and protection of lands and subsistence resources; formalization of Aboriginal cultural heritage protection and promotion initiatives through agreements or contracts; making the business case for cultural heritage protection and promotion; and ensuring that company-driven initiatives are relevant to the given cultural context.

### **d. Employment and Training**

#### *Employment*

Project employment is viewed by both proponents and local Aboriginal communities as one of the most desirable forms of project benefit. It has evolved, and continues to evolve as a centerpiece of leading practice Aboriginal engagement programs in Canadian and Alaska resource development. The current trend is toward maximizing the use of contract companies (through joint ventures or other means) that are Aboriginal-owned and operated, providing an ideal means of increasing the level of Aboriginal employment on projects.

Low educational levels and lack of wage employment experience have been (and continue to be) major barriers to Aboriginal participation in resource development jobs. Leading practice proponents are taking



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on increased responsibilities, becoming more actively involved in the funding and facilitation of pre-employment training initiatives, in some cases as part of a larger network of stakeholders.

Leading practice developers recognize that operations employment is more desirable than construction work because it is more diverse and of longer duration. In general, Aboriginal participation levels are higher for operations than for construction because more time is available to put effective recruitment and retention programs in place and correspondingly, more time is available for training individuals.

Key aspects of leading practices for employment include a high level of corporate leadership commitment; ensuring fair and respectful treatment of Aboriginal workers; face-to-face informal recruitment methods; culturally appropriate support systems; effective stakeholder communication and multi-party networks; community-based training; contractor buy-in; and promotion of Aboriginal employees into management and supervisory positions. Hiring preference policies with targets which identify total jobs (and in some cases, specific job-types) are utilized by developers engaged in leading practices. The monitoring and reporting of combined Aboriginal salaries can benefit developers by showing monetary benefits to the communities. It can benefit the communities as well, by holding developers accountable. Personalized retention strategies supplemented with schedules that take into account Traditional pursuits or events such as potlatch or subsistence leave, are also characteristic of leading practices.

### *Training*

Leading practice developers are engaged in the development and implementation of large-scale human resource development strategies intended to bring together Aboriginal groups, mining companies and on-the-ground operations personnel.

The most substantial training efforts are those that have a high level of involvement on the part of government, through both funding and active participation. This allows proponents to draw upon a larger pool of training resources, and also serves as a basis for regional-wide program development and coordination. Aboriginal groups are becoming more involved in the planning, development and implementation of pre-project training programs with a view towards ensuring trainees can secure project employment.

Key aspects of leading practices for training include community involvement in program planning and delivery; community-based programming; training to meet local community and project needs simultaneously; multi-stakeholder approaches; emphasis on supervisory and management training; and formalization of training programs through agreements.

### **e. Supply Chain Participation**

A growing number of companies are increasing the levels of participation on the part of Aboriginal businesses in their supply chain through special procurement policies or through promotion of joint ventures. As in the case of employment and training, those operations engaged in leading practices have extensive, long-standing policies and programs intended to maximize these opportunities.

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High levels of successful Aboriginal engagement in supply chain participation associated with development projects are typically characterized by an environment in which some form of resource development has taken place for an extended period of time, allowing local Aboriginal groups a sufficient time period over which to build relevant capacity.

Key aspects of leading practices for supply chain participation include nominated contracts; preference policies and promotion of joint ventures with more experienced firms; participatory roles on the part of corporations (e.g., business support services); close working relationships with all regional stakeholders; and effective communication of supply chain opportunities.

### **f. Sharing Project Revenues**

Increasingly, resource developers are entering into arrangements with Aboriginal groups that involve some form of participation in project revenues. This can take several different forms:

- Payments to Aboriginal participants that retain land/resource ownership - Where an Aboriginal community or organization owns the resource being developed and is able to charge a rental for use. Significant examples related to Aboriginal land/resource ownership can be found in Alaska, where sizable parcels of land, often with valuable natural resources, are under the control of local and regional Native organizations set up through land claim settlement processes. As a condition for accessing the land and resources, developers have had to come to an agreement with these groups regarding revenue sharing.
- Payments to Aboriginal participants in the absence of land/resource ownership - A portion of the project revenues is distributed to local Aboriginal groups, either directly or through a trust set up to manage the funds for the community. Examples of this can be found where developers have recognized the significance of the Traditional resource areas of local Aboriginal groups. Although the land is typically government-owned, developers have opted for providing project revenues to these groups.
- Equity participation - Ownership entitles the community to a share of project profits, but also imposes potential risk if the project is not successful or profitable. Proponents have generally been reluctant to offer this, but there are conditions when this type of arrangement is likely to be warranted and successful, including if the project is located on reserve or settlement lands requiring approval from the Aboriginal group; the project is located on Traditional lands and also requires the support of the local Aboriginal group; or, a very attractive package is required to increase the likelihood of approval. The hydroelectric sector is replacing forestry as the leading sector for Aboriginal equity participation in Canada. There are few examples of mining cases studies.
- Re-distribution of government revenues - Typically, in Canada, the federal government receives the majority of revenues from royalties and land lease sales, while, it is argued, the municipal, territorial and Aboriginal governments must bear most of the economic and social

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costs associated with resource development. Aboriginal groups are lobbying (successfully in some cases) for the devolution of control and administration over resources in conjunction with revenue sharing between themselves and governments.

Key aspects of leading practices for project revenue sharing include the recognition and respect for Aboriginal aspirations, acknowledgement of Traditional resource areas; establishment of trust funds into which project revenues can flow; with a view towards ensuring long-term sustainability of communities; provision of opportunities for equity participation; monitory support for these equity arrangements.

### **g. Implementation**

A well developed and supported approach to implementation is a common characteristic of leading practices in Aboriginal engagement. Key aspects of these approaches include:

- Personnel – Functional personnel across the operation that retain close ties to the specific project and local Aboriginal communities are replacing Aboriginal relations departments located away from the work-site and communities.
- Continuity – Strategies include community-wide engagement and structured institutionalized relationships to ensure smooth transitions and continuity of relationships in the event of major personnel or project changes.
- Leadership – Superior leadership on the part of both the project proponent and Aboriginal group. Key aspects of this include senior corporate commitment, high degree of respect for Aboriginal people and culture and willingness to engage in open dialogue.
- Resourcing – Adequate staff and financial resources to enable effective implementation of initiatives with Aboriginal groups and allow them to be fully and fairly engaged.
- Tracking progress – Ongoing monitoring to ensure that agreements are fulfilled and targets achieved. Transparency and accountability are central to this.
- Business planning approach – Move towards joint business planning approaches with attention being paid to scope of activities, responsibilities and consequences, timeframes and resources.

Key aspects of leading practices in implementation include effective consultation; formalized agreements; community-wide engagement; structured institutionalized relationships; ground-level personnel; and effective resourcing and tracking.

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## **CHAPTER 1: INTRODUCTION**

Rio Tinto Ltd. commissioned this research piece in early 2007. It has been carried out by InterGroup Consultants Ltd., (InterGroup). This document represents the culmination of a series of research components intended to lead to an increased understanding of leading practices with respect to Aboriginal engagement in resource development projects across Canada and Alaska.

From the beginning, this research was intended to be practice-based. The findings within this document have been drawn from the thoughts and perspectives of individuals engaged in many different facets of resource development and Aboriginal engagement, particularly those with 'hands-on' experience in this subject matter. At the outset, the research process was steered not towards producing a theory-based report derived from academic research and review but rather a document produced *by* industry and stakeholders to be used *by* industry and stakeholders.

This section provides a description of the project case studies, commentary on the structure of this document (practice tips, chapter headings, etc.) as well as a summary of key limitations. More detailed background and methodological notes, including acknowledgements, a description of the document review process and terminology notes are provided in Appendix 3.

### **CASE STUDY STRUCTURE**

This research employed a case-study approach. Subject matter collected during the process included information on the following topics:

- Project description, resource sector;
- Partners and participants;
- Direct economic benefits flowing from resource development, particularly where the fortunes of the recipients are linked to the fortunes of the business;
- Financial benefit models and arrangements;
- Management of, and governance around, financial benefits;
- The degree to which the outcomes of any engagement recognize, enhance and reinforce cultural practice and develop civic capacity;
- Impact assessment and management;
- Employment and training;

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- Enterprise development;
- Land access and management;
- Environmental protection and management;
- Cultural heritage protection and promotion;
- The creation of economic, social, cultural and civic benefits for indigenous peoples that endure beyond the life of the resource development;
- Perspectives of key participants as to the positive and negative features of projects as well as their commentary regarding keys to success for potential operators; and
- Other notable key features.

Information has been incorporated into a series of 'leading practice' research components for the analysis. These components are identified in Figure 1.1 below and are also described briefly in sections that relate specifically to each component.

**Figure 1.1**  
**Components of Aboriginal Engagement in Resource Development**





## **CASE STUDY PROJECTS AND OPERATIONS**

The following projects and operators were considered within the context of this research. A note has been attached to each to identify whether or not the operation is a greenfield operation (a proposed project on undeveloped site) or a brownfield operation (a previous development on proposed project site). For several reasons, including the availability of information, confidentiality and the specific topic of interest, some cases have been examined to a greater degree than others.

### **Mining - Canada**

Diavik - Northwest Territories, Canada (greenfield)  
Cameco/AREVA - Saskatchewan, Canada (greenfield)  
Snap Lake - Northwest Territories, Canada (greenfield)  
CanAlaska - Saskatchewan, Canada (greenfield)  
Musselwhite - Ontario, Canada (greenfield)  
Victor - Ontario, Canada (greenfield)  
Galore Creek - British Columbia, Canada (greenfield)  
Raglan - Quebec, Canada (greenfield)  
Voisey's Bay - Newfoundland & Labrador, Canada (greenfield)  
Polaris Minerals - British Columbia, Canada (greenfield)

### **Mining – Alaska & Australia**

Red Dog - Alaska, USA (greenfield)  
Donlin Creek - Alaska, USA (greenfield)  
Western Arctic Coal - Alaska, USA (greenfield)  
Greens Creek - Alaska, USA (greenfield)  
Argyle – Western Australia, USA (greenfield)

### **Hydroelectric Generation**

Wuskwatim - Manitoba, Canada (greenfield)  
Snare Cascades - Northwest Territories, Canada (greenfield)  
Umbata Falls - Ontario, Canada (greenfield)  
Alouette - Quebec, Canada (brownfield)

### **Infrastructure**

Five Nations Energy - Ontario, Canada (greenfield)  
Trans-Alaska Pipeline System - Alaska, USA (greenfield)  
Mackenzie Gas Project - Northwest Territories, Canada (greenfield)

### **Oil and Gas**

Syncrude Canada - Alberta, Canada (greenfield and brownfield)  
Alpine Oil Field - Alaska, USA (greenfield)  
Autuqtuuk Fund - Alaska, USA (greenfield)  
Liberty & Northstar - Alaska, USA (greenfield)

## **LIMITATIONS AND CAUTIONS**

The following limitations and cautions must be considered when interpreting the results of this study:

- It should be noted that the geographic, regulatory and market conditions for each case-study operation are different. A government-owned utility company will likely have different resources and tools with which to engage Aboriginal participants than, for example, a privately-owned enterprise. In addition, Aboriginal engagement provisions and policies undertaken by a project proponent will also depend on the nature of the land ownership situation (i.e., Aboriginal-owned land versus provincial or state-owned land).
- Not all companies selected as leading practice case studies were willing to participate in the research process. In these instances the research team was only able to obtain information that was readily available from public sources (or other outside contacts).
- The industry practices that are described in various sources (corporate documents, agreements and other information sources) do not necessarily manifest themselves as expected or explained. For example, although a corporate newsletter may outline a comprehensive community-consultation strategy, this may not be the perception at the 'ground' or community level. Although schedule and budgetary restraints were in place, a wide range of stakeholders were engaged throughout the research process, leading to, in the view of the research team, an acceptable range of different perspectives on the part of proponents, Aboriginal peoples and other parties (e.g., government).
- Some level of proponent bias is anticipated in this research. The objective of the research was to examine the Aboriginal engagement efforts being undertaken by project proponents, rather than the specific contributions of other parties (government, Aboriginal parties, etc.). In addition, certain regions and operations were of particular interest to Rio Tinto Ltd., and specific aspects of Aboriginal engagement in resource development (e.g., supply-chain participation, training and employment) were of greater interest than others.
- In some cases, the developments in question had been in operation for some period of time before this study had been undertaken, while other operations may only have been in the planning stages. As such, while the initiatives and programs planned to promote Aboriginal involvement may build upon the lessons learned in other operations or sectors, their levels of success or failure remain uncertain.
- Due to time and financial restraints it was not possible to do a more thorough scan of practices in all industries and all jurisdictions. While there may be some relevant and interesting industry practices taking place in operations that were not considered, the researchers are confident that a representative picture of leading practices has been obtained.

## **STRUCTURE OF DOCUMENT**

The remainder of the document is organized according to the leading practice components illustrated in Figure 1.1. Each of these sections provides broad details regarding the scope of data collection, with some contextual background where necessary, followed by preliminary findings and key aspects of leading practices that were noted during the research. Case study examples are presented where relevant.

Various practical tips for engaging Aboriginal groups were identified throughout the course of the research. In some cases, these arose from the analysis of specific case studies, while at other times tips arose from personal interviews, or during conversations that took place as part of the document drafting and review process. Where these tips were not specifically captured from the case-study analysis, they have been placed into separate text boxes at the end of each chapter.

## **CHAPTER 2: DRIVERS FOR ABORIGINAL INVOLVEMENT IN RESOURCE DEVELOPMENT**

Aboriginal peoples' basis for influence over resource development varies between Canada and Alaska due to different histories, constitutions, attitudes and tenure environments. Increasingly, resource developers must find ways of involving Aboriginal people in their projects, and the nature of these efforts depends on a number of different drivers. This section highlights key drivers from Canada and Alaska that are relevant to the case studies presented in this report. The information presented provides a broad context and is not intended to be comprehensive. Two categories of drivers that can provide Aboriginal communities and groups with influence over the occurrence, timing and nature of resource and land development are presented:

- Drivers related to tenure - Deals with Aboriginal ownership, rights and privileges related to the resources and lands being developed. The basic premise of this section is similar for both Canada and Alaska – control or influence over land determines the nature and level of Aboriginal engagement in resource development. However, given the very different circumstances in the two jurisdictions, separate discussions are provided for each.
- Other drivers related to tenure - Political and regulatory, and legal drivers as well as more indirect drivers related to Aboriginal socio-economic imperatives, community capacity and cultural and environmental aspirations. These drivers can be found in some form in all jurisdictions, a separate section is provided for this discussion.

These drivers in turn affect the components of Aboriginal engagement that are presented in Figure 1.1.

### **DRIVERS RELATED TO TENURE**

Forty years ago, Aboriginal people had limited influence over how development occurred on lands in which they had an interest. Since that time, the situation has changed markedly and new developments occurring on sizable portions of lands require the support and acceptance of interested Aboriginal groups before they can proceed. The discussion below provides insight into the evolution of Aboriginal engagement in resource development in both Canada and Alaska in the context of land tenure.

#### **Canada**

Since the late 1960's, Aboriginal people in Canada became more organized and increasingly politically and legally active, aggressively pursuing self-government and their right to be involved in decisions affecting their lives. Aboriginal organizations grew at the national, provincial and regional level, and developed increased abilities to affect change. They became very effective, through the courts and other means, at pressuring governments to share power and to regulate or direct industry to act in a manner that promoted Aboriginal economic and political goals, including the use of lands and resources in which they had an interest. Aboriginal influence over the development and use of lands in these areas was extended

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through a combination of legal and political considerations. The amount of land directly controlled by Aboriginal entities expanded a great deal due to land-claims settlements, resolution of outstanding Treaty entitlements and resolution of special claims. Positive interpretations regarding the recognition and affirmation of Aboriginal and Treaty rights entrenched in the Canadian Constitution, enacted in 1982 by Canadian courts, gave Aboriginal groups substantial influence on, and in some cases rights over, decisions that occur on provincially-owned Traditional lands.

Aboriginal groups in Canada have a number of different land tenure arrangements that could be affected by resource development. The tenure form affects the type and level of influence that Aboriginal groups may have over development. These various forms are described below and include situations where the resource is on:

- Indian reserve land
- Land claim settlement areas
- Traditional territory not covered by Treaties
- Traditional territory covered by Treaties

The discussion below provides background into these different forms of tenure, examples where they occur, and present potential future implications for resource developers.

### *Indian reserve land*

Indian reserves are found in areas covered by Treaties between the First Nation and the Government of Canada, or its predecessors. They are usually relatively small, widely dispersed parcels of land occurring in north-eastern British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec and the Atlantic Provinces. This is the most straight-forward scenario, as it is comparable to the First Nation owning the resource that is being used or developed. In this scenario, the reserve land is held in trust on behalf of the First Nation by the federal government for their use and benefit under the *Indian Act*. The First Nation's chief and council make decisions on the use of Indian reserve lands. Before proceeding with a development, resource developers would require regulatory approvals from senior governments and consent from the First Nation; the developer would also have to reach a resource lease agreement with the First Nation, and would have to pay a royalty for use of the resource (which is collected by the Government of Canada on behalf of the Aboriginal group). Resource leases and royalties for oil and gas development are common in Alberta and north-eastern British Columbia.

The federal government does not get involved in negotiations between First Nations and resource developers in these situations; the negotiations are strictly between the First Nation and the developer. It should be noted however, that there is a fiduciary duty on behalf of the Crown to ensure that the agreement is in the best interests of the First Nation.

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### *Land claim settlement areas*

A sizeable portion of Canada is not covered by Treaties. Over the past 25 years, land claim settlements (or modern-day Treaties) have been reached between the Government of Canada and First Nations, or regional Aboriginal organizations, in vast areas spanning the Yukon Territory, Northwest Territory, Nunavut Territory, northern Quebec and Labrador. There are three forms of lands interests: surface ownership, surface plus subsurface and settlement lands (subsistence use). The settlements include the provision of substantial areas of fee simple lands; consequently, any developer would need to secure a lease agreement from, and pay revenues to, the First Nation or regional Aboriginal organization in order to undertake development activities in these areas.

This is similar to privately held lands. On tracts that continue to be government-owned, settlements mandate strong consultation and involvement requirements with the local Aboriginal group, or regional Aboriginal organization, that effectively require arriving at a negotiated agreement, typically called an Impact Benefit Agreement (also referred to as participation agreements, socio-economic agreements, etc.), before a development can proceed. Development in these areas would also have to meet regulatory requirements which invariably contain requirements for assessing the impact of the project on local Aboriginal people, as well as conducting consultations with them.

The territory of Nunavut presents a unique situation established through the land claim process; Nunavut is governed by Inuit and is a recognized part of the Canadian Federation. An example of a resource development occurring in a land claim settlement area would be the MacKenzie Valley Pipeline in the Northwest Territories.

### *Traditional territory not covered by Treaties*

In some areas of Canada, Treaties or land claim settlements were never signed with First Nations or regional Aboriginal organizations, and they continue to assert and maintain Aboriginal title over lands within their Traditional territories. In most of British Columbia, Aboriginal groups are actively pursuing and negotiating Treaties with the federal government, and in Quebec, the Innu and Inuit people are pursuing and negotiating land claim agreements (for parcels of land and off-shore territory). These are significant outstanding matters which need to be dealt with by governments and resource developers.

While governments have the right to allocate resources to development in these situations, they are reluctant to do so if the local Aboriginal groups are not supportive because it could compromise the Treaty negotiating process and the future rights of the First Nation or Aboriginal organization with whom they are negotiating. The uncertainty surrounding future tenure over resources means that these areas are highly problematic for developers, as long term success may only be achieved if the developer is able to forge a legitimate partnership with the local First Nation or regional Aboriginal organization.

The proposed Galore Creek gold mining project in northern British Columbia is an example of a project that fits into this situation (Tahltan First Nation & Nova Gold).

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### *Traditional territory covered by Treaties*

In areas covered by the Treaties, most of the Traditional territories in which First Nations have an interest are owned by provincial governments who have ultimate jurisdiction over the use and allocation of the resources on these lands. However, many Aboriginal groups maintain usufructuary rights (e.g., the right to engage in Traditional subsistence activities) on ceded areas within these areas.

Developments in these areas require regulatory approvals, which include assessment of the impacts on local Aboriginal people, and a public involvement program that includes talking to the interested local parties. These processes give local Aboriginal people a forum where they may raise their aspirations and concerns, and where they may have such concerns at least partially dealt with. Increasingly, governments are required to consult for all developments in the Treaty area.

In Ontario, mine proponents are required to consult potentially affected Aboriginal communities in the development of closure plans.<sup>1</sup> In some jurisdictions, most notably Saskatchewan, the provincial government implemented policies to advance Aboriginal economic development through resource development on northern provincial Crown lands. These policies resulted in targets and requirements for Aboriginal participation being incorporated into the conditions of the leases that were issued to developers.

In recent years, the rights of local Aboriginals with regard to developments in their Traditional territory have been strengthened and the forums available for raising their concerns and issues have been broadened by a number of court decisions regarding the duty to consult what was introduced above. The decisions obligate the provincial government, as the ultimate allocators of the land, to formally consult with Aboriginal groups whose Traditional territories may be affected by a proposed development prior to any allocation being made, and to make meaningful efforts to accommodate the aspirations and concerns that are raised during the consultations.

In some areas, in response to both the pressure exerted by Aboriginal organizations and the outcome of recent court decisions, provincial governments are sharing (or are considering sharing) with local Aboriginal groups, the decision-making authority with regard to resource development decisions. In some Traditional territories, joint resource management boards have been established comprising of the province and the local First Nation. These boards review all proposed resource allocations in the Traditional territory covered and make recommendations regarding how to proceed to the Minister in charge. Ministers rarely overturn these recommendations. In addition to consultation by the provincial government, recent court decisions require developers to consult with local Aboriginals. This is often done in conjunction with the consultation carried out for the environmental assessment process.

Another approach being explored is to give local First Nations the right to accept or reject planned developments in their Traditional areas. The east side of Lake Winnipeg in Manitoba, is an example of a region moving towards the advanced stages of this approach, with provincial funding provided to groups to facilitate land-use planning studies and the design of a decision-making protocol.

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<sup>1</sup> O. Reg. 240/00, Sched. 2; O. Reg 194/06, s.7.

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Some provincial governments, in particular Ontario and Manitoba, are also considering sharing resource royalties and fees with Aboriginal groups located in the vicinity of resource developments. The combination of these factors give potentially affected Aboriginal groups strong, albeit not controlling, influence over developments that take place in their Traditional territories. In the future it is likely that some Aboriginal groups will be given control over development decisions that occur in their Traditional territories.

As a result of this combination of factors, it is no longer sufficient for a developer to simply obtain provincial approvals for a proposed development that occurs in Traditional territories; the acceptance by local Aboriginal groups is also required.

Examples of projects operating on provincial Crown lands in Traditional territories include the uranium mines in northern Saskatchewan, whose projects are covered by surface lease agreement with the provincial government. These northern mining developments impose stringent Aboriginal participation requirements. Another example is the Musselwhite Mine in north-western Ontario, where First Nations receive project revenues from the proponent.

### **Alaska**

Land ownership and management in Alaska is a complex and evolving system. The federal and state governments own 59 percent and 28 percent, respectively, of the state's approximately 375 million acres (about one-fifth of the continental U.S.), and have different rules and laws for its development and use. Native corporations established by the Alaska Native Claims Settlement Act (ANCSA) of 1971, have been granted 44 million acres of former federal land or 12 percent of the state's land area.

The Alaska Native governance structure is made up of many different organizations serving diverse and distinct needs. It consists of 13 regional Native corporations (the Thirteenth Regional Corporation, based in Seattle, received a cash settlement but no land), 168 village corporations (consolidated from the 224 in the original formation), 233 Traditional/IRA councils, four urban corporations (Juneau, Kenai, Kodiak and Sitka), six former reserves and one Indian reservation at Metlakatla. The Alaska Federation of Natives (AFN), founded in the late 1960s has a 37-member board of directors (comprised of regional corporations, regional non-profits and villages) and works to represent the Alaska Native community on state and federal issues. Though diverse, the AFN membership is a powerful political block in Alaska. The Alaska Inter-Tribal Council coordinates state-wide tribal advocacy.

The Alaska Native Allotment Act of 1906 allowed individual Native people to choose up to 160 acres of their Traditional land for use. The program's original intent, in part, was to break up Native lands. The allotments are held in trust by the U.S. Department of the Interior, which must be consulted for the approval of any resource-development activity proposed by the Alaska Native allotment owners. Tribes have areas of Traditional use but rarely own land outright, instead interacting with their ANSCA corporation counterparts. U.S. Geological Survey maps offer a picture of the intricate, jigsaw-like interaction of the different categories of land ownership.



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The rights of Alaska Native peoples to influence development are largely grounded in ANCSA, which provided the Native corporations with title, surface and subsurface rights to land previously held under Aboriginal title, as well as privileges on Traditionally-used and occupied areas that continued to be owned by the government. ANCSA also provided for Native employment and supply-chain participation on projects on other lands in which Alaska Natives have an interest. Rights to subsistence hunting, fishing and other subsistence resource uses on non-settlement lands were extinguished by ANCSA. Native organizations later received guaranteed access to their subsistence resources under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). In 1989, however, the Alaska Supreme Court ruled that the subsistence priority was contrary to Article VIII of the Alaska Constitution. This led to a dual management system, with different rules governing the harvest of subsistence resources on state and federal land.

Each of the half-dozen cultural groups in Alaska encompasses many tribes. In fact, almost half of the 560 federally recognized tribes in the United States are located in Alaska. Federal recognition means that the tribes have a special relationship with the federal government.

Because of the array of responsibilities and authorities, decision-making within the Alaska Native community can be diffuse. Resource developers must be prepared to consult and form partnerships with many organizations. In particular, companies must have current knowledge of land ownership and an awareness of the Traditional subsistence uses of specific land tracts. As in Canada, the tenure form affects the type and level of influence that Native groups may have over development. These are discussed below and include the following resource scenarios on:

- Native-owned land (surface and subsurface)
- Native settlement areas on government or privately-owned lands
- Government or privately-owned land with Alaska Native involvement
- Allotment lands

### *Native-owned land (surface and subsurface)*

ANCSA provides surface land ownership to Native village corporations and subsurface resource ownership to regional corporations within their selected lands. Because the land in this scenario is owned by specific Alaska Native groups, developers must obtain rights to use and develop the resources from the village and regional corporations and pay rent and royalties to the corporations for the use of the resources.

The Donlin Creek mine, Red Dog mine and Alpine oil field are examples of projects located at least in part on Native-owned land. This situation gives the Native organizations a controlling position in dealing with resource developers.

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### *Native settlement areas on government or privately-owned lands*

Governments or others own the land and are responsible for its allocation, but it has special status as settlement lands where allocations cannot be made until all Alaska Native interests have been accommodated. This means that developers must consult and reach agreements with the local Native regional corporations before the land can be developed. Usually, this takes the form of consultation and negotiation of employment and supply-chain preference agreements.

### *Government or privately-owned land with Alaska Native involvement*

Proponents of projects located on government lands, or other owned lands covered by ANCSA, are required to enter into agreements with the state to maximize Native employment and supply-chain participation in the projects.

One example of such an agreement is the Trans-Alaska Pipeline System (TAPS), which has employment targets outlined in the Native Utilization Agreement drafted prior to construction in the 1970's. Following construction, the commitments made to Native people were not addressed. In response, the Alaska Federation of Natives eventually threatened pipeline operators and owners with legal action. They then started to receive significant assurances, action and financial pledges. In a clear example of pressure driven performance, the TAPS owners began upholding their commitments in the last decade.

### *Allotment lands*

While the U.S. government had signed Treaties and established reservations for indigenous people in the Lower 48 (that is, the contiguous United States), there were few of these agreements in Alaska. However, the Alaska Native Allotment Act of 1906 provided a means for individual Natives (not tribes) to gain title to land. Alaska is peppered with hundreds of privately held Alaska Native Allotments, but not many people took this route and it was superseded by ANCSA. There are a limited number of these acres. For example, just over 200,000 were designated in northwest Alaska. The consent of the owners followed by approval from the Secretary of Interior is required before development can proceed on these lands.

## **OTHER DRIVERS**

Proponents for maximizing project benefits for Aboriginal participants have noted other successful drivers including:

- Political and regulatory;
- Legal;
- Aboriginal socio-economic imperatives;

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- Aboriginal community capacity; and
- Aboriginal cultural and environmental aspirations.

### *Political and regulatory*

Governments are increasingly viewing natural resource development, and the relationship between developers and Aboriginal groups in the vicinity of these operations, as a useful tool for expediting their social and economic strategies.

Aboriginal organizations, and the people and communities that they represent, have become more adept at lobbying with provincial and federal governments and effectively using pressure tactics to achieve their goals. They are increasingly seeking redress for past adverse impacts associated with resource development in their vicinity and opportunities to participate in well managed future development.

### *Legal (Canada)*

In Canada, under Section 35(1) of the Canadian Constitution, the government's duty to consult Aboriginal people is triggered when government actions infringe upon existing Aboriginal or Treaty rights. While this does not necessarily directly affect resource developers, they are in practice expected to play some role in the procedural aspects associated with the government's consultation duties. For example, if there was evidence to suggest that a proposed development would infringe upon an Aboriginal or Treaty right (e.g., interference in hunting activities on Traditional land), then the government would be required to consult the Aboriginal groups or groups, and the resource developer would be expected to participate in this consultation.

As this body of law evolves, other issues may be raised that impact on resource developers. For example, in some jurisdictions it is becoming common place for resource developers to deal directly with Aboriginal groups outside of a process driven by the federal and provincial governments (e.g., directly negotiated between companies and Aboriginal groups). However, even if resource developers negotiate a fair agreement relating to a potential infringement of Section 35(1), if that agreement is not undertaken with some level of government involvement, it could potentially be set aside by the government.<sup>2</sup>

While the term accommodation has often been used in the courts as part of the Crown's duty to consult, the exact nature of this obligation is unclear. If some type of 'accommodation' is deemed necessary, then it is not unreasonable to suggest that expectations regarding the activities of resource developers could be impacted.<sup>3</sup>

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<sup>2</sup> Isaac, T. and A. Knox. Canadian Aboriginal Law: Creating Certainty in Resource Development (2004) Retrieved from: [http://www.mccarthy.ca/pubs/Resource\\_development.pdf](http://www.mccarthy.ca/pubs/Resource_development.pdf). Verified on Feb 27, 2008.

<sup>3</sup> Isaac, T. and A. Knox. Canadian Aboriginal Law: Creating Certainty in Resource Development (2004) Retrieved from: [http://www.mccarthy.ca/pubs/Resource\\_development.pdf](http://www.mccarthy.ca/pubs/Resource_development.pdf). Verified on Feb 27, 2008.

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### *Aboriginal socio-economic imperatives*

Socio-economic conditions of Aboriginal groups are, almost without exception, lower than those of the general population. This is the case in Alaska and much of the continental United States where education and labour force participation levels are lower than the general population. Alaska Natives and American Indians are also more likely to be living in poverty.<sup>4</sup> In addition, the health status of these populations is poorer than that of the average American.<sup>5</sup> Aboriginal people in Canada are faced with the same types of challenges.<sup>6</sup>

There is an increasing desire on the part of Aboriginal groups to participate in mainstream economic opportunities as a means of improving their social and economic realities. There is greater motivation on the part of Aboriginal groups to use all means at their disposal to participate in economic development on their lands rather than simply being observers to the activities taking place around them. This participation can be a valuable tool in helping Aboriginal groups to address the socio-economic challenges that they are typically faced with.

### *Aboriginal community capacity*

Aboriginal groups are building capacity and tools to deal more forcefully and effectively with resource development issues in their Traditional area.

This is supported by advances in Aboriginal governance (including arms-length development corporations and tribal council coordination) which means that Aboriginal groups in the vicinity of developments are better equipped and more capable in asserting their views and demands on land and resource use decision-making processes.

As the Aboriginal population continues to experience rapid growth, the number of people engaged in education, training and employment will also rise. With this increasing capacity and with growing awareness of the type of benefits that other groups are receiving through resource development, Aboriginal groups are likely to argue more vigorously for similar levels of control, influence and benefits.

### *Aboriginal cultural and environmental aspirations*

For many Aboriginal groups, their land provides a subsistence livelihood and is a crucial element in cultural identity and continuity. They are acutely aware of the need to protect their environment and lands in order to continue engaging in subsistence activities. This is intertwined with their desire to maintain and foster their cultural identity, cultural institutions and related teachings.

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<sup>4</sup> Ogunwole, S.U. We the People: American Indians and Alaska Natives in the United States: Census 2000 Special Reports. (2006). Retrieved from: <http://www.census.gov/population/www/socdemo/race/censr-28.pdf>. Verified on Oct 7, 2008.

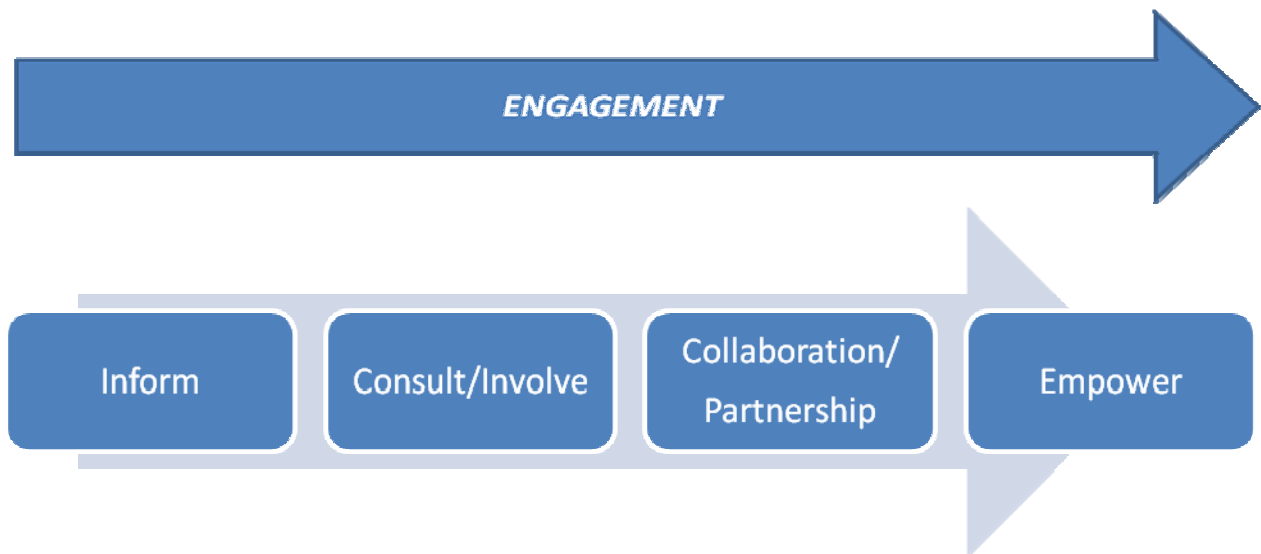
<sup>5</sup> Alaska Native Health Board. Federal Legislative Priorities for Fiscal Year 2009. (2008). Retrieved from: <http://www.anhb.org/documents/ANHB-Federal.pdf>. Verified on Oct 7, 2008.

<sup>6</sup> Statistics Canada. Aboriginal Peoples. Retrieved from: [http://www41.statcan.ca/2007/10000/ceb10000\\_000\\_e.htm](http://www41.statcan.ca/2007/10000/ceb10000_000_e.htm). Verified on Oct 7, 2008.

## **CHAPTER 3: PROJECT DEVELOPMENT**

The following figure provides a visual representation of Aboriginal engagement in the context of Aboriginal involvement in project development. The four key elements in the spectrum of Aboriginal engagement in project development are described below.

**Figure 3.1  
Aboriginal Engagement in Project Development**



1. **Inform** – Provide information to Aboriginal participants to facilitate their understanding of the project, the communities and its benefits, etc. Leading practices have moved well beyond simply providing information to potentially affected Aboriginal participants, so this topic will not be considered in further detail.
2. **Consult/involve** – Work with the Aboriginal participants to ensure their concerns are understood, discussed and incorporated, and to obtain feedback on the project.
3. **Collaboration/partnership** – Partner with Aboriginal participants in project decision-making.
4. **Empower** – Place the decision to move forward on the project (or parts of the project) in the hands of the Aboriginal participants.<sup>7</sup>

Leading practices are providing increasing opportunities for Aboriginal involvement in project development that, directionally, are moving towards the empowerment end of the Aboriginal engagement spectrum depicted in Figure 3.1. This reflects an increasing level of control on the part of Aboriginal

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<sup>7</sup> International Association for Public Participation, 2007.

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groups involved in project development processes. While it is important throughout the entire project development process, successful engagement in the early stages of project development is critical to a proponent's ability to move forward; this is especially true, the further right one moves on the engagement spectrum.

Key considerations include the following:

1. Understanding and incorporation of Traditional Knowledge;
2. An Aboriginal participant role in project design and policies;
3. Provision of participatory funding for Aboriginal participant;
4. Aboriginal co-proponent in any Environmental Impact Assessment (EIA) analysis and permitting and licensing procedures; and
5. Aboriginal consent.

These are discussed in greater detail below.

### **PRELIMINARY FINDINGS**

Consultation that takes place early on, and takes place often is key to successful community engagement. It is typically the first level of involvement between an Aboriginal group and the resource developer; consultation processes may lead to Aboriginal involvement in other processes, or Aboriginal involvement in the proposed project. Since it presents an opportunity for further Aboriginal involvement in terms of leveraging economic development or other benefits, the requirement to engage in a consultation process is consequently invaluable to an Aboriginal group.

Honesty and respect represent two of the most important components of Aboriginal engagement. There is great value in recognizing the importance of honesty during project development; acknowledging that while the project has a finite timeline, the community and its people will be there for generations to come. Respect for Aboriginal people and their culture are of great importance.

The duty of resource developers to consult with Aboriginal people in Canada and Alaska stems from the existence of Aboriginal and Treaty rights to the land and its resources. In Canada, the existence of Treaty and Aboriginal rights are affirmed by section 35 of the Constitution Act 1982; pursuant to this legislation, Aboriginal people are defined as Inuit, Métis and First Nations people. In Alaska, Native people have retained Aboriginal rights to their Traditional resources.

As part of overall efforts to achieve greater control over their lives (e.g., through such mechanisms as self-government and land-claim settlements), Aboriginal people in Canada and Alaska are insisting on having broader involvement in, and greater influence over, aspects of project development that affect them. Aboriginal people are becoming increasingly effective at wielding available political and legal tools

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to strengthen their position in this regard. Progressive resource developers recognize that involvement in project development decision-making processes is a major theme being brought into resource development discussions by Aboriginal groups and are finding ways to respond to this new development.

Over the past five years, the nature and extent of leading practices in Aboriginal engagement in this area has advanced a great deal in Canada. In this vein, the scope of Aboriginal involvement in project development in Canadian jurisdictions occurs earlier and extends deeper into the project planning process, and Aboriginal participants have a greater degree of influence over project decisions. Five to 10 years ago, Aboriginal involvement in project planning would have focused on the inclusion of Traditional Knowledge in EIAs, and use of this knowledge for determining mitigation, compensation and monitoring programs. The input of Aboriginal groups would have been sought and acknowledged, but would not have been decisive. No special funding would have been provided to nearby Aboriginal groups (which typically possessed limited skills or capacity) to facilitate their participation in project planning or licensing.

Today's leading practices provide nearby Aboriginal groups with an equal say in determining project design features that affect them, and also provide a strong influence over benefit distribution policies. In some cases, potentially affected Aboriginal groups are being given the opportunity to hold a referendum or other measures to determine whether or not a project should proceed. They are conducting their own Traditional Knowledge research and project impact assessments; this work is being funded by project proponents and included as separate volumes in EIAs. Nearby Aboriginal groups are also being provided with participatory funding for a wide range of project planning and licensing activities.

Involvement in project development in Alaska is not quite as advanced as it is in Canada. While there has been advancement, particularly with inclusion of Traditional Knowledge into EIAs, dedicated funding and other initiatives, as well as input into project development is typically limited to measures such as consultation and advisory committees. Referendums, or any other measures that would allow a similar level of decision-making authority with regard to developments, are not well developed in Alaska.

Involving local Aboriginal groups in project development is the most promising and problematic area of Aboriginal participation in resource development. While it offers potentially significant benefits to both the proponent and Aboriginal group, out of all engagement categories examined, it also creates the greatest potential risk. Specifically, there is an inherent reluctance on the part of developers to abdicate any control over key project decisions that may increase risks to a project's schedule and budget. Since this is a relatively new, undefined area, with little developed knowledge or practical experience to rely on, both developers and proponents must work through the logistics of how this may be accomplished without a blueprint or roadmap to provide guidance. Typically, proponents and Aboriginal groups will establish joint terms of reference to help structure the process with timelines, activities, responsibilities and costs.

There is no single approach that will accommodate all scenarios. Before approaching any Aboriginal groups, leading companies start with due diligence. Key areas of focus include historical background, previous development experience and legacy issues, leadership, and governance structure and Treaty status (or similar).

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To date, in both Canada and Alaska, there is only limited experience that may be relied upon, making the compilation of a comprehensive suite of success factors problematic. However, extensive Aboriginal involvement in project development may be facilitated when the following circumstances exist.

The proponent:

- Is prepared to treat the Aboriginal group as an equal in project planning.
- Has background information on the Aboriginal group (history, structure, etc.).
- Brings the Aboriginal group into the process early in project planning and before key design and policy decisions have been made.
- Can make substantial participatory funding available to Aboriginal groups.

The Aboriginal group:

- Has previous experience in dealing with major resource developers and major projects.
- Has given its leadership a clear mandate regarding how the project might fit within the context of their peoples' priorities and plans.
- Has a well-formulated vision about its future and how the proposed development fits with that vision.
- Is well organized.
- Is prepared to adopt a cooperative mode of dealing with the proponent.
- Consists of a single Aboriginal entity, or only a small number of Aboriginal groups or organizations.

Effective leadership, both on the part of Aboriginal groups and proponents, is essential to successful engagement in project development. Relationships should be treated and structured such a way that they are robust enough to remain viable during the inevitable hand-offs (of both personnel and project transitions) that are anticipated over the life of a project. Interactions should be leader-to-leader, with all parties involved having well-defined and mutually agreed-upon roles and responsibilities. In this regard, it is important to recognize that the definition of Aboriginal leadership may differ from one project to the next. For example, in Canada leaders established pursuant to enactment of the *Indian Act* may not have the same responsibilities or influence as hereditary leaders. This relationship and history needs to be understood by the proponent.

Consultation with Aboriginal groups is collective in nature, as opposed to dealing with individuals. This can translate into a significant cost investment for the resource developer. However, progressive resource



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developers are making the business case for Aboriginal engagement, specifically recognizing the benefits associated with coming to a mutual agreement on consultation protocols and the importance of relationship building, as well as recognizing the robust nature of community decision-making.

Leading practice developers are defining consultation jointly with Aboriginal groups by exploring mutually agreed upon definitions regarding the nature and frequency of meetings; parties to be involved; the role of independent advice; how the meetings are resourced; managing the minutes and outcomes; communication between parties; and how issues and concerns can be addressed jointly. Project proponents and Aboriginal groups are jointly determining the nature of consultation protocols.

The following are questions and answers:

- *When* – Throughout the entire mine cycle (exploration through closure).
- *Who* – More than simply the formal leadership; this should entail using the existing governance structure to help engage the rest of the community.
- *How* – Provide the community with an opportunity to decide how the consultation will be undertaken.
- *What* – Come to an agreement between the community and the proponent as to what is actually involved in consultation, the process to be followed and the goals to be achieved.
- *Where* – Mutual agreement regarding the location for consultations to take place (possibly within appropriate Aboriginal community).

The level of consultation required depends on the type of claim, or the nature of the Aboriginal group's relationship to their Traditional territory. For example, an Aboriginal group located on non-reserve land will generally have a more limited ability to leverage benefits and involvement, compared to an Aboriginal group located on reserve land with Aboriginal title to that land. This latter group would have greater influence over negotiating benefits and a greater level of involvement in the project. However, leading practice proponents are realizing that it is best to engage on the expectation that most communities will require full consultation and participation. Developers striving to engage in successful partnerships with Aboriginal groups may assume that the house is never empty; Aboriginal interests apply everywhere.

Aside from the legal and regulatory requirements, key drivers for resource developers include the links between proper consultation and project risk in terms of liability and project cost and schedule. Where a resource developer does not properly and adequately consult with Aboriginal groups, a project may become more uncertain and give rise to the following concerns:

- Liability issues for the resource developer in the event of harm to an Aboriginal group from company activities or financial liability to its shareholders.

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- The cost of a project may be increased significantly if it is delayed for an indefinite period of time by legal and administrative challenges by an Aboriginal group.
- The schedule will be jeopardized in the face of said challenges by Aboriginal groups.

### **KEY CONSIDERATIONS**

#### **Understanding and incorporation of Traditional Knowledge**

Leading practice developers recognize the validity, applicability and significance of Aboriginal Traditional Knowledge to their projects and provide means of collecting, applying and protecting this knowledge to the benefit of the project and community. The diamond mining industry in the Northwest Territories of Canada, as well as recent oil sands projects in northern Alberta have provided funding to local First Nations to assist them with conducting their own Traditional Knowledge studies. A great deal of latitude with regard to the scope and contents of these studies was also provided. The scope of work included conducting Traditional land-use studies, identifying issues and concerns regarding the project, and performing a community-based assessment of the project. To avoid compromising the integrity of the Traditional Knowledge, the resulting studies were left unaltered by the proponent and were submitted to regulators as a separate attachment to the EIA. Information acquired during the course of the study was also incorporated into the EIS to describe the environmental baseline, determine potential impacts, mitigation and monitoring measures and to assess cumulative effects and significance. As leading practices evolve, this particular practice will continue to be an important measure for involving Aboriginal groups in project development. Developers engaged in leading practices ensure that the recognition of Traditional Knowledge is not merely intended to provide proof of consultation but rather for real use in project planning.

#### **SNAP LAKE**

- Substantial efforts were undertaken to collect relevant Traditional Knowledge from the Lutsel K'e Dene First Nation, North Slave Métis Alliance, Yellowknives Dene First Nation and Dogrib Treaty 11 Council. This knowledge was used for determination of valued ecological components, identification of alternatives, design of mitigation and monitoring procedures.
- Traditional Knowledge was used in the EIS process for the following purposes:
  - To identify or confirm project issues (e.g., issues that require mitigation measures).
  - To identify alternatives (e.g., when Elders' concerns about the discharge of sewage effluent from the sewage treatment plant directly onto wetlands led to the removal of this treatment method as an option).
  - To aid in the design of the project (e.g., the Traditional Knowledge study recommendation to fence the water-management pond was incorporated into the project design).

### **Aboriginal participant role in project design and policies**

Seeing a project within a framework of Traditional Knowledge can be extremely valuable for those engaged in project development and design. Timelines/schedules are longer and the environmental knowledge is different. As such, engineers can benefit greatly from a visit to the site where a proposed project will be situated. Bringing local people in to participate in project design has great value, in large part because an Aboriginal individual can more effectively speak to the things that connect with other Aboriginal people.

#### **DIAVIK**

- Dogrib Treaty 11 Council, the Lutsel K'e Dene First Nation, the Yellowknives Dene First Nation, the North Slave Métis Alliance and the Kitikmeot Inuit Association are members of the Environmental Monitoring Advisory Board (EMAB) and Project Communities Advisory Board (PCAB).
- Responsibilities of the EMAB include providing recommendations on wildlife and harvesting issues, the participation of Aboriginal peoples in training or monitoring programs and identifying the need for, and aiding in, the design of Traditional Knowledge and other studies.
  - Aboriginal groups were approached and provided with Diavik's ideas, and were able to provide feedback to the proponent with concerns related to flooding, water chemistry, explosives and the proposed mine footprint.
  - The original plan for mine construction was for waste rock to be hauled across a causeway to the mainland. Through discussion, the decision was made not to disturb the mainland. Instead, the facility was designed so that waste rock could be distributed near the mine site.
  - Other examples of modifications include site selection (e.g., facilities are now restricted to the east island) and human resource policies (e.g., commuter rotation system focus on specific Aboriginal communities in the region; opportunities for employees to schedule their work rotation in such a way that they can engage in Traditional pursuits like hunting).

### **Provision of participatory funding to Aboriginal participants**

Over the past two decades resource developers have developed a regular policy practice that entails providing funding and resources that enable Aboriginal groups to effectively prepare and participate in the consultation process. Transparency and accountability concerns place specific conditions on the use of such funding and resources by the Aboriginal group.

It is becoming standard practice to provide Aboriginal groups with participatory funding for those aspects of project development for which the proponent is seeking Aboriginal involvement. As the scope of involvement broadens and deepens, the extent of participatory funding increases. In all of the case studies mentioned in this chapter, participation funding was made available to the Aboriginal group

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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involved to ensure the resources required to fully participate were available; this included providing financing for their own peoples' time. A key challenge with participation funding has been ensuring that the funds are used as intended and that there are no irregularities in their use. To ensure this, proponents are becoming more sophisticated in their reporting requirements and payment procedures. Specifically, funding is often incremental in nature, released as objectives or milestones are reached.

### **MACKENZIE GAS PROJECT**

- TransCanada has offered to provide \$80 million in financing during the project definition stage to the Aboriginal Pipeline Group (APG), a group that represents the interests of the regional Aboriginal groups. Costs associated with this phase are expected to include technical, environmental and consultation work required to prepare, file and support regulatory applications, in addition to work required to develop benefit plans, access agreements and other supporting arrangements.<sup>8</sup>

### **Aboriginal co-proponent in environmental impact assessment and licensing**

While still a rare occurrence, a co-proponent arrangement in EIA and licensing can provide valuable benefits to both the proponent and the Aboriginal participant. For the proponent, it can be a highly effective means of accessing local information and knowledge, building local capacity, gaining an in-depth appreciation for what is important to the local First Nation and for demonstrating to other groups and regulators that the First Nation is supportive of the project. It also has the potential to temper the extent of opposition to the project by individuals and organizations outside of the Traditional territory. It can benefit the local First Nation by providing direct influence on how the EIA is conducted and on what material is included in the EIA. This is especially important when involving interested community members in the EIA, determining the approach to dealing with Traditional Knowledge, presenting the Aboriginal group's perspective on the project and defining the types of mitigation measures that are incorporated into the EIA. However, it is noted that a First Nation is not likely to participate in such an arrangement without also being provided with a genuine role in project design and policy, and significant project job, supply-chain and/or revenue benefits.

A major role in project planning for an Aboriginal participant can flow from their role as an owner in the project. This study has not identified any projects in either Canada or Alaska where this type of controlling influence in project planning has been provided to the local Aboriginal group or organization in the absence of an equity arrangement. An important next step in the evolution of Aboriginal involvement in resource development would be to extend this type of influence to non-equity situations. This would give Aboriginal communities access to the type of influence they are looking for in project development, without having to deal with the financial (and other) challenges that accompany equity arrangements. Examples of joint decision-making in the absence of ownership are not uncommon. This involvement takes the form of advisory committees with decision-making power.

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<sup>8</sup> Mackenzie Gas Project Case Study.

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### WUSKWATIM

- Wuskwatim introduced a new leading practice in EIA and licensing by having the local community serve as co-proponent in the project. Under this arrangement, Manitoba Hydro and Nisichawayasihk Cree Nation (NCN) were co-proponents in the project licensing and approvals process and jointly directed the EIAs for the Wuskwatim generating station. This included the following joint activities:
  - Selection of the EIA consultants.
  - Determination of issues to be addressed in the EIA.
  - Determination of approach to be used for incorporating Traditional Knowledge.
  - Determination of mitigation and monitoring measures.
  - Review of the draft EIS.
  - Appearances at public involvement meetings and regulatory hearings.<sup>9</sup>

### *Community consent*

In the future, as Aboriginal influence and control over any development taking place in their Traditional areas becomes stronger, it is likely that proponents providing for community approval of developments will become more common. In northern Saskatchewan and eastern Manitoba, provincial governments are considering proposals that would give local Aboriginal groups a veto over development proposals in Traditional areas that are located on provincial Crown lands. If this materializes, the Aboriginal people in these areas will have the power to request community approval and would likely dictate the approval mechanism. Where this occurs, it will be in the proponent's interest to heavily involve relevant Aboriginal groups in project planning in order to strengthen relations and develop an acceptable project design and policies.

Community referendums, especially those requiring a double majority, represent a vigorous means of testing and defining community support.<sup>10</sup> Such referendums provide a very clear mandate to community leadership and also provide resource developers with a high degree of certainty that the project will proceed successfully. Another successful means is to have Impact Benefit Agreements (IBAs) or other extension agreements in place prior to project development. Many Aboriginal groups view formal agreements as a form of consent. It is important to note that decision-making processes and mechanisms can vary from one community to the next. Some communities may not be familiar with referendum procedures and will have other protocols in place.

### WUSKWATIM

- Manitoba Hydro committed not to proceed with construction of Wuskwatim unless the project was acceptable to NCN, as determined in a membership ratification vote. If the vote was negative, the project would not proceed. The key to making this commitment was the

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<sup>9</sup> Wuskwatim Case Study.

<sup>10</sup> In the first vote, 60 percent or more of eligible voters of the First Nation must cast a ballot. If 60 percent or less of eligible voters cast a ballot, then the First Nation may hold a second vote where only the majority of the voters need to vote in favour (percentage of eligible voters that show up to vote is irrelevant; requires a simple majority vote in the second ballot by all those who voted).

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associated strategy of making NCN equity partners in the project and involving the community heavily in project planning to create a positive working relationship with the community and establish conditions for an acceptable project. In the end, the vote was positive, with 62 percent of the community supporting entering into the project development agreement and hence proceeding with the project. An important issue that arose in providing this approval opportunity was its timing. The vote took place after all approvals had been obtained. Having the community approval vote before the detailed engineering and project licensing get under way would be preferable in terms of managing project risks.<sup>11</sup>

### **KEY ASPECTS OF LEADING PRACTICES**

The Canadian and Alaska leaders in Aboriginal engagement in project development have a number of common approaches and practices that have been instrumental in successfully involving Aboriginal groups. These approaches are described below, and provide a useful starting point for developing an effective Aboriginal participation program.

#### *Consult early and often*

Consultation that takes place early on, and takes place often, is key to successful community engagement. Leading practice developers understand that early engagement, before key design and policy decisions have been made, is invaluable to an Aboriginal group. It can lead to a better understanding of potential adverse impacts and thereby refinements in project design that decrease the likelihood of these impacts. It also leads to a greater likelihood that Aboriginal groups will be engaged in economic opportunities that may arise from a project.

#### *Joint definition of consultation*

Leading practice developers are defining consultation jointly with Aboriginal groups. They are defining when they will take place, who will be involved, how it will be undertaken, what process will be followed and where the consultation will take place.

#### *Due diligence*

Developers engaged in leading practices are aware of the situations that they may face well in advance. Familiarity with historical background, previous development experience and legacy issues, in addition to insights regarding leadership and governance structure and treaty status is critical to successful Aboriginal engagement.

#### *Honesty and respect*

Leading practices acknowledge the importance of honesty and respect in the relationship between developer and Aboriginal groups.

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<sup>11</sup> Wuskwatim Case Study.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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### *Leadership*

Personnel and project transitions are inevitable. Leading developers are ensuring that relationships between corporate and Aboriginal leadership personnel are robust enough to remain viable during these hand-offs.

### *Involvement in decision making*

Progressive resource developers recognize that involvement in project development decision-making processes is the major, new theme being introduced into resource development discussions by Aboriginal groups.

### *Traditional Knowledge*

Leading practice developers recognize the validity, applicability and significance of Aboriginal Traditional Knowledge to their projects and provide means of collecting, applying and protecting this knowledge to the benefit of the project and community.

### *Participatory funding*

Leading practice developers are providing funding and other resources to allow Aboriginal groups to effectively prepare and participate in project development, including consultation, activities.

***ADDITIONAL PRACTICAL TIPS***

**EFFORT NOW FOR OPTIONS LATER**

The development of positive relationships with Aboriginal groups may not necessarily translate into immediate rewards (e.g., quick turnaround on project proposals). Over time, however, a level of trust can be built between the proponent and Aboriginal group that may end up in a successful venture in the future. The challenge is for both parties to recognize that relationship-building work in the immediate term can result in more, and better, options down the road.

**COMMUNITY-WIDE ENGAGEMENT**

Changes in community leadership will almost undoubtedly occur during the life of a project. Therefore, it is important to work with existing leadership to also engage with the community at large, in order to obtain broad support.

**JOINT INVOLVEMENT**

Joint involvement is key to effective engagement between project proponents and Aboriginal participants at all stages of development. Ideally, this includes joint involvement during the stages of:

- a. Project planning;
- b. EIA/EIS processes such as data collection, document production, public hearing attendance; and
- c. Decision-making associated with all project components (e.g., business, training, etc.).

**COMMUNITY OPINION SURVEYS**

Community-wide surveys can be undertaken early in the project planning stages. The benefits can be two-fold. First, it provides community leadership with a clear mandate from which to operate. Second, it represents an excellent opportunity to provide training and awareness for community members, increasing local capacity in the process.

**“WE WANT PARTNERSHIPS – NOT EXTRACTIVE AGREEMENTS”**

Aboriginal groups place great value on partnerships and relationship building. Agreements should be built around human relationships – finding and expanding the intersections of the common interests of the two parties (developer and Aboriginal).



***ADDITIONAL PRACTICAL TIPS***

**THE BIG PICTURE**

Aboriginal groups are typically dealing with challenges related to their own long-term security such as economic hardship, housing shortages and environmental and cultural insecurity. There are opportunities for resource developers in these cases to work with the Aboriginal groups to address these challenges. Relationships built in this way during project development stages can be mutually beneficial, increasing the proponent's chances of gaining support for a project while making real improvements in the community's situation.

**ROLE FOR NON-PROFIT ENTITIES**

Where there are multiple parties with multiple interests, regional non-profit entities can work to bring together any number of different Aboriginal groups so that they may be engaged in a transparent and efficient way.

**MINING EDUCATION**

To increase the likelihood of having communities supportive of future projects, invest in scholarships and related measures early on. If people are educated on mining, particularly with respect to environmental effects, then they will be less likely to reject proposed projects. It is important to engage early to ensure that their decisions are not already made before the project begins.

**INSTITUTION BUILDING**

By supporting local community institutions, developers can establish a means of helping them to deal with challenges and conflicts that may arise from their operations (e.g., support to local social support networks to help families cope if family members work on a rotation system that requires them to be away for significant periods of time).

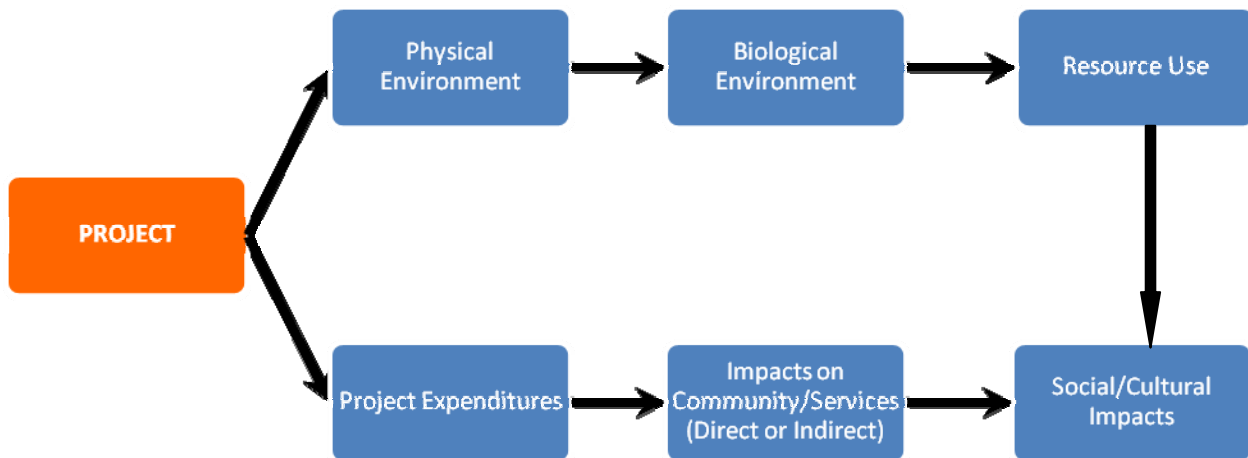
**CANADIAN TAX BENEFIT**

This is an additional benefit to providing participation funding to local communities. Junior mining companies with flow-through shares can apply to the Canada Revenue Agency to have consultation funding considered tax-deductible at a rate of 133 percent as part of their pre-approved exploration costs.

## **CHAPTER 4: ADDRESSING ADVERSE IMPACTS**

Resource development projects will invariably create changes in the physical and biological environment of the area in which they are located. This will in turn affect Traditional resource use and the way of life of Aboriginal people who live in and use the area. Aboriginal people can also be adversely affected by immigration and the social impacts (increased cost of living, access to services, racism) associated with project job and supply-chain opportunities (see Figure 4.1). The challenge for developers is to gain the support of local Aboriginal groups by addressing these adverse impacts in an acceptable manner while also providing project-related benefits.

**Figure 4.1  
Pathways for Adverse Impacts of Resource Development Projects**



Aboriginal groups, unlike mining companies, are not mobile and cannot relocate when negative impacts occur. It has become critical for resource developers to address adverse impacts and deleterious impacts that preceded current operations or that will result from their proposed operations.

Aboriginal people have strong spiritual, emotional and physical attachments to the land, water, wildlife, vegetation and other aspects of the natural environment in those areas that they have traditionally lived in and used. As such, their highest priority and most serious concerns when confronted with a proposed development in their Traditional territory typically pertain to potential adverse impacts on the natural environment and how that may affect their use of that environment for Traditional pursuits. Developers must be prepared to resolve these concerns in order to make progress on other issues. It is unlikely that a local Aboriginal community will support or avoid opposing a proposed project unless concerns have been satisfactorily addressed in some form of an adverse impacts agreement between local Aboriginal groups and the developer.

In the past, such agreements were only entered into where the project was located on reserve or Aboriginal-owned lands. In recent years, with the strengthening of Aboriginal rights, increasing political capacity and stronger regulatory requirements intended to take into account Aboriginal concerns in a

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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project; developers are entering into adverse impacts agreements on projects located on the much-larger Traditional territories. Such agreements may be stand-alone or be integrated into larger impact benefit or project participation agreements. As well as addressing Aboriginal peoples' concerns, these agreements give developers greater certainty regarding their future mitigation and compensation costs. If a project is able to proceed without such an agreement, a developer can be faced with sizeable unplanned-for mitigation and compensation costs once the project is in operation as a result of legal or political action by affected Aboriginal groups.

### **PRELIMINARY FINDINGS**

Addressing adverse impacts has become a cornerstone for Aboriginal engagement in a proposed development. In Canada, leading practices for dealing with adverse impacts have evolved a great deal in the past decade, with hydroelectric development in Manitoba and Quebec and northern mining projects in Canada being the trend-setters.

Where a previous development has taken place in the vicinity of the proposed project that left a legacy of damage to local Aboriginal groups and unresolved issues and grievances, the developer of a proposed project may find themselves having to resolve the past in order to be able to move forward. Many operations in the past have adversely affected the connection that some Aboriginal groups have had to the land, thereby affecting their rights and privileges in the context of that land.

While not considered leading practice, developers are increasingly being forced to address past grievances (through restitution or otherwise) before moving forward with new projects. Apologies are being issued and agreements entered into to settle for past damages and frustrations in order to reduce the animosity and distrust built up in the past that would invariably lead to strong opposition to a new development in the area. Due to the build-up of frustration over long periods of time (sometimes over generations), such settlements are often much costlier than if the adverse impacts had been addressed when the earlier projects were being planned. At the same time, they are often structured to set the stage for future involvement of the Aboriginal signatories in project planning and development.

In one exceptional case, a mining company in Alaska has discussed addressing the adverse impacts resulting from another company's previous mining operation.

### **WESTERN ARCTIC COAL**

- BHP Billiton has signed an exploration and auxiliary agreement with the Arctic Slope Regional Corporation to conduct a five-year coal exploration program and concept-level project evaluation. Part of this commitment includes a willingness to address the reclamation of past coal mining projects in the region (Kuchiak coal mine being one of these).

For greenfield projects and brownfield projects that have resolved past issues, developers are required by governments to conduct environmental impact assessments during project planning that identify and assess these issues and endeavour to mitigate both adverse and beneficial project impacts. As well,

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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developers are consulting directly with local Aboriginal groups to address adverse impacts that may result from a project. As discussed in the previous section on engagement, project designs are being altered to prevent notable adverse impacts from occurring. Formalized agreements with local Aboriginal groups and specific resource users are becoming the norm. These may deal exclusively with adverse impacts although leading practice developers are now entering into comprehensive agreements that address anticipated adverse and beneficial environmental and socio-economic impacts (e.g., impact benefit or project participation agreements). Processes for addressing anticipated adverse impacts are now taking place during the project planning stage before any irreversible damage arising from project construction or operations takes place. This is a marked improvement from the past, when addressing adverse impacts occurred after they had materialized.

The following hierarchy of adverse impacts management is emerging as an appropriate sequence for working with Aboriginal groups and resource users to address potential adverse impacts:

- Prevent – Modify project design (avoidance).
- Mitigate (reduce) – Establish remedial works or programs.
- Offset unmitigated impacts – Replace or substitute for anticipated loss or damage.
- Compensate for remaining impacts – Monetary payments for anticipated loss or damage.

Effective, joint project development with local communities can help to avoid adverse impacts in the first place. Avoidance of adverse impacts is preferable to mitigation and compensation after the fact.

### **VOISEY'S BAY**

- A winter shipping program is in place for the Voisey's Bay project to deal with the effects of transport ships tracking through winter ice. It includes a signage system to clearly mark the ships' track and the creation of several points that are confirmed safe crossings. The program is supported by comprehensive communications to ensure that hunters and other ice users in the area are aware of ship traffic. This system alleviates the need for local subsistence hunters to be provided with compensation or to consider alternative hunting grounds (offsets).

In some cases, offset programs are being implemented to relocate subsistence resource users. It is important to note that this is not the preferred means of addressing adverse impacts as it affects the lifestyle of resource users in addition to disrupting their connection to the land.

## BP NORTHSTAR AND LIBERTY

- BP's Good Neighbour Policy (GNP) came about in response to widespread community concerns about risks of an environmental spill and how a company might deal with it. If something was to occur, existing laws do not currently protect subsistence use.
- The GNP describes mitigation measures related to loss of access to fish and other marine resources, reduced quotas and counseling and financial arrangements. For example, if local hunters noted that an oil spill limited their access to a marine resource and consequently had to travel further to find an alternative resource, then GNP would provide for the costs and materials required for that additional travel.
- Other key aspects:
  - There is independent, third-party costing of mitigation measures.
  - A trust is set up by the developer but exists independently from the developer so that the community can access funds in the event of a negative event.
- The Alaska Eskimo Whaling Commission now requires that all companies sign up to the GNP and pay funds into the trust before they can sign a Conflict Avoidance Agreement (CAA; see page 37).

Approaches to addressing adverse impacts are also closely tied to existing environmental and regulatory legislation. This strongly influences the types of measures and programs that developers institute in this context. For example, environmental and resource development regulations are arguably much more stringent in the State of Alaska than those encountered in Canada. This may be due, in part, to a vast number of different federal, state, municipal and Aboriginal groups (regional and village corporations) that require some level of involvement in project licensing and permitting (very much related to the high level of capacity exhibited by the local Aboriginal groups). This has led to the development of relatively advanced initiatives established for the purpose of adverse impacts monitoring and mitigation that, while not always developer-driven, have obvious consequences for their operations.

In addition to the broader perspectives presented above, our case studies yielded more specific insights into adverse impacts management in the following topics:

- Assessing environmental impacts.
- Monitoring and managing ongoing adverse impacts.
- Resourcing and capacity of Aboriginal groups.

## **KEY CONSIDERATIONS**

### **Assessing environmental impacts**

Although communities located in the vicinity of resource development are typically very interested in employment, training and supply-chain opportunities, protection of the environment is of paramount importance in every case. Developers must not only be prepared to minimize damage to the environment through changes in project design and mitigation measures but also be willing and able to address any anticipated and unexpected impacts that remain through offset programs and compensation.

Regulations have become increasingly stringent over the last two decades. While requirements may have previously been in place that dictated to developers a need to consult communities on this topic, current regulations often include explicit requirements for the involvement of local communities and, in some cases, even a consideration for equal weighting of Traditional and scientific knowledge in EIS processes (e.g., Voisey's Bay). However, leading practices in addressing adverse impacts continue to move beyond these guidelines. The reasons for this include many of those identified throughout this research, including increased control and influence of Aboriginal groups in the vicinity of operations.

Developers have had to dedicate more resources and attention to socio-economic impacts associated with projects. Their efforts have often been quite substantive in nature and include a wide range of topics, such as employment and business; migration to and from local communities and resulting impacts on infrastructure and services, community health and well-being, and culture.

### **DIAVIK**

- Monitoring commitments are outlined in the socio-economic monitoring agreements signed by Diavik, Government of Northwest Territories and Aboriginal groups. The responsibilities of all three parties are outlined in detail in these agreements. Indicators include:
  - Employment and training indicators – To assess the effectiveness of training programs (on-site and elsewhere) and hiring practices (through collection of hiring data by community, priority group and job category).
  - Economic indicators – Data collected (gross value by category, business preference level, community and project phase) to assess the contribution of the project to local companies.
  - Cultural and community well-being – Monitoring to address impacts on Traditional economy, land and resource use, cultural well-being, social stability and community wellness.

WUSKWATIM

- An extensive, adaptive, socio-economic monitoring program is underway. Key areas of concern include:
  - Employment and training indicators – Assessing the effectiveness of training programs and hiring practices.
  - Supply-chain participation by local businesses – Direct, indirect and induced expenditures by Aboriginal and non-Aboriginal companies.
  - Transportation, infrastructure and services – To assess impacts on traffic, municipal infrastructure, social services, emergency services and others that may result from the influx of workers into the region.
  - Social and cultural indicators – To assess impacts on project workers, their families and the community.

Important advances have been made in a number of areas for involving local Aboriginal and resource groups in environmental impact assessment.

*Incorporating Traditional Knowledge*

Three key trends may be discerned regarding the use of Traditional Knowledge in EIS processes:

- There has been more prescriptive treatment of Traditional Knowledge in Environmental Assessment (EA) legislation, policy and guidelines. For example, on the Diavik project, the proponent was directed by regulators toward where Traditional Knowledge should play a role in the EA specifically in the scoping of valued ecosystem components, description of baseline conditions, impact predictions, mitigation measures and techniques, evaluation of significance and monitoring and follow-up. Similarly, for the Voisey's Bay project, EA guidelines necessitated full consideration of local Traditional Knowledge and expertise in EIS preparation.
- There has been equal treatment given to Traditional Knowledge along with western science. For example, the Voisey's Bay project EIS represents an example of where equal weight was expected to be given to both the Traditional Knowledge and western science models. Notably, if conclusions drawn from the two models were not consistent, the EIS had to provide a balanced presentation of the two approaches.
- Reflecting the two points above, there has been a move from a consideration of Traditional Knowledge in the EIS process to the 'integration' of Traditional Knowledge into the EIS.
- With the increased collection and utilization of Traditional Knowledge there is an increased desire on the part of Aboriginal groups to ensure that this knowledge is protected. For example, BHP Billiton signed an agreement with the Inuit of the Kitikmeot Inuit Association in March 2006 to transfer intellectual property rights associated with the Naonayaotit Traditional

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: INDUSTRY LEADING PRACTICES**

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Knowledge Project (NTKP). This study was initiated in the early stages of licensing for the Ekati diamond mine in the Northwest Territories.

### SNAP LAKE

- Traditional Knowledge was used in the EIS process for the following purposes:
  - To define specific environmental components that should be subject to consideration in the context of adverse impacts (e.g., the project's effect on caribou population and migration).
  - To assign significance to potential adverse impacts arising out of project development.
  - To identify mitigation measures (e.g., the Lutsel K'e Traditional Knowledge study provided recommendations for mitigation).
  - To assist in the identification of follow-up programs (e.g., the need for spring and fall monitoring of caribou migration and monitoring of fugitive dust on vegetation).

#### *Developing a common information base*

Leading practice proponents are working jointly with Aboriginal groups to develop a common base of knowledge for defining, monitoring and addressing adverse impacts. In preparing environmental assessments, developers are increasingly working with Aboriginal groups to collect Traditional Knowledge. The benefits of doing so are wide-ranging and include the following:

- Increased buy-in to the environmental impact assessment on the part of the Aboriginal group and increased proponent credibility with the regulator.
- Opportunity to help local Aboriginal groups build capacity.
- A greater level of local Aboriginal involvement in defining environmental baseline conditions enhances the possibilities of reaching a common understanding about the nature and extent of project impacts.
- Improved information that serves as the basis for negotiating adverse impacts agreements.

A valuable means of coming to a better, mutual understanding of potential project impacts is by seeing firsthand similar projects (or environmental conditions) in other locations. As part of efforts to obtain support from local Aboriginal groups for offshore oil production by allaying fears related to ice conditions, BP provided them with an opportunity to travel to a specific region in northern Alaska where conditions were quite similar. This effort was successful in two ways. First, it eased the concerns of those that participated in the trip. Secondly, it served as a valuable relationship-building tool.<sup>12</sup>

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<sup>12</sup> Northstar and Liberty Case Study.



## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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### *Consideration of previous adverse impacts*

Leading practices are moving towards understanding impacts of past developments in the region in order better understand the nature and scope of potential impacts arising from a proposed development.

### *Definition and measurement of impacts*

This is closely tied to developing a common information base. Greater levels of involvement of the local community in the definition and measurement of impacts increase the likelihood of building a common understanding of adverse impacts and determining the most appropriate way to address those impacts. This can also be very valuable for negotiating an adverse impacts agreement if there is a common understanding of potential impacts before the adverse impacts negotiations have progressed too far.

## **Monitoring and managing ongoing adverse impacts**

### *Advisory committees and multi-stakeholder processes*

Leading practices in monitoring typically consist of field work in conjunction with community consultations, personal interviews and similar methods. Leading practice developers are ensuring that efforts aimed at monitoring and reporting remain current. The most effective process are those that utilize advisory committees with representation from interested and affected Aboriginal groups or resource users as well as other stakeholders and/or multi-stakeholder, non-profit organizations with a mandate to research and make recommendations regarding adverse impacts (e.g., the Northern Saskatchewan Community Vitality Monitoring Program Partnership). Advisory committees are effective in identifying and addressing deleterious impacts. Incorporating a wide range of participants from various backgrounds minimizes the chances of impacts being missed, while maximizing the likelihood that some form of contingency plan can be implemented to manage any impacts.

### *Health-related impacts*

Addressing health-related adverse project impacts is an area where more attention is being paid by developers. Notably, Syncrude and Suncor (through partnerships with regional health authorities) have been involved in substantial research efforts to describe and quantify airborne chemical and particulate exposures for local populations. This has led to the development of a long-term strategy to monitor and measure human health in the region.<sup>13</sup> Through socio-economic agreements for the Diavik and Ekati diamond mines, more than a dozen indicators for health and wellness are tracked, including injuries, potential years of life lost, suicides, teen births, single-parent families, children in care, domestic violence, communicable disease, crime and others. It is important to note that this is undertaken with substantial involvement on the part of the Government of the Northwest Territories.<sup>14</sup>

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<sup>13</sup> Syncrude Case Study.

<sup>14</sup> Diavik Case Study.

## CAMECO AND AREVA

- Northern Saskatchewan uranium mines make extensive use of multi-stakeholder advisory groups as both a funding party (e.g., for studies) and an active participant in monitoring of potential adverse impacts. This includes the following entities:
  - Athabasca Working Group – Represents the nine most-affected Aboriginal groups in the Athabasca region (where most of uranium exploration and production takes place). Meetings are held regularly to address their concerns.
  - Environmental Quality Committees – Acts as a bridge between communities, government and uranium mining companies to discuss concerns of residents of northern Saskatchewan.
  - Community Vitality Monitoring Partnership Program – Identifies and tracks indicators that provide information on community vitality, in order to provide information on uranium mining impacts (e.g., commuter rotation study), foster partnerships to address issues and develop effective communication activities.<sup>15</sup>

### *Implementation and adaptability of mitigation and compensation measures (contingency)*

Leading operators have worked closely with potentially affected communities to develop mitigation and compensation policies and protocols in the event of adverse impacts. They have been engaged in a wide range of options on this particular aspect of Aboriginal engagement, from simply making finances available in the form of a trust fund (e.g., the Autuqtuuk Fund was signed between various oil and gas producers and the North Slope Borough municipal government, for, among other purposes, monitoring the impact of oil and gas operations on subsistence resources, as well as substance abuse issues) to incorporating various levels of Traditional Knowledge into mitigation and compensation protocols.

Adverse impacts from development are not always predictable, as there is often a delayed reaction to impacts by a community. Therefore, social and health impacts need to be anticipated and addressed as they arise. This requires that a mechanism be put in place, such as a multi-stakeholder, community-based monitoring advisory committee with a clear contingency process. In the absence of a contingency process, monitoring is being done for monitoring sake only.

Two of the most advanced monitoring and mitigation practices have been designed and implemented in connection with offshore oil production in Alaska. These include the Good Neighbour Policy and Conflict Avoidance Agreements.

## GOOD NEIGHBOUR POLICY

- BP's Northstar offshore oil platform was the trigger for the first Good Neighbour Policy (GNP). It came about in response to widespread community concerns about risks of an

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<sup>15</sup> Cameco/AREVA Case Study.

environmental spill and how a company might deal with it. If something occurred, existing laws would not protect subsistence use.

- The GNP describes mitigation measures related to loss of access to fish and other marine resources, reduced quotas, counseling and financial arrangements. For example, if local hunters noted that an oil spill limited their access to a marine resource and consequently had to travel further to find an alternative resource, then GNP would provide for the costs and materials required for that additional travel.
- Other key aspects:
  - There is independent, third-party costing of mitigation measures.
  - A trust is set up by the developer but exists independently from the developer so that the community can access funds in the event of a negative event.

#### CONFLICT AVOIDANCE AGREEMENTS

- The roots for these agreements were laid in the 1980's with a Shell exploration in the Beaufort Sea. They are intended to provide management of offshore oil activities, particularly the interactions between local hunters and resource developers.
- These agreements are signed between industry and communities and provide mitigation and communications measures intended to address the concerns of subsistence whale hunters. With project permits required from the local borough and Eskimo governments it is in the best interest of developers to have these in place. As a result, to date, no companies have refused to sign up to one of these.
- Notably, these agreements are linked to the federal permitting processes that deal with incidental harassment of marine life. Companies must make a good faith effort to reach a CAA with local hunters.
- Mitigation measures have included:
  - Instituting a moving, no-seismic-activity zone that matches the migration pattern of the bowhead whale.
  - Scheduling oil industry activities to avoid hunting and whales.
- Other key aspects:
  - Monitoring defines mitigation (e.g., if monitoring indicates that whales are moving further offshore, an increased contribution for fuel is then provided as a mitigation measure).
  - Peer review of monitoring (first included by BP).
  - This is a valuable means of providing a way for the borough to participate in the federal leasing process, while also giving local communities a means of engaging with the oil industry.

### **Resourcing and capacity of Aboriginal groups**

In order to ensure successful and meaningful engagement on the part of Aboriginal groups, issues of resourcing and capacity must be addressed. Aboriginal groups often have limited resources (financial and otherwise) and a lack of skilled people available to handle these issues.

Involvement in the EIS process and negotiation of adverse impacts (and broader) agreements represents a valuable opportunity for communities to build capacity while also providing such communities with a meaningful role in the definition of adverse impacts and the design of mitigation and compensation plans. Leading developers are increasingly providing participation funding to Aboriginal groups in order to facilitate this type of involvement. As part of the Mackenzie Gas Project, TransCanada is providing \$40 million so that Aboriginal groups can engage in the project planning stages. In some cases, resources are provided to participants on an ongoing basis in order to ensure that adverse impacts continue to be adequately monitored and addressed.

### **KEY ASPECTS OF LEADING PRACTICES**

The Canadian and Alaska leaders in addressing adverse impacts have a number of common approaches and practices that have been instrumental in successfully involving Aboriginal groups. These approaches are described below, and provide a useful starting point for developing an effective Aboriginal participation program.

#### **Recognition of relationship to the land**

Realization on the part of the developer that Aboriginal groups have a special relationship to the land so that any and all activities (including other leading practices) must be undertaken with very careful consideration of potential negative impacts on the environment. This realization should include willingness on the part of the developer and Aboriginal group to learn from each other – to share thoughts and perspectives on how best to identify, avoid and/or correct unanticipated negative impacts.

#### **Addressing negative legacy**

Address any history of negative interactions between developers and Aboriginal groups within a given region. Where scenarios of this kind exist, developers have realized the need to address past negative impacts from their projects (Wuskwatim), or those of others (BHP Billiton). In some cases, formal apologies have been made. Compensatory measures may take the form of financial benefits or simply more elaborate Aboriginal engagement practices (e.g., employment, supply-chain participation, etc.).

#### *Agreements prior to construction*

Ensure compensation agreements and other, similar measures are in place before starting project construction.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: INDUSTRY LEADING PRACTICES**

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### *Traditional Knowledge*

Integrate a high level of Traditional Knowledge in all aspects of project development, especially in planning, monitoring, mitigation and compensation.

### *Joint EIA and adverse effect management development*

Develop programs and policies for addressing adverse impacts developed jointly by the developer and the Aboriginal group, typically developed through consultation (e.g., the Northern Saskatchewan Impact Management Agreement).

### *Flexibility and adaptability*

Develop flexible and adaptable monitoring and mitigation protocols. For example, in an agreement associated with BP's Northstar offshore oil and gas project, there is a commitment to revisit monitoring data collection protocols every five years and decide where changes (e.g., reductions) might be considered.

### *Advisory committees with decision-making authority*

Develop advisory committees with decision-making authority to address planning and protection of land and subsistence activities in the face of new and existing operations. Although a wide range of advisory committees were identified throughout the research, the most effective groups were those that had real decision-making authority. These were typically, but not exclusively, cases in which Aboriginal groups retained control over the resource in question, or situations in which the Aboriginal group was a partner in the project (e.g., Snare Cascades, Wuskwatim).

### *Health impacts*

Provide some consideration of the potential negative health impacts, either by recognizing the possible needs of communities and providing the funding mechanisms to address them (e.g., Autuqtuuk Fund), or by getting involved in the development of a system of monitoring with other stakeholders (e.g., Northwest Territories diamond producers and the Territorial government).

***ADDITIONAL PRACTICAL TIPS***

**LINKING EIA TO ADVERSE IMPACTS**

The understanding of impacts and appropriate mitigation gained through a project's environmental impact assessment can provide valuable knowledge for negotiating an adverse effects agreement. EIA scoping needs to be done jointly and in such a way that information of value to adverse impacts agreement-making processes is made available early on in the process. This will allow an agreement to be negotiated before construction begins.

**BUSINESS/REGULATORY BALANCE**

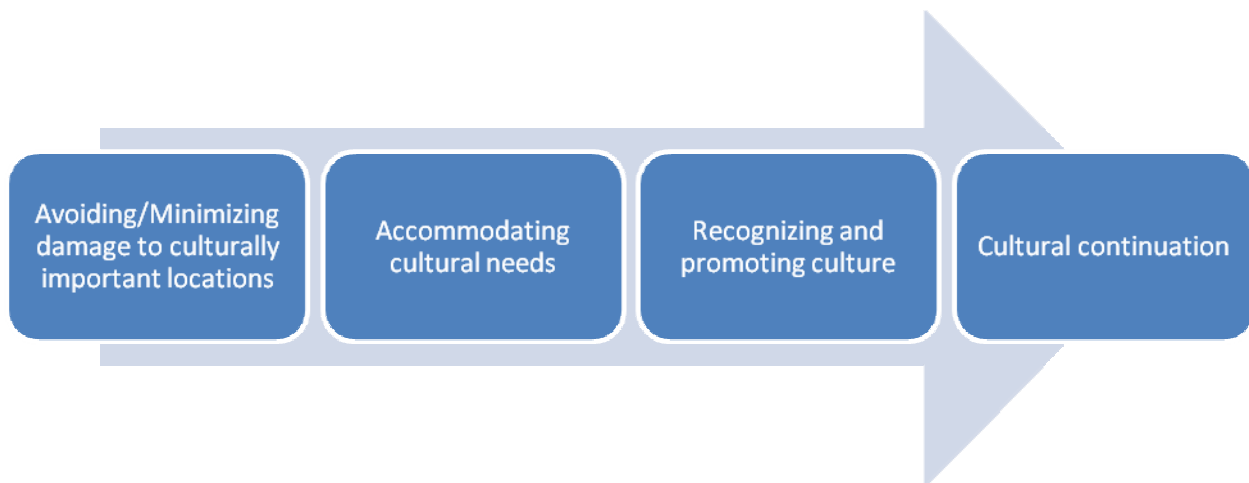
Leading practice developers are seeking to address long-term business interests (via relationship-building processes with Aboriginal participants, etc.) while at the same meeting short-term regulatory requirements (e.g., for obtaining permits and licenses).

## **CHAPTER 5: PROTECTING AND PROMOTING CULTURAL HERITAGE**

This discussion is not intended to address the theoretical underpinnings of culture and heritage, or to provide an inventory of cultural indicators. Rather, it is an attempt to characterize the efforts that resource developers are taking to be more sensitive to Aboriginal culture and heritage within the context of their operations.

Figure 5.1 below provides an illustration of the spectrum of Aboriginal engagement in protecting and promoting cultural heritage.

**Figure 5.1  
Protection and Promotion of Cultural Heritage**



As the figure demonstrates, efforts undertaken by developers can be categorized into the following four categories:

1. **Avoiding/minimizing damage to culturally important locations** – Initiatives for protecting cultural locations are well-developed throughout Canada and Alaska. This can be accomplished through the following actions:
  - Minimizing damage by designing or relocating projects to avoid sensitive locations.
  - Minimizing damage by redesign or relocation around sensitive areas by fencing, covering or isolating the location. These protective measures may be temporary or permanent depending on the development and nature of the cultural location. If the location is a frequently visited religious or subsistence site then the protective measures must accommodate necessary access to the site. If the location is an archaeological site it may be protected by covering the location to preserve the site *in situ*. If archaeological excavation is required the developer may choose to promote the culture through a partnership with a local museum or university with the participation of tribal members to document and preserve the objects and information recovered from the site. However, it

is important to remember that archaeological excavation is a highly controlled destruction of a site and must be approached with the preservation of research potential first and foremost as the excavation is planned.

2. **Accommodating cultural needs** – The most commonly used attempt to accommodate cultural needs is the work rotation system, intended to provide Aboriginal workers with the opportunity to obtain project employment while also having significant periods of time away from the work site so that they can engage in subsistence activities. This can also include time away for religious and spiritual activities and other cultural Traditions. Project planning is undertaken with acknowledgement of annual Aboriginal events as well as the usual national holidays. The initiative of posting workplace signage in the Aboriginal language is relatively well-established.
3. **Recognizing and promoting culture** – Current leading practices fall within this step in the spectrum. Rather than just accommodating Aboriginal culture, developers are doing more to promote and recognize it, both on the worksite and in the surrounding communities. Examples of these, discussed in greater detail below, include:
  - Spiritual and secular cultural ceremonies for key project events (key projects identified jointly by the developers and Aboriginal groups involved).
  - Cultural awareness training (reflective of both the Aboriginal and non-Aboriginal cultural participants in the development project).
  - Culturally appropriate counseling services.
  - Other contributions including regional cultural surveys and studies.
4. **Cultural continuation** – This is the next likely step for resource developers seeking to be leaders in Aboriginal involvement. An example includes efforts intended to promote the continuation of cultural heritage to future generations through storytelling means.

## **PRELIMINARY FINDINGS**

This is a relatively new, undeveloped and poorly defined area for resource developers and Aboriginal groups. Although there is general acceptance on the part of proponents that cultural issues are important, outside of relatively standard cultural awareness training directives and sponsorship of research studies, efforts on this front are not well-developed within the industry, no matter what level of influence or control exists on the part of the Aboriginal participants or their level of capacity. Despite this, expectations on the part of Aboriginal people toward developers for the management and protection of culture and heritage are increasing. Central to these efforts is recognition that Aboriginal culture is dynamic in nature, undergoing continual revival and maintenance.

Although employment, training and supply-chain opportunities are typically the most highly sought-after benefits for Aboriginal groups in the vicinity of resource development, protection of culture as in the case of the environmental protection, while achieving these benefits is important in every case. Leading developers are approaching Aboriginal participants with an open mind and willingness to learn more about their cultures and how they might be promoted and protected. There are different understandings



## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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of what constitutes culture and heritage. Therefore there are different perspectives on what constitutes a viable cultural heritage protection measure. Due to the diversity of Aboriginal cultures, companies use different approaches.

Leading practices in cultural heritage protection for a given project will typically depend on the Aboriginal participants. If development is taking place in relatively remote areas where there is increased prevalence and higher profile of subsistence activities, efforts aimed at the protection of cultural heritage will likely be heavily weighted towards the sustainability of subsistence activities (e.g., the Red Dog Mine Subsistence Advisory Committee). On the other hand, in regions where there are higher levels of development taking place and Aboriginal people have begun to capitalize on these activities, they have typically adapted their cultural and subsistence activities to the situation. In these circumstances, cultural heritage protection activities are more likely to take other forms (e.g., ceremonies, cross-cultural awareness training, etc.).

Leading practices recognize that cultural promotion, protection and continuation serve the business interests of the operation. For example, effective community participation in site-based rehabilitation and long-term monitoring, as described in a closure plan, requires the preservation of subsistence and ethnobotanical knowledge.

There is a wide range of practices being undertaken by developers to address cultural heritage protection issues. In some cases there is very little being undertaken outside of cultural awareness training for new workers. At the other extreme, developers are partaking in (or at least sponsoring) regional socio-cultural studies or, in at least one case, tendering contracts for comprehensive cultural services to an Aboriginal project partner that incorporates project milestone ceremonies and counselling services in addition to cultural awareness training.

Ceremonies represent a very effective means for developers to deliver a message that they support the culture of the Aboriginal groups that they are working with. Research undertaken for Cameco and AREVA identified the Argyle Diamond Mine in Australia as a leader in this regard.<sup>16</sup> The Manthe Ceremony is undertaken as a means of welcoming people to the country and ensuring that they have safe passage. In some cases the ceremony incorporates smoke while in others water is used. Under the Argyle Diamond Mine Participation Agreement, this ceremony is incorporated into the mine's safety orientation procedures. Everyone that goes through this orientation must attend the Manthe Ceremony. Other ceremonies are conducted by Traditional owners of the site for key project milestones (e.g., ground-breaking, beginning of tunnel construction and various tunnel depth achievements).<sup>17</sup>

Another way that Argyle Diamond Mine is recognizing and promoting culture is through establishment of a law and culture fund set up within the framework of the Gelganyem Trust which is intended to provide

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<sup>16</sup> InterGroup Consultants. *Aboriginal Involvement and Participation in Resource Development: Industry Best Practices 2006*. Study undertaken for Cameco Corporation and AREVA Resources. Winnipeg, Manitoba.

<sup>17</sup> Argyle Diamond Mine Case Study, 2006.

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long-term support to the Traditional owners. Interest from this law and culture fund is split equally to fund men's and women's law and cultural activities.<sup>18</sup>

The drivers for cultural awareness training and the make-up of these programs differ from one project to the next. Leading practice cultural awareness training efforts are typically initiated, developed and overseen by the Aboriginal participants. One of the most outstanding examples of this is Manitoba Hydro's Wuskwatim generating station.

### **WUSKWATIM**

- The local Aboriginal community (Nisichawayasihk Cree Nation) submitted a proposal in the amount of \$2.1 million for a cultural services contract. Components of this contract include:
  - Cultural awareness program designed and implemented by the community.
  - Culturally appropriate counseling by trained community personnel on the site and in the community.
  - Ceremonies at project construction milestones and the construction of a circular cultural meeting centre and ceremonial sweat lodge.

Leading developers are those that realize that cultural heritage protection and promotion encompasses more than cultural awareness training and similar initiatives. Rather, they understand that it must incorporate the protection and management of Aboriginal cultural Traditions, heritage resources and subsistence resources.

Commuter rotation systems, as a form of cultural accommodation, are relatively well-established in Canada and Alaska. Where operations have been of the fly-in/fly-out type, leading operators have implemented a variety of rotation options to accommodate the desire on the part of Aboriginal workers to engage in Traditional subsistence activities. The Red Dog mine provides an example of this.

### **RED DOG**

- Often characterized as an employee retention strategy, the work rotation system instituted by Teck Cominco at the Red Dog mine has been a central feature of the operation's cultural heritage involvement efforts. Initially, the mine used a single system of two weeks in, one week out. The resulting retention rates were as low as 50 percent. In consultation with Aboriginal groups and shareholders, the company created a more flexible approach aimed at retaining workers, many of whom participate in seasonally based, Traditional resource harvesting. Consequently, the company introduced approximately a dozen different options.<sup>19</sup> Arrangements for Aboriginal ceremonies undertaken for key project milestones, as part of unforeseen discoveries (heritage sites, human remains) or as a regular part of construction camp activities (sweat lodge) are part of Red Dog's cultural protection initiatives.

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<sup>18</sup> Argyle Diamond Mine Case Study, 2006.

<sup>19</sup> Red Dog Case Study.

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As in the case of ceremonies, culturally appropriate counselling services are a relatively new area for developers and Aboriginal participants alike. Most efforts to institute programs of this kind have not met with a high degree of success. The most common form of counselling in place for major resource developments in Canada and Alaska consists of Employee and Family Assistance Programs, also found throughout other business areas not specifically geared toward Aboriginal sensibilities. Typically, this approach provides workers and their families with telephone numbers that they can call if they need some form of counselling. There is little, if any, acknowledgement of cultural circumstances. This may be in conjunction with periodic site visits from Elders or other respected community representatives. These efforts have had some success, though there are challenges posed where several different cultural groups are represented at a project site.

Cultural awareness training efforts have long been well-established methods of encouraging cultural heritage protection within industry. The intent of this training is typically to inform and familiarize non-Aboriginal employees about local Aboriginal peoples. Leading practices in this regard relate primarily to training program development (through varying levels of consultation with Aboriginal participants), frequency of training offerings and scope of activities, from classroom to 'cultural exchange' programs.

Cultural sensitivity surveys represent another means that developers are using to promote and recognize culture. These provide a forum for Aboriginal groups and communities to describe potentially negative effects of a project on their culture and heritage.

### **GREENS CREEK**

- Bi-annual cultural sensitivity surveys are undertaken in the local Aboriginal community. People from the community are given an opportunity to provide input on the effect that the Greens Creek mine may be having on their culture (e.g., language, etc.). Results are then incorporated into a formal cultural management system which becomes part of the operation's corporate policy.<sup>20</sup>

Leading practice developers are sponsoring and/or becoming directly engaged in Traditional Knowledge studies. These are often undertaken as part of the EIS process and provide a valuable means of obtaining Aboriginal input into project decision-making processes while also serving to promote and recognize Aboriginal culture. These studies are designed jointly by the proponent and the Aboriginal community.

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<sup>20</sup> Greens Creek Case Study.

DIAVIK

- For the Diavik mine (as with other recently developed mines) Traditional Knowledge was included as part of the assessment process. Active collection is ongoing directly, as in the case of the recently completed “Weledeh Yellowknives Dene, a Traditional Knowledge Study of Ek’ati”. The company also contributes to the West Kitikmeot Slave Study Society (WKSS), which supports Traditional Knowledge studies. Several other studies have been completed or are ongoing, including:
  - Habitat of Dogrib Traditional territory – Place Names as Indicators of Bio-Geographical Knowledge.
  - Final Report Community-Based Monitoring. Traditional Knowledge Study on Community Health, Community-Based Monitoring Study.
  - Dogrib Traditional Knowledge: Relationship Between Caribou Migration Patterns and the State of Caribou Habitat.<sup>21</sup>

The promotion and recognition of culture and cultural continuation are intimately linked. Recognizing culture is the first step in cultural continuation and the promotion of culture can lead to its continuation and its revitalization. Aboriginal language, oral Tradition and Elders’ Knowledge are three areas where cultural loss is very high.

During the course of this project, the research team was provided with a wide range of ideas that would represent leading practices in protecting and promoting cultural heritage as well as cultural continuation. These can typically be managed in the partnership between the Aboriginal group and developer and can be operated at a range of levels, from very simple to very sophisticated, depending on the need, desire, ability and willingness of the participants. Some of these are currently under consideration by developers:

*Aboriginal language promotion*

- The first rule of language is that it is dynamic. Recording and documenting a language is important for its continuation but if no one uses that language by listening to the recordings or using the documentation to teach the language to others then all that has been accomplished is the creation of a monument. Language must be used to keep it alive. It is also important to recognize that nothing in anyone’s culture is isolated. Language is intimately linked to cultural knowledge, places, activities, food, tools, household goods and personal items, and history. Within the work environment there are many opportunities to promote Aboriginal language. Promotion can be done simply and inexpensively and may take the following forms:
  - Bilingual or trilingual signage in offices, job site, housing or recreation facilities.
  - Bilingual or trilingual phone reception for both answering machines and by office staff during business hours.
  - Common language phrases taught during cultural awareness training and promoted through use by supervisors, managers, etc. (identify common usage such as hello,

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<sup>21</sup> Diavik Case Study.

- goodbye, yes, no, or slang and teach them to all staff in whatever languages spoken by staff; this will promote basic communication and it always helps to know what another person is saying).
- Aboriginal word of the day with sound files to promote pronunciation, distributed via list-serve, company email or posted on the company website.
- Developer options for making a longer-term commitment to Aboriginal language include the following:
    - Fund a recording project to document language.
    - Fund a translation and publication project to provide greater access to archived or out-of-print language materials or documents. Publication may be in the form of language learning CDs, monolingual, bilingual or trilingual books, and language sound files available via internet, card and board games, cookbooks, calendars, etc.; look at the popular media for other publication ideas.
    - Fund mentor-apprentice language partnerships to promote active language learning and use.
    - Fund language nests in local schools or communities. These programs provide an environment for infants and toddlers to be exposed to their native languages and can serve as encouragement for parents to more readily use the language in their homes.
    - Create a linguistic scholarship at a university or local college.
    - Form a business partnership(s) to fund language teaching positions in local schools or language teacher stipends or jobs within community programs; partnerships can also fund language immersion classes or camps.
    - Provide space for locally taught language classes if community facilities aren't available.

*Elder Knowledge and oral traditions*

- Cultural knowledge as preserved by Elders' Knowledge and oral traditions can be promoted in the same manner as language – by providing the means to extend that knowledge to others through Traditional methods and popular media. Traditional methods will be identified by the Aboriginal group the developer is working with and may include storytelling, dance, music and art. A popular current method is a spirit or culture camp. Spirit or culture camps are usually at least one week long and typically include an agenda with cultural activities and language. Knowledgeable Elders and/or culture bearers teach youths or adults in an environment intended to promote and revitalize cultural activities and knowledge. The agenda and schedule are set by the Aboriginal partner, with activities sometimes focused on endangered knowledge or skills (i.e., information or skills that are about to be lost because so few people know them). The camp serves as a vehicle for mentoring so that the knowledge or skill is carried into the future.
- A developer may be a partner in a culture camp by providing financial or in-kind support. Financial support may be in the form of funds for transportation costs, elder/culture-bearer stipends, food, supplies, etc. In-kind support may be cooks or camp equipment from field

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projects, Aboriginal project staff working at the camp (as mentors or support staff), advertising, telephonic support for pre- and post-camp organizational teleconferences and logistics, etc.

Partnerships can be extended to include involvement with museums and universities for the purpose of research and teaching. Partnerships may incorporate:

- Museums and/or Tribal Heritage Centres – With a focus on exhibitions, both travelling and permanent, Aboriginal artists or curators-in-residence, internships, research and publication projects specific to Aboriginal collections and knowledge, and public education and awareness programs.
- University involvement – Including the participation of resident-Elders as instructors and mentors, funded chairs for Aboriginal professors, resident Aboriginal artists, writers and educators, as well as scholarships in anthropology, art, museum studies and media.

### **KEY ASPECTS OF LEADING PRACTICES**

Canadian and Alaska leaders-in-training have a number of common approaches or practices that have been instrumental in achieving success. These, described below, can provide a useful starting point for developing an effective Aboriginal participation program.

#### *Open dialogue*

Leading developers are approaching Aboriginal participants with an open mind and willingness to learn more about their culture and how it might be promoted and protected.

#### *Traditional Knowledge studies*

Leading practice developers are sponsoring and/or becoming directly engaged in Traditional Knowledge studies as a means of facilitating the EIS and licensing process while promoting and recognizing Aboriginal culture.

#### *Cultural retention programs*

The loss of culture (particularly language) among younger Aboriginal generations is a concern for nearly all Aboriginal groups. Developers engaged in leading practices recognize this and work with Aboriginal groups through local cultural organizations and institutions to promote culture. This can be done through a combination of language classes, artisan workshops and programs to ensure provision of Traditional foods through local suppliers.

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### *Range of activities*

Realization on the part of the proponent that cultural heritage involvement, promotion and inclusion encompasses informing participants and employees of the broad range of cultural awareness knowledge, including a recognition of Treaties, the history of Aboriginal-to-non-Aboriginal relations, government-to-government relations, land claims, Aboriginal history, ceremonies, traditions, heritage, protection of lands and subsistence resources. Understanding how these elements inform and affect today's modern Aboriginal people is crucial.

### *Formalizing Aboriginal input*

Aboriginal groups are provided with a high level of influence (if not outright control) over issues and activities that relate to cultural heritage resources. The most important thing about working with Aboriginal communities in this context is to find out what will work within their community and what resources each partner brings to cultural promotion, continuation and vitalization. This may be outlined in formal agreements or contracts, or granted through representation on associated committees and boards that are governed by a joint Terms of Reference. This allows the Aboriginal participants to define community priorities and to work with developers to meet them.

### *Making the business case*

Leading practices recognize cultural promotion, protection and continuation serve the business interests of the operation. For example, effective community participation in site-based rehabilitation and long-term monitoring as described in a closure plan requires the maintenance of subsistence and ethno-botanical knowledge.

### *Relevance*

Successful initiatives implemented for cultural heritage programs are relevant to the given circumstances (i.e., different beliefs and practices of each Aboriginal group that may be engaged in the project or region).

**ADDITIONAL PRACTICAL TIPS**

**“TRAIL OF DREAMS”**

A more recent development in cultural heritage protection and promotion that developers may be required to address has been the incorporation of spiritual significance as a component of cultural significance. Efforts to characterize and address potential impacts on cultural heritage are in a relatively early stage of development, with proponents only starting to understand this facet of impact management. The ramifications for having to deal with impacts on spiritual aspects of culture remain to be seen. In at least one case (Glamis Gold Imperial project in California) a license was denied as a result of an Aboriginal group (Quechan Tribe) claiming that aspects of its spiritual culture would be impacted. The U.S. Department of the Interior stated that the proposed mine was within a Native American spiritual pathway and that tribal members believed the proposed mine would impair the ability to travel, both physically and spiritually along this "Trail of Dreams" (United States Department of the Interior, 2001).

**CULTURAL HEALING**

Leading practices are moving towards recognizing and utilizing Traditional practices or institutions as a means of resolving adverse impacts on culture (e.g., healing ceremonies).

**THE CULTURE OF BUSINESS**

As resource developers strive to recognize and promote Aboriginal culture, there is still a relative lack of incorporating that culture into the business aspects of resource development projects. Incorporation of culture into business dealings stands to be an interesting challenge that Aboriginal groups are likely to welcome.

**DUE DILLIGENCE**

As part of due diligence, developers should thoroughly map local, regional and federal cultural heritage protection laws and regulations that may apply to their region where there proposed project will be situated.



***ADDITIONAL PRACTICAL TIPS***

**“THE MINERALS HAVE BEEN IN THE GROUND FOR MILLIONS OF YEARS.  
WHY DO YOU NEED THEM NEXT WEEK?”**

Cultural awareness training in most cases is focused upon the relay of information from Aboriginal to non-Aboriginal rather than vice versa. Developers should consider offering potential Aboriginal participants information and perspective regarding such topics as shareholder relations, marketing, mineral processing and manufacturing so that questions of the kind displayed above can be answered and understood more effectively.

**USING TRADITIONAL KNOWLEDGE**

Although the use of Traditional Knowledge in resource development (from exploration through closure) is becoming better established, there remain questions about how the Knowledge is actually incorporated into decision-making processes. Developers may find it necessary to provide Aboriginal participants with details regarding how this Knowledge is used in the context of company policy and practice and also indicate how this information will be protected (confidentiality).

**INTELLECTUAL PROPERTY**

A mechanism for acknowledging the intellectual property in cultural material has been written into the Argyle Diamond Mine Participation Agreement. A security clearance is normally needed for access onto the mine lease due to the value and mobility of diamonds. By agreement, Traditional owners have a right of access to non-operational parts of the mining lease without needing a security clearance. That right of access is managed through a Traditional owner access list. The Traditional owner group prepares and maintains that list, which is based on family trees prepared through an extensive ethnography. Argyle Diamonds acknowledges that the family trees represent cultural information to which the Traditional owners want to retain all intellectual property rights. Although the mine has access to a Traditional owner access list, it does not have access to the family trees. The access list must be treated as confidential information and used only for the purpose of ensuring free access for those Traditional owners on the list at the security gate.

## **CHAPTER 6: EMPLOYMENT AND TRAINING**

### *Employment*

Aboriginal participation in employment opportunities has been relatively frequent within resource development for some time. Measures to enhance this involvement can be voluntary on the part of developers, or part of a formal participation agreement between Aboriginal groups and the developers. These measures may also be conditions imposed upon developers by different levels of government.

Specific measures and efforts targeted for data collection include the following:

- Hiring preference;
- Monitoring the level of Aboriginal participation;
- On-the-job training opportunities;
- Recruitment services;
- Retention measures;
- Human Resource development strategies; and
- Mechanism for addressing Aboriginal employment issues.

### *Training*

As has been the case with supply-chain and employment components, efforts to enhance Aboriginal involvement and participation in training and education opportunities have been in place, and consistently evolving, over the past few decades. These initiatives can be developer-driven, or provincial and territorial governments may make them part of the conditions necessary for licensing approvals. Current initiatives are often multi-party or multi-participant driven and may include the involvement of one or more corporations, governments, regional development organizations, educational institutions and Aboriginal groups.

The nature of training delivery is a key issue with which both resource developers and Aboriginal groups are grappling. In some instances, training can be delivered on-site or in the local communities. However, in many instances potential trainees must seek training outside of the local area.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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The following information was sought on this topic:

- Efforts to build capacity within local communities by implementing or supporting education, pre-project and on-the-job training activities.
- Existence of pre-project upgrading and training programs.
- Community-based pre-project training.
- Local training delivery agent.
- Nature of training and education.
- Industry and institutional partnerships.

### **PRELIMINARY FINDINGS: EMPLOYMENT**

Project employment is viewed by both proponents and local Aboriginal stakeholders as one of the most desirable forms of project benefit. It has evolved, and continues to evolve, as a centerpiece of leading-edge Aboriginal engagement programs in Canadian and Alaska resource development. However, as Aboriginal groups become more effective in asserting their rights and at leveraging benefits from resource development, opportunities beyond project employment are becoming more of an imperative (e.g., supply-chain participation, equity participation and involvement in project planning).

The trend in resource development is to employ the services of contract companies, often Aboriginal-owned and operated. This provides an ideal, indirect opportunity for increasing the level of Aboriginal employment on projects. For example, the percentage of Native employment achieved by Chiulista Camp Services on the Donlin Creek project is greater than 90 percent.<sup>22</sup>

Due to their nature and duration, a distinction exists between employment in construction and employment in operations. Operations employment is more desirable because it is more diverse and of longer duration. Mining, forestry and resource processing provide a sizeable number of operations jobs, while hydroelectric development, conventional oil and gas production and pipelines tend to be more construction intensive, providing few operations jobs. In general, Aboriginal participation levels are higher for operations than for construction because more time is available to put effective programs in place for training and retention. Aboriginal employment percentages tend to approach, or exceed, 40 percent for operations-phase leading practices projects, while maintaining around 30 percent on construction phase projects. As a result of the longer duration of operations jobs, this phase is more conducive to having Aboriginal workers move into advanced positions. The relatively short duration of construction employment does not easily accommodate advancement.

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<sup>22</sup> Donlin Creek Case Study.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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Low educational levels and lack of wage employment experience have been (and continue to be) major barriers to Aboriginal participation in resource development jobs. Consequently, training is a key factor in achieving high participation levels. Proponents are taking on increased responsibilities, becoming more actively involved in the funding and development of pre-project training initiatives. In some cases, this occurs as part of a larger network of resource developers, contractors, Aboriginal stakeholders and others. Aboriginal groups, in addition to becoming more heavily involved in planning and delivery, may be moving towards accessing their own funds for these purposes.

The drivers for trying to achieve high levels of Aboriginal employment are different for each project, although the attitude of the owners is a key factor. Cameco, AREVA and their predecessors have been driven by the socio-political sensitivity and high profile of the uranium industry, with the attendant need to attain and maintain a highly positive image with northern Aboriginal groups and a socially conscious provincial government. This was reinforced by stringent requirements for Aboriginal employment in project surface lease agreements entered into with the provincial government. In the case of Red Dog, Native corporation ownership of the resource base enabled the corporation and the local communities to leverage higher Native participation commitments in the project. In the Northwest Territories, most land claim settlement processes had been completed during the Diavik project development (with the exception of the Tlicho or Dogrib Treaty 11 Land-claims and Self-Government Agreement that was signed in 2005). The developers realized that the projects were unlikely to proceed unless they had the support of local Aboriginal stakeholders. In addition, although IBA's are not legally required, there is a political requirement within the territory for developers to negotiate these with potentially affected Aboriginal groups.

### **Operations phase**

Employment and training is the most mature and well-developed area of Aboriginal participation in resource development in Canada and Alaska. Tested and proven practices provide a solid base from which to draw. The leaders in operations employment, both in Canada and Alaska, have achieved high levels of Aboriginal employment and have been applying leading practices for more than two decades. Canadian leading practices extend back to the early 1980's while Alaska leading practices extend back to the mid-1980's.

Employment in management or supervisory positions on the part of Aboriginal people is still at a relatively low level. As a result of relatively low educational levels and lack of wage employment experience, Aboriginal people are typically employed at entry-level positions. There is a realization on the part of some that higher levels of Aboriginal involvement in these types of positions take a longer period of time.

In both Canada and Alaska, operations in the mining sector have been, and continue to be, the leaders in Aboriginal employment and training, making the experience in these areas of particular value and relevance to mining projects.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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### **CAMECO AND AREVA**

- In Canada, uranium mines in northern Saskatchewan operated by Cameco, AREVA and their predecessors have routinely had 40 to 50 percent of their operations workforce (Cameco and long-term contractor employees) comprised of northern Saskatchewan residents, the vast majority of whom are First Nations and Métis. The first uranium mine to achieve these high levels of Aboriginal employment in northern Saskatchewan began operating in 1980. Due to its extraordinary profitability, resources were made available to test and adopt much more elaborate and sophisticated practices for employing northern residents than had been used previously. Since then, five other uranium mining projects in the region have produced similar results, building on the lessons learned from the first project. However, these projects have not been as profitable as the first project. Many of the approaches used for the first project (which ceased to operate in 2002 after 22 years) continue to be used today, with various refinements being incorporated over the years to enhance effectiveness and lower costs.<sup>23</sup>

### **RED DOG**

- The leader in Alaska is the Red Dog lead zinc mine, where the level of Native participation exceeds 55 percent (including contractor employees) and is the highest on a sustained basis of any project that was reviewed as part of this research. Red Dog has had high levels of Native employment since production began in 1989. A long-term target of 100 percent Native employment has been stated by corporate participants. While it is recognized this target is not attainable, it is meant to serve as a continuing reminder to strive for continually increasing levels of Native employment. As with the uranium-mining case, the fundamental approaches for achieving high levels of Alaska Native employment were established at the start of the mine operation and have been refined and improved over time.<sup>24</sup>
- Increasing involvement of Aboriginal-owned and operated businesses can serve to increase levels of Aboriginal employment. For example, Chiulista Camp Services, a subsidiary of Calista Native Regional Corporation, is heavily involved in the NovaGold/Barrick Donlin Creek operation and boasts 90 percent Native employment.
- For Red Dog, Cameco and AREVA, the following key factors have helped to maintain and even increase Aboriginal employment levels:
  - Improvement in retention rates for Aboriginal workers over time.
  - Progression of a number of Aboriginal workers to advance to journeyman positions in the trades, and to on-site supervisory jobs.

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<sup>23</sup> Cameco/AREVA Case Study.

<sup>24</sup> Red Dog Case Study.

## DIAVIK

- Recently developed diamond mining projects in the Northwest Territories, including the Diavik Diamond Mine project, are achieving levels of Aboriginal employment comparable to the long-standing leading practice cases. Diavik specifically has reached 33 percent Aboriginal-hire (includes contractors), however, if one considers the larger-than-anticipated workforce (800 versus 400), the mine has actually greatly exceeded its targets as far as individual employees are concerned. The company is committed to at least 40 percent Aboriginal hire (and 60 percent Northerner) and has various policies in place to help achieve this, including a hiring preference system, a work rotation system and others.<sup>25</sup>

### Construction phase

The Trans-Alaska Pipeline System (TAPS) provides an Alaska example of Aboriginal employment leading practices in the construction phase. The project had extensive measures in place to maximize Aboriginal employment during construction in the 1970's, however; the commitments made to Native people were renege-upon following construction. In response, the Alaska Federation of Natives (AFN) eventually threatened pipeline operators and owners with legal action. They then started to receive significant assurances, action and financial pledges. The TAPS owners began upholding their commitments during the last decade. If it were not for the efforts of AFN and Alaska Native leaders, TAPS would not be held up as an example of leading practices today. Some of the construction-era and contemporary measures include:

- Federal and state regulatory requirements, established in conjunction with the Native regional development corporations established under the Alaska Native Claims Settlement Act dictated the project developer maximize opportunities for Native employment as set out in the Native Utilization Agreement between the project proponent (Alyeska Pipeline Services Company) and the Federal government.<sup>26</sup> These requirements are referred to as "Section 29".
- Notable practices adopted on TAPS for maximizing Alaska Native employment during construction consisted of the following:
  - Extensive system of recruitment, testing, training, placement, employment and job counselling and mentoring for Alaska Native employment on the pipeline.
  - Extensive measurement and monitoring of Native employment in addition to regular updating and renewal of agreement. This includes specific targets for various occupational classifications. In 2007, for example, this practice led to the establishment of the following targets: 14 to 16 percent managers, 19 percent professionals, 21 percent technicians and 30 percent clerical and administrative. Spending commitments have been put in place to create additional educational or employment opportunities in subsequent years if employment targets are not reached.

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<sup>25</sup> Diavik Case Study.

<sup>26</sup> Trans-Alaska Pipeline System Case Study.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: INDUSTRY LEADING PRACTICES**

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- A weighting system is now in place for maximizing Native employment on TAPS during the current operations phase in order to facilitate the measurement of success. Notable aspects of the weighting system include the following:
  - Each Alaska Native person on payroll is counted as a single employment opportunity on a pro-rata basis (2,080 hours or the contractor's annual work year equals one full-time equivalent employee).
  - Alaska Natives who are not employed, but are receiving a scholarship funded by Alyeska (pipeline proponent), are counted as an educational opportunity. Each educational opportunity counts (on a pro-rata basis) as one employment opportunity credit for each \$30,000 expended by Alyeska.
  - Each Native person engaged in paid full-time training is counted as an employee.
  - Each Native employee on loan to another organization, or on sabbatical for career development or training, counts as a single employment opportunity.
  - Actively employed Alaska Natives that are identified as potential higher job candidates and that are participating in a structured training plan to reach that goal are counted as an additional employment opportunity.
  - Internships (internal and external) are counted as an employment opportunity (pro-rata basis for summer internships).
  - Each scholarship award, or similar, is counted as a single employment opportunity in increments of \$30,000.
  - Each Native employee on special assignment leading to an advancement opportunity counted as an additional 0.25 of an employment opportunity.
  - Implementation Plans outlining how employment targets and commitments will be met must be submitted for review by both the state and federal governments by Alyeska Pipeline Services (primary contractor) and the 15 largest designated contractors (with 50 or more full-time equivalent employees working within the State of Alaska).
  - A sum of \$25 million over a 12-year period is provided to cover administrative costs of implementing the Agreement, as well as training scholarships.
  - Recognition on the part of both proponent and government that employment targets are only one measure of success. Employment with other regional contractors, enrolment in educational and training programs, types of job opportunities (e.g., management/supervisory positions) are also considered successes.<sup>27</sup>

### **KEY ASPECTS OF LEADING PRACTICES: EMPLOYMENT**

Canadian and Alaska leading practice operations-phase employment have a number of common approaches, or practices, that have been instrumental in attaining high Aboriginal employment levels. These approaches, described below, can provide a useful starting point for developing an effective Aboriginal participation program.

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<sup>27</sup> Wuskwatim Case Study.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: INDUSTRY LEADING PRACTICES**

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### *Leadership commitment*

Strong, unwavering commitment of senior management to Aboriginal participation that is clearly and unequivocally communicated to human resources staff and to staff engaged in mining operations.

### *Fair and respectful treatment*

The expectation that Aboriginal employees will be treated fairly and with respect combined with an understanding that staff members who violate these principles will be reprimanded.

### *Preference policies with targets*

Leading operations give hiring preference to qualified Aboriginal workers and have measurable targets for Aboriginal employment. Cameco's and AREVA's targets are set out in agreements that they have entered into with the provincial government, while Red Dog's targets are set out in a development and operating agreement. To be successful, these targets are monitored regularly and typically include recording the classification of the Aboriginal workers (e.g., catering, safety technician, heavy equipment operator, etc). Taken as a whole, this information helps to gauge the success of the company in hiring and retaining Aboriginal employees.

### *Recruitment*

Leading practices are characterized by superior recruitment methods. While word-of-mouth, web postings and community postings can be effective, they work best when complemented by the following leading practices:

- Less-formal interview processes with more personalized face-to-face interactions, rather than formal telephone calls, hiring panels and other established procedures (e.g., on the Trans-Alaska Pipeline, the primary contractor, Alyeska, emphasizes relationship-building with potential employees).
- Creative initiatives intended to help in the identification of candidates (e.g., through sports camps). In the research to date, nothing has been identified that resembles the creative efforts of Rio Tinto and their Argyle mine (e.g., sports camps and archaeological research camps).
- On a technical level, leading developers are engaged in some level of coordination between stakeholders (Aboriginal, government, proponent and others) through centralized computer databases, joint advisory groups and similar measures.



*Retention*

Leading practices are also characterized by advanced retention systems. The most successful examples tend to be of the more personalized, face-to-face variety with relationship-building and continuous follow-up. Other key aspects of leading practices in the context of retention include:

- Commuter rotation systems whereby workers are employed for various periods of time and live in camps at the mine site, then are given an extended period of time (often one to two weeks off) to live in their home communities. Workers are flown to and from their community and the mine site at the start and end of shifts. As a result, workers and their families can continue to live in their communities and do not have to relocate to a mining community. The large blocks of time off are also conducive to participating in Traditional activities such as hunting, fishing and trapping. Research has shown that this type of workforce system has been a key factor in attracting and retaining Aboriginal workers on these projects. To improve retention, Red Dog now offers more than a dozen different work rotation options. Employee turnover rates in the early stages of the operation were approximately 50 percent; however, by 2005 turnover rates had improved to 18 percent.<sup>28</sup>
- Measures that maximize opportunities for workers to engage in Traditional pursuits (e.g., hunting, trapping and fishing) and partake in community events. This may take the form of subsistence or potlatch leave.
- Initiatives intended to address on-site racism issues. Commitment on the part of management to institute zero tolerance rules in conjunction with cultural awareness training and the establishment of advisory committees as a forum for addressing racism issues.
- Support services for Aboriginal workers and their families including opportunities for the following:
  - Culturally appropriate counselling.
  - Addressing issues of racism, especially in the workforce.
  - Mentoring programs.
  - Financial literacy tutoring, recognizing that increased incomes associated with project employment can potentially lead to family problems, community ostracism and other scenarios. Training of this kind was undertaken at the Voisey's Bay project.<sup>29</sup>
  - Family work-site visits and other communication methods (e.g., email and internet, cell-phone, in-room telephones and teleconference capabilities between workers and families).

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<sup>28</sup> Red Dog Case Study.

<sup>29</sup> Voisey's Bay Case Study.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: INDUSTRY LEADING PRACTICES**

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### *Communication*

Leading operations are engaged in ongoing communication efforts with local communities and Aboriginal organizations about project employment and training (among other topics). This takes the form of regular formal and informal community meetings, newsletters, linkage to community human resource departments and involvement in multi-party committees and programs related to training.

### *Multi-party networks*

Strong connections to local training and educational institutions are a hallmark of leading practice operations. Uranium mining operators in northern Saskatchewan are signatories to the Human Resource Development Agreement with the provincial government. These agreements commit the parties to be part of the multi-party training plan, a consortium that includes northern Saskatchewan educational institutions and is intended to bring all key players together for training program design and delivery. Cameco and AREVA provide planning and program funding to the institutions as well as information regarding upcoming workforce requirements. In response, educational and training institutions are designing and implementing upgrades and training programs to help industry's needs. One institution operates a mobile training trailer that travels from community to community, delivering training.<sup>30</sup>

### *Community-based training*

Leading operations promote the development and implementation of community-based training programs. Diavik has an innovative community-based training program in place that provides classroom and real hands-on training in potential employees' home communities. Additional detail on this program is provided in the training section.<sup>31</sup>

### *Expectations for contractors*

Leading operations retain similarly high expectations for on-site contractors. Contractors working on-site on a continual basis are expected to adopt practices similar to those of the project proponent. Contractors engaged in operations at Diavik must submit a business plan that describes their efforts in the context of what is outlined in the various project Participation Agreements (including training, employment, retention, etc.).

### *Management/supervisory positions*

Leading operations strive to increase the level of Aboriginal participation in employment with management positions. This challenge has been encountered across virtually all resource sectors in both Canada and Alaska. Aboriginal groups regularly express dissatisfaction with their level of participation in these positions. Programs to address this issue have been instituted by some developers, including the establishment of employment targets, mentoring and succession-planning initiatives.

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<sup>30</sup> Cameco/AREVA Case Study.

<sup>31</sup> Diavik Case Study.

**ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT:  
*INDUSTRY LEADING PRACTICES***

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Challenges associated with appointing and retaining Aboriginal people in operations management/supervisory positions are closely tied to the lack of education and capacity that often characterize Aboriginal groups in the early stages of development. It is exacerbated by the need to bring local Aboriginal employees into entry-level positions, and to allow regular attrition at management levels in the companies to take place. Leading operators have realized that it takes a long period of time for this shift into management/supervisory positions to occur and they are developing policies and programs in consideration of this. Recognizing that the majority of its Aboriginal workers are in entry-level and semi-skilled positions, Diavik began developing an Aboriginal leadership development program in partnership with Southern Alberta Institute of Technology. A customized curriculum was complemented with mentoring on the part of a Diavik supervisor. By the end of 2006, 18 participants had successfully graduated from the program.

### ***ADDITIONAL PRACTICAL TIPS***

#### **TECHNOLOGY MITIGATION**

In response to improvements in technology and displacement of entry-level roles, resource developers may be expected to:

- Identify alternative jobs outside of those that are usually pursued by Aboriginal participants.
- Provide offsets – Identify other means of providing benefits to communities in the absence of project-related employment.

#### **JOB SHARING**

One approach to attracting and retaining Aboriginal employees may be to implement a job-sharing system. Requiring work on a part-time basis, potential benefits include:

- Possibility of leading to reduced turnover in physically or mentally demanding jobs.
- Opportunity for job-share partners to cover for one another if there is a need to be away from work (e.g., for hunting).
- Opportunity for job sharers to learn from, and provide support to each other.

#### **JOB GUARANTEES**

Job guarantees can be a valuable tool for maximizing the uptake of Aboriginal participants into training programs.

#### **SALARY REPORTS**

One option for gauging the success of Aboriginal hiring processes, while also providing a built-in accountability mechanism, is to monitor and report the total combined salaries of Aboriginal staff. This allows the developer to describe the overall benefits to local communities in the context of employee salaries. At the same time, since this value reflects the number of Aboriginal staff and their classifications, it can have the effect of holding the developer accountable for endeavouring to hire and develop Aboriginal employees in higher salary and/or higher skill areas.

## **PRELIMINARY FINDINGS: TRAINING**

Low educational levels and lack of wage employment experience have been, and continue to be, major barriers to Aboriginal participation in resource development jobs. Consequently, training is a key factor in achieving high participation levels.

Leading practice developers are engaged in the development and implementation of large-scale human resource development strategies intended to bring together Aboriginal groups, companies and on-the-ground operations personnel. Jointly developed strategies whereby human resource profiles of long-term workforce needs are used to create strategies for moving Aboriginal participants into supervisory positions represent a valuable tool for developers and Aboriginal groups alike. Following on this, a multi-party approach (involving government and other parties) can be taken to help fill the gap between existing education levels and future employment.

The most substantial training efforts are those that have a high level of involvement on the part of government, through both funding and active participation. This allows proponents to draw upon a larger pool of training resources, and also serves as a basis for regional wide program development and coordination.

Aboriginal groups are becoming more involved in the planning, development and implementation of pre-project training programs. For example, in response to perspectives brought forward by local Aboriginal groups, the recent Wuskwatim project opted for community-based rather than centrally offered training to increase the number of people recruited and raise the retention rate. Central to this involvement, the programming that is being offered often involves skills that will be useful within the community (e.g., plumbing and carpentry). This helps to ensure that trainees can find employment after the life of a project.

Supervisory/management training initiatives are becoming more common, with developers realizing the challenges and time associated with successfully moving Aboriginal employees into these areas.

Developers engaged in leading practices are devising or participating in scholarship programs that go further than simply giving local Aboriginal workers the skills to work on-site. Rather, there is a view towards maximizing opportunities for local people to contribute to the larger economic success of their communities. The resulting skills, knowledge and experience can work towards advancing the aspirations of their respective communities, moving them from a position of entitlement in the benefits of development of their natural resources to a position of initiating and driving this development.

Training is expensive, time-consuming and it can be difficult to achieve good results.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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Notable practices adopted by Saskatchewan's uranium mining industry and the Diavik diamond mine for maximizing Aboriginal training opportunities have consisted of the following:

### **CAMECO AND AREVA**

- Coordinated efforts between project proponents, government and Aboriginal groups that are formalized in multi-party agreements. In Saskatchewan, signatories to the Multi-Party Training Plan include Cameco, AREVA, Claude Resources, Northlands College and six First Nations and Métis authorities. Proponents also have representation on the Northern Apprenticeship Committee, Mineral Sector Steering Committee and Interprovincial Association on Native Employment and are guided by human resource development agreements and plans in accordance with their project surface lease agreements.<sup>32</sup>

### **DIAVIK**

- Providing both pre-project and on-the-job training by incorporating a combination of classroom and work simulation or experience approaches. As noted previously, Diavik has an innovative, community-based training program in place that provides classroom and hands-on training in real construction settings located in local communities.
- Providing site-based training for overhead cranes, small loaders, aerial life/platforms, technology systems and security systems. Other training areas include, but are not limited to, the following:
  - Process plant operations
  - Process plant maintenance
  - Operations and maintenance
  - Mine operations and equipment
  - Mine maintenance

## **KEY ASPECTS OF LEADING PRACTICES: TRAINING**

Canadian and Alaska leaders-in-training have a number of common approaches, or practices, that have been instrumental in achieving success. These can provide a useful starting point for developing an effective Aboriginal participation program and are described below:

### *Community involvement*

Plan key roles in community research, such as surveys and career fairs, to better develop links with the community. Foster high levels of involvement on the part of Aboriginal groups in training program development and implementation. This allows the parties involved to have a stake in the training process and is more likely to result in policies and procedures that suit the needs of the community and individuals.

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<sup>32</sup> Cameco/AREVA Case Study.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: INDUSTRY LEADING PRACTICES**

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### *Community-based programming*

Developing community-based programming is central to leading practices. This alleviates potential problems associated with having students leave their communities for major centres.

### *Local community needs*

Develop training targets that are not only intended to meet the needs of the project workforce but those of local communities as well. Certain occupations lend themselves well to serving both the project and community, including that of plumbers, carpenters and certain equipment operators. Ideally, these types of training opportunities provide further incentive for local Aboriginal people to access training while also ensuring that there are still skilled people living in the communities.

### *Multi-party approach*

Foster networks and partnerships involving various levels of government, educational institutions and Aboriginal stakeholders, in order to access funding and to coordinate efforts.

### *Supervisory/management training*

Develop programs intended to expedite the appointment of Aboriginal employees into more advanced supervisory/management positions. The most successful endeavours begin steering employees toward these types of positions early on in their career and provide ample opportunities for training, mentoring and other forms of support.

### *Formalized agreements*

Identify processes, targets, etc. in formalized agreements. This increases accountability for all parties involved and is most effective if periodically revisited and renewed. Dedicated resources to monitor the progress of these types of agreements are ideal.

## **CHAPTER 7: SUPPLY-CHAIN PARTICIPATION**

Along with increased participation in project development and project revenues, Aboriginal groups are becoming increasingly involved in the supply chain aspects of resource development. A growing number of companies are increasing the levels of participation on the part of Aboriginal businesses in their operations. Some have adopted specific procurement policies (e.g., supply-chain preference policies), while others have promoted joint ventures in order to provide opportunities for Aboriginal suppliers. Some companies have decided to work cooperatively with Aboriginal groups where there is limited capacity for the involvement of these entities.

Data collection for this section focused on the following areas:

- Forms of direct supply-chain participation involving joint ventures or equity ownership for the local community.
- Local supply-chain preference.
- Nominated contracts.

### **PRELIMINARY FINDINGS**

Opportunities for supply-chain participation are viewed as one of the most desirable project benefits to local Aboriginal groups. As in the case of employment and training, those operations engaged in leading practices have extensive, often long-standing policies and programs intended to maximize these opportunities. However, it is important to note what is now being experienced in some jurisdictions. As Aboriginal groups become more effective in asserting their rights and leveraging benefits from resource development, opportunities beyond supply-chain participation are gaining prominence (e.g., equity participation, involvement in project planning and related decision-making processes).

The leaders in this facet, both in Canada and Alaska, have achieved very high levels of Aboriginal participation and have been applying leading practices since the 1980's.

High levels of successful Aboriginal engagement in supply-chain participation associated with development projects are typically characterized by an environment in which some form of resource development has taken place for an extended period of time, allowing local Aboriginal groups a sufficient time period over which to build relevant capacity. In the Northwest Territories, Aboriginal engagement policies have evolved from earlier periods when gold and base metals were the primary focus of activities in the region to the subsequent development of the Ekati and Diavik mines. In northern Saskatchewan, local Aboriginal groups typically do not retain land or resource ownership. However, efforts aimed at promoting Aboriginal engagement in supply-chain opportunities on the part of Cameco and AREVA (and their predecessors) have been underway for some time. As a result, a wide range of successful Aboriginal-owned and operated businesses have been serving the needs of industry.



## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: INDUSTRY LEADING PRACTICES**

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The drivers for trying to achieve high levels of Aboriginal supply-chain participation are different for each project, although in both cases the attitude of the owners of the resource towards Aboriginal participation was a key factor. As in the case of training and employment, uranium-mining proponents in Saskatchewan have been guided by regulatory requirements for Aboriginal participation in supply-chain opportunities as outlined in project surface lease agreements entered into with the provincial government. In the case of Red Dog, ownership of the resource base enabled the Native Corporation that represents the interests of local communities to lever higher Native participation commitments in the project. In the Northwest Territories, various land claim settlement processes had either been completed or were underway during Diavik project development. Although not explicitly required under existing legislation, there were political expectations for developers to negotiate IBAs with Aboriginal participants. The developers realized that projects were unlikely to proceed unless they had local support. Maximizing the opportunities for supply-chain participation was seen as an effective vehicle for garnering such support.

In both Canada and Alaska, operations in the mining sector have been, and continue to be, leaders in Aboriginal engagement in supply-chain participation, making the lessons from this area of particular value and relevance to mining projects. The Saskatchewan uranium-mining industry, Alaska Red Dog mine and Northwest Territories diamond mining industry have been leaders in Aboriginal engagement in supply-chain opportunities. Alberta oil-sands operators (e.g., Syncrude) have also been heavily engaged.

### **CAMECO AND AREVA**

- In 2005, Cameco spent approximately \$163 million on northern services, or 85 percent of the total services in support of their northern operations. This has resulted from a business development strategy, outlined in part in their Preferred Northern Supplier Program that provides preferential opportunities for business proposals containing northern and Aboriginal involvement. Targets and commitments are generally guided by project Surface Lease Agreements.
- The number and size of Aboriginal-owned contractors has increased over time. These have often evolved from joint venture partnerships to become 100 percent Aboriginal-owned operations. Notable northern suppliers include the following:
  - Northern Resource Trucking (joint venture with 71 percent Aboriginal ownership; nine First Nations and three Métis communities).
  - Mudjatic/Thyssen (joint venture with 50 percent Aboriginal ownership).
  - Tron Power and SLR Tron (joint venture with 100 percent Aboriginal ownership by English River First Nation).
  - Snake Lake Construction (100 percent Aboriginal ownership).
  - Athabasca Catering (100 percent Aboriginal ownership on the part of five First Nations).<sup>33</sup>

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<sup>33</sup> Cameco/AREVA Case Study.

DIAVIK

- Compared to Cameco and AREVA, Diavik is a relatively recent player on this front and has outlined the majority of its Aboriginal engagement promotion activities in community-specific cooperation agreements and the larger project socio-economic agreement.
- A local supply-chain preference policy has been implemented and some contracts are nominated, particularly with those Aboriginal groups located in the vicinity of operations. Approximately 50 percent of contracts are out-sourced to Aboriginal businesses, including site service, aviation, heavy equipment, and blasting contracts.
- Realizing that market conditions and working relationships can change over time, long-term contracts are periodically re-visited and re-costed by Diavik and the contractors. Over the last five years, more than \$1 billion has been directed towards Aboriginal businesses.<sup>34</sup>
- Notable Aboriginal enterprises include the following:
  - Tli Cho Logistics – Originated as a partnership between the Dogrib Rae Band's Behcho Ko Development Corporation and ATCO Frontec. Engaged in site services including road maintenance, facility management (airport, power house and water and sewage treatment) and manages fuel handling activities. As of June 2005 the company is 100 percent Behcho Ko owned.
  - Ekati Services – A joint venture between Deton'Cho Investments North Ltd., and PTI Group (Edmonton), Ekati Services provides camp and mine management services (food preparation, housekeeping, maintenance, procurement, laundry, administration and other services).
  - Denesoline Corporation – Owned by Lutsel K'e Dene band. This is a business development corporation with firefighting, ice road maintenance, survey stake production, big game hunting and outfitting, residential construction and other general contracts. Involved in a joint venture (Western Denesoline Explosives) that supports Diavik's explosives program.
  - Others – SECURECheck supplies security services (Inuit-owned); Kitikmeot Cementation Mining and Development provides underground mine services (partnership between Inuit-owned Kitikmeot Corporation and Cementation Canada); Lac de Gras Constructors provides logistics, construction contract mining and site services including expertise regarding Diavik's water retention dikes (joint venture between Peter Kiewit Sons Ltd., and majority Inuit-owned Nuna Logistics).

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<sup>34</sup> Diavik Case Study.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: INDUSTRY LEADING PRACTICES**

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### RED DOG

- The leader in Alaska is the Red Dog lead zinc mine. Whenever the regional Aboriginal corporation (NANA Regional Corporation in this case) can perform work at a price similar to that offered by the competition, the contract will be awarded to NANA. There is typically an implicit understanding that NANA shareholder-operated companies will retain contracts on the project.
- NANA mine-site contracting subsidiaries include the following:
  - NANA Management Services
  - NANA Lynden Logistics
  - NANA/CH2M Hill (formerly VECO)
  - NANA Dynatec<sup>35</sup>

### SYNCRUDE

- Syncrude actively seeks to procure goods and services from firms owned by First Nations development corporations and Aboriginal entrepreneurs, ranging from oil field services to equipment manufacturing, airlines and even hunting and fishing camps.
- By the end of 2006, Syncrude had spent \$132 million in business with Aboriginal-owned (First Nation and Métis) firms through 27 active contracts, bringing the cumulative total spent over the last 15 years to more than \$1 billion.
- Notable Aboriginal contractors include 2000 Plus Ltd. (waste disposal, road work, pest control and environmental clean-up), Fort Petroleum, Air Mikisew and Mikisew Sling and Safety.

## **KEY ASPECTS OF LEADING PRACTICES**

Canadian and Alaska leaders in supply-chain participation have a number of common approaches, or practices, that have been instrumental in achieving success. These can provide a useful starting point for developing an effective Aboriginal participation program and are described below.

### *Promotion of joint ventures with more experienced firms*

Joint ventures (typically characterized by at least 51 percent ownership) are the most successful method for building capacity amongst Aboriginal businesses. Over time it is then possible for Aboriginal owners/operators to build up the knowledge and resources required to retain 100 percent of the company in question. On a continuum of business development Wuskwatim would represent an early stage of Aboriginal involvement in supply-chain participation (mostly joint ventures); Cameco, AREVA and Diavik represent a mix of joint ventures and Aboriginal-owned and operated companies; and Red Dog

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<sup>35</sup> Red Dog Case Study.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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provides an example where the majority of service providers are now 100 percent Aboriginal-owned and operated.

### *Nominated contracts instead of competitive bidding*

Although the usual factors associated with contract tendering are adhered to (cost competitiveness, quality, ability to supply and deliver the goods and services to be provided, timely delivery, safety and environmental record) in lieu of competitive bidding, leading practices are opting for nominated contracts to candidates that are either Aboriginal or have relatively high levels of Aboriginal involvement.

In the early stages, this may require the developer to pay a premium for services; however, through the process, as the capacity of Aboriginal businesses builds, this may lead to a more competitive contracting environment in the future. This approach is often used in conjunction with repackaging of contracts to maximize Aboriginal participation.

### *Supply-chain preference policies and targets*

Leading operations give contracting preference to those companies that have some form of Aboriginal ownership/operation. They also have measurable targets for Aboriginal supply-chain participation. Cameco and AREVA's targets are set out in agreements they have entered into with the provincial government.<sup>36</sup> Diavik's are set out in the project's Socio-Economic Monitoring Agreement and community-specific cooperation agreements (purchases of goods and services through, or from, northern businesses are to be at least 38 percent of the total purchases during construction and 70 percent during operations).<sup>37</sup>

### *Dividing contracts up into smaller packages*

Rather than pursuing large-scale comprehensive contracts that cover a range of products and services, leading developers are providing Aboriginal participants with opportunities to engage in smaller-sized contracts, more attuned to the capabilities of Aboriginal businesses. Various approaches are used, including removing one or more discrete parcels of work from a larger package (e.g., site preparation or road construction from an infrastructure development contract), or breaking the work into input components such as labour, equipment supply, fuel supply, etc. To manage risk and costs, work that is not schedule sensitive and that can be done with little added cost tends to be favoured for this approach.

### *Participatory role*

Leading operations take a more participatory role with Aboriginal suppliers, with active engagement on the part of senior management. Inherent in this is an understanding that supply-chain relationships and market conditions change over time such that contracts are periodically reassessed and revised as necessary.

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<sup>36</sup> Cameco/AREVA Case Study.

<sup>37</sup> Diavik Case Study.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: INDUSTRY LEADING PRACTICES**

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### *Support services*

Leading operations provide support services to potential and existing Aboriginal businesses, including initiating the business development process, assisting in the establishment of joint venture partnerships and specialized contracting arrangements (e.g., identifying and splitting out smaller parts of contracts that are more attuned to Aboriginal business capabilities) and providing technical support and assistance in accessing sources of commercial capital.

### *Close working relationships with all regional participants*

Establishing working relationship with regional participants, including local and regional governments and associated organizations, may involve establishment of, or representation on, one or more advisory committees.

### *Communication*

Leading operations are engaged in ongoing communication efforts with local Aboriginal groups about supply-chain and procurement opportunities. This takes the form of regular formal and informal community meetings, newsletters, linkage to community economic development departments and involvement in multi-party committees and programs related to supply chain participation.

### **ADDITIONAL PRACTICAL TIPS**

#### **OPPORTUNITIES OUTSIDE THE GATE**

Other opportunities falling outside of those that provide direct services to a project represent an area where proponents can direct their Aboriginal business engagement strategies. Examples might include restaurants, taxi-cab companies and other service providers that might participate indirectly from the economic benefits that arise out of a development project.

#### **SEPARATION OF BUSINESS AND POLITICS**

Although this can be particularly challenging for smaller Aboriginal groups, it is often advantageous if their business operations can be separated from their political body. This can help to alleviate the conflicts of interest, delays and other challenges that can arise if project involvement becomes politicized.

## **CHAPTER 8: SHARING PROJECT REVENUES**

Increasingly, resource developers are entering into arrangements with Aboriginal groups that involve some form of participation in project revenues. This may take the form of direct redistribution of revenues to the community (via cash allocations or trust funds), or it may involve equity participation. A number of different scenarios are possible to meet this type of arrangement.

Notably, the discussion is heavily weighted toward equity participation. This is an area that is rapidly emerging as a topic of interest for resource developers and Aboriginal groups. As such, a wide range of information and perspectives has been incorporated into this report.

### **PRELIMINARY FINDINGS**

In contrast to the relatively long-standing leading practices associated with training, employment and supply-chain participation, project revenue sharing is a new and emerging area where leading practices are still in the formative stages and appropriate scope and applicability remain to be determined. In Canada and Alaska, revenue sharing can take a number of different forms and in some cases arrangements involve a combination of the following:

- Payments to Aboriginal participants that retain land/resource ownership;
- Payments to Aboriginal participants in the absence of land/resource ownership;
- Equity participation; and
- Re-distribution of government revenues.

#### **Payments to Aboriginal participants that retain land/resource ownership**

This form of revenue sharing has also been characterized as payment for loss of use of land, and typically applies where an Aboriginal community or organization owns the resource being developed and is able to charge a rental for use of the resource. As owner of the resource, the Aboriginal organization or community is entitled to a share of the revenues in the same way as a private landowner or government resource owner. Notable cases from the mining sector occur in Alaska, including the following examples:

##### **RED DOG**

- The Red Dog lead zinc mine in Alaska has been paying royalties to NANA, a Native regional development corporation, for almost two decades. NANA receives advance royalties from Teck Cominco. Pursuant to a royalty agreement with NANA Regional Corporation Inc., the company pays NANA an annual advance royalty equal to 4.5 percent of Red Dog mine's net smelter return or \$1 million USD, whichever is greater. Now that the company has recovered

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: INDUSTRY LEADING PRACTICES**

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capital expenditures (including an interest factor), NANA receives a payment of 25 percent net proceeds of production royalty from the Red Dog mine, increasing in five percent increments every fifth year to a maximum of 50 percent. Advance royalties previously paid are recoverable against the 25 percent royalty on net proceeds of production.<sup>38</sup>

### **DONLIN CREEK**

- The Donlin Creek gold mine, currently in the construction phase, pays royalties and rentals to Calista Regional Corporation (which retains sub-surface rights) and Kuskokwim Village Corporation (which retains surface rights). Under lease conditions, Calista holds a retained net royalty of 1.5 percent, increasing to 4.5 percent after recovery of mine capital. Annual property payments are made to Calista, as well in the amount of \$200,000, increasing to \$500,000 per year after a feasibility study is completed.<sup>39</sup>

In Canada, Aboriginal groups in oil-producing areas receive royalty payments for oil and gas production that takes place on their reserve lands which are held in trust for the First Nation by the Government of Canada. Similarly, in Alaska, royalties are collected where development occurs on land granted to regional and village corporations through the land claim settlement process. Scenarios of this kind have been in place for several decades. Alaska land claims were settled in the 1970's, while in Canada most land claims in the Yukon, Northwest Territories and Nunavut were settled in the last decade. There are still substantial land claims to be settled in British Columbia, which currently has only a few Treaties in place.

### **Payments to Aboriginal participants in the absence of land/resource ownership**

A portion of the project revenues is distributed to local Aboriginal groups; either directly or to a trust set up to manage the funds for the community. In this case, Aboriginal participants do not retain ownership of the resource.

There is growing interest on the part of Aboriginal groups in Canada in this type of revenue sharing. It offers the advantage of not imposing any financing requirements on the First Nation in order to secure the income stream. Challenges that project proponents have faced include:

- Establishing a formula suitable for determining the form, frequency and amount of payment and its connection to the project costs or revenues.
- Determining who is eligible to receive the funding and putting in place mechanisms to ensure the funding is properly used (there is an increasing interest in establishing trusts to manage funds).
- Ensuring it does not become construed as an entitlement.

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<sup>38</sup> Wuskwatim Case Study.

<sup>39</sup> Donlin Creek Case Study.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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Select developers in Alaska and Canada have been leaders in Aboriginal participation in project revenues.

### **MUSSELWHITE**

- The Musselwhite gold mine in Ontario represents a unique royalty scenario in Canada. In this case, the First Nations retained no surface or sub-surface rights in the area. Rather, it was claimed as their Traditional lands. An Impact Benefit Agreement (IBA) was negotiated with North Caribou Lake, Cat Lake, Kingfisher Lake, Wunnumin Lake, Shibogama First Nations Council and Windigo First Nations Council. The following are notable features of the associated revenue-sharing arrangement (signed in 2001 but following up on previous agreement signed in 1996):
  - Payment of \$6 per oz of gold once the price of gold rose above \$250 per oz.
  - Price received goes up by a dollar for every \$50 per oz increase in the price of gold; up to a ceiling of \$700 (this ceiling has since been removed).

During the initial years of the agreement, the four First Nations communities were getting about \$40,000 per month; however, this has increased significantly with the rising price of gold.

### **GALORE CREEK**

- The Galore Creek mining project is located within the Traditional territory of the Tahltan First Nation in British Columbia. In 2006, NovaGold entered into a comprehensive participation agreement with the Tahltan First Nation and Iskut First Nation that recognized Tahltan rights, title and interests in the project. The following features are included in this agreement:
- Financial contributions to the Tahltan Heritage Trust Fund of \$1 million annually once the mine is in operation. Once certain targets are met, the Trust will annually receive the greater of \$1 million or 0.5-1.0 percent of the net smelter royalty.
- A portion of the Tahltan Heritage Trust Fund will go to Tahltan Nation governance and community development initiatives.<sup>40</sup>

### **AUTUQTUUK FUND (Intrepid Project)**

- The Fund was established to provide grants for the following activities:
  - Improvement of education and training of North Slope Borough residents.
  - Monitoring of health of subsistence resources.
  - Monitoring the impact of oil and gas operations and travel on such resources.
  - Addressing substance abuse on the North Slope of Alaska.
  - In this case, developers ConocoPhillips, Anadarko and Pioneer made a commitment to donate a total of \$150,000 per calendar year to the Fund; this was in addition to providing an overriding royalty interest of 1 percent of all hydrocarbons produced and

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<sup>40</sup> Galore Creek Case Study.



saved or sold from Oil and Gas Leases on lands described in the agreement. Although no commercially significant quantities of oil or gas were found, the Fund would remain in place for seven years.<sup>41</sup>

#### RAGLAN

- The comprehensive agreement signed between Falconbridge and Makivik<sup>42</sup> Corporation was the first IBA signed in Canada in 1995. A key feature of this agreement is monetary compensation and profit-sharing payments to be made to the signatories, which could total more than \$70 million over 18 years.<sup>43</sup>

#### **Equity Participation**

Since the early 1990's, Aboriginal groups in Canada have significantly raised their expectations of benefits from resource development in their Traditional areas. These expectations regarding benefits have broadened from the Traditional areas of employment and supply-chain opportunities, to sharing project revenues and having meaningful influence over project decisions that affect them. Equity participation is seen as a way of accomplishing both types of expectations. This has led to increased pressure on federal and provincial governments, who are the main resource owners and project regulators, and on project proponents, to share project revenues and decision-making with Aboriginal groups in the vicinity of the project and to provide meaningful input into project decisions.

Aboriginal groups have been assisted in advancing their interests by the emergence of stronger and more effective political organizations, improved capacity and tools for dealing with resource management issues affecting their Traditional areas (e.g., resource management boards and land-use plans) and by favourable Supreme Court decisions on the interpretation of Treaty and Aboriginal rights that have strengthened their legal status with respect to use and management of natural resources in their Traditional areas. In some areas of the country, land claim settlements have also been an important contributing factor.

Project proponents have generally been reluctant to offer equity participation to Aboriginal groups in whose lands resource development activities are occurring. Reasons for such reluctance include the following:

- The long period of time required to negotiate such an agreement;
- The high degree of effort required to negotiate such an agreement;
- The high monetary cost incurred in negotiations; and

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<sup>41</sup> Autuqtuuk Fund Case Study.

<sup>42</sup> Makivik Corporation was formed in 1978 to carry out the mandate of the James Bay Agreement of representing the interests of Inuit people in the Nunavik Territory of Quebec. Makivik signed the Agreement on behalf of the SMRQ, Makivik, the Qarqalik Landholding Corporation of Salluit, and the Nunaturlik Landholding Corporation of Kangiqsujuaq.

<sup>43</sup> Raglan Case Study.

## **ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT: *INDUSTRY LEADING PRACTICES***

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- The sizable commitment of senior management time required to negotiate an equity participation agreement and to include the new partner in project planning and decision-making.

Experience suggests that an equity arrangement is likely to be warranted and successful under the following conditions:

- The project is located on reserve or settlement lands and requires formal approval of the local Aboriginal group in order to proceed (e.g., CanAlaska exploration).
- The project is located on Traditional lands and requires the support, or at least the non-opposition, of the local Aboriginal group in order to proceed. The Aboriginal community's support is needed to avoid potential court challenges that would result in lengthy delays, or to secure resource rights and/or regulatory approvals from the federal or provincial government. Canadian forestry and hydroelectric projects are in this category and in each of the cases examined Aboriginal support was retained. Especially valuable was the willingness of NCN to participate as a co-proponent in the regulatory review processes for the Wuskwatim project.
- The Aboriginal group involved requires a very attractive package in return for its support, or at least for its agreement not to oppose the project. Such a package would have to include substantial project benefits and real influence over project decisions that affect the Aboriginal group. This requirement arises in situations where the local people have had a bad experience with previous projects in the area or with the proponent, resulting in strong animosity towards the proponent or project and apprehension about development of similar projects in its Traditional area.
- The project will be sufficiently profitable to accommodate substantial added costs for Aboriginal participatory funding for negotiation, involvement in planning and licensing, community approval process and support during construction and operations.
- The Aboriginal group is well organized and wants a share of project revenues and also wants to have meaningful influence over project decisions that affect the community.
- Proponent shareholders are prepared to share project profits, proponent management is prepared to share project decision making and audits.
- If there is an adversarial past history, the developer is prepared to arrive at a resolution with the Aboriginal group on past damages before dealing with the new development. Once a resolution has been achieved, the Aboriginal leadership is prepared to focus on partnership building and taking advantage of opportunities instead of continuing to hold resentment about the past.

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- The Aboriginal group has internal capacity, likely as a result of past experience, in negotiating large agreements with resource developers.
- The Aboriginal group becomes partner in project planning.
- Very little risk (financial, environmental) to the community is balanced with a high rate of return.
- Only one Aboriginal group is involved (reaching agreement with several is much more expensive, time consuming and difficult, although not impossible as evidenced by Wapawekka Lumber).
- The proponent can assist the Aboriginal group with financing their equity share, having sufficient financial clout to access funds that can be loaned to them. Examples include bridge financing and loan guarantees.

Offering the local Aboriginal community or organization the opportunity to become a shareholder and owner in a project represents one of the most complex forms of revenue sharing that resource developers can engage in. Ownership entitles the community to a share of project profits, but also imposes potential risk if the project is not successful or profitable. Equity is typically offered through earned interest in the project, with the Aboriginal groups given the opportunity to buy company or project shares. In addition to providing income to the community, equity participation is being used in some cases to create a management partnership in the project that gives the community a meaningful influence over project decisions. Aboriginal equity participation is occurring in a number of sectors in Canada; however, no occurrences of equity participation were found in Alaska.

The forestry industry in Canada has been the leader in establishing equity participation arrangements. A number of 50/50 or 49/51 percentage-share sawmill and logging joint ventures have been entered into with local Aboriginal groups. Factors contributing to the high level of joint ventures in this sector include the large areas of land required for forestry operations overlapping with large areas of local Aboriginal Traditional lands, the potential for long-lasting activity due to the renewable nature of the resource and a requirement for less capital investment than most other types of resource development projects. Unfortunately, with the severe turndown of Canada's forestry sector in recent years, some of these operations (e.g., Wapawekka Lumber in northern Saskatchewan) have had to shut down.

The hydroelectric sector is replacing forestry as the leading sector for Aboriginal equity participation in Canada. The recent Wuskwatim project (up to 33 percent Aboriginal ownership) in northern Manitoba has provided equity opportunities to the nearby Aboriginal group on whose Traditional land the project is located. The arrangement has provided the First Nation with significant involvement in project planning. Notably, the project is being carried out by a public-owned electric utility, which makes it easier to secure primary shareholder support. Hydroelectric projects also tend to be of very long duration and have lower financial risk than other types of resource development. On the other hand, these projects have been

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characterized by high capital cost and long construction phases resulting in a long period of time before profits begin to flow.

The proposed Mackenzie Valley pipeline is another notable example of an equity arrangement with Aboriginal organizations whose lands are affected by the project. In this case, the lands are both settlement lands and Traditional lands. The Aboriginal Pipeline Group (APG) consisting of the Deh Cho, Sahtu, Gwich'in and Inuvialuit, entered into a memorandum of understanding with the Producer Group (Imperial Oil, ConocoPhillips, Shell Canada and ExxonMobil), giving the Aboriginal participants the right to own a third of the proposed McKenzie Valley pipeline. The APG has the discretion to offer participation to the other settlement areas of the Northwest Territories (the Akaitcho, Dogrib, Salt River, North Slave Metis Alliance and South Slave Metis Alliance). The APG has formed a limited partnership to participate in the project. This project offers an innovative approach to helping the Aboriginal participant finance its equity share. The project proponent, TransCanada Pipelines Limited, has offered to provide funding to the APG for participation in project definition. If there is leftover funding then the APG can use it for financing its equity share.<sup>44</sup>

There are examples in Canada of Aboriginal groups purchasing and developing mining operations. Torngait Ujaganniavit Corporation (TUC) is 100 percent owned by the Labrador Inuit Development Corporation. Through early involvement with an Italian marketing firm, stone quarries and processing facilities have been established in several areas of Labrador.<sup>45</sup> Although some assistance was provided by Demetre in the early stages, TUC has been provided with an opportunity to retain 100 percent ownership of these operations over time.

Revenues flowing from cigarette sales have been instrumental in allowing the participation of some Aboriginal groups in mining, including a 50/50 partnership between Mohawk Investment Group and the Peter Ballantyne Cree Nation in northern Saskatchewan on the Noble Bay Graphite Mine and Mill project.<sup>46</sup> Recently, a Memorandum of Understanding was signed between Wahnapiatae First Nation and Mohawk Garnet Inc., a corporation owned by members of the Six Nations of the Grand River. This Aboriginal-owned garnet mine in Ontario is considered one of the largest assayed garnet deposits in the world.<sup>47</sup> In this case, acquisition and development of the mine has been undertaken solely by the Aboriginal groups involved.

Outside of these (and a few other) examples, there are few examples of mining case studies in which Aboriginal parties have retained some level of ownership in the project. This includes projects operated by some of the most progressive companies in Canada with regard to Aboriginal engagement (e.g., the northern Saskatchewan uranium mining companies and the Northwest Territories diamond mining companies). An intriguing recent development in this sector is an equity initiative of CanAlaska for their uranium exploration activities in northern Saskatchewan. For two separate projects, CanAlaska has

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<sup>44</sup> Mackenzie Valley Gas Project Case Study.

<sup>45</sup> Gateway to the North. Retrieved from: <http://www.goosebayairport.com/Goose%20Bay%20Ovrun.pdf>. Verified April 5, 2008.

<sup>46</sup> The tycoons with a global reach. Retrieved from: <http://www.caledoniawakeupcall.com/smuggling/061004spectator.html>. Verified April 5, 2008.

<sup>47</sup> Mine a first for natives; Garnet company located on the Wahnapiatae First Nation. Retrieved from: <http://www.thesudburystar.com/ArticleDisplay.aspx?e=982611&auth=Carol+Mulligan>. Verified on April 5, 2008.

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offered local First Nations a 51 percent share in any discovery that is made through a stock offering with no financial input required on their part. Significantly, the activity is taking place on the reserve lands of these First Nations (Fond du Lac and Black Lake).<sup>48</sup> While such an attractive offer might be possible in the context of exploration activity, it is unlikely that it could be offered for a defined development prospect. The point-source nature of mining development (high initial costs, private sector ownership and short, uncertain project life) has contributed to low levels of equity participation in Canada's mining sector.

Aboriginal groups face several significant challenges with regard to entering into an equity arrangement with a resource developer. A resource developer interested in an equity arrangement needs to be aware of these challenges and must be prepared to be patient while the Aboriginal group addresses them, or where appropriate, to provide support in addressing these challenges. The following are examples of challenges that may be faced by Aboriginal groups entering into equity arrangements:

- Lack of funding available to Aboriginal groups to pay for their share.
  - Most Aboriginal groups lack sufficient funds to meet basic community needs. Furthermore, they do not have title to their reserve lands that are held in trust for all the members by the federal government. This inhibits their ability to access private capital. The federal government is typically not prepared to make equity capital available to participate in resource development opportunities. The Mackenzie Gas Project and equity participation on the part of the Aboriginal Pipeline Group (APG; consortium of First Nations) provides one interesting scenario. In this case, a third party, TransCanada offered to provide the APG with \$80 million in financing during the project planning stage (e.g., for involvement in feasibility study and EA processes). APG has the option of using this financing (i.e., any amounts remaining after the feasibility study and EA process) to finance their equity share.
  - Some Aboriginal groups have obtained bank or venture capital financing on the basis of projected project profits. However, a lack of previous experience with this type of financing may limit what they can obtain. Project proponents with a strong interest in an equity arrangement with Aboriginal groups should be prepared to provide assistance with regard to securing a sizeable portion of the funds required to buy shares. One approach is for the proponent to itself secure the needed funds, and then loan the funds at cost. The Aboriginal group can repay the loan with income received from project profits. While this seems straight forward, there are many issues involved, including the proponent's own capacity to access the required type of capital. Public-owned utilities with loan guarantees available from their government owners (as was the case for the Wuskwatim and Snare Cascades hydroelectric projects), likely have greater capacity for this type of arrangement, than privately-owned organizations.
- A lack of resources or capacity available for negotiating complex business agreements – A project development agreement will need to be negotiated between a resource developer and Aboriginal group. The negotiation process is a time-consuming, highly technical process

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<sup>48</sup> CanAlaska Case Study.

requiring teams of lawyers, financial experts and engineers and client representatives for both parties. Leading a negotiating team in such a process can be a daunting task even for seasoned negotiators. Some Aboriginal groups do not have a wide range of experience to draw upon in order to negotiate such agreements, and consequently are not familiar with how to effectively organize their team or how to provide effective leadership and direction on their side of the negotiation. Aboriginal groups are forced to rely on outside experts to perform this crucial role, reducing the meaningful involvement of the community in this key process.

- Governance disparity – Equity can bring with it membership on the board of directors for the project. Developers will usually have more experience in this role, giving them an advantage over their less-experienced Aboriginal board members. This can accentuate the advantage that the developer will have as the majority shareholder.
- Making the transition from adversary to partner - Where damage from previous developments is part of the project context, the Aboriginal group is faced with shifting its view of the project developer from one that has historically been adversarial to one that is cooperative. The Aboriginal leadership needs to set the tone for this shift. Where this transition cannot be made, it is unlikely that a partnership-type of equity arrangement will gain community approval.
- Communicate equity arrangements and their implications – Equity arrangements in major projects are new to most Aboriginal groups. Few members would be familiar with the business concepts, financial structures and legal requirements that underlie such arrangements. Combined with the complex and highly technical nature of project development negotiations and agreements, this makes it very hard to explain these arrangements effectively and credibly to community members. The problem of credible communication is further exacerbated by the continuous changes and high uncertainty of project financial information and projections. This communication hurdle makes it difficult to convince the community membership of the advantages of proceeding with such an arrangement. In such situations, it can be easier for community members to come up with potential problems than to develop an understanding of what is being proposed and its associated benefits.
- Long period of time before profits accrue – Depending on the type of project, and project economics, it takes from five to 15 years for a project's profits to accrue from the start of project planning. With large backlogs of unmet basic needs on most reserves, it is difficult to build enthusiasm for long-term propositions like equity arrangements.
- Higher risk profile of an equity arrangement – Being an equity owner is generally riskier than other forms of revenue sharing as profits are less certain and owners have liability responsibilities. The situation is more problematic with mining projects where commodity prices, and hence profits, are quite cyclical and the project duration is generally short.

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Projects, whose revenues are regulated, such as pipelines, have more predictable revenues and tend to be of longer duration. Renewable resource projects usually have longer lives and duration of profits.

Despite the risks and challenges associated with equity participation agreements the expectations regarding this type of arrangement in resource development are increasing among Aboriginal groups. Effective engagement with Aboriginal groups in light of this expectation is likely to be an area of emerging leading practice over the next several years.

### **Re-distribution of government revenues**

Under current fiscal arrangements in Canada, the federal government typically receives the majority of revenues from royalties and land lease sales, while, it is argued, the municipal, territorial and Aboriginal governments bear most of the economic and social costs associated with resource development. Aboriginal groups are lobbying for the devolution of control and administration over resources in conjunction with revenue sharing between Aboriginal governments.

As part of their comprehensive land-claims settlement, the Gwich'in and Sahtu Tribal Councils in the Northwest Territories (Canada) collect resource royalties at the rate of 7.5 percent of the first \$2 million received in royalties by the Canadian government and 1.5 percent for any royalties received thereafter (per year).

The Province of British Columbia (Canada) announced in October, 2008 that revenue sharing will be included in discussions between the Province and First Nations where new mining projects are being developed. Discussions will be taking place to determine how that revenue sharing takes place.

### **KEY ASPECTS OF LEADING PRACTICES**

The Canadian and Alaska leaders in this aspect of Aboriginal engagement have a number of common approaches and practices that have been instrumental in successfully involving Aboriginal groups. These approaches are described below, and provide a useful starting point for developing an effective Aboriginal participation program.

#### *Recognition and respect for Aboriginal aspirations*

This is an area that has gained increasing attention over the last five to 10 years. Leading practice developers are recognizing and respecting the aspirations of Aboriginal groups to retain project revenues and working with them to find mutually agreeable solutions.

#### *Acknowledgement of Traditional resource areas*

Leading practice developers are acknowledging the rights of Aboriginal groups to areas that fall outside of reserve lands.

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### *Trust funds*

Leading practice developers are working with Aboriginal groups to set up trust funds (and similar mechanisms) into which project revenues can flow, with a view towards ensuring the long-term sustainability of the communities.

### *Equity participation*

Leading practice developers are exploring or becoming fully engaged in providing opportunities for equity participation on the part of Aboriginal groups in resource developments. They are recognizing the benefits of providing an ownership stake to the Aboriginal groups including the increased likelihood of community support.

### *Proponent support for equity participation*

In those cases where equity participation arrangements with Aboriginal groups have been pursued, leading practice developers are taking steps to facilitate this involvement, including participatory funding and fair interest loans.



## **CHAPTER 9: IMPLEMENTATION**

Achieving success in Aboriginal engagement requires a combination of sound practices such as those described in the previous sections and effective strategies for implementing those practices. A well developed and supported approach to implementation is a common characteristic of leading practices in Aboriginal engagement.

Our case studies have identified the following key considerations with respect to implementation:

- Personnel
- Continuity
- Leadership
- Resourcing
- Tracking process
- Business planning

### **PRELIMINARY FINDINGS**

#### **Personnel**

Ground level personnel that retain operational accountabilities, close ties to the specific project and the Aboriginal groups are replacing Aboriginal relations departments located away from the work-site and communities. Leading practice proponents are moving away from having dedicated head office staff implementing Aboriginal engagement initiatives. There is an increasing emphasis on having northern or community affairs activities directed by people at, or near, the work-site. Responsibilities for Aboriginal engagement are being integrated into the job descriptions of senior staff working at the project site. As a result, Aboriginal engagement practices become integrated into everyday operations. Diavik is a leader in this regard.

#### **Continuity**

Projects often run for many years, and over this same period of time key players for both the project proponent and Aboriginal group can change. Changing key players can affect relationships and undo previous results or outcomes between the parties. Leading practitioners are adopting a number of strategies, including community-wide engagement and structured, institutionalized relationships to ensure smooth transitions and continuity of relationships in the event of major personnel or project changes.

Specifically:

- While support from elected leadership is critical for maintaining positive working relationships with communities, practice leaders are extending their relationship-building with the community beyond the elected leadership to broader and longer-standing elements of the community and are striving for broader community support. This reduces the risks associated with the frequent changes in the elected leadership that are common in Aboriginal groups. Above all, however, it should be recognized the autonomy and absolute decision-making power of the formal leadership of the Aboriginal group.
- Although continuity of senior staff from early planning stages through construction and operations would be ideal, it is not realistic. To address this source of discontinuity, emphasis is being placed on structured relationships based on positions in the proponent's or Aboriginal group's organization instead of relationships between particular individuals so that interaction between the two can continue to work effectively when changes occur.
- Turnover of mining personnel is unavoidable. Ideally, to minimize the negative impacts of this turnover, one or two people might be retained to ensure continuity and retention of historical knowledge. This would not necessarily have to be a project manager, but rather anyone that has good knowledge regarding the project from early relationship-building exercise to the current state of affairs.
- Similarly, some continuity of community personnel is crucial. Relationships between developers and Aboriginal groups are developed over a period of time. Effective maintenance of these relationships requires that the people involved have a long-term understanding of issues and concerns in the community.
- In addition to continuity associated with leadership and other personnel, it is important to have continuity of policy at the community level. This can help to bridge political differences between administrations and ensure some level of continuity when leadership changes occur.

### **Leadership**

Leading practices in implementation are characterized by superior leadership on the part of both the project proponent and Aboriginal group. Key aspects of this leadership for the proponents include:

- Senior corporate view and commitment toward building relationships with Aboriginal groups and reaching agreements that are mutually beneficial. Providing support to staff who will be implementing the commitment.
- Willingness on the part of senior leadership to engage in open dialogue with their Aboriginal leadership counterparts and help address difficult problems through leadership discussions. Maintaining an open-door policy for Aboriginal leaders.

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- Willingness to participate in important ceremonies and events in, or with, the Aboriginal group.
- High degree of respect for Aboriginal people and their culture.

### **Resourcing**

Practice leaders provide adequate staff and financial resources to enable effective implementation of their initiatives with Aboriginal groups and allow them to be fully and fairly engaged.

The relative lack of capacity that often characterizes an Aboriginal group's involvement in large-scale resource development projects often requires that operators provide funding to the Aboriginal group. While funding for project planning activities is becoming more common, funding to facilitate implementation during the construction and operations stages is a new practice. Leading operators have used two approaches:

- Implementation funding that enables the Aboriginal group to establish their own project implementation office, hire personnel, retain various professional consulting services, office space, etc. Among other things, this office keeps track of and facilitates agreement implementation, coordinates community involvement in project opportunities, participates in project monitoring and reviews and keeps the community informed about project progress and impacts.
- Direct assistance for accessing opportunities (e.g., helping the Aboriginal group set up a joint venture or other business entity to become engaged in the project). Cameco and AREVA have had great success in this regard.

Proponent assistance with resourcing and agreement implementation is closely tied to the individual circumstances of the Aboriginal groups that are being engaged (and the latter's associated level of capacity). For example, in Alaska the Native Regional Corporations are well-established and have a wealth of knowledge and experience from which to draw. Similarly, in the case of Northwest Territory diamond mining, the Tlitcho and Inuit are approaching a very high level of capacity.<sup>49</sup> As a result, they are not as dependent on proponent support as others might be (e.g., NCN in the case of Wuskwatim).

An outstanding example of leading practices in implementation-related resources is the Trans-Alaska Pipeline System.

### **TRANS-ALASKA PIPELINE SYSTEM**

- The Utilization Agreement between the Alyeska Pipeline Company and the U.S. Department of the Interior is intended to increase Alaska Native employment, training and promotional opportunities. It is reviewed every three years.

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<sup>49</sup> Diavik Case Study.

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- Section 2.1 of the agreement sets out the following commitment of resources by Alyeska - \$25 million (which includes administrative costs) over the 12-year period (1996 through 2007).

### **Tracking progress**

Careful tracking of progress in implementation of agreements and commitments has been a central component of virtually all leading practices. Effective tracking is crucial to ensuring that the conditions of agreements are being fulfilled and targets are being achieved. Trans-Alaska Pipeline System is a leader in this area. A new approach to tracking involves doing it with the Aboriginal group and has the advantage of transparency and demonstrated accountability. An extensive tracking system is in place for the Trans-Alaska Pipeline System.

### **TRANS-ALASKA PIPELINE SYSTEM**

- Trans-Alaska's agreement with senior governments outlines an extensive and meticulous formula for tracking training and employment success that considers full-time versus part-time employment, the nature of training (e.g., twice the credit for training that is intended to lead to higher positions), educational scholarships (e.g., \$30,000 is considered a job opportunity) and special assignments (e.g., each special assignment that leads to job advancement is counted as  $\frac{1}{4}$  of a job opportunity).
- During a given year, if a specified level of Native employment is not attained, then the proponent makes funds available to create the number of additional educational or employment opportunities that would equal this level of employment.<sup>50</sup>

Auditing mechanisms are increasingly being viewed as a means of tracking the success of implementation efforts. Ideally, these are proponent-driven rather than being initiated or mandated by government or international efforts (e.g., ISO 14001 certification related to environment, health and safety policy and procedures).

Those institutions and procedures that have been established to monitor implementation, particularly those that have been designed jointly by both Aboriginal groups and resource developers, should be embraced. Effective utilization of these reduces the potential for local people to take other measures to have their voices heard. For example, the Alaska Eskimo Whaling Commission (AEWC) and coastal zone management areas in Alaska provide a forum for local people to have regular participation in the monitoring process.

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<sup>50</sup> Trans-Alaska Pipeline System.

### **Business planning**

Leaders are moving towards a joint business planning approach to implementation of Aboriginal engagement initiatives, with attention to the identification of the following matters:

- Scope of activities with associated targets
- Responsibilities and consequences
- Timeframes
- Resources
- Linking relationship timelines and project timelines

This approach is currently be utilized by Diavik.

### **DIAVIK**

- Each Participation Agreement negotiated with the regional Aboriginal groups calls for the creation of a joint implementation committee to outline responsibilities, tasks and timelines for reaching project targets and fulfilling obligations.

### **KEY ASPECTS OF LEADING PRACTICES**

The Canadian and Alaska leaders in implementation have a number of common approaches, or practices, that have been instrumental in achieving success. These can provide a useful starting point for developing an effective Aboriginal participation program and are described below:

#### *Accountability*

Responsibilities (with timelines) outlined for key personnel to ensure effective implementation. For example, Section 29 of the Federal Agreement and Grant of Right-of-Way attached to the Trans Alaska Pipeline clearly outlines the responsibilities of the pipeline owners and contractors. Compliance is monitored annually.

#### *Contingency*

Developers engaged in leading practices ensure that resources are in place to adequately address any major challenges that present themselves during project construction or agreement implementation. For example, the Good Neighbour Policy attached to offshore oil production in Alaska outlines the resourcing and responsibilities associated with mitigation that have to be followed in the event of a major negative environmental impact.

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### *Consultation*

Consultation, characterized as early and often, where the information exchange takes place on behalf of both the project proponent and Aboriginal group.

### *Formalized agreements*

Formalization of an implementation protocol in an agreement. Some level of flexibility and adaptability is ideal.

### *Community-wide engagement*

To ensure that there is broad-based, community support for implementation. This also assists in the event that there are changes in the formal leadership of the Aboriginal group involved.

### *Structured institutionalized relationships*

In order to ensure smooth operation in the event of major personnel and/or project transitions.

### *Personnel*

Ground level personnel that retain close ties to the specific project and the Aboriginal groups involved (rather than an Aboriginal relations department located away from the work-site and communities).

### *Resourcing*

Adequate resources (financial and otherwise) to allow Aboriginal groups to be fully engaged in implementation.

### *Tracking*

Systems in place to track the progress of implementation, often with associated committees, reporting procedures, etc.

***ADDITIONAL PRACTICAL TIPS***

**CONFIDENTIALITY AS COUNTERPRODUCTIVE**

The confidentiality that is often associated with agreement-making can be an impediment to successful implementation and a barrier to transparency.

"...it has been suggested that confidentiality clauses be avoided, as these can hinder learning amongst signatory groups, reduce accountability, and affect the evaluation of agreements." (Prno, 2008)

**THE COMFORT OF MONEY**

There is a risk that, once project revenues and benefits begin to flow, those involved in developing and monitoring project-related agreements become complacent. It is essential that selected portions of long-term agreements be reviewed at scheduled intervals throughout the life of the agreements.

**COLLECTIVE AGREEMENTS**

Resource developers can be presented with unique challenges where workplaces are subject to one or more collective agreements. This is particularly the case when Aboriginal hiring preferences are in place, which can work against, for example, seniority policies. In addition, ratios of entry-level to experienced workers outlined in collective agreements can create difficulties for resource developers seeking to increase Aboriginal employment levels. Leading practice developers are ensuring that they have taken into account these issues when identifying employment and training targets.

**LEADERSHIP SIGN-OFF**

An effective means of ensuring that resource development activities are consistent with community priorities is to seek sign-off on project implementation plans from leadership at regular intervals.

Key elements of an effective implementation plan include defining the scope of activities (with identified targets), responsibilities and consequences, timelines and resources (and the linkage between them) in addition to monitoring and review. This can then be brought to both corporate and Aboriginal leadership to ensure mutual agreement on the plan, its priorities and how to resource its implementation.

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## **CHAPTER 11: APPENDICES**

### **APPENDIX 1 - CASE STUDIES**

The following projects/operators were considered within the context of this research. The list includes brief commentary on some of the factors that influenced the approach that the developers took in their Aboriginal engagement efforts. For several reasons, including the availability of information and the specific topic of interest, some cases have been examined to a greater degree than others.

#### ***Mining – Canada***

##### *Diavik (Northwest Territories, Canada)*

There are a number of influential Aboriginal groups in the region, in addition to various settled and unsettled land claims. Diavik has also had to follow on the legacy and performance of the Ekati diamond mine.

##### *Cameco/AREVA (Saskatchewan, Canada)*

Proponents have been driven by the socio-political sensitivity and high profile of the uranium industry in conjunction with a socially conscious provincial government. Stringent requirements are in place through surface lease agreements for Aboriginal employment, business and others.

##### *Snap Lake (Northwest Territories, Canada)*

There are a number of influential Aboriginal groups in the region, in addition to various settled and unsettled land claims. Diavik has also had to follow on the legacy and performance of the Ekati diamond mine.

##### *CanAlaska (Saskatchewan, Canada)*

With two proposed projects (Fond du Lac and Black Lake) located on Aboriginal-owned (reserve) land, the operator in this case has had to offer an attractive enough scenario to ensure approval from the Aboriginal groups to move forward with exploration activities.

##### *Musselwhite (Ontario, Canada)*

This project is located within the Traditional territories of several Aboriginal groups.

##### *Victor (Ontario, Canada)*

As in the case for the Musselwhite mine, this project is located in Aboriginal Traditional territory.

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### *Galore Creek (British Columbia, Canada)*

The project is located on Aboriginal Traditional territory. Land claim processes are ongoing throughout much of the province of British Columbia with resource developers typically operating in an environment of uncertainty with respect to land/resource rights. The proponents in this case (Teck Cominco, NovaGold) have opted to partner with the local First Nation.

### *Raglan (Quebec, Canada)*

The project falls within the region that is administered by the Aboriginal Makivik Corporation, the regional Inuit entity assigned to oversee implementation of the James Bay and northern Quebec Agreement, the first of Canada's modern-day land claim settlement agreements. Although the project is not located in Aboriginal-owned land, Falconbridge needed the shore for shipping and was concerned that an Inuit offshore claim recognized by the federal government could affect the project.

### *Voisey's Bay (Newfoundland & Labrador, Canada)*

The proposed undertaking is in an area of overlapping land claims by the Labrador Inuit Association (LIA) and the Innu Nation. Some certainty has been obtained with the former as a land claim settlement agreement was reached with the government. Negotiations are still underway for the Innu Nation.

### *Polaris Minerals (British Columbia, Canada)*

Projects located on Aboriginal Traditional territory. Land claim processes are ongoing throughout much of the province of British Columbia with resource developers typically operating in an environment of uncertainty with respect to land/resource rights. The proponent has opted to provide equity participation opportunities to local Aboriginal groups.

## **Mining – Alaska and Australia**

### *Red Dog (Alaska, USA)*

Northwest Arctic Native Association (NANA) retains surface and sub-surface rights where the project is located. The operator (Teck Cominco Alaska) was selected by NANA as a partner in the project as a result of their commitment to maximizing opportunities for Native benefits.

### *Donlin Creek (Alaska, USA)*

Calista Regional Corporation and Kuskokwim Village Corporation retain subsurface and surface rights respectively. The operators in this case (Barrick Gold and NovaGold) have had to follow on the legacy/performance of the Red Dog project.

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### *Western Arctic Coal (Alaska, USA)*

The Aboriginal group in this case, the Arctic Slope Regional Corporation, retains a high level of influence within the region.

### *Greens Creek (Alaska, USA)*

The project is located adjacent to the Admiralty Island National Monument making it a high-profile and environmentally sensitive area.

### *Argyle (Australia, USA)*

This diamond mine is located in East Kimberly region, in the remote northern area of Western Australia. A Participation Agreement was signed with the region's Traditional owners in 2004. This agreement acknowledges the rights and interests of the owners, including native title rights, in the mining lease area.

## **Hydroelectric**

### *Wuskwatim (Manitoba, Canada)*

This project is located in the Traditional territory of Nisichawayasihk Cree Nation, which had been subject to past adverse impacts associated with project development, most notably flooding.

### *Snare Cascades (Northwest Territories, Canada)*

The project is located in Tlicho Traditional territory. There was a realization on the part of the proponent (Northwest Territories Power Corporation) that approval from the Tlicho (Dogrib at the time) would be required to for the project to proceed. Economics was a factor as well, as a partnership would facilitate more timely completion of licensing processes.

### *Umbata Falls (Ontario, Canada)*

Project is located in Aboriginal Traditional territory (Pic River First Nation) and sought out potential project partners.

### *Alouette (Quebec, Canada)*

The project is located in Innu Nation Traditional territory.

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### **Infrastructure**

#### *Five Nations Energy (Ontario, Canada)*

Transmission line is located on the Traditional territory of various First Nations. Aboriginal groups successfully made a case to the government that it would be less expensive to provide funding for a transmission line compared to what it would cost to upgrade and maintain existing diesel generating facilities.

#### *Trans-Alaska Pipeline System (Alaska, USA)*

Pipeline crosses the territory of multiple Aboriginal groups. Proponent in this case is subject to conditions outlined by state and federal legislation, specifically the project Utilization Agreement that outlines employment and training requirements and commitments.

#### *Mackenzie Gas Project (Northwest Territories, Canada)*

This proposed project crosses the settlement lands of multiple Aboriginal groups, one of which (Deh Cho) has not signed on to the party representing potential Aboriginal owners in the pipeline (Aboriginal Pipeline Group). A moratorium on development in the region was previously in place and all parties are acutely aware of the need to get Aboriginal sign-on for the project to proceed.

### **Oil and Gas**

#### *Synchrude Canada (Alberta, Canada)*

Operations located in Aboriginal Traditional territory.

#### *Alpine Oil Field (Alaska, USA)*

Surface rights to this specific project are retained by Kuukpik, the local Aboriginal village corporation. In order to gain access to the resources ConocoPhillips had to enter negotiations with the local community. These efforts have not yet been successful.

#### *Autuqtuuk Fund (Alaska, USA)*

Influential Aboriginal groups in the region, in particular the Arctic Regional Slope Corporation.

#### *Liberty & Northstar (Alaska, USA)*

As is the case for most Alaska North Slope resource development opportunities, the combination of influential Aboriginal groups and particularly sensitive type of project (offshore oil/gas) has led the developer in this case (BP) to maximize opportunities for Aboriginal engagement.

## **APPENDIX 2 - CASE STUDY FRAMEWORK**

### *Key project features*

- Type and product
- Location, whose lands/waters is the project located on
- Output capacity
- Size of workforce (construction/operations)
- Capital cost
- Timeframes for planning, construction, operation and maintenance
- Key players for Aboriginal involvement and participation – name, role and other notable features
- Key features of Aboriginal involvement and participation
- Who owns the lands/waters where project is located? Identify notable features in relationship between resource owner and local Aboriginal groups
- Historical context
- Attitude and capacity of key Aboriginal players
- Formal participation framework
- Proponent objectives for Aboriginal involvement and participation
- Factors influencing the objectives
- Other notable features

### *Participation in project development*

- Role as partner in project
- Local approval of development
- Participation in project definition

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- Participation in EIS
- Participation in design and implementation of local impact management and monitoring
- Provision of participation funding

### *Supply-chain participation*

- Local supply-chain preference
- Nominated contracts
- Other efforts to promote Aboriginal business development

### *Participation in employment and training*

- Employment
  - Negotiation of project collective agreement
  - Hiring preference
  - Monitoring the level of Aboriginal participation
  - On-the-job training opportunities
  - Recruitment services
  - Retention measures
  - Mechanism for addressing Aboriginal employment issues
- Training
  - Existence of pre-project upgrading and training programs
  - Community based pre-project training
  - Local training delivery agent
  - Nature of training & education
  - Partnerships
  - Others

### *Participation in project revenues*

- Opportunity for equity participation
- Assistance in financing equity share
- Direct revenue or profit sharing



*Addressing adverse impacts*

- EIS
- Use of Traditional Knowledge
- Compensation for adverse impacts

*Cultural heritage protection and promotion*

- Cultural ceremonies for key project events
- Cultural awareness training
- Culturally appropriate counseling services
- Cultural services and awareness
- Other contributions to cultural recognition and retention

*Community involvement/consultation*

- Project planning
- EIA
- Ongoing process

*Community relations and infrastructure*

- Investment in community infrastructure
- Participation in community events
- Donations and in-kind contributions
- Fostering relationships
- Opponents
- Outstanding issues (not intended to be a comprehensive review)

*Implementation*

- Leadership
- Resourcing
- Tracking

## **APPENDIX 3 – STUDY BACKGROUND**

### **BACKGROUND**

In 2006, Cameco Corporation Ltd. and AREVA Resources Inc. (Cameco/AREVA) contracted InterGroup to undertake research into industry leading practices in Aboriginal engagement in resource development. As part of this process, InterGroup examined a variety of sectors (forestry, oil and gas, hydroelectric and mining), mostly within Canada, but with some consideration of outstanding cases elsewhere in the world. The latter included the Red Dog mine in Alaska and Rio Tinto's Argyle mine in Australia. It was through the Argyle diamond mine case study that InterGroup established a relationship with Bruce Harvey, Chief Advisor, Aboriginal and Community Relations, Rio Tinto Ltd.

Mr. Harvey then commissioned InterGroup to undertake additional related research, including a scan of equity participation arrangements in Canada, some of which were examined in greater detail for the current research. The research program and document drafting process was managed by Simon Nish, Principal Advisor, Community Agreements, Rio Tinto Ltd. It is important to note that this research project has been opportunistic in nature. It has drawn heavily from the data collected and lessons learned from the previous work undertaken for Cameco and AREVA.

Components of the research that have contributed to this document include:

- High-level Scan – Building on a base of knowledge gained during previous research, InterGroup did another scan across Canada to look for those operators or operations that might be characterized as leading practices in Aboriginal engagement in resource development.
- Case Studies – Although valuable lessons can be gleaned from all resource sectors, this research piece was more heavily focused on mining. Additional mining case studies were identified through the course of the research and incorporated as appropriate.
- Equity Participation – As mentioned previously, the topic of Aboriginal equity participation in resource development was examined in extensive detail in early research. Further details were drawn out where relevant for this research piece.
- Infrastructure – Finally, InterGroup undertook a scan of infrastructure projects with some level of involvement (e.g., ownership) on the part of Aboriginal participants, with special attention paid to those that were attached (or could be in the future) to specific resource development projects.

## **ACKNOWLEDGEMENTS**

Rio Tinto Ltd. and InterGroup Consultants would like to acknowledge the following parties for their role in shaping this research:

- Hans Matthews and Peter Recollet of Canadian Aboriginal Minerals Association (CAMA) for their role in document review and assistance in workshop in Winnipeg 28-29 January 2008.
- Veronica Slajer and staff of North Star Group for providing the research and consultation team with access, contacts and follow-up for personal interviews undertaken in Alaska in addition to having a role in document review.
- Eric Christensen with Diavik Diamond Mines Inc. for his role in document review.
- Rio Tinto Alcan for their role in document review and assistance in the Feb 1<sup>st</sup> 2008 workshop in Montreal.
- Participants in the Alaska stakeholder review sessions that took place in June and Anchorage in June 2008:
  - Alaska Native Arts Foundation board members and staff
  - Albert Kookesh, State Senator
  - Allison McLain, Cultural Resource Manager
  - ANCSA Regional Association leaders
  - Annette Evans Smith, Vice President of Community Relations, Alaska Native Heritage Center
  - April Ferguson, Bristol Bay Native Corporation, Acting COO
  - Brian Rogers, Interim Chancellor, University of Alaska – Fairbanks
  - Byron Mallott, First Alaskans Institute and Sealaska board member
  - Cindy Bailey, Community Relations Manager, BP
  - Deb Call, Vice President of Operations, Alaska Native Heritage Center
  - Jonathon Ross, President/CEO, Alaska Native Heritage Center
  - Julie Kitski, President, Alaska Federation of Natives
  - June McAtee, Lands VP, Calista Regional Corporation
  - Matt Ganlay, Vice President, Land and Resources, Bering Straits Native Corporation
  - North Slope Borough Mayor's Office
  - Reggie Joule, State Representative
  - Roy Tansy, Jr., Chief Operating Officer, AHTNA, Inc.
  - Sarah Scanlon, Vice President, Rural Alaska Community Action Program (RurAl Cap)
  - Sheri Buretta, Chair, ANCSA Regional Association, and CEO, Chugach Regional Corporation
  - Tiel Smith, Bristol Bay Native Corporation, Lands Manager
  - Vicki Otte, Executive Director of the ANCSA Regional Association
  - William "Willie" Hensley, Chair, First Alaskans Institute

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- Various other research participants from Alaska and Canada that have helped to guide this work by providing their knowledge and experience.

### **METHODOLOGY**

The approach to this research is described chronologically below. Research undertaken for Cameco and AREVA served as a starting point from which to undertake further literature review and personal interviews.

This research differs from the previous work in the following ways:

- It has been suited to the specific needs of Rio Tinto Ltd.
- A larger number of case studies have been considered, with a greater emphasis on mining.
- More personal interviews were carried out, with corresponding increased richness regarding corporate, Aboriginal and third-party perspectives.
- A document and study review process has provided multiple opportunities for improvement.

Further details regarding the methodology include the following:

#### *Drawing from previous research*

InterGroup began by drawing knowledge, as well as seeking potential leads for further research, from the case studies and industry papers used in similar research to date, including the "*Aboriginal Involvement and Participation in Resource Development: Industry Best Practices*" project undertaken for Cameco/AREVA in 2006, and the study completed for Rio Tinto Ltd. entitled "*Aboriginal Equity Participation in Canadian Natural Resource Projects*".<sup>51</sup>

#### *Research review*

The next step in the research process included extensive use of online resources supplemented with existing internal documentation, in order to identify those arrangements between resource developers and Native entities in Canada and Alaska that could be considered Aboriginal engagement leading practices.

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<sup>51</sup> InterGroup Consultants. *Aboriginal Involvement and Participation in Resource Development: Industry Best Practices*. 2006. Study undertaken for Cameco Corporation and AREVA Resources. Winnipeg, Manitoba.

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### *Personal interviews*

Personal interviews were then undertaken in order to obtain information that was not easily accessed at this point in the process. This was a useful and efficient means of gathering additional information. This also facilitated an understanding of the perspectives of individuals at the ground level of these case study operations. The interviews were undertaken both in person and over the telephone, with a wide range of Aboriginal participants, government representatives and industry personnel in both Canada and Alaska.

### *Document drafting and review process*

Interview notes compiled in Alaska were provided to the participants during early stages of report drafting in order to obtain verification and further commentary.

Draft documents, along with an accompanying presentation, were distributed to Hans Matthews and Peter Recollet of CAMA in January 2008. Follow-up discussions with CAMA and Simon Nish of Rio Tinto took place in Winnipeg on January 28<sup>th</sup> and January 29<sup>th</sup>, 2008.

The preliminary draft materials were provided to Rio Tinto Alcan in a similar manner and discussions were held with Simon Nish in Montreal on February 1<sup>st</sup>, 2008. This document has been revised to reflect the input of this group as well.

Additional review phases were undertaken and are described below (with approximate timelines):

- Round 2 began in January and was completed by April, 2008. Participants in this round included:
  - Simon Nish, Principal Advisor, Community Agreements, Rio Tinto Ltd.
  - Hans Matthews, Peter Recollet with the Canadian Aboriginal Mining Association (CAMA)
  - Veronica Slajer, North Star Group
  - Rio Tinto Communities team, North America, Salt Lake City
  
- Round 3 was underway from May through July, 2008. Some of the same parties were involved in the review process. In addition, stakeholder review sessions were held in Alaska from June 6<sup>th</sup> to June 11<sup>th</sup>. Participants in this phase included:
  - Simon Nish, Principal Advisor, Community Agreements, Rio Tinto Ltd.
  - Mary Lee Johns, Senior Advisor, Tribal Governments and Native Communities, Rio Tinto North America
  - Veronica Slajer, North Star Group
  - Various Alaska stakeholders

Final document production is expected to be completed by October, 2008.

*Language*

Throughout this document, references are made to various groups of people that are indigenous to Canada and Alaska. The intended meaning of some of the more commonly referred to terms is as follows:

- **Aboriginal** – Typically used in the Canadian context and is often used synonymously with Native or indigenous. The term Aboriginal peoples, as defined by section 35(2) of the Constitution Act, 1982 includes Indian, Inuit and Métis peoples of Canada. It is a term used to refer to the indigenous inhabitants of Canada in a general manner, without regard to their separate origins and identities.
- **First Nation** – Term arising in Canada that has gained prominence in the last three decades to describe the Aboriginal groups, or Indian Bands, which make up the tribes in Canada. The term encompasses the indigenous occupation of the tribes by the use of the word first and the assertion of nationhood by the use of the word nation. In the 1970's, the term First Nations indicated sovereignty and was introduced to replace the word Indian, which can be considered derogatory or offensive. Although no legal definition of the term exists, it is now widely used. In Canada, Aboriginal peoples south of 60 degrees are comprised mostly of First Nations peoples. Although grouped together, these peoples are as distinct as the regions they have historically inhabited.
- **Native** – This term is used as a designation for all of the indigenous people in Alaska, notwithstanding their particular race or origin. This term is used in the report when referring specifically to indigenous peoples in Alaska.
- **Inuit** – Term used to describe the people inhabiting the regions in northernmost Alaska and Canada. Inuit inhabit vast regions of Nunavut, the Northwest Territories, the coast of northern Labrador and about 25 percent of northern Quebec, called Nunavik. Traditionally, they have lived above the tree line in the area bordered by Alaska in the west, the Labrador coast in the east, the southern tip of Hudson Bay in the south and the High Arctic Islands in the north.
- **Innu** – Formerly known as the Naskapi-Montagnais Indians, are an Algonkian speaking people whose homeland (Nitassinan) is the eastern portion of the Quebec Labrador peninsula.
- **Métis** – A group of mixed Aboriginal and European ancestry who identify themselves as Métis. The Métis originated from the union of early settlers, particularly the French and Aboriginal peoples. The Métis consider themselves distinct from First Nations people, Inuit or non-Aboriginal people by their unique culture rooted in their diverse ancestral origins.

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Within the report, except when referring to specific populations and communities, the terms Aboriginal group or Aboriginal groups are used in reference to First Nations, Inuit, Innu and Métis. In the case of Alaska, the term Native will be used. It is important to note that Aboriginal groups, as described in this report are not always finite entities such as a villages or communities. Rather, they may be specific government-recognized First Nation entities, loosely defined coalitions of primarily Aboriginal communities, or other types of arrangements. The use of this terminology in the documentation speaks to the wide range of scenarios that developers may find themselves in.

The research team recognizes that in referring to specific peoples and populations, there is no standard protocol that applies across all regions and/or Aboriginal groups and that all groups are unique.

References to Traditional aspects of Aboriginal groups (e.g., Traditional Knowledge, Traditional resource use, etc.) are made throughout this document, particularly when discussing adverse impacts and cultural heritage. The terms are intended to be used in the following way:

- Traditional Knowledge – A body of knowledge that has accumulated within Aboriginal populations, through time spent living on the land. It encompasses biophysical, economic, social, cultural and spiritual aspects and is passed on orally through songs, stories, actions and observations.<sup>52</sup> This concept is also widely referred to as Traditional Ecological Knowledge or Traditional Environmental Knowledge (TEK). Components of an Aboriginal group's Traditional Knowledge may include:
  - Knowledge about wildlife and plant habitat and uses.
  - Knowledge regarding important culture sites and regions.
  - Knowledge about environmental indicators including animal species, climate, water and land.
  - Inter-relationships and dependencies between people and components of Traditional Knowledge.
  
- Traditional land – Also referred to when describing Traditional territories or areas and in discussions regarding Traditional resources and subsistence use. Describes a defined area where an Aboriginal group has historically carried out a range of Traditional activities such as fishing, hunting, trapping and gathering. This area also serves a valuable social, medical and spiritual need and may contain sacred sites.<sup>53</sup> Maps identifying the boundaries of these areas are typically constructed on a case-by-case basis. They are unlikely to correspond to political boundary maps and will typically overlap with those of neighbouring Aboriginal groups.

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<sup>52</sup> The Science and the Environment Bulletin. (2002). Aboriginal Traditional Knowledge and Environmental Management. Retrieved from: [http://www.ec.gc.ca/science/sandesept02/article1\\_e.html](http://www.ec.gc.ca/science/sandesept02/article1_e.html). Confirmed April 23, 2008.

<sup>53</sup> Health Canada. (2007). Canadian Handbook on Health Impact Assessment – Volume 1: The Basics. Retrieved from: [http://www.hc-sc.gc.ca/ewh-semt/pubs/eval/handbook-guide/vol\\_1/chap\\_5\\_e.html](http://www.hc-sc.gc.ca/ewh-semt/pubs/eval/handbook-guide/vol_1/chap_5_e.html). Confirmed on April 23, 2008.



**APPENDIX 4 – ABORIGINAL CONTRACTORS ASSOCIATED WITH SELECTED  
RESEARCH CASE STUDIES**

The following list of Aboriginal contractors has been compiled from an examination of selected leading practice operators/operations in the supply-chain participation sphere - Diavik, Cameco and Areva and Syncrude. This list is not intended to be exhaustive. Except where noted specifically, these are all considered Aboriginal businesses, defined as having at least 51 percent Aboriginal ownership. The individual listings are in alphabetical order and do not reflect contractor size, project contribution or any other characteristics. Contractors identified for Syncrude were obtained from secondary sources as the company has a policy of not releasing this type of information.

**Diavik**

A&A Technical Services Ltd.  
Aboriginal Engineering  
Air Tindi Ltd.  
Canadian North  
Ek'ati Services Ltd.  
Exploration Medical Services Ltd.  
First Air  
I&D Management Services Ltd.  
Lac De Gras Constructors  
Nuna Logistics  
SecureCheck  
Tli Cho Landtran Transport Ltd.  
Tli Cho Logistics  
Western Denesoline Explosives Ltd.

**Cameco and Areva**

Northern Resource Trucking  
Mudjatic/Thyssen Joint Venture (50/50)  
Tron Power and SLR Tron Joint Venture  
Athabasca Catering  
Snake Lake Construction  
Robwel  
Points Athabasca Contracting Ltd.

**Syncrude**

Fort Petroleum  
Air Mikisew  
Mikisew Sling and Safety  
2000 Plus Ltd.

**CHAPTER 12: MAPS<sup>54,55</sup>**

**CANADA – ALBERTA**

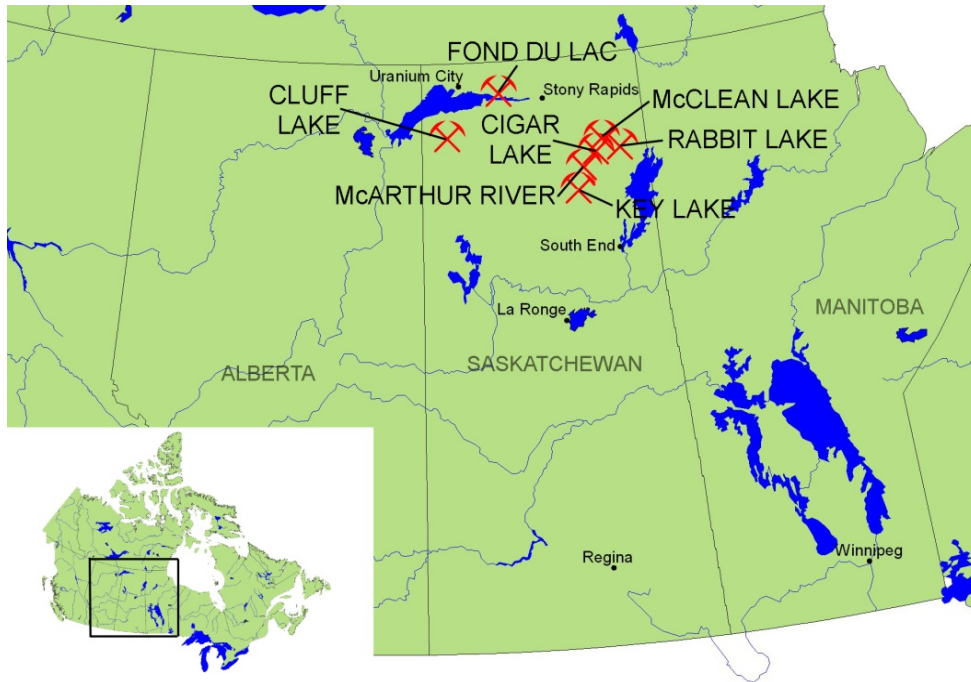


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<sup>54</sup> <http://geogratis.cgdi.gc.ca>

<sup>55</sup> <http://www.ec.gc.ca/nopp/docs/rpt/waterpollution/mining2003/en/c3.cfm>

**CANADA – SASKATCHEWAN**



**CANADA – MANITOBA**



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**CANADA – ONTARIO**



**CANADA – QUEBEC**



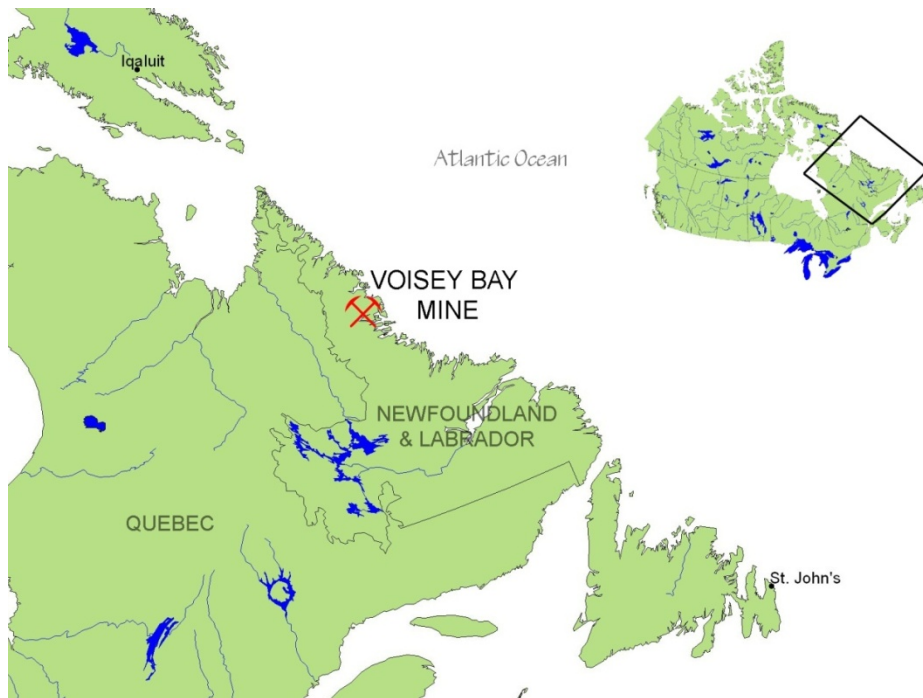
**ABORIGINAL ENGAGEMENT IN RESOURCE DEVELOPMENT:  
INDUSTRY LEADING PRACTICES**

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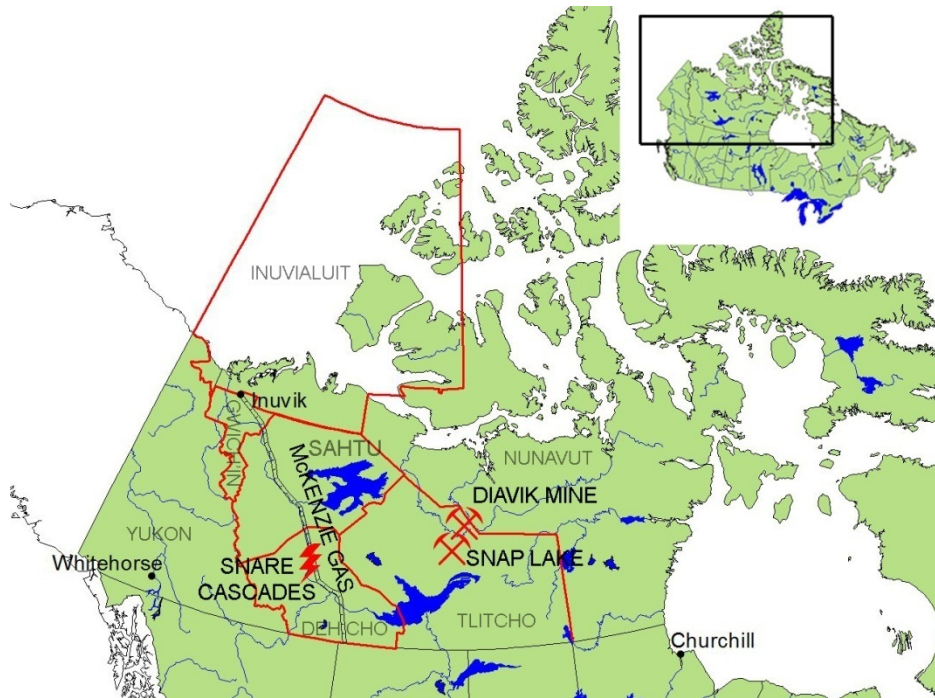
**CANADA – BRITISH COLUMBIA**



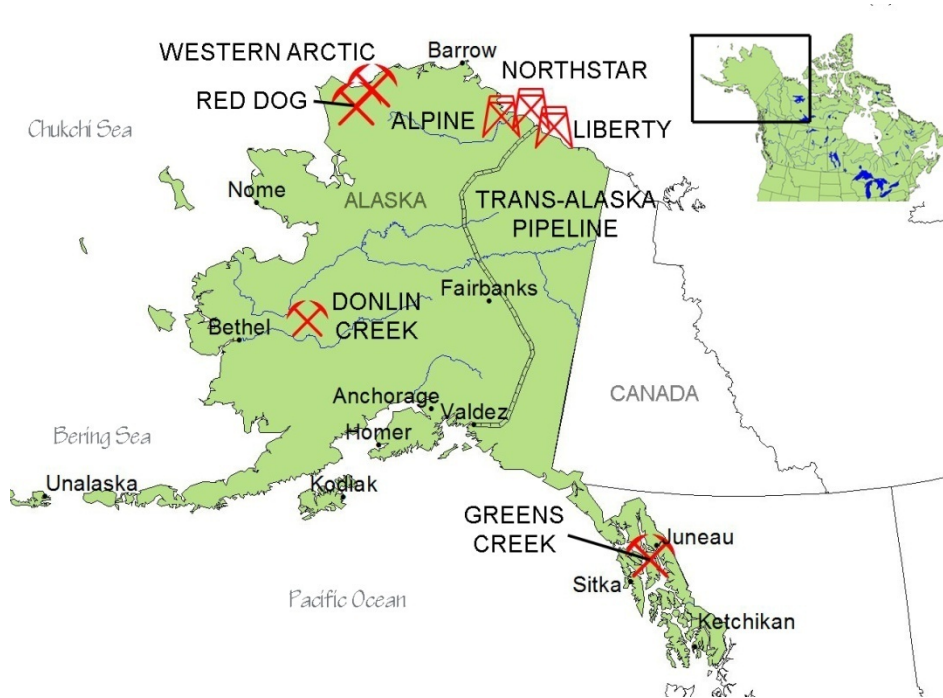
**CANADA – NEWFOUNDLAND & LABRADOR**



**CANADA – NORTHWEST TERRITORIES**



**ALASKA**



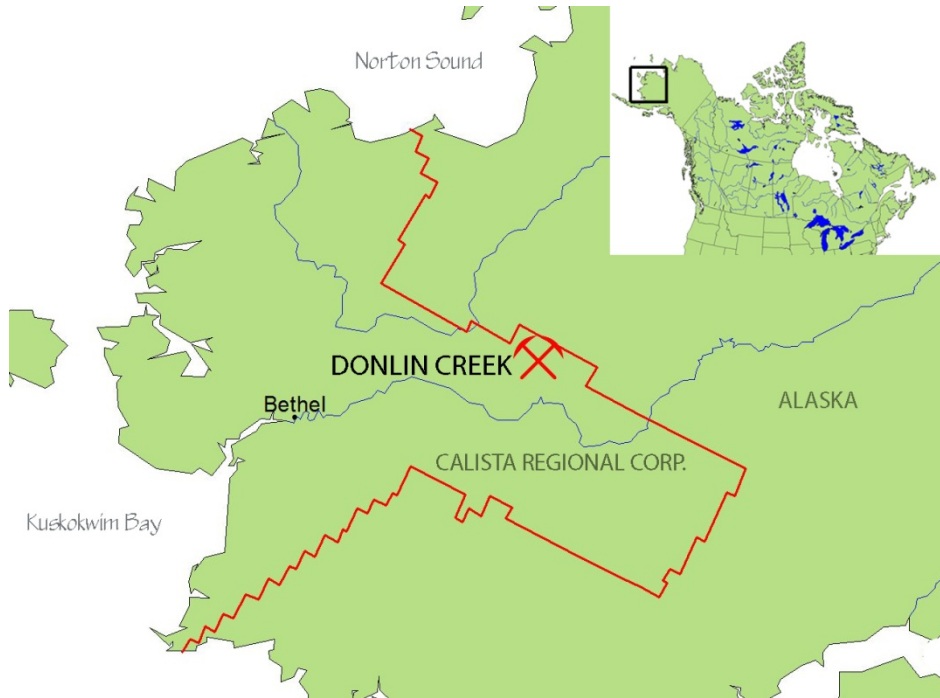
**ALASKA – ARCTIC SLOPE REGIONAL CORPORATION (ASRC)**



**ALASKA – NORTHWEST ARCTIC NATIVE ASSOCIATION (NANA)**



**ALASKA – CALISTA REGIONAL CORPORATION**







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