Assessment of Impacts on the Carrier Sekani First Nations' Aboriginal Title, Rights, and Interests from the Blackwater Gold Project (Part C)

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1. PRELIMINARIES

1.1 Document Purpose and Structure

The Blackwater Gold Project (Blackwater) is a proposed open pit gold and silver mine located approximately 160 km southwest of Prince George. New Gold Inc. (the Proponent or New Gold) is seeking environmental assessment (EA) authorizations for Blackwater via processes led by the British Columbia (B.C.) Environmental Assessment Office (the EAO) and the Government of Canada (Canada) Canadian Environmental Assessment Agency (the Agency).

A proposed power transmission line and associated access roads are needed to provide power to the Blackwater mine site, which transmission line, as well as existing and proposed new roads to access the mine site, are and would be located in the Territories of Nadleh Whut'en, Saik'uz and Stellat'en First Nations (collectively, the Carrier Sekani First Nations or CSFNs). For the purposes of engaging with B.C. and Canada in connection with the Blackwater EA, the CSFNs worked together as a collective, and this document is structured to reflect this coordinated approach. The collaborative approach facilitated the parties' recommendations to address the potential adverse effects of Blackwater on any CSFNs' Aboriginal title, rights, and interests (RTI) in accordance with the Collaboration Agreement (see section 2 for details).

This document was collaboratively developed by the CSFNs, the EAO, and the Agency, including collaborating on the descriptions of differing views of the parties as set out in this document. This document is included in Part C of the B.C. EA process, which considers Blackwater's potential effects on the CSFNs' RTI, and associated consultation and accommodation processes and outcomes. The document also includes a discussion of the potential effects and impacts relative to the potential benefits that Blackwater may generate, developed collaboratively between the CSFNs and the EAO.

In consideration of Blackwater's potential effects on the CSFNs, the following matters are presented in this document:

a. *Collaborative EA process* – The background, timelines and perspectives related to consultation on Blackwater, including the unique nature of the collaborative approach to engagement that emerged within the Blackwater EA process.

b. *Community Profiles* – An overview of the CSFNs' community profiles, including Indigenous governance, cultural characteristics, and socioeconomic status and statistics.

c. *RTI* – The CSFNs' descriptions of their RTI.

d. *Assessment of Impacts* – The CSFNs' assessment of Project impacts on their:
   i. RTI;
   ii. traditional knowledge and traditional land use;
   iii. transmission of traditional knowledge;
   iv. socioeconomic factors; and,
   v. governance components of their RTI.

e. *Accommodation* – Accommodation measures for Project impacts on the CSFNs.

f. *Conclusions* – The CSFNs' perspectives on the adequacy of consultation and accommodation, along with their recommendations to the Ministers.

Based on the information summarized in Part C, the final portion of this document considers the CSFNs' interests in relation to the assessed potential effects and impacts of Blackwater on their RTI, and its projected/forecast benefits, and provides the CSFNs' recommendation to the Ministers regarding the issuance of an EA Certificate (EAC) for Blackwater.

1.2 Project Description

Blackwater is a proposed open pit gold and silver mine for which New Gold is seeking a provincial EAC and federal EA authorization. Blackwater is proposed to be located approximately 160 kilometers (km) southwest of Prince George, in south-central British Columbia.

The transmission line and associated access roads that would be required to provide power to the proposed mine site, as well as existing and proposed new roads to the mine site, are proposed to be located in the traditional territories of the CSFNs (see Figure 1). The construction and operation of the mine itself would not take place within CSFNs' Territories, but could result in downstream water quality effects, impacts to wildlife and ecosystems, and socio-economic impacts with corresponding potential adverse impacts within the CSFNs' Territories and on the CSFNs' RTI.

The mine and ore processing facilities would have a nominal milling rate capacity of 60,000 tonnes per day (22 million tonnes per year) over 17 years, resulting in average annual production of 507,000 ounces (oz) of gold and 2,039,000 oz of silver during that period. Blackwater is expected to have a two-year construction phase, and 17 years of operations. After the mine closes, reclamation activities are expected to continue for about 24 years. Monitoring and post-closure activities are expected to run for an extended period after closure.

1.3 Summary

The parties engaged in the Blackwater EA in a unique, progressive, and collaborative manner. This collaborative process provided the CSFNs will a fulsome opportunity to understand the scope of Blackwater as proposed, engage at an EA-level on its potential environmental effects and impacts on their RTI, communicate transparently with the EAO, the Agency, and the Proponent, and engage in Government-to-Government (G2G) discussions regarding the regulation of the Blackwater.

The collaborative approach to the Blackwater EA was in part due to the execution of two G2G agreements between the CSFNs and B.C., which agreements were signed during the course of the Blackwater EA. A key impetus for these agreements related to the CSFNs' view of the state of their Territories and the manner in which historical impacts, and more recently, forest health issues and extensive Mountain Pine Beetle (MPB) salvage harvesting, have resulted in a diminished ecological condition of their Territories with corresponding serious impacts on the CSFNs' RTI.

The CSFNs have indicated that this current state of affairs has caused impacts on the economic potential of each of their Nations and their members (as well as on the broader region) moving forward. To that end, Blackwater provides a potential opportunity to diversify the regional labour market and business environment as timber/fibre constraints manifest on the regional forestry economy, as well as an opportunity for the CSFNs to rebalance the economic asymmetry that exists between their communities and non-aboriginal communities.

When considering Blackwater effects on the CSFNs and its impacts on their RTI, this "current state of affairs" also provides the context through which the CSFNs view the "seriousness of impacts" on their RTI. Based on the CSFNs' separate assessment, the CSFNs concluded that their current ability to exercise their RTI ranges from being constrained (for chinook, lake trout, moose and grizzly), to severely constrained (for sockeye and caribou), to not possible (for coho, Nechako white sturgeon).

Further, after conducting their own assessment of Blackwater impacts on their RTI, the CSFNs concluded that Blackwater would have the following residual ecological impacts on key species:

- negative and serious impacts on sockeye, coho, Nechako white sturgeon, and other resident species (including kokanee, rainbow trout, bull trout and burbot); and

- negative and serious impacts on caribou, moose and grizzly.

The CSFNs have indicated that this current state is not easily or quickly reversible, and some adverse effects are likely to continue to worsen even without further disturbance. Nevertheless, at the conclusion of the EA process, the CSFNs, the EAO and the Agency reached consensus on the proposed conditions for the EA authorizations, if granted.

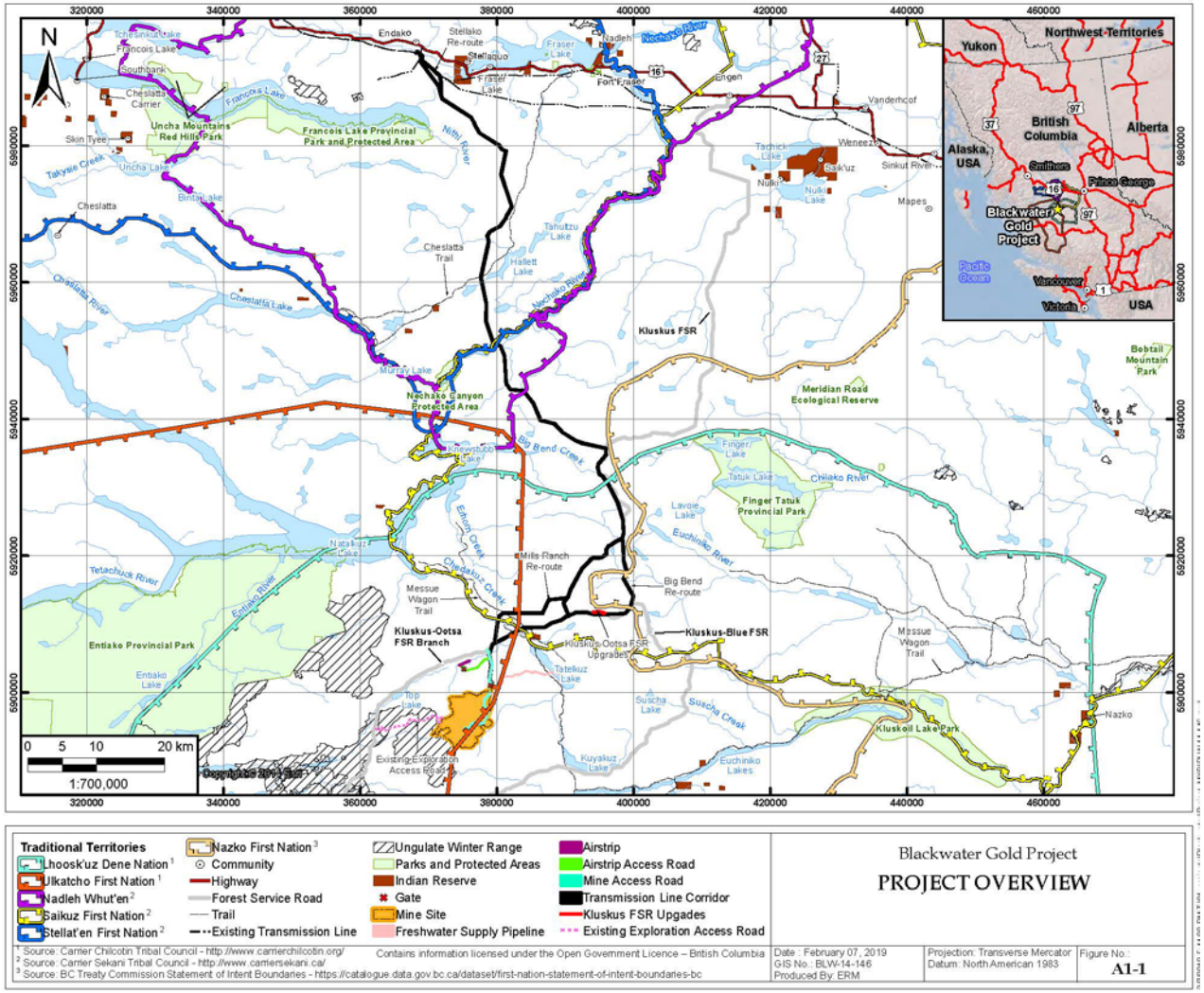
The CSFNs note, however, that the proposed conditions are only one element of the required accommodation for Blackwater. The CSFNs have assessed that economic accommodation and compensation are also required to address the serious residual impacts that Blackwater will visit upon their RTI even after the EA conditions are taken into account. These include the serious residual impacts to the economic and governance elements of the CSFNs' Aboriginal title. For example, CSFNs have concluded that proceeding with Blackwater would: (i) prevent the CSFN members from using for their economic benefit their lands, water, and resources in and around Blackwater which overlaps or borders their Territories, or potentially impacts the resources that they rely on to exercise their RTI; and (ii) worsen the already constrained state of CSFN members' ability to harvest fish, wildlife, plants, and other resources in their Territories.

The CSFNs note that the importance of economic accommodation is clearly recognized in their *Yinka Dene Water Law*, which acknowledges that both existing and new projects that have the potential to impact their RTI require economic accommodation of such impacts through instruments such as revenue sharing agreements, impact management and benefits agreements and/or project equity arrangements.

Notably, New Gold is currently negotiating an agreement with the CSFNs that seeks to address Blackwater's potential impacts on the CSFNs' RTI. The CSFNs also aim to pursue accommodative agreements with the Province and Canada. Until such agreements are finalized, however, the CSFNs are not in a position to support Blackwater.

As no accommodation agreements have yet been finalized, the CSFNs are hereby recommending to the provincial Ministers that they exercise their discretion pursuant to s. 17(3)(c)(iii) to order that further assessment be carried out in connection with the required economic accommodation and compensation owing to the CSFNs with respect to Blackwater and its corresponding impacts on their Territories and RTI.

Figure 1: Map of Blackwater Gold Project, transmission line route, Kluskus FSR and FN Territory boundaries



2. CONSULTATION AND COLLABORATION OVERVIEW

2.1 Consultation by the EAO

The CSFNs and B.C.'s execution of the *Collaboration Agreement* and *Environmental Socio-Cultural Initiatives Agreement*, and the implementation of collaboration, occurred while the EA for Blackwater was well underway within an existing process framework. The summaries below therefore reflect on consultation activities and perspectives pre- and post-collaboration.

2.1.1 Pre-Collaboration

From the commencement of the EA for Blackwater in October 2012 until April 2016, the EAO consulted the CSFNs as described in the Section 11 Order. EAO included the CSFNs in the EA working group and invited them to review and comment on the Section 11 Order, draft Application Information Requirements (AIR), New Gold's draft Aboriginal consultation plans and reports, and the Application for an Environmental Assessment Certificate/Environmental Impact Statement (Application/EIS). The CSFNs participated in Working Group meetings and meetings with EAO, exchanged letters and commented on draft documents.

EAO provided capacity funding to the CSFNs for pre-Application and Application review.

2.1.2 Post-Collaboration

On April 2, 2015, the Carrier Sekani Tribal Council (CSTC), its seven member Carrier Sekani First Nations, and B.C. concluded two agreements: the *Collaboration Agreement*[1], and an *Environmental and Socio-Cultural Initiatives Agreement*. Under both agreements, B.C. committed to enhancing collaboration with the CSFNs in the conduct of EAs, major projects and environmental stewardship. In particular, section 5.3 of the *Collaboration Agreement* sets out a decision-making framework for major projects in which the parties agree to seek (i) to develop consensus recommendations in relation to the design and implementation of environmental assessments, and (ii) consensus in relation to decisions on major approvals.

Following the execution of these agreements, the EAO and the CSFNs worked together to create a Collaboration Plan (Appendix A) in relation to Blackwater to describe how they would collaborate on the EA within the spirit and intent of the *Collaboration Agreement*, including addressing the potential adverse effects of Blackwater on the CSFNs' RTI. EAO provided additional funding to develop and fulfill collaborative commitments.

EAO and the CSFNs met regularly to discuss the EA review schedule and specific Project-related issues, and to collaboratively develop this document. Community

[1] http://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/aboriginal-people/aboriginal-peoples-documents/cstc_-_collaboration_agreement_-_signed_april_2015.pdf

meetings were held at Nadleh Whut'en and Stellat'en during the comment period on the Application/EIS.

EAO's initial views of strength of claim in the areas of the Territories potentially affected by Blackwater and the scope of consultation were communicated to the CSFNs by letter on April 5, 2013. An updated assessment incorporating considerations from the Supreme Court of Canada *Tsilhqot'in* decision (which clarified the test for Aboriginal title relating to the elements of sufficient and exclusive occupation at 1846) was shared with the CSFNs on April 27, 2016 for discussion. Irrespective of different views on strength of claim, EAO and CSFNs agreed that consultation at the deeper end would be carried out by implementing the steps in the Collaboration Plan.

The commitment to collaborate on the development of this report is consistent with the spirit and intent of the *Collaboration Agreement*. The parties fulfilled these commitments by setting out an opportunity for the CSFNs to develop an assessment methodology and provide their perspectives of the impacts from Blackwater to their RTI.

2.2 Consultation by the Agency

The Agency determined at the commencement of the EA process that it was appropriate to consult the CSFNs at the moderate level of the *Haida* consultation spectrum, based on information regarding potential impacts to rights available at the time. Following receipt of information outlining how their members exercise rights in areas potentially affected by Blackwater, specifically the area along the transmission line, the Agency began consulting the CSFNs at the deep end of the *Haida* consultation spectrum in January 2016. Consultation was undertaken through a variety of forms including phone calls, emails, letters, and in-person meetings, to provide updates on key developments and to solicit input or feedback on documents such as the Environmental Impact Statement Guidelines, the draft Consultation Workplan, and the Application/EIS. A draft Consultation Workplan outlines the Agency's proposed consultation activities with each of the Nations.

In April 2016, after discussions with the CSFNs, the Agency proposed updates to the draft Consultation Workplan that provided additional opportunities for direct dialogue between the parties in the EA process. A key commitment in the updated Consultation Workplan is to incorporate text from the CSFNs into the Agency's draft EA Report, regarding potential environmental effects of Blackwater on the CSFNs or potential impacts on CSFNs' RTI.

The Agency supported CSFNs' participation in the EA process through its Participant Funding Program.

2.3 CSFNs' Views on Consultation by the Agency and the EAO

The following reflects the CSFNs' views on the consultation carried out by the EAO and Agency during the EA process and does not necessarily reflect the views of the EAO and Agency.

EA and regulatory review processes are not viewed by First Nations to accommodate First Nations' stewardship responsibilities and their inherent right of self-governance. The right to decide how lands will be used and managed is a component of Aboriginal title. EA and regulatory review processes feed into the CSFNs' Indigenous decision-making processes. Accordingly, for projects to proceed with CSFNs' consent, as provided through each of their own decision-making processes, projects must be constructed and operated in ways that enhance CSFNs' traditional land base and ultimately help the CSFNs achieve their stewardship and economic goals and aspirations. This includes improvements to: employment, education levels, cultural integrity, health services, income levels and social status, social support networks, and social environments.

The CSFNs previously commissioned an assessment of the processes and methodologies utilized within the EA, and identified a number of constructs that frequently lead to differing perspectives in relation to the information and findings flowing from the process. The key constructs within the process that were identified as leading to differing perspectives on the validity of EA findings were as follows:

a. the process-guidance to proponents that the collection of contemporary land and resource use for "traditional purposes", and consideration of that information in relation to Blackwater's impacts and effects – as a surrogate for broader impacts on RTI; and

b. use of EA findings (Valued Ecosystem Components effects characterizations) to infer impacts on impacted First Nations (relevance of biological and spatial context, and thresholds for characterizing).

The CSFNs used the findings of this assessment to structure their own assessment of Blackwater's effects and potential impacts on the CSFNs and their RTI, which co-informs the collaborative process (along with the Application/EIS). That assessment report was completed on the initiation of collaboration pursuant to the Collaboration Agreement.

After the execution of the Collaboration Agreement, the CSFNs, the EAO and the Agency implemented a collaborative approach to the EA for Blackwater to meet the spirit and intent of the Collaboration Agreement.

The CSFNs' viewed consultation to be much more effective following implementation of collaboration. The clarity of potential impacts provided by the CSFNs' RTI assessment was central to focussing discussions with the EAO, the Agency and the Proponent. The more frequent and regular discussions and information sharing that occurred through the collaboration allowed the CSFNs to feel that they were far more appraised of, and involved in, the EA process, as opposed to being mere recipients of information.

The CSFNs do, however, maintain that collaboration is an interim step towards true accommodation of the governance and economic aspects of their RTI through joint decision-making and fair compensation. Perspectives on accommodation outcomes are discussed below in section 6 of this Part C.

2.4 Consultation by New Gold

Under section 11 of the British Columbia *Environmental Assessment Act*, EAO ordered New Gold to consult with the CSFNs about (i) the potential effects of Blackwater on their RTI, and (ii) measures to avoid or mitigate potential adverse effects and/or otherwise address or accommodate their concerns. The Section 11 Order prescribed a process for developing, conducting, and reporting on this consultation.

New Gold submitted consultation plans and reports periodically throughout the EA review as described in the Section 11 Order and as requested by EAO. New Gold's consultation reports are available on the EAO's e-PIC Blackwater website.

Nadleh Whut'en

During the development of the AIR, efforts were made, but there was no progress towards consultation between New Gold and Nadleh Whut'en. Negotiation of a capacity agreement between New Gold and Nadleh Whut'en began in April, 2015, and the agreement was signed in January, 2016. Throughout that time, New Gold conducted meetings, email exchanges, phone calls and site tours with Nadleh Whut'en, and provided draft reports for comment.

Capacity Funding and Agreements

- June, 2015 – Nadleh Whut'en submitted a proposal to conduct a Traditional Knowledge/Traditional Land Use and Occupancy study. The study was completed and eventually shared with New Gold, the EAO, and the Agency.

- January 20, 2016 – Nadleh Whut'en entered into a capacity funding agreement with New Gold and received funding in February, 2016.

Saik'uz

During the pre-Application phase of the EA, New Gold and Saik'uz exchanged technical information, including traditional land use information, and discussed impacts of concern. New Gold conducted meetings, email exchanges, and phone calls with Saik'uz, and attended community meetings. After submission of the Application/EIS, discussions between New Gold and Saik'uz focused on the transmission line route and water quality.

In April, 2016, New Gold provided a report to the EAO and the Agency with an updated assessment of the potential impacts to current land and resource use for traditional purposes. Saik'uz had planned to co-write this report with New Gold, but instead it was produced by New Gold and provided to Saik'uz for comment.

Capacity Funding and Agreements

- February, 2014 – Saik'uz and New Gold signed a Capacity Funding Agreement.

- July, 2014 – New Gold signed a Traditional Knowledge Protocol Agreement with Saik'uz.

- June, 2015 – Saik'uz provided New Gold a Traditional Use Study.

- January 20, 2016 – Saik'uz entered into a capacity funding agreement with New Gold and received funding in February, 2016.

- June, 2016 – Saik'uz provided New Gold a socio-economic study.

Stellat'en

Throughout the EA review, New Gold conducted meetings, email exchanges, and phone calls with Stellat'en, and provided documents for comment.

Numerous discussions were held regarding a potential First Nations Training and Employment Strategy; however, this Strategy has not received endorsement by Stellat'en.

Capacity Funding and Agreements

- December, 2013 – New Gold and Stellat'en signed a capacity funding agreement.

- October, 2014 – New Gold provided funding to Stellat'en for a Traditional Knowledge /Traditional Land Use Study, which was completed and provided to New Gold, the EAO, and the Agency.

- July, 2015 – New Gold provided Stellat'en with financial support for a socio-economic study which was provided to New Gold.

- January 20, 2016 – Stellat'en entered into a capacity funding agreement with New Gold and received funding in February, 2016.

2.5 CSFNs' Views on New Gold's Consultation

In February, 2016 and November, 2016, Nadleh Whut'en, Saik'uz and Stellat'en each provided comments on New Gold's draft Consultation Summary Report indicating that the report was factually inaccurate, that consultation was inadequate and not meaningful, that key concerns were not addressed and that the discussions and associated conclusions were mischaracterized or incomplete.

The lack of capacity funding made it difficult for the CSFNs to participate in consultation, particularly for Nadleh Whut'en, where capacity funding was provided late (February 2016) in the process.

The CSFNs would have preferred to co-draft the Consultation Plans and Summary Reports, rather than commenting on them after the fact.

Following implementation of collaboration and the completion of the CSFNs' RTI assessment report, further conversations between the CSFNs and New Gold led to the re-routing of the transmission line to avoid sensitive habitats and reduce potential impacts to the CSFNs' RTI. New Gold has also committed to discussions with the CSFNs on the implementation of the Yinka Dene Water Law.

Discussions are ongoing between the CSFNs and New Gold on high level topic areas such as business and employment opportunities, environmental matters, social/cultural matters and the application of the *Yinka Dene Water Law*.

3. CSFNS' PROFILE OF CARRIER SEKANI FIRST NATION PEOPLES

3.1 Introduction

The CSFNs are all part of the Dakelh or Yinka Dene Nation. These names, *Dakelh* ("travelers on water") and *Yinka Dene* ("people of the earth"), reflect key aspects of each of the CSFNs' identities. The CSFNs are also commonly referred to as Carrier, thought to be a translation of a Sekani term for their people.

The CSFNs have been self-governing since time immemorial. Key elements of their governance system and legal order are the affiliation of Nadleh Whut'en, Saik'uz and Stellat'en people with clans that include *'Uza'hné* (hereditary leaders), the existence of land and resource territories known as *keyah* (Nadleh Whut'en) or keyoh (Saik'uz / Stellat'en) associated with extended family units, and the use of a system of governance known as *bahlats* (sometimes called "potlaches") as an institution to govern the *keyah*/*keyoh* and clans. Prior to contact with Europeans in 1846, this interconnected system determined legal obligations and authority for stewardship and access to lands, waters and natural resources to ensure that they benefit present and future generations.

After contact, CSFNs' legal orders persisted and evolved, responding to developments such as the imposition of the *Indian Act* and creation of Indian reserves and bands. CSFNs continue to apply their laws, including through the *bahlats* and *Yinka Dene Water Law*, and continue to recognize *'Uza'hné*, *keyah*/*keyoh*, and clan membership in a manner that integrates elected band councils.

The *Yinka Dene Water Law* is comprised of the Yinka Dene 'Uza'hné Surface Water Management Policy (Version 4.1, March 2016) and the Yinka Dene 'Uza'hné Guide to Surface Water Quality Standards (Version 4.1, March 2016) (collectively, the Yinka Dene Water Law). This law is a modern form and emanation of the CSFNs' regulation of the use and management of lands, water, and resources, and is an expression of the CSFNs' Aboriginal rights of governance with respect to the regulation of the surface waters within their Territories. The *Yinka Dene Water Law* describes the CSFNs' guiding narrative objective for surface waters within their Territories as follows:

> Surface waters within our Territories should remain substantially unaltered in terms of water quality and flow.

Finally, each of the CSFNs is a “band” within the meaning of section 2(1) of the *Indian Act*, and their members are “aboriginal peoples of Canada” within the meaning of section 35 of the *Constitution Act, 1982*.

3.2 CSFNs’ Community Profiles

The following profiles of each of the CSFN communities were provided by the CSFNs. Information included in each of the profiles varies based on the information available for each of the CSFNs. Much of the information provided in sections 3.3 to 3.5 below is based on socio-economic studies completed by New Gold as a component of their Application and associated updates, socio economic studies completed by each of the CSFNs, and an Aboriginal and Northern Affairs Development Canada report that included aggregated First Nation community well-being surveys from 1981-2011. In particular, source documents included the following:

- Blackwater Gold Project Economic 2013 Baseline Report; Prepared for New Gold by AMEC Environment and Infrastructure, a division of AMEC Americas Ltd. October 2013;
- December 1, 2015 Memorandum from ERM re Proposed Blackwater Project – Socio-economic Baseline Information Update for Aboriginal Groups;
- Relevant portions of the Application, including:
    - Section 14 (Aboriginal Groups Background Information);
    - Appendix 6.1A (2013 Economic Baseline Report);
    - Appendix 7.1.1A (2013 Social Baseline Report); and
    - Sections 6.3 (Summary of Assessment of Economic Effects) and 7.3 (Summary of Assessment of Social Effects); and
- Aboriginal Affairs and Northern Development Canada, The Community Well-Being Index: Well-Being in First Nations Communities, 1981-2011.Ottawa: Her Majesty the Queen in Right of Canada, represented by the Minister of Aboriginal Affairs and Northern Development (AANDC 2015).

3.2.1 Saik’uz First Nation

Saik’uz is a Dakelh community whose Territory is located a short distance from the geographical centre of British Columbia. The main community, Reserve 1, is located on the east end of Nulki Lake on Tachick Lake, 9 km southwest of Vanderhoof, B.C.

The Saik'uz are Dakelh speaking peoples, part of the Athapaskan language family. The name Saik’uz is derived from the Dakelh (Carrier) word 'on the sand' and refers to the sandy soil on which the main community is located.

Saik’uz describes the occupancy and Athapaskan settlements as being present in the area since time immemorial (Jenness 1943; Morice 1893). Within the Dakelh territory, Saik’uz describes hereditary chiefs (heads of clans - extended families) as having title

over Keyohs, which are specific land bases that are linked to watersheds (Beck 2013; CSTC, 2011; Thomas 2015).

In addition to the hereditary governance system, Saik'uz also has an elected political governing structure in place pursuant to the *Indian Act*. Elections are held every two years for a chief and two councillors.

Saik'uz and its members engage in a range of economic activities, including forest-related activities, arts and crafts, campground and general store operation, trapping, seasonal firefighting, seasonal trap manufacturing, banquet catering, and construction. Some of those businesses include:

- Tin Toh Forest Products Ltd.;
- SFN Catering; and
- Innergex Renewable Energy Inc. and the Saik'uz First Nation Joint venture – developing a wind energy project at Nulki Hills near Vanderhoof.

Saik'uz infrastructure and facilities include a general store, cultural center, church, adult education school, training center, administration office, community hall, and sports fields.

As of 2016 there were 958 registered Saik'uz members, 325 (or 34 percent) of whom live on reserve.

At the time of New Gold's socio-economic survey:

- 93 percent of participants were Status Indians;
- 87 percent lived on reserve;
- the average age of the participants was 40 years old; and
- a large portion of the participants indicated they are single or never married (54 percent), 24 percent were common-law, and 15 percent were married.

Aboriginal Affairs and Northern Development Canada conducted a community well-being survey of First Nations, Inuit, and non-aboriginal communities across Canada in 2011 (AANDC 2015). Indicators used to develop the index were limited to housing, income, labour force, and education.

Saik'uz (shown as Stoney Creek Indian Reserve 1 in the AANDC 2015 report) scored 54 in the wellbeing index, placing it below-average for B.C. aboriginal communities on reserve and well below the average score for communities in B.C., which sits at 80. This indicates a substantial gap in education, income, housing, and employment between Saik'uz members and the broader population, particularly the non-aboriginal population.

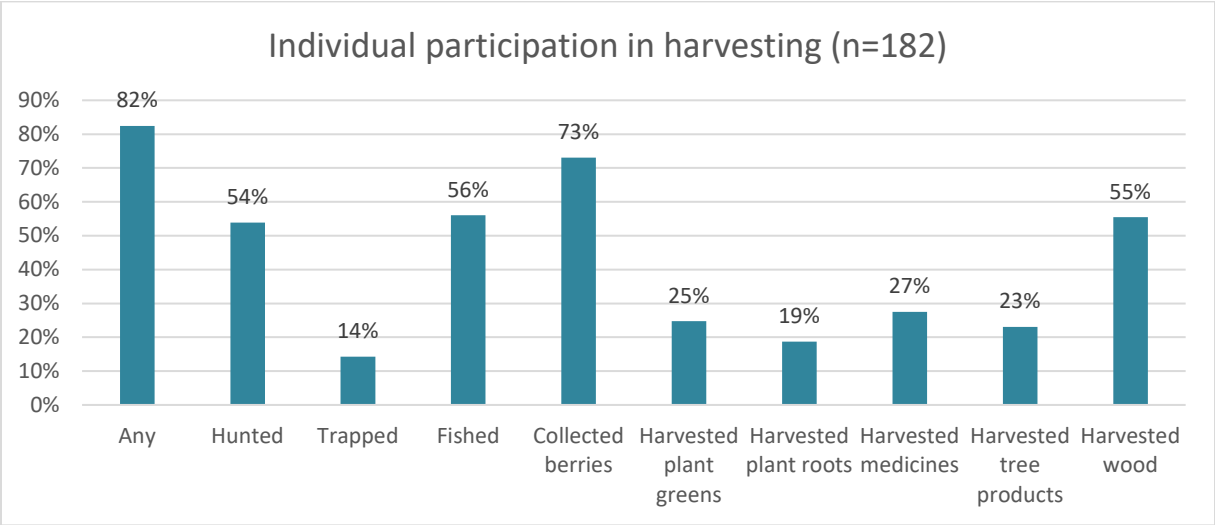
As with most First Nations, Saik'uz incomes lag behind those of non-aboriginal Canadians. Table 1 shows the relative individual incomes of survey respondents compared to regional and provincial populations. Individual incomes for Saik'uz at the time of this study are well below average British Columbians, with Saik'uz citizens over-represented in low-income brackets. The number of Saik'uz respondents with incomes of less than $10,000 was double that of the B.C. aboriginal population, and their overall income was considerably lower, with no community member reporting an income higher than $69,999.

Table 1. Income Brackets per Geographic Area.

National Household Survey 2011. Net individual income (after tax)						
		General population			**Aboriginal population**	
	Saik'uz Survey	**PG (All) N=?)**	**Bulkley-Nechako Region (All) N=30,780**	**B.C. (All)**	**B.C.**	**Bulkley-Nechako Region**
0-$9,999	54%	17%	20%	19%	27%	35%
$10,000-$19,999	25%	17%	19%	19%	24%	22%
$20,000-$29,999	10%	13%	14%	14%	14%	13%
$30,000-$39,999	5%	12%	11%	12%	11%	8%
$40,000-$49,999	3%	9%	9%	10%	8%	5%
$50,000-$59,999	2%	8%	9%	7%	5%	6%
$60,000-$79,999*	1%	12%	9%	8%	6%	7%
$80,000+	0%	12%	2%	10%	5%	4%
*Note: For Saik'uz, no member reports a higher income than $69,999.						
Source: National Household Survey, 2011						

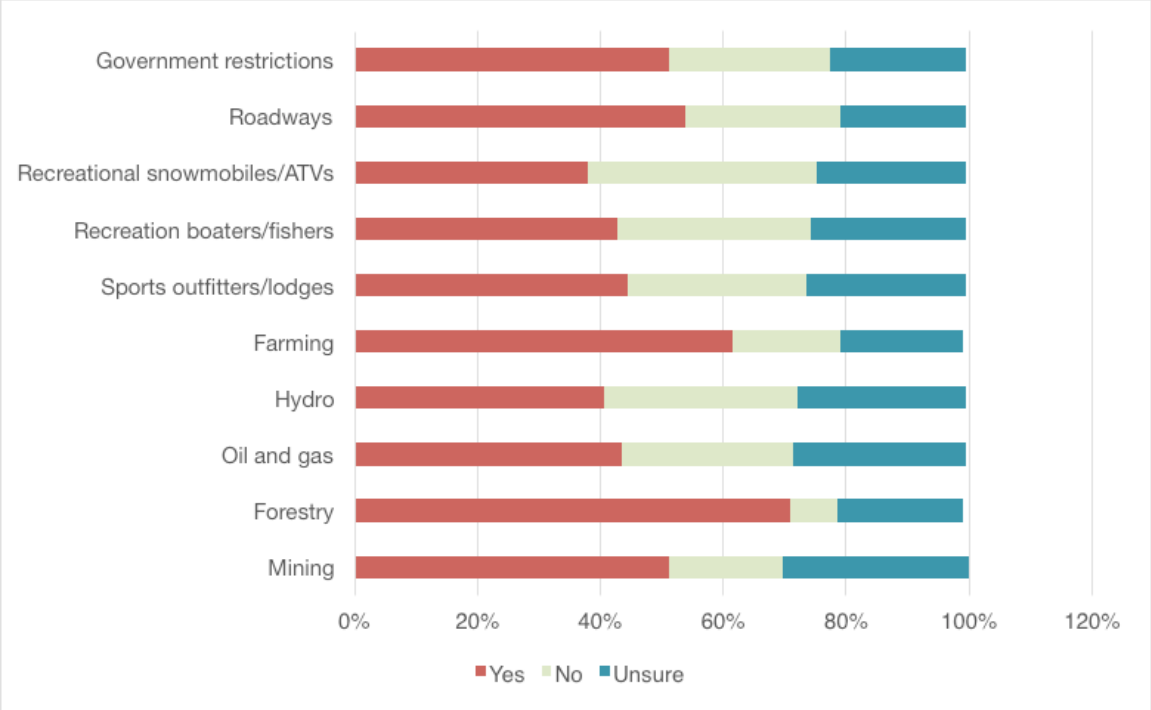
Of the 182 people surveyed in the 2016 study, 82 percent indicated they participated in harvesting. Members participated in a variety of different types of harvesting activity (see Figure 2).

Figure 2: Participation in Harvesting



Participants were asked what factors impacted their ability to harvest. More than 50 percent of participants indicated that disturbance and displacement created by forestry, farming, mining, and roadways, and government restrictions limited their ability to harvest (see Figure 3).

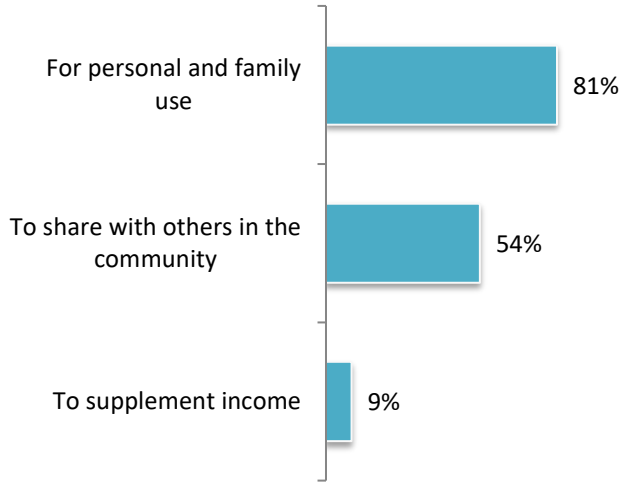
Figure 3: Additional Industrial Limits on Harvesting Figure 3. Additional Industrial Limits on Harvesting



Sharing economy

The sharing economy is very alive within Saik'uz: 54 percent of survey respondents reported that their reason for harvesting in the last year was to share with others in the community (see Figure 4). Concurrently, many members rely on more than one source for their traditional foods. Even those who harvest themselves rely on sharing, trading, community events, and other sources.

Figure 4: Reason for Harvesting



3.2.2 Nadleh Whut'en First Nation

Nadleh Whut'en are a Dakelh people. Nadleh Whut'en Territory is located between Nadleh Bun (Fraser Lake) and the Nechako River along the banks of the Nautley River, which, at only 800 m long, is one of the shortest rivers in the world. The main Nadleh Whut'en community is located on Fraser Lake Indian Reserve No. 1, on the eastern shore of Nadleh Bun.

Canada historically "named" the Nadleh Whut'en Band the Fraser Lake Band. The name was changed in 1990 to Nadleh Whut'en. *Nadleh* refers to where the salmon return every year, while *Whut'en* refers to where you come from (FirstVoices 2011).

In addition to the continued hereditary governance system based on *Keyahs* (as described above), Nadleh Whut'en has an elected political governing structure in place in accordance with *Indian Act* requirements.

There are 553 registered Nadleh Whut'en members, with 262 members (47 percent) living on reserve (INAC, February 2016). According to the Nadleh Whut'en eligible voters list (age 18+), approximately 66 percent (368) of the population is 18 years and older. Ninety-three households are situated within the Territory boundaries, with 82 homes within 25 km of the main community reserve. In the adjacent Prince George / Quesnel area there are 54 recorded Nadleh Whut'en households. The Nadleh Whut'en 2016 voting list indicates that of 368 adult members, 134 (36 percent) live on reserve, suggesting that the reserve population includes a high percentage of children and youth.

Well-Being Index

The Dakelh meaning of wellness is based on the self, body, mind and spirit as being interdependent, and that this self must live interdependently with community, the environment and the spirit world (Brazzoni 2013).

One of the main challenges with many mainstream socio-economic metrics is that they are focused on economic measures and do not include elements such as cultural, family, and community connections of critical importance to Aboriginal peoples. Despite such limitations, those metrics can be illustrative of socio-economic gaps between Aboriginal peoples and non-aboriginal populations.

Nadleh Whut'en (referenced in the AANDC 2015 report index as Nautley (Fort Fraser 1)) scored 49 in the well-being index, placing it below-average for Aboriginal communities on reserve in B.C. Both the Nadleh Whut'en and provincial Aboriginal scores are well below the average score for communities in B.C. (average 80), indicating a substantial gap in education, income, housing, and employment between Nadleh Whut'en and the broader non-aboriginal population.

Income

Households were asked to estimate the annual income of all residents in the home. Comparisons with the regional data sets are difficult as the income brackets used in the survey are not directly comparable with the census brackets. Additionally, housing costs are usually source-deducted for on-reserve First Nations, meaning that income will only include the living allowance portion. This is not the case for off-reserve populations who generally pay their housing costs from income. This means that the lowest income categories are not directly comparable for on and off reserve. However, income brackets above $25,000 can generally be compared as the social assistance rates are generally under that level.

From a comparison of the income brackets above $25,000 in the survey data, it is evident that the on-reserve households have much lower numbers in the higher income brackets.

Both on and off reserve data sets show lower incomes than the available regional comparators. The on-reserve population is particularly under-represented in the higher income brackets. Despite challenges in data comparability, it is obvious that the Nadleh Whut'en living on reserve face a significant income gap with the regional Aboriginal and non-aboriginal populations.

Survey respondents reported spending a large amount of their income on housing. More than half (52 percent of households reported spending in excess of 25 percent of their income on housing. As a comparison, most households (84 percent) in the Bulkley–Nechako region spent less than 30 percent of their household total income on shelter costs. This is alarming because not only are Nadleh Whut'en members making less income, they are also spending a greater portion of their income on housing, leaving less

available for other needs. This exacerbates the income gap, making those households particularly vulnerable to potential adverse effects from Blackwater.

As discussed above, Nadleh Whut'en median incomes – especially those on reserve – are significantly below those of regional and provincial non-aboriginal populations. In addition, there is a high proportion of households with low incomes. While the well-being survey did not measure household food insecurity of adults or children, given income levels it is likely that the majority of households on reserve are also facing challenges in purchasing food, and in particular, healthier food options. These financial challenges make meeting nutrition needs to support good health difficult, which increases risks for several health problems.

Given this context, access to traditional food is highly important for Nadleh Whut'en. While the survey did not include questions directly on community members' participation in different kinds of traditional food harvesting other than medicine, households were asked to indicate how often they consumed a limited number of traditional foods including four species of large game, (moose, deer, caribou, bear), two kinds of fish (salmon, other lake fish), five species of berries (blueberries, huckleberries, saskatoon berries, soapberries, cranberries), one species of plant (labrador tea), and two kinds of small game (rabbit and beaver).

The results show that almost all households consume traditional foods. Traditional foods consumed by the majority of households were salmon (88 percent), other lake fish (60 percent), moose (75 percent), and all species of berries asked about in the survey. At least half of the households consume salmon and moose at least a few times a month, while some households (10 to 15 percent) have these foods more than once a week. Some access to these foods is directly via harvest, but sharing and trading, both within the community and with other communities, are very important to Nadleh Whut'en.

Comparing the data from this survey against results from the First Nations Food, Nutrition and Environment Study (FNFNES), reveals that consumption among Nadleh Whut'en members meets or exceeds the levels of use reported for First Nations residing in the Montane Cordillera/Subarctic.

When use of traditional food by households was displayed by location, it was clear that most households are consuming traditional food. This illustrates the ongoing strong ties between Nadleh Whut'en members and their Territory (wherever members reside) and their ongoing reliance on the Territory's ecosystem health for cultural continuity, physical and mental health, and food and income security.

Wage Employment

Nadleh Whut'en survey respondents were asked a series of questions about their own employment status as well as the number of individuals working in their households and their usual occupation. The bulk of the survey respondents (93 percent) answered the question on employment status. Out of those 145 respondents, 59 percent were employed: 42 percent had full-time employment, six percent were seasonal employees,

eight percent were part-time employees, and three percent were self-employed. Six per cent were receiving employment insurance (EI).

Sixty-one per cent of Nadleh Whut'en adult respondents were working for pay at the time of the survey, with another eight percent doing unpaid work. Thirty-two percent of adult respondents aged 18+ were not employed or were enrolled in education/training. Households were also asked to identify if they contained at least one individual who was working. Of the 140 households that responded to this question, 74 percent indicated that there was at least one person in the household working for pay.

Employment, Education, and Income

Additional analysis was undertaken to see if there was a relationship between level of employment, education, and income. With respect to employment and education, all individual Nadleh Whut'en respondents that held university degrees indicated they were employed while almost half (48 percent) of individuals without a high school degree were unemployed. Retirees, students, as well as all respondents who labelled their employment status as "other" or with an explanation, were excluded. Most of the explanations were full-time students or retirees. Also excluded were individuals who did not list an educational attainment level. The higher an education level obtained, the less likely there was a 'no response' reply. Overall, the survey results indicated that employment has a stronger correlation with household income than education level. Notably, while employment status appears to be linked to education level, there is no clear relationship between education and household income.

Ability to Take Advantage (ATA)

In terms of ATA, the survey results indicated the availability and interest of a significant portion of Nadleh Whut'en members in potential Project opportunities, including training, employment, and business development. Concurrently, the survey results also indicate that notable barriers exist to accessing training and employment, and that overcoming those barriers would require advance planning, programs, and resources. Nadleh Whut'en's experience with resource extraction to date indicates that proactive and early engagement is necessary to ensure adequate access by members to any potential Project opportunities.

Vulnerabilities

The survey results clearly illustrate that most of the potential benefits of industrial development and the cash economy in the region have been bypassing Nadleh Whut'en members, driving a large gap in income and well-being between members without jobs, and those with jobs and the regional population. This gap is evident across indicators of well-being from education and income to mental health. The colonial legacy, including the impact of residential schools, is evident in the vulnerabilities, including addictions and mental health as well as loss of language. Cumulative effects are also evident, with members reporting reduced access to traditional resources and cultural resources and activities. With these vulnerabilities, cultural engagement, family and community

cohesion, and other social determinants of Aboriginal health and resilience are relatively more important.

3.2.3 Stellat'en First Nation

The Stellat'en are Dakelh speaking peoples, part of the Athapaskan language family. The territory of the Stellat'en is located in central British Columbia. The main reserve, Stellaquo (Stella), is located 160 km west of Prince George, at the confluence between two rivers: the Stellaquo and Endako. The Nation also has a second, small reserve at Binta Lake. The Stellat'en belong to the Carrier Sekani First Nations and Stellat'en First Nation is a member of the Carrier Sekani Tribal Council.

Stellat'en describe its Territory as extending from Fort Fraser in the east, to the western shores of Francois Lake, as far north as Grassham Lake and as far south as Knewstubb Lake. When Stellat'en speak of their Territory, they speak of Keyoh Whut'en, an area much larger than the Stellaquo reserve. Many parts of the Keyoh Whut'en area are shared with other First Nations, primarily the Nadleh Whut'en whose reserve is situated on the east end of Fraser Lake.

Historically, Stellat'en and the Nadleh Whut'en were one group, historically referred to by Indian and Northern Affairs Canada (INAC) as the Fraser Lake Indian Band. In the 1950s the two communities split to form the Stellaquo Indian Band (Stellat'en First Nation) and the Fraser Lake Indian Band (Nadleh Whut'en Indian Band). At this point, the Fraser Lake Indian Band was dissolved and Stellat'en First Nation was assigned band number 613 and given authority over two IRs (Stellaquo and Binta Lake) totaling 834.3 hectares (SFN 2009b; AANDC 2015d). The main community of Stellaquo (IR #1) is located at the west end of *Nadleh Bun* (Fraser Lake). The next closest community to Stellaquo is the Village of Fraser Lake, approximately six kilometres east of the reserve. The nearest major centre is Prince George.

Stellat'en has both a hereditary and a band council governance system.

Stellat'en had 535 registered members as of February 2015 (AANDC 2015a), the majority of whom lived off reserve (206 members or 38.5 percent lived on reserve). Of the 329 members living off reserve, 17 live on other reserves while the remaining 312 live primarily in towns and cities in the region, including Prince George, Fraser Lake, Vanderhoof, and the larger provincial centres of Vancouver and Victoria (SFN 2009a). The gender balance of the Nation is even, but the on-reserve population has a slightly higher portion of males to females (46.1percent female).

Aboriginal groups tend to have a faster growing and younger population than the Canadian average. Statistics Canada data available for the Stellat'en on-reserve population mirrors this. Between 2006 and 2011, Stellat'en's on-reserve population grew by 10.2 percent. Over the same period, the population of the Prince George Census Metropolitan Area grew by only 1.2 percent, the Regional District of Bulkley-Nechako (RDBN) grew by 2.5 percent, and B.C. grew by 7 percent (Statistics Canada 2013a). The faster growth and higher birth rate means a younger First Nations population. The

median age for the Stellat'en on-reserve population was 33 years in 2011, compared to 39 for Prince George, 39.3 for the RDBN, and 41.9 for B.C. in the same year.

Well-Being Index

Stellaquo scored 62 in the wellbeing index, placing it at the average for B.C. Aboriginal communities (on reserve). Both of these indexes are, however, well below the average score for communities in B.C., which sits at 80, indicating a substantial gap between Stellat'en members and the broader population, particularly the non-aboriginal population, in education, income, housing, and employment.

Economy

The Stellat'en economy is a complex interplay of wage-based work, self-employment, trapping, harvesting, sharing, and trading of traditional foods. Stellat'en members, on reserve and off, rely on traditional foods to meet their needs, both physical and cultural, on a regular basis. Members also rely on access to their Territory and resources to earn income from trapping, guiding, forestry, construction, environmental monitoring, and other activities.

Traditional foods are economically, nutritionally, and culturally important to First Nations communities. The link between Stellat'en identity, Stellat'en traditional territory, and Indigenous or traditional food is a very important one. The 2014 socio-economic survey (Brown, 2014) found that:

- 80 percent ranked traditional food as somewhat or very important to the diet of Stellat'en families;
- 77 percent ranked traditional food as somewhat or very important to the Dakelh culture in Stellaquo; and
- 75 percent ranked traditional activities as somewhat or very important to the Dakelh culture in Stellaquo.

This link between health and cultural identity is seen in the broader literature on the social determinants of Aboriginal health. Other research also shows that indigenous foods are important for maintaining identity and cultural health. Harvesting activities and indigenous foods play "a key role in maintaining diverse cultures, languages, heritages and identities — in short, in the mental, emotional, spiritual and physical well-being of Indigenous Peoples" (Turner, Plotkin and Kuhnlein 2013: 37).

Economic development from an Aboriginal perspective has to take into consideration the complex interplay between the Aboriginal and market economies. Employment and education need to be framed in a context that considers informal Aboriginal employment or education — employment should include participation in the informal sector through harvesting, trading, and sharing, while education needs to recognize that Aboriginal people have informal education such as the transmission of oral history, traditional knowledge, experiential learning, and language. Mainstream measures of employment

and education tend to fail to recognize the informal and experiential learning and skills of Aboriginal people, and they therefore tend to be inadequate measures. Given that those measures are used as thresholds for access to employment, they do indicate relative access for members to potential project 'opportunities' and have therefore been used for that purpose here; however, based on the inadequacies described above, it must be acknowledged that the mainstream measures are not complete representations of the skills and abilities, or actual education or employment levels, of Stellat'en members.

Wage Employment

Formal sector employment characteristics for Stellat'en survey participants were conducted. Just over half (54 percent) of the 166 respondents reported being employed outside the home. The majority of respondents work full time. However, the proportion working full time is higher among on-reserve members than off-reserve members.

Although some of those not employed are currently students or retired, the majority are seeking some form of employment and for most of them their preference is full time. Although there were more full-time positions held by on-reserve members than off-reserve members, unemployment is higher for on-reserve members. However, for those on reserve, many are either homemakers or pensioners who are not participating in the labour force.

When asked about their general employment goals, 86 listed gaining some form of employment and 21 listed further education and training. Stellat'en survey respondents indicated interest in a wide array of employment areas. The top areas of interest include:

- Health (social worker, registered nurse, counsellor);
- Hospitality (chef, cook, hunting guide);
- Trades (electrician, mechanic, gunsmith);
- Business owner (construction, farm, restaurant);
- Management (board of directors, band manager, advisor); and
- Equipment operation (heavy machines operation).

Just over half of the members surveyed reported that they are interested in jobs with an industry (e.g., a mine or pipeline), with a small percentage (8 percent) indicating interest subject to the fulfillment of certain environmental or economic conditions and another one third of the respondents stating they were not interested in industry jobs. The proportions are different for men and women, with a higher proportion of men showing interest in industry jobs than women.

Education and Training

Typical measures of educational attainment and success are not aligned particularly well with First Nations' experience, values, and culture. There is a gap between Aboriginal perspectives on informal education and experiential learning and government reporting frameworks with respect to indicators of learning outcomes. Though currently utilized indicators are an important measure of the ability of First Nations to engage in the resource wage economy and adapt to effects on their traditional livelihoods, these indicators will have significant limitations for creating strategies and policies for change if they do not adapt to cultural differences in ways of learning.

The Stellat'en survey shows that members have generally lower levels of education achievement compared to the B.C. Aboriginal and general populations. The survey indicated that only about 34 percent of the Stellat'en population holds post-secondary qualification, compared to 40 percent for the B.C. Aboriginal, 48 percent for Prince George, and 56 percent for B.C. as a whole. The proportion of Stellat'en members without a certificate, diploma, of degree is quite high at 36 percent, compared to 21percent for Prince George, and 17 percent for B.C. as a whole.

The key areas of study indicated by the surveyed Stellat'en members holding a college or university degree include education, culinary arts, social work, and First Nations studies.

Barriers to Education and Training Programs

The following is a breakdown of the barriers to education and training programs:

- 59 percent finances, lack of access to funding;
- 19 percent work obligations or time;
- 15 percent transportation issues (including lack of a driver's licence);
- 13 percent location or lack of local provision of training (some report an inability or desire to relocate, lack of funding for relocation, and costs associated with living away from home);
- 11 percent do not have the necessary qualifications;
- 7 percent elder or child care responsibilities; and
- Others: medical reasons, program is not available, or wait listed.

4. CSFNS' DESCRIPTION OF THEIR RTI IN RELATION TO BLACKWATER

The following reflects the CSFNs' description of their RTI in relation to Blackwater and does not necessarily reflect the views of the EAO of the Agency. It is noted that under the Collaboration Agreement, British Columbia expressly recognized the existence of the

CSFN's RTI in their Territories, while also agreeing that further processes are required to establish the scope and geographic extent. Both British Columbia and Canada have also committed to fully implement the *United Declaration on the Rights of Indigenous Peoples*, which provides at Article 26 that "Indigenous peoples have the right to the lands, territories and resources which that have traditional owned, occupied or otherwise used or acquired."

4.1 CSFNs' RTI

The CSFNs are all members of the Carrier Sekani Tribal Council, which is a society formed under the B.C. *Societies Act* and governed by a Board of Directors comprised of the Chief Councillors from each member Nation. CSTC was incorporated in 1979 with a view to, among other things, achieving a just resolution of land claims and RTI issues for the Carrier and Sekani peoples.

In 1982, on behalf of the CSFNs and the other CSTC member Nations, CSTC filed a Comprehensive Land Claim with the Government of Canada. That claim was accepted for negotiation in 1982. In 1994, the CSTC also filed a statement of intent with the British Columbia Treaty Commission.

The CSFNs each possess RTI within and throughout their respective Territories, including Aboriginal title to the land, waters and air-shed, as well as the river and lakebed areas. The CSFNs also each hold important governance, cultural, spiritual, and harvesting rights.

The CSFNs have never ceded, released or surrendered any of their RTI within and throughout their Territories, nor have any events occurred which would operate to otherwise extinguish the CSFNs' RTI. Accordingly, present-day members of each of the CSFNs continue to hold RTI within and throughout their Territories.

Since time immemorial, the CSFNs have occupied, hunted, fished, gathered, travelled, governed, acted as stewards of, and raised families on the lands and waters within their Territories. The lands and waters have provided the CSFNs, their members and their ancestors with spirituality, sustenance, economy, and transportation. Further, prior to contact, the CSFNs' ancestors operated according to legal principles that governed their peoples' use of lands, waters and natural resources, which is the source of their stewardship laws and practices today.

Despite a degree of interruption caused by modern factors including ongoing industrial development, the CSFNs and their members have continued to rely on a variety of resources, lived in villages, occupied semi-permanent campsites and harvested resources on a regular and seasonal basis throughout their Territories. Accordingly, each of the CSFNs continue to hold existing RTI within and throughout their Territories, including to the lands, waters, air-sheds and resources therein.

Each of the CSFNs has RTI that will be adversely impacted by Blackwater. These RTI are described individually below, but are often closely related to one another, with impacts on one having potentially wide-ranging impacts on others.

The CSFNs' Aboriginal title includes the right to possess their Territories and exclusively occupy, use, and control their Territories for their Nations and their members' benefit. The CSFNs refer to case law from the Supreme Court of Canada that the CSFNs view as confirming that Aboriginal title includes incidental rights to (i) exercise authority and jurisdiction over, (ii) decide on current and future uses, and (iii) actively use and manage each of their Territories, including the water, land, air and resources therein, in accordance with their Nations' laws, customs, and practices.

The CSFNs view these concepts as closely tied to the right or ability to benefit from uses of the land and the resources therein, or put another way, the CSFNs' economic interests. This includes deriving benefits from their Territories and pursuing economic development opportunities in a variety of ways; whether related or unrelated to modern forms or natural resource development and extraction. This also includes access to natural resources and use of natural resources by preferred means, which use includes wild foods for the CSFNs' contemporary communities and their ancestors, as well as for sale, trade, or barter as the CSFNs' ancestors did historically.

Additionally, the CSFNs continue to govern and conduct themselves in a manner that is respectful of customary principles of environmental integrity and stewardship. For example, the CSFNs continue to require regular access to an environment that is not significantly degraded and is capable of sustaining (i) the ecosystems therein, (ii) a robust subsistence economy, and (iii) the CSFNs and their members both today and into the future.

Prior to contact with Europeans, the CSFNs operated according to a legal order that governed their peoples' use of lands, waters and natural resources (focused on the salmon fishery and a system of family landholding or occupation called *keyohs/kehahs*). This forms the basis for the CSFNs' stewardship practices today. This stewardship governance practice of the CSFNs corresponds to a well-established legal mandate under Carrier customary law which requires the CSFNs to manage the lands and resources in their Territories in a sustainable way. This springs from and sustains a legal responsibility imposed on the CSFNs by their own system of laws that dictates how they must manage lands and harvest resources.

The CSFNs therefore continue to use lands and resources in a manner reflective of their historical and inherent role as stewards of their Territories, including by using their detailed knowledge and historical occupation of their Territories to maintain an understanding of its overall health and to ensure its long-term sustainability. A large percentage of young Carrier adults continue to use lands and resources within their Territories today. This is a strong indicator of the CSFNs' continued, strong relationship with the land, waters and resources in their Territories, and their future ability and capacity to act as stewards in that regard.

These stewardship obligations require the CSFNs to sustain healthy ecosystems in their Territories, with a view to maintaining these resources as a viable foundation for CSFN members' sustenance and culture, both today and for the benefit of future generations.

Coupled with these practices related to environmental integrity and stewardship is accessing, harvesting, using and enjoying the benefits of natural resources for their desired purposes – be they cultural, ceremonial, spiritual, subsistence, economic and/or other purposes – and to do so in a preferred manner. Incidental and essential to this is the ability to safely travel unobstructed over the lands and waters throughout each of their Territories.

Specific resources that are of historical and contemporary importance to one or more of the CSFNs include the following:

- a variety of fish, including salmon (pink, sockeye, and chinook) and white sturgeon (which is endangered);
- large and small game, including caribou, bear, rabbit, beaver, squirrel, muskrat, grouse and a variety of waterfowl;
- cambium from pine trees, blueberries, huckleberries, Saskatoon berries, soapberries, wild raspberries, and other roots, leaves, berries and types of wood;
- earthen material, such as stones and gravel; and
- the experience of remoteness and solitude on the land for the cultural and spiritual relationships with the land including healthy connection to and adequate protection of and respect for spiritual sites.

Essential to carrying out all of these practices, and vice versa, is the maintenance of individual and community health, which is itself comprised of maintaining conditions conducive to healthy bodies, minds, and spirits (i.e., to the intertwined environmental, cultural, spiritual, social and economic conditions that ensure the well-being of individuals and of each of the CSFNs as a whole). Additionally, this cannot be achieved without equitable socio-economic conditions for each of the CSFNs and their members.

Finally, and closely tied to this are the CSFNs' archaeological, spiritual and cultural sites and practices. The survival of the CSFNs' unique culture depends on the preservation and protection of the existence and sanctity of archaeological, spiritual and cultural sites and to ensure they are kept physically intact for current and future generations. In addition to maintaining the CSFNs' connection to the land, such uninhibited, undisturbed, and private access to these sites is essential to fostering an ongoing sense of community (including Elder-youth interactions) and providing traditional knowledge holders and Elders with opportunities to share history, knowledge, traditional ways and skills with other members, including youth.

4.2 Water

As discussed above, the CSFNs adopted the *Yinka Dene Water Law* in 2016. In accordance with the *Yinka Dene Water Law*, the CSFNs have classified receiving waterbodies located within their Territories and downstream of Blackwater based on their cultural and ecological importance, including High Cultural or Ecological

Significance (Class I Waters), Sensitive Waters (Class II Waters), and Typical Waters (Class III Waters).

Water management goals for Class I Waters are focussed on protecting and maintaining background conditions in terms of quality and quantity (i.e., non-degradation). For Class II Waters, resource management activities are focussed on minimizing changes to background conditions, such that developmental activities are planned and implemented in a manner that minimizes alteration of the quality and quantity of surface waters. For Class III Waters, resource management activities are focussed on protecting existing and future water uses. For all water bodies, rates of flow should not be altered relative to background conditions and flows should be restored in water bodies that have been affected by historical water management activities.

The conditions for the EA authorizations (if granted) that the parties have collaboratively developed incorporate specific requirements for New Gold to take into account the Y*inka Dene Water Law*. Concurrently, the CSFNs and New Gold are in ongoing discussions regarding the application of the *Yinka Dene Water Law* to Blackwater.

4.3 Governance

The CSFNs have been governing their Territories in accordance with the Yinka Dene legal tradition for thousands of years. There are several distinct elements of their governance system and legal order. In particular, their peoples are affiliated with various clans that include hereditary leaders known as *'uza'hne*. They also have land and resources management territories known as *keyoh/keyah* associated with extended family units. The primary institution for governing *keyoh/keyah* and clans is through the potlatch system of governance known as *Bah'lats*.

Prior to contact with settlers, this interconnected system determined legal obligations and authority for stewardship of and access to lands, waters, and natural resources to ensure that they benefit present and future generations. After contact, the CSFNs' governance system and legal tradition have persisted and evolved, responding to developments such as imposition of Indian reserves and bands, a provincial trapline registration system that did not necessarily correspond to *keyoh/keyah*, and Canada's former ban on conducting *Bah'lats*. The CSFNs continue to apply their laws, including through the *Bah'lats*, and continue to recognize their '*uza'hne, keyoh/keyah* and clan membership.

The governance system of each CSFN is described briefly below.

The Stellat'en traditional, hereditary governance system is matrilineal and clan based. As a matrilineal society, kinship lines are traced through the mother's lineage, and clans and names are inherited through the mother. The Stellat'en are grouped into four clans: grizzly bear/black bear/wolf (*dumdenyoo*), beaver/owl (*tsayoo/tsumusyoo)*, frog/crane (*dulth ts'eyoo)* and caribou/little man (*luksilyoo)* (SFN 2009a).

The Stellat'en traditional clan based governance system is practiced through the *Bah'lats* (often anglicized to "potlatch"). Formal *Bah'lats* business takes place during the

feast with strict protocols for where people are seated according to their house groups, acknowledgment of guests, presenting gifts, etc. These protocols are strictly adhered to.

According to Stellat'en oral history, dispute resolution is an important function of the *bah'lats* and historically it played a critical role in sustaining peace:

> *Bah'lats Ada Dene Huyinla: In the beginning, at the time of Ustas, the Bah'lats was not yet known by this name. Instead the people spoke of the "big gathering" du'ghe'telh-dulh, to describe the congregation of several families at an important meeting. At these meetings you would have talks to settle problems in the village and were given food afterwards. The du'ghe'hu'telhdulh became the way to settle important disputes between families. (Bah'lats Ada Dene Huyinla — Potlatch in the Beginning (SFN 2009c)*

As a result, the outcomes of *Bah'lats* decisions were accepted as binding.

Nadleh Whut'en hereditary governance is based on clans and *Keyahs*. *Keyah* holders have great responsibility as they are the caretakers of the land, and act as the spokesperson for people who live within the *Keyah*. The Nadleh Whut'en traditional or 'hereditary' clan-based governance system is practiced through the *Bah'lats*. *Bah'lats*, which were administered by head clan and sub-clan chiefs, serve as a legal basis for succession and inheritance, territorial laws, resource management, family law, dispute settlement, and local governance, while also serving as means by which principles of justice passed on are taught to future generations (Borrows 2010). The *Bah'lats* is also important for sharing resources, recognizing the uneven access to resources year to year in different areas, and the corresponding challenges of scarcity (CSTC 2006).

Saik'uz hereditary governance is based on clans and *Keyohs*. Saik'uz members are divided into two clans: the *Nulki Whut'en*, (the frog clan) and the *Ta'chik Whut'en* (the grouse clan). *Keyoh* holders have great responsibility, as they are the carers of this land, and act as the spokesperson for people who lived within the *Keyoh*. The Dakelh people have historically been matrilineal, meaning that decent is traced along matrilineal lines and clan membership is based on the mother's clan.

5. CSFNs' ASSESSMENT OF PROJECT IMPACTS ON THEIR RTI

As described above, the CSFNs' RTI include the right to use, occupy, and possess and govern the lands, waters, air and resources in their respective Territories. In addition, the CSFNs have independent freestanding rights to manage and harvest fish, wildlife, plants, and other species in their Territories for a variety of purposes.

During the EA of Blackwater, the CSFNs raised concerns and issues related to Blackwater, environmental components, and their RTI, including the following:

Any potential impacts from Blackwater to:

- water, including water management, quality and quantity;

- water crossings, wetlands and wildlife habitat, including habitat fragmentation;
- sediment and erosion control;
- hunting, fishing, trapping and gathering rights, including impacts to the species (i.e. caribou, moose, plants, berries) and methods of harvesting (i.e. traplines);
- use and management of Territories; and
- socio-economic well-being.

Issues / concerns with respect to:

- tailings management;
- access roads;
- opportunities to be involved in Blackwater throughout the mine life;
- Project design, proposed mine facilities, and structures;
- transmission line design and route;
- proposed mitigation measures and conditions;
- cumulative effects; and
- loss of land use due to the transmission line.

The following sections detail the CSFNs' assessments of various effects and corresponding impacts of Blackwater on their RTI, which assessments do not necessarily reflect the views of the EAO or the Agency.

5.1 Biophysical Project Effects

5.1.1 Impact Assessment Methodology

As discussed above, a comprehensive assessment of the impacts of Blackwater on the CSFNs' RTI requires a different approach and methodology relative to that used for the effects assessment in Part B of the EAO assessment report. This approach requires that the assessment reflect the territorial-basis upon which RTI exist and are exercised, and incorporates an assessment of the current ability of the CSFNs to meaningfully exercise their RTI. This "current state" of the ability to meaningfully exercise (AME) then serves as a "baseline" against which impacts can be assessed and characterized (i.e. provide an understanding of the sensitivity of the AME to potential impacts).

The "Assessment of the Impacts of New Gold's proposed Blackwater Gold Project" (Eco Report) prepared by Brian Toth and Michelle Tung for the CSFNs in June 2016

assesses Blackwater's potential impacts to the CSFNs' RTI from that unique perspective. This assessment was conducted separately from the assessments conducted through the EA process led by the EAO.

The approach used by the authors of the Eco Report included the following methodological steps:

(a) The current understanding of the CSFNs' RTI relative to Blackwater were described and "framed" to produce a common understanding of associated geographical area(s) and environmental matters that need to be scoped into the assessment.

(b) The CSFNs' Territories were then scoped relative to key historical effects that influence the current condition of the environment and the CSFNs' ability to exercise their RTI. Key environmental trends within the CSFNs' Territories were also identified at this stage.

(c) Landscape-level disturbance indicators were then assessed for each of the CSFNs' Territories to understand the current condition of each Territory relative to land and resource use pressures, and potential sensitivity to additional disturbance.

(d) Key biological resources that are central to CSFNs' RTI were then assessed in terms of their current health/status.

(e) This information was then used to build and inform an understanding of the ability of the CSFN members to meaningfully exercise their rights by harvesting or using those species (i.e. "the ability to meaningfully exercise").

(f) Blackwater's potential impacts and effects that are relevant to the CSFNs' RTI were then summarized based on the information presented in the Application.

(g) The potential adverse effects of Blackwater were then considered based on the existing state of affairs in order to assess and characterize the seriousness of those Project impacts on the CSFNs' RTI.

The Eco Report assessed the entirety of the CSFNs' Territories in an effort to describe the "existing state of affairs", including the existing ability of the CSFN members to meaningfully exercise their RTI. For this reason, all areas of the CSFN Territories are discussed, regardless of whether there is a potential effect from Blackwater. The assessment is summarized and characterized below.

Following the completion of the Eco Report (2016), the CSFNs' reviewed New Gold's Consolidated Effects Memos dated September to November 2017 (collectively, the CEMs) to consider changes to Blackwater made subsequent to the submission of the

Application/EIS, including the re-alignment of the transmission line. Notably, these alterations to Blackwater did not alter the findings of the Eco Report.

5.1.2 Current Condition as Background Context

Background environmental trends and historical impacts to the environment within the CSFNs' Territories have had, and continue to have, significant adverse impacts on the ability of the CSFNs members to exercise their RTI. These include, but are not limited to:

- Climate change related trends, including warming air and water temperatures, and shifting precipitation and run-off patterns, which have broadly caused environmental effects and adverse effects to the CSFNs' Territories – including:
    - large-scale forest health issues;
    - fires and salvage logging;
    - altered stream thermographs/hydrographs;
    - large-scale terrestrial habitat disturbance and alteration, with corresponding effects on wildlife species; and
    - shifting discharge regimes, warming stream temperatures, and lower summer flows adversely effecting fish health.
- The diversion, impoundment, and regulation of the Nechako River which have caused broad environmental effects as well as adverse effects on the CSFNs' Territories – including:
    - inundated watersheds;
    - a diminished water budget;
    - an altered discharge, temperature and sediment regime;
    - a transitioning channel and flood plain;
    - loss of lands; and
    - adverse effects on fish and wildlife species that use or reside in the river.

These issues have resulted in well documented and ongoing adverse effects on aquatic and terrestrial ecosystem health, and on the biological resources that the CSFNs' Territories are capable of supporting, with corresponding impacts on the CSFNs members' abilities to exercise their RTI. These factors serve as "background-context" to the current condition of the CSFNs' Territories.

5.1.3 Current Status of Wildlife and Aquatic Populations

Aquatic Populations

The Eco Report assessed the status/health of key species of concern to the CSFNs based on available information. This section provides a summary of each fish stock/population considered within the CSFNs' Territories (as outlined in the Eco Report). The bolded text under each summary reflects a corresponding assessment of

the ability of the CSFNs members to meaningfully exercise their associated RTI (i.e. the existing state of affairs of the ability to exercise). That assessment is based on the degree to which the CSFNs' ability to exercise the right within their Territories is constrained.

Sockeye

- Primary sockeye stocks that support the CSFNs' harvesting rights include stocks that originate within the Nechako watershed, including the Nadina and Stellako sockeye conservation units (CUs). The Fisheries and Oceans Canada (DFO) status of these CUs are poor and cautionary-poor, respectively.

- These DFO status assessments only considered data up to 2010. Trends contributing to the declines observed for these stocks have generally continued from 2011 to 2015.

Conclusion for Sockeye

Sockeye salmon is a critical species to the CSFNs – it is a cornerstone of their cultures. CSFNs members' abilities to exercise their RTI associated with sockeye is **severely constrained** due to both diminished abundance and restrictive regulation in recent years. Fish cannot be regularly caught in the amount, in the locations, and/or using the methods desired by CSFNs members seeking to exercise their Aboriginal rights and interests. The condition of sockeye is also becoming problematic. In many years, with increasing frequency, the CSFNs have not been able to fish for sockeye at all, meaning that their ability to exercise of their corresponding rights and interests has been fully constrained in those years.

Chinook

- Chinook that originate from and return to habitats in the Nechako River watershed belong to two different management units ("MUs"; the Spring 5_2 and Summer 5_2 MUs within DFO's Fraser Chinook Management Framework).

- Chinook stocks in both MUs have been declining (as have most other Fraser River chinook stocks), and the DFO has undertaken an investigation of causative factors after multiple years of management measures that have not elicited the desired response.

- The current status of both of these chinook MUs is considered poor. Abundance is the lowest on record for both MUs; and is managed by DFO as a conservation concern.

Conclusion for Chinook

CSFN members' ability to exercise their RTI associated with chinook is **constrained** by limited abundance and regulation. The CSFNs members' abilities to harvest chinook has been adversely affected by a number of historical factors, including the impoundment

and regulation of the Nechako River, which resulted in physical alterations to fishing sites, as well as policies that prohibited fishing of preferred sites and with preferred methods. More recently, conservation-based management restrictions on harvesting have been implemented, further limiting the ability of CSFN members to meaningfully exercise their corresponding Aboriginal rights and interests.

Coho Salmon

- The coho salmon population within the Nechako River watershed is a component of the Upper Fraser subpopulation of Interior Fraser Coho. Interior Fraser Coho are Committee on the Status of Endangered Wildlife in Canada (COSEWIC) assessed as Endangered, and are managed according to a Conservation and Recovery Strategy and ministerial commitments.

- Coho salmon presence and distribution in the Nechako River are poorly described, and very limited inventory efforts have been undertaken to date.

- The harvest of coho by the CSFNs is historically documented, but stock distributions in the upper Fraser River watershed are believed to have been heavily impacted by the Hells Gate slide in the early 1900s. Their existing distribution in the upper Fraser River has been characterized as a re-colonization.

Conclusion for Coho Salmon

The CSFNs are currently prohibited from harvesting coho from the Nechako watershed (i.e. ability to harvest is **not possible**) due to DFO's conservation and rebuilding management directives. Regardless, harvesting is not likely to be viable given what are believed to be very low numbers of coho within the Nechako.

Kokanee

- Kokanee populations are widespread through the Nechako basin – they occur within all sockeye nursery lakes (Francois, Fraser, Takla, Trembleur, Stuart) and are documented in 41 other lakes and reservoirs within the Nechako watershed.

- Kokanee are, however, not monitored to any extent and are only managed with a blanket harvest regulation, with the exception of some stocked populations.

- Insufficient information exists to assess the current health or status of the kokanee populations within the CSFNs' Territories.

- Kokanee is a yellow-listed species, meaning that it is not currently recognized as being at risk in B.C. However, kokanee are susceptible to industrial, agricultural, and urban development due to their dependence on clear flowing streams.

- The CSFNs use and rely on kokanee extensively for sustenance and other purposes. Kokanee are also well recognized for their importance to the ecosystem in terms of their contribution to fish and wildlife diets.

Conclusion for Kokanee

CSFN members' ability to exercise their RTI associated with kokanee is **not well understood** and information is limited. Kokanee populations and harvests within the CSFNs' Territories are not monitored to any extent. Kokanee stocks in the reservoirs created by the Kenney Dam are not harvested due to perceived risks.

Nechako White Sturgeon

- White sturgeon in the Nechako River watershed have been assessed as Endangered by COSEWIC (2006 and 2012), and were added to Schedule 1 of federal *Species at Risk Act* (SARA) in 2006. Their management is guided by SARA and the population specific goals and objectives are outlined in the Recovery Strategy for White Sturgeon in Canada.

- The sturgeon population has suffered from a "recruitment failure" since 1967 – essentially a failure to produce juveniles that survive to become adults; as such, the remaining population (recent estimates maximum of 600 individuals) are largely older fish (>40-years of age), and declining in reproductive potential. It is estimated that the population will become unrecoverable within 15-20 years – meaning there will be too few individuals that can successfully reproduce to maintain the species.

- A sturgeon hatchery has recently been built (2014) in Vanderhoof for the purposes of annually raising several thousand juvenile white sturgeon to be released back into the Nechako River as 1-year olds. Work is intended to continue on restoring natural recruitment so that successful wild spawning and juvenile-adult survival can be re-established.

Conclusion for Nechako White Sturgeon

White sturgeon is a very important species to the CSFNs for the exercise of harvesting, cultural and other rights and interests. The CSFNs can no longer exercise their RTI associated with sturgeon (i.e. the ability to exercise Nechako White Sturgeon harvesting rights is **not possible**). For example, they can no longer legally or sustainably harvest white sturgeon for sustenance, cultural or other uses. The CSFNs have forgone directed harvest of sturgeon for more than a decade out of concern for the sustainability of the population.

Since the sturgeon population's protection under SARA in 2006 (prohibitions restrict activities with the potential to kill, harm, harass, etc. sturgeon), the CSFNs have reported by-catch encounters, while the CSTC (which includes the CSFNs) has implemented harm reduction and outreach measures, and continually engages with the DFO in relation to the prohibitions and the food, social, ceremonial salmon fishery.

Lake Trout (char)

- Lake trout populations are distributed across the Nechako plateau, with each population typically resident in a single larger lake, with no or limited gene flow with other populations.

- Lake trout within the Omineca (Region 7) are among the most actively managed populations in B.C., with many populations having been assessed in recent years.

- Diminished lake trout populations is documented for numerous lakes within the CSFNs' Territories.

Conclusion for Lake Trout (char)

The CSFN members' ability to exercise their RTI associated with lake trout is **constrained** in some lakes due to reduced abundance and reduced size (over-exploitation). Concurrently, there is an increasing reliance on resident fish stocks such as lake trout due to the decline in sockeye availability, thereby further threatening the long-term sustainability of this species within the CSFNs' Territories.

Rainbow Trout

- Wild native rainbow trout are extensively distributed throughout the Nechako River watershed.

- Although extensive efforts have been undertaken to monitor stocked populations, little work has been completed on specific biological, life history, and genetic traits exhibited between the various wild populations, and few wild populations are monitored to any extent.

- CSFNs members harvest rainbow trout in lakes and rivers throughout their Territories.

- Insufficient information exists to determine the health and status of rainbow trout populations within the CSFNs' Territories, and in many cases the information required would be stock and fishery specific.

Conclusion for Rainbow Trout

Harvest and population monitoring (particularly for wild populations) is inadequate for the purposes of assessing trends and the CSFNs' current abilities to exercise their RTI associated with rainbow trout (i.e. ability to exercise RTI associated with rainbow trout is **not well understood**).

Data Gaps and Other Resident Fish Species

- Bull trout:
    - The Nechako River and its main tributaries and lakes are known to provide important habitats, particularly in relation to seasonal feeding opportunities for bull trout.
    - Bull trout are managed as a conservation concern by B.C., and resident anglers are subjected to restricted harvests within the Omineca. That conservation concern is largely driven by susceptibility to overharvest.
    - The CSFNs harvest bull trout in directed seasonal fisheries. The presence and numbers of bull trout are anecdotally recognized by several First Nations to be diminished in a number of watersheds in B.C.
    - Insufficient regional information exists about bull trout to understand their status in relation to the CSFNs' RTI.
- Burbot:
    - Burbot populations are also widely spread across the Nechako River watershed and the CSFNs' Territories.
    - The CSFNs use burbot from a number of lakes and large rivers within their Territories. There are a number of seasonally preferred harvesting areas where burbot are specifically targeted, particularly in winter ice fisheries.
    - Few burbot populations within the CSFNs' Territories have been assessed or monitored to any extent. There is insufficient information available to assess their status relative to the CSFNs' RTI.
- Lake whitefish:
    - Lake whitefish are recorded in 27 lakes within the Nechako River watershed. There have not been any comprehensive surveys of these stocks – they are managed via a blanket harvest quota.
    - The CSFNs do and have historically used lake whitefish for a variety of purposes.
- The CSFNs also use and have historically used various species of sucker, pikeminnow, chub, peamouth and other resident species for both sustenance and other uses (e.g. rendering for oil, trapping attractants, etc.). These species are not monitored to any extent.

As outlined above, there are numerous species that are utilized by CSFNs members, but for which little or no information exists to inform an assessment of population status

and/or the manner in which the CSFNs' abilities to meaningfully exercise associated RTI may be affected.

Wildlife Populations

The Eco Report reaches the following conclusions about the current status of wildlife resources that support CSFNs' RTI in their Territories (the bolded text under each summary reflects an assessment of the ability of CSFNs members to meaningfully exercise their corresponding RTI.

Caribou

- The Tweedsmuir-Entiako and Itcha-Ilgachuz caribou subpopulations are part of the Southern Mountain population, listed on Schedule 1 of SARA as Threatened.

- Caribou population levels have contracted from all but small portions of the CSFNs' Territories.

- In the central interior, the decline in caribou numbers and the retraction of their range have been the focus of substantial research and management effort since recognition of the matter triggered the actions of responsible agencies approximately 15 to 20 years ago, and began long before research and management efforts began.

Conclusion for Caribou

CSFN members' ability to exercise their RTI associated with caribou is **severely constrained**. With diminishing numbers and habitat pressures, caribou population ranges have contracted to the extremities of the Territories. Where not precluded from harvesting due to conservation prohibitions, caribou population numbers are small and remotely distributed, making the exercise of corresponding RTI by the CSFNs impracticable, and in some cases incongruent with cultural values given the populations' current status and declining trends.

Moose

- Moose are distributed throughout the CSFNs' Territories.

- Surveys undertaken in 2011/12 and 2012/13 indicated that moose densities have declined by 50 percent since 2005 in the southern Omineca. A 2016/2017 inventory in the Southern Omineca found that populations have continued to decline. Populations around the Prince George area have continued to decline from highs of 1.35 moose/km^2 to 0.40 moose/km^2 to 0.46 moose/km^2. In the Fort St. James area, populations have declined from 0.77 moose/km^2 in 2011 down to 0.47 moose/km^2 in 2016 (B.C. moose fact sheet, Dec. 2017).

- Whereas caribou had historically been the primary ungulate targeted and harvested by the CSFNs' members and their ancestors, adverse effects on caribou populations

have resulted in moose being the ungulate that is most commonly harvested and consumed by CSFNs members today.

- The decline in the moose population is noted by the CSFNs to be a substantial impact on their RTI. Some CSFNs members report substantial challenges in finding and harvesting moose and suggest that in preferred hunting areas, numbers are substantially lower than the 50 percent recorded decline since 2005.

Conclusion for Moose

CSFN members' ability to exercise their RTI associated with moose is **constrained** due to population declines of late, and increased access and competition. Greater effort is required to harvest, or hunt in the desired setting, thereby requiring greater travel, time and cost which has had the effect of reducing or outright eliminating the CSFNs members' ability to meaningfully exercise their corresponding Aboriginal rights and interests.

Grizzly

- Grizzly bear is a species of conservation concern both federally and provincially (COSEWIC Special Concern; SARA Special Concern; B.C. CDC Blue List), largely due to extensive range and population reductions caused by habitat development and fragmentation, and human-related conflicts and mortality.

- Grizzly bear population units (GBPUs) within the CSFNs' Territories include the Nation, Nulki and Francois units, and a portion of the Bulkley-Lakes unit.

- The Francois and Nulki GBPUs were closed to harvest in 2012 as a result of low population estimates (58 bears and 44 bears, respectively).

Conclusion for Grizzly Bear

Grizzly bears are of significant cultural and spiritual importance to CSFN. The maintenance of habitat capacity to support healthy/robust populations is central to the CSFNs' RTI and their members' abilities to exercise their Aboriginal rights and interests. Notably, grizzly bear populations (Nulki and Francois) have recently declined below levels that are considered viable to sustain directed harvest. CSFNs' threshold for a healthy population is well above B.C.'s "viable" population designation. Due to limited abundance and sustainability issues related to Nulki and Francois populations, CSFNs' RTI, including cultural and spiritual interests, in grizzly bear populations are **severely constrained.**

5.1.4 Related Project Impacts on CSFNs' RTI

The results of the Eco Report indicate that a large number of fish and wildlife species within the CSFNs' Territories have undergone recent (10-20 years) large-scale declines in abundance, while others have been declining for longer periods and have exceeded biological thresholds of population sustainability.

Factors contributing to these diminished statuses vary, and range from factors external to the local area (such as marine productivity and other climate change related trends), to localized factors (such as those related to land and resource management, including forestry and MPB impacts). In all cases of diminished population health/status, additional landscape disturbance, including clearing and linear development, have the potential to contribute to factors that have or are facilitating the diminished state of many species that are central to the CSFNs' culture, RTI, and to their members' abilities to meaningfully exercise their RTI.

The prior/ongoing impacts/trends and their effects, and the current status of fish and wildlife provide the current condition (or existing state of affairs) of the "ability to exercise rights", and provide the starting point for assessing how Blackwater will impact the CSFNs' RTI.

This section provides a summary of the CSFNs' assessment of Blackwater's impacts on their RTI, including their members' abilities to meaningfully harvest aquatic and wildlife resources, based on the existing state of affairs described above. This assessment includes the CSFNs' review of New Gold's CEMs, that consolidated the changes made by New Gold after the submission of the Application/EIS, including the re-routing of the transmission line.

Aquatic Populations

The primary means by which Blackwater will interact with aquatic resources that are associated with the CSFNs' RTI include the following:

- the power transmission line and access roads that will pass through portions of each of the CSFNs' Territories;
- the existing Kluskus FSR that will see an increase in a variety of traffic (through all Project phases); and
- downstream threats to fish and fish habitat values due to water use/withdrawal, seepage/runoff (water quality) associated with the mine site and freshwater supply system (FSS), and accidents/malfunctions.

In particular, the construction of the transmission line will cause measurable effects that will contribute to existing adverse effects on all three of the CSFNs' Territories and their RTI. These effects include:

- increases in road density;
- increases in ECA or disturbed areas;
- increases in riparian areas disturbances; and
- increases in stream crossings (roads and transmission line right of ways (RoW)).

The mine site and FSS will affect downstream fish and aquatic habitat that will contribute to existing adverse effects on resident populations. These Project-related effects include changes to water quality and quantity (related to seepage, sediment movement and tailings storage facility (TSF) discharge to Davidson Creek post-closure). A TSF dam

breach could potentially have severe adverse effects on downstream aquatic values of interest to the CSFNs that would vary in duration and extent depending on the nature/magnitude of the breach.

Sockeye Salmon

Each CSFN has an existing high proportion of watershed assessment units (WAUs) within its Territory that falls into the high risk category for the riparian forest removal and equivalent clearcut area (ECA) indicators. The transmission line corridor will result in incremental loss of riparian habitat and increases in ECA.

Based on the findings of the Eco Report, Blackwater is anticipated to incrementally contribute to current effects that are adversely affecting the Nadina and Stellako conservation units (CUs). These two populations already have poor and cautionary-poor statuses, respectively. CSFN members' ability to exercise their corresponding RTI are already severely constrained due to diminished abundance and regulation.

Activities associated with Blackwater, in particular the transmission line corridor, are anticipated to exacerbate existing migratory stressors through the loss and/or disturbance of riparian habitat, and increases in land clearing/ECA (impacting flow and temperature regimes). Other incremental effects associated with the transmission line include increased erosion, sedimentation, and water temperatures due to disturbance of riparian vegetation, and an increased risk of spills or leaks into water courses (also associated with increased traffic on Kluskus FSR). Project effects on sockeye are anticipated to be negative, incremental to causation related to the CSFNs' constrained ability to exercise their harvesting rights and interests, and therefore causing potentially serious impacts on the CSFNs' RTI.

Coho

Each CSFN has a high proportion of WAUs within its Territory that fall into the high risk category for the riparian forest removal and ECA indicators. The transmission line corridor will result in incremental loss of riparian habitat and increases in ECA.

Based on the findings of the Eco Report, Blackwater is anticipated to have a negative effect on coho stock recovery through incremental additions to adverse cumulative environmental effects. The transmission line corridor will diminish fish habitat productivity, negatively affecting stock re-colonization and recovery. Anticipated Project effects on coho will therefore potentially cause serious impacts on the CSFNs' RTI.

Chinook

Based on the findings of the Eco Report, Blackwater is anticipated to have negligible (neutral) effects on chinook. Chinook in the Nechako watershed have not been documented to be adversely affected by temperature and discharge trends.

Nechako White Sturgeon

Based on the findings of the Eco Report, Blackwater is anticipated to have a negative effect on sturgeon recovery. Any Project effects that could lead to adverse effects on the Nechako River that contribute to the impairment of spawning habitats are of great concern and pose potentially serious impacts to the CSFNs and their RTI. Particular effects that are of significant concern include the addition of sediment, and alterations to flow and temperature regimes due to the loss and/or disturbance of riparian habitat. Thus, although Blackwater is not anticipated to have direct adverse effects on Nechako white sturgeon, the numerous potential indirect effects would nevertheless be incremental to existing cumulative adverse environmental effects, and negative and potentially serious impacts on the CSFNs' RTI.

Lake trout (char)

Based on the findings of the Eco Report, Blackwater is not anticipated to have a direct negative effect on lake trout (char). The transmission line corridor will not facilitate new or improved (motorized and foot) access to any lake trout-bearing lakes within the CSFNs' Territories. Accordingly, Blackwater effect on lake trout is anticipated to be neutral.

Other Resident Species

Other resident fish species of value to the CSFNs include kokanee, rainbow trout, bull trout and burbot. While there are information gaps on the existing health/status of these populations within the CSFNs' Territories, the residual effects of Blackwater are expected to be incremental and negative on these fish stocks.

The Application characterizes localized effects on resident fish and fish habitat related to the mine site and FSS that include changes in fish habitat quality and availability in Davidson Creek and lower Chedakuz Creek. CSFN members have expressed concerns related to potential downstream effects that may affect fish and fish habitat in the Chedakuz Creek watershed (downstream of the mine site and FSS) and in the Nechako Reservoir. Effects of concern include changes in water quality and quantity as a result of seepage (all Project phases), sediment movement, and TSF discharge to Davidson Creek post-closure.

Wildlife Populations

The primary means by which Blackwater will interact with wildlife resources that are of interest to the CSFNs include:

- the transmission line and access roads that will pass through portions of each of the CSFNs' Territories;
- the existing Kluskus FSR that will see an increase in a variety of traffic (through construction, operation and reclamation); and

- the mine site and related infrastructure that has the potential to displace and/or adversely affect the abundance and/or population size of wildlife with ranges that include portions of the CSFNs' Territories.

The CSFNs presently and/or historically have used all wildlife resources within their Territories for some purpose generally related to their RTI. Large game wildlife resources (such as moose, caribou and grizzly bear), which are of particular importance to the CSFNs' RTI, are described below.

Moose

Based on the findings of the Eco Report, Blackwater is anticipated to have negative effects on the status/health of moose. The current health of moose populations in the southern Omineca has already declined significantly by approximately 50 percent. Blackwater will contribute to the causative factors that are believed to have led to these declining moose population trends, which include loss of limiting (winter) habitat and increased mortality due to changes in predator efficiency and hunter access – both largely due to extensive forest health and forestry-salvage activities.

The Application concludes that Blackwater's residual effects include:

- increased mortality due to vehicle collisions and increased access for legal and illegal hunting within the RSA;

- changes to movement patterns, due to changes in habitat availability and sensory disturbance; and

- changes in wildlife population dynamics as a result of changes in foraging habitat, increased access for predators, and changing predation rates within the RSA.

The Application also describes habitat loss and alteration effects that include two percent loss of high to moderate value winter and growing (summer habitat) in the RSA. According to New Gold, Project activities are therefore expected to result in the incremental decline of limiting habitat (two percent of high to moderate winter habitat) for moose within Blackwater Wildlife RSA.

The Eco Report (section 6.2.2) quantifies how Blackwater-related transmission line corridor will increase ECA percentage and road density. In the southern Omineca, those effects will be cumulative with factors that have already contributed to a significant short-term decline in the moose population, and will impart an overall reduction in moose population potential, and population resiliency (i.e., ability to rebuild). Notably, these effects are contrary to the objectives of the moose management measures recently implemented by the Ministry of Forests, Lands and Natural Resources Operations (FLNRO) to facilitate population rebuilding and therefore represent potentially serious impacts on the CSFNs' RTI.

The re-alignment of the transmission line, which occurred subsequent to the submission of the Application/EIS, avoids and reduces the transmission line's environmental effects and adverse impacts on the CSFNs' RTI. However, the remaining effects cannot be fully

mitigated, and the potential impacts of residual effects on moose populations and the associated CSFNs' RTI remain negative and serious.

Caribou

Based on the findings of the Eco Report, Blackwater is anticipated to have negative effects on caribou, through incremental degradation of core habitat and increased linear feature density, which contribute to increased mortality risks (predator efficiency, hunting access, and vehicle collisions). The Tweedsmuir-Entiako and Itcha-Ilgachuz caribou subpopulations are part of the Threatened Southern Mountain Population/Northern Group (Environment Canada, 2014) of Northern Mountain DU7 (COSEWIC 2011), and part of the provincially Blue-listed northern ecotype (B.C.CDC, 2014). The declining numbers throughout their distribution are already approaching or exceeding recognized thresholds for caribou sustainability, and Blackwater's residual effects will thereby contribute negatively to the existing poor health of those subpopulations.

The Application describes current conditions that potentially exceed or are expected to exceed recognized thresholds for caribou sustainability – as follows:

- The Application finds that cumulative residual effects currently affect 29 percent of the RSA (forestry and MPB are the two greatest contributors). Due to the large area affected by MPB, there is a reasonable likelihood that future cumulative effects to caribou habitat could increase beyond the 35 percent threshold (Environment Canada, 2014).
- Caribou calf surveys of both subpopulations indicate wolf densities may be greater than 3 per 1000 km^2, which would exceed the threshold for significance related to changes in caribou population dynamics; calf mortality rates suggest that predation was high in 2013 in the Tweedsmuir-Entiako subpopulation area.

The Application finds that Blackwater will have the following negative residual effects on caribou:

- Loss and degradation of caribou habitat (3 percent of moderate to high value available suitable spring and summer/fall habitat in the RSA). The overlaps of forestry, mining, roads, fire and MPB infestation on moderate to high value caribou habitat account for 84 percent of the RSA (217,053ha of overlap of RSA);
- Increased mortality risk, associated with the access road, Kluskus FSR and transmission corridor, through vehicle collisions and indirect effects related to predatory efficiency and hunting access; and
- Changes in population dynamics, due to additional linear development within the caribou RSA, which can increase predator efficiency (increase in potential wolf access to suitable caribou habitat).

The Application concludes that Blackwater will have cumulative residual effects on caribou through interactions with Blackwater's contribution to habitat loss and changes to population with past/present and future activities (forestry, recreation, mining, and natural disturbances).

Given the status of these caribou sub-populations, and the CSFNs' constrained abilities to exercise their rights to harvest them, any landscape effects that threaten the conservation and recovery objectives for caribou are of considerable concern to the CSFNs, and potentially serious impacts to the CSFNs' RTI.

Grizzly Bear

Based on the findings of the Eco Report, the Blackwater area potentially affects the Blackwater-West Chilcotin GBPU, the western part of the Nulki GBPU, and a small south-central area of the Francois GBPU. The Francois and Nulki GBPUs, which are both within the CSFNs' Territories, were closed (to harvest) in 2012 as a result of low population levels (58 bears and 44 bears, respectively). The management objective for Threatened GBPUs in B.C.is population recovery to prevent range contraction and ensure long-term population viability.

Pre-existing habitat loss and fragmentation due to logging and road development have altered low elevation habitat within the Blackwater area. MPB infestation has affected large areas of mature pine forest in the region, including the LSA and RSA. Mineral exploration in the area has increased the number of access roads, which has caused increased habitat fragmentation (relatively small and localized compared to forestry activities), and while there are no hunting seasons for grizzly bear in the Blackwater area, there are hunting seasons for other species that share grizzly bear habitat (i.e., moose, black bear).

The Application characterizes effects on grizzly bear as follows:

- Habitat loss: one to three percent of suitable grizzly bear spring and summer habitat and one to four percent of suitable late summer/fall habitat. Once the habitat effect occurs during construction, it will be approximately 17 years before closure and then at least 80 or more years for the forest ecosystems to reach maturity. Sources of habitat loss that include mining, forestry, roads, fire and MPB overlap with 85 percent of the RSA.
- Linear density: All 3 GBPUs already above the 0.6 percent linear density threshold of 0.6km/km^2 at current conditions, and Blackwater will contribute to a further increase in linear density (29 km in Nulki, 0.1 percent increase; 0.4 km increase in Francois, minimal percentage increase).
- Risk of mortality: Mortality risks will increase along roads, airstrip, transmission line and FSS, with long-term effects potentially occurring within 250 m of the edge of clearing and roads.
    - Based on available mortality records, the sustainable harvest rate of 3.8 percent (set by B.C. MFLNRO) is already exceeded by Nulki (7 percent) and just met by Francois (3.8 percent). Therefore any additional mortality risk exceeds the FLNRO threshold (in the absence of directed harvest).
    - The Kluskus and Kluskus-Ootsa currently experiences 4.8 vehicles/hour, which use will increase to 9.5 vehicles/hour, and peak for several months at 12.5 vehicles/hour.

The Application recognizes that Blackwater is expected to interact cumulatively with all past, present and future activities related to habitat loss and mortality risk – this includes historical activities (such as forestry, recreation, trapping, guiding and traditional land uses), as well as current and future land uses (which mirror the historical activities, and also include activities such as mining, mountain bine beetle impacts and forest fires).

Based on the findings of the Eco Report, Blackwater is anticipated to have a negative effect on the status of the Nulki and Francois GBPUs. Project effects exacerbate and will interact cumulatively with past, present and future activities that negatively affect these grizzly bear populations, and they are therefore potentially serious impacts on the CSFNs' RTI.

The re-alignment of the transmission line, subsequent to the submission of the Application/EIS, avoids and reduces the transmission line's environmental effects and adverse impacts on the CSFNs' RTI. However, the effects cannot be fully mitigated, and the potential Project impact of residual effects on grizzly populations and the CSFNs' associated ability to exercise their rights and interests remain negative and serious.

Other Wildlife

There is insufficient information to understand the status of deer and elk populations within the CSFNs' Territories. Nevertheless, elk are becoming increasingly important to the CSFNs for sustenance given declines in moose and caribou populations. It is likely that Blackwater's effects, including increased traffic and increased access, will result in high mortality rates via vehicular collisions and hunter access.

Summary

A summary of the anticipated Project impacts on the CSFNs' RTI is provided in Table 2 below. Notably, alterations to Blackwater, including the re-alignment of the transmission line, do not alter the findings of the RTI assessment presented above and summarized in Table 2.

Table 2. Summary of anticipated Project impacts on the CSFNs' RTI.

Species/ Stock	Current State		Anticipated Project Impact	
	Health/Status	CSFNs' Current Ability to Exercise Rights	Anticipated Project Impact on Species/Stock	Anticipated Project Impact on CSFNs' AME-RTI
AQUATIC RESOURCES				
Sockeye	**Red/Red-amber** (poor/ poor-cautionary, WSP)	**Severely Constrained;** diminished abundance, regulation. In some years, fully constrained.	**Negative and incremental.** Transmission line corridor anticipated to exacerbate existing migratory stressors through the loss and/or disturbance of riparian habitat and increases in land clearing/ECA (impacting flow and temperature regimes). Other incremental effects associated with the transmission line include increased erosion, sedimentation, and water temperatures due to disturbance of riparian vegetation, and an increased risk of spills or leaks into water courses (also associated with increased traffic on Kluskus FSR).	**Negative and Serious**
Chinook	**Poor status:** lowest abundance on record	**Constrained;** limited abundance, regulation	**Negligible (neutral) effects on chinook.** Chinook in the Nechako watershed have not been documented to be adversely affected by temperature and discharge trends.	**Neutral**
Coho (IFC)	**ENDANGERED**, COSEWIC	**Not Possible**	**Negative and incremental on coho stock recolonization and recovery through incremental additions to adverse cumulative environmental effects.** The transmission line corridor will result in incremental loss of riparian habitat and increases in ECA and diminish fish habitat productivity.	**Negative and Serious**
Nechako White Sturgeon	**Endangered**, COSEWIC, SARA-listed.	**Not Possible**	**Negative effect on sturgeon recovery.** The numerous potential indirect effects would be incremental to existing cumulative adverse environmental effects. Effects of significant concern include the addition of sediment, and	**Negative and Serious**

Species/ Stock	Current State		Anticipated Project Impact	
	Health/Status	CSFNs' Current Ability to Exercise Rights	Anticipated Project Impact on Species/Stock	Anticipated Project Impact on CSFNs' AME-RTI
			alterations to flow and temperature regimes due to the loss and/or disturbance of riparian habitat.	
Lake trout (char)	**Diminished status**; numerous lake populations	**Constrained and negatively impacted in some lakes**	**Neutral.** Not anticipated to have a direct negative effect. The transmission line corridor will not facilitate new or improved (motorized and foot) access to any lake trout-bearing lakes within the CSFNs' Territories.	**Neutral**
Other resident species, (incl. kokanee, rainbow trout, bull trout and burbot).	**Unknown.** Insufficient information to determine health status of populations within CSFNs' Territories	**Not well understood**	**Incremental and negative.** Effects of concern include changes in water quality and quantity as a result of seepage (all Project phases), sediment movement, and TSF discharge to Davidson Creek post-closure.	**Negative and Serious**
WILDLIFE				
Caribou	**Threatened** – COSEWIC, SARA listed	**Severely Constrained**	**Negative.** Incremental degradation of core habitat and increased linear feature density, which contribute to increased mortality risks (predator efficiency, hunting access, and vehicle collisions). Factors that have led to declining numbers throughout their distribution are already approaching or exceeding recognized thresholds for caribou sustainability.	**Negative and Serious**
Moose	**Declined:** densities declined by 50 percent since 2005 in S. Omineca	**Constrained**	**Negative**. Transmission line will increase ECA percentage and road density and these effects that will be cumulative with factors that have already contributed to a significant short-term decline in the moose population and impart an overall	**Negative and Serious**

Species/ Stock	Current State		Anticipated Project Impact	
	Health/Status	**CSFNs' Current Ability to Exercise Rights**	**Anticipated Project Impact on Species/Stock**	**Anticipated Project Impact on CSFNs' AME-RTI**
			reduction in moose population potential, and population resiliency (i.e., ability to rebuild). The re-alignment of the transmission line, subsequent to the submission of the Application/ EIS, avoids and reduces the transmission line's environmental effects. However, remaining effects cannot be fully mitigated, and the potential impacts of residual effects on moose populations remain negative.	
Grizzly	COSEWIC **Special Concern**; B.C. CDC Blue List. Two local populations – Declined	**Constrained;** limited abundance and sustainability issues	**Negative effect on the status of the Nulki and Francois GBPUs.** Project effects (habitat loss, linear density, risk of mortality) will exacerbate and interact cumulatively with past, present and future activities that negatively affect these grizzly bear populations The re-alignment of the transmission line, subsequent to the submission of the Application/EIS, avoids and reduces the transmission line's environmental effects. However, the effects cannot be fully mitigated, and the potential project impact of residual effects on grizzly populations remain negative.	**Negative and Serious**

5.2 Project Impacts on CSFNs' Traditional Knowledge and Land Use

This section provides the CSFNs' assessment of Blackwater impacts on their traditional knowledge and traditional land use. The information presented below is specific to the information available for each of the CSFNs at the time of writing.

Stellat'en First Nation

Land Use Resources

Travel corridors are of critical importance to the Stellat'en given their regular use and connected areas of trade, resource use, cultural and spiritual importance and habitation. The Blackwater transmission line corridor crosses over important corridors and trails which have traditionally and continue to be used by resource harvesters and those attending healing camps and sacred sites. Trails that travel in a more northerly or westerly direction from Stellat'en and other areas around Fraser Lake may be impinged upon by Blackwater.

The Blackwater transmission line corridor also includes areas of significant cultural and spiritual importance, including battle and gravesites, cremation sites, fasting, healing, ceremonial and sacred sites, and sweat lodges and pictograph sites.

Plant and Wildlife Resources

Berry picking and plant harvesting constitute a very important component of Stellat'en land use and cultural practice. Berry picking remains a vital and important seasonal harvesting activity. Recent forestry practices and other developments have negatively affected berry picking and plant gathering areas, and Blackwater could further degrade the Stellat'en ability to participate in these traditional practices and other RTI.

Moreover, the Blackwater transmission line corridor includes regions of intense hunting used by Stellat'en members. These regions have the potential to be crossed or impinged upon by aspects of Blackwater.

Potential impacts to the ecological environment could negatively impact Stellat'en members' ability to (i) harvest adequate quantity and quality of traditional foods, and (ii) engage in activities that strengthen cultural continuity and enable the exercise of their RTI.

Protecting the ability to hunt, fish and collect berries and medicines for the next generation is of critical importance to Stellat'en. These intergenerational practices may be threatened by Blackwater as biotic resources are strained and Stellat'en members are forced to travel farther distances to hunt and gather due to increased construction and traffic in nearby, traditional and/or preferred harvesting areas.

Aquatic Resources

Quality of surface and groundwater is of critical important to the Stellat'en people. Traditional water sources are relied on to provide quality habitat for aquatic life and sustain a healthy subsistence food fishery. In this regard, fish continues to be a major component of Stellat'en sustenance and cultural practice.

Blackwater may adversely affect the quality of already strained traditional water sources. Stellat'en members used to collect drinking water from the Endako River, but are no longer able to safely use this water source due to contaminants from nearby projects.

Notably, Fraser Lake and Francois Lake and all associated tributaries are of immense importance to the Stellat'en food fishery. Also of critical importance is the Endako River that connects the two lakes. Many other lakes within the Stellat'en Territory are also used extensively, depending on the time of year and desired species. The Blackwater transmission line corridor will also cross streams that are within these watersheds. As water is not stationary, implications to the Nation's RTI may be broad in scope.

Cumulative Effects

Blackwater may exacerbate habitat loss related to land development, increased rate and magnitude of forest fires, and bioaccumulation of contaminants from existing projects, such as the Endako mine. At present, the cumulative effects of development and resource extraction on or nearby the Stellat'en Territory have seriously impacted at least three resources relied on by Stellat'en members to meaningfully exercise their RTI, such as: (i) healthy populations of fish and game in preferred harvesting areas; (ii) traditional land tenure and governance systems; and (iii) an adequate land base within which to pursue seasonal rounds and meaningfully exercise RTI. Additional future development could compromise a fourth critical resource: freedom from competition for access to traditional resources.

Nadleh Whut'en First Nation

Nadleh Whut'en members have used the area proposed for the Blackwater transmission line corridor since time immemorial for hunting moose and other game, fishing, and collecting berries, drinking water and medicine. Additionally, the Blackwater transmission line corridor extends over several important places that support the cultural continuity of Nadleh Whut'en members, such as campsites, trails, water routes, and collection sites for plants used for ceremonial purposes.

When the physical works and activities required by Blackwater are considered alongside Nadleh Whut'en use and occupation of its Territory, it is clear that Project interactions have the potential to constrain and adversely impact Nadleh Whut'en use of lands and resources and its RTI for multiple generations.

Wildlife Resources

Nadleh Whut'en members have experienced a decline in the abundance of wildlife available for hunting, with significant declines in caribou and moose populations across their Territory. Forestry has been intensive in the region and Nadleh Whut'en members have observed significant habitat loss and fragmentation in their Territory as a result. Moose are one of the most crucial species hunted by Nadleh Whut'en members; however, moose have suffered serious declines in numbers and health over the past decades. Potential Project interactions with Nadleh Whut'en RTI include, but are not limited to:

- loss of valued wildlife habitat to deforestation and fragmentation;
- increased traffic on the Kluskus Forest Service Road increasing (i) instances of road kill, (ii) driving animals (particularly moose) away from the area, and/or (iii) presence of people who are not Nadleh Whut'en members which will lead to an increase of non-Aboriginal hunting;
- exacerbation of moose population declines in the region, resulting in Nadleh Whut'en members having to travel further in order to hunt successfully;
- decreased moose health and associated increase in Nadleh Whut'en members encounters with sick or unhealthy moose; and
- increased travel for Nadleh Whut'en hunters to hunt successfully; potentially outside of Nadleh Whut'en's Territory.

Aquatic Resources

Fishing has always been an important part of Nadleh Whut'en culture, life, and its RTI. Since time immemorial, fishing has been a key source of food for Nadleh Whut'en people. Nadleh Whut'en members continue to access and rely on fishing for a significant portion of their diet. Further, sharing fish is an important aspect of Nadleh Whut'en culture. Sharing is key to Nadleh Whut'en food security and also supports community wellbeing – it is a way of life for Nadleh Whut'en members. Sharing salmon and other fish is a key aspect of the reciprocal and respectful sharing relationship and traditional protocols that Nadleh Whut'en maintains with other Nations. Nadleh Whut'en members have experienced a decrease in fish abundance and quality within their lifetimes. Potential Project interactions with fishing include, but are not limited to:

- contamination of fish from upstream Project components (such as tailings pond) and other Project effluents;
- damage to fish and fish habitat from transmission line water crossings;
- water use for Blackwater impacting overall water levels in the Nechako River basin; and

- increase in non-Aboriginal fishing, lowering the overall fish population and availability thereof for Nadleh Whut'en RTI.

Flora Resources

Collecting berries and food plants has been a way of life for Nadleh Whut'en members since time immemorial. Gathering berries, food plants and fungi is an important subsistence and cultural activity for Nadleh Whut'en members. Nadleh Whut'en members collect a variety of berries, including blueberries, raspberries, huckleberries and Saskatoon berries as well as other food plants, including mushrooms and wild onions.

Nadleh Whut'en members have observed a decline in the quantity and quality of berries across their Territory. Potential Project interactions with berries and other food plants include, but are not limited to:

- avoidance of berries along transmission lines;

- contamination of food plants from Project components, effluents and related activities; and

- decreased access to berry and food collection sites along the Kluskus FSR and Holy Cross Road.

Gathering and using medicinal plants, and the associated traditional knowledge, are of great importance to the Nadleh Whut'en. Medicinal plants and traditional knowledge of their use, including gathering, preparation, and administration, are central to Nadleh Whut'en way of life, Nadleh Whut'en members' relationship to their Territory and their associated RTI.

Nadleh Whut'en members have observed adverse effects to medicinal plant harvesting from a number of causes, including deforestation and linear developments. Potential Project interactions with medicinal plants include, but are not limited to:

- physical damage to plant and medicine habitats from road widening, construction, maintenance and use;

- replacement of native species with non-native species during reclamation;

- contamination or perceived contamination of plant collection sites due to spraying of herbicides around the transmission-line corridor, and along roads and access routes used during the mine life;

- damage to, and avoidance of, medicines from dust generated by Project-related road traffic during mine construction, operations and maintenance; and

- avoidance of medicine resources to due hazards from Project-related traffic.

Water

Nadleh Whut'en members collect spring water regularly throughout their Territory. Spring water is used as drinking water and in the making of medicines. Spring water collection is a traditional practice that continues to be exercised by Nadleh Whut'en members today. Contemporary water collection and use is based in traditional knowledge and practices. Water collection is a key part of Nadleh Whut'en culture. In addition to being used for drinking and medicine-making, springs and spring water are used in Nadleh Whut'en ceremonies. Spring water is an important component of Nadleh Whut'en harvesting rights, practice, culture and overall RTI.

Nadleh Whut'en members have experienced the contamination of springs and spring water due to industrial development across their Territory. Potential Project interactions with water include, but are not limited to:

- direct or indirect contamination of groundwater aquifers from Project components, effluents and activities (including the tailings pond), with corresponding impacts on spring waters;
- corresponding damage to Nadleh Whut'en health through contaminated spring water; and
- disruption of spring water access from transmission line and loss of use.

Cultural Continuity

Connection to the land and experience of the land is a central component of Nadleh Whut'en culture. Nadleh Whut'en cultural practices and spirituality are at work in every aspect of Nadleh Whut'en members' use of the land, and are tied directly to the land and their corresponding RTI.

The areas of the Territories affected by Blackwater cover specific sites of particular cultural importance to Nadleh Whut'en, including: creeks and springs visited by Nadleh Whut'en members for ceremonial purposes; the red mountain near Stellaquo which is a sacred site within the vicinity of Blackwater's transmission line; historical burial places; and site-specific locations associated with different types of spirits, including Ormond Lake, Fraser Mountain and Lejac.

Nadleh Whut'en members maintain protocols and positive relationships with neighboring Nations and are able to access neighboring territories for traditional activities (including hunting and berry-picking) through those protocols and relationships. This respectful and reciprocal sharing of resources and territory has been taking place for generations.

Cultural uses within the areas of the Territories affected by Blackwater, including spiritual and ceremonial uses, are tied to the land and often rely on clean or undeveloped land. Nadleh Whut'en members' identities, culture and spiritualties are all tied to the land. Having an intact, healthy landscape is integral to the continuity of Nadleh Whut'en intergenerational knowledge transmission and the practice of the Nadleh Whut'en way of life.

Blackwater would potentially affect Nadleh Whut'en culture use and RTI associated with the land in the following ways:

- clearing of land for the transmission lines poses a risk to the transmission of knowledge as it would remove key teaching areas and push Nadleh Whut'en members out of their preferred areas;

- development in the area, including scarcity of resources and corresponding competition for scarce resources, may cause tension among neighbouring Nations and erode historical and traditional relationships; and

- impediments may be caused to cultural practices that rely on clean (undeveloped) land.

Cumulative Effects

Blackwater's impacts interact within a web of cumulative effects that have already changed the landscape. Interactions from Blackwater would occur in the context of existing and on-going effects from various sources, including from, but not limited to:

- logging and the associated destruction and fragmentation of habitat;

- conversion of habitat to agricultural land and the associated loss of access and use;

- transmission lines and the associated destruction and fragmentation of habitat, as well as the spraying of pesticides and herbicides;

- existing mines, such as the Endako mine, and the associated contamination of water ways and avoidance of hunting areas and plant collection areas;

- climate change and the associated increase in ticks negatively affecting moose health, among other climate change related effects, such as loss of forested area due to the MPB; and

- decline in the quantity and health of moose and the associated increase in competition for scarce resources.

Saik'uz First Nation

Information regarding the impacts to traditional knowledge and traditional use for Saik'uz First Nation was not available at the time of writing.

5.3 Project Impacts on CSFNs' Transmission of Traditional Knowledge

The following provides the CSFNs' assessment of Blackwater effects on their transmission of traditional knowledge. In short, the CSFNs view Blackwater as likely to have detrimental effects on traditional knowledge, including: the sharing of stories and legends; teaching of traditional knowledge and skills; and transfer of oral history, the

CSFNs' Indigenous laws and legal principles, place names and spiritual practices. These practices and knowledge may be lost or altered by Blackwater and related environmental changes (e.g. diminished access to, and quality of experience using, lands and resources due to noise, visual quality, air quality or human presence). Moreover, changes to traditional land use patterns may hinder the ability of the CSFNs members to apply their language skills and transfer language and knowledge between generations.

Project effects on each of the CSFNs' abilities to transmit traditional knowledge are described separately below. The scope of information presented for each Nation varies based on the information available from each of them at the time of writing.

Stellat'en First Nation

The ability to exercise historical and contemporary RTI and practices valued by Stellat'en while recognizing the dynamic nature of their culture is crucial to present-day and future generations of Stellat'en members. Evidence of Stellat'en occupancy on the land represents only a small portion of the land that is needed for the continued survival of their living and dynamic culture.

The overwhelming majority of Stellat'en material culture and/or cultural practices are not represented in the archaeological record, with the 'oral history of the Carrier Sekani (being) the primary authority on their culture, governance, and territories' (CSTC, 2007; page 18 of Triton report).

Stellat'en maintains, as it always has, complex laws, policies and protocols governing its Territory, including access and use of the land, and the responsible use of its resources. These systems are still important in contemporary Stellat'en culture, and maintaining records of, and control over, hereditary rights and property is integral to this process.

Governance, and land use planning, management and tenure, is carried out through the potlatch *Bahl'ats* system. The cultural practices and information sharing that occur during *Bahl'ats* convey and enforce Stellat'en legal traditions and protocols from generation to generation. In *Bahl'ats*, the Stellat'en system of land ownership and management is maintained.

Legends and stories, while leaving little material evidence behind, attach place names to events, stories, legends and assist in underlining a relationship to the land, as well as developing an indigenous typonymy as evidence of occupation.

Historically, survival entailed substantial knowledge of the complexity of the landscape and the resources available from it. Resources are considered and/or gathered in cycles of procurement called seasonal rounds. Knowledge of the availability, cycle, location, seasonality, quality, or movements of resources was, and is, imperative. This knowledge remains vital, whether on a daily, seasonal or annual round basis and includes techniques of proper preparation and preservation of resources in addition to knowledge and availability of harvest. This knowledge remains pertinent for Stellat'en.

Familial, commercial and political astuteness is essential for transactions between members, families and other Nations.

Blackwater could contribute to existing cumulative adverse effects on Stellat'en's language loss if cultural practices, harvesting and time on the land in its Territory are adversely impacted. As noted in an earlier report (MacDonald, 2014), "Cultural continuity depends to a large extent on continued use of the land, and is therefore vulnerable to industrial development that limits access, use and cultural practices. Actions that destroy a place, or cause the use of a place to be lost… frequently result in a gap in the transmission of place-based knowledge, and eliminate the place as a cultural resource for remembering, teaching and learning the knowledge associated with it."

Nadleh Whut'en First Nation

Nadleh Whut'en cultural practices and spirituality are at work in every aspect of Nadleh Whut'en's use of the land, and are tied directly to the land and Nadleh Whut'en's corresponding RTI. Nadleh Whut'en members' identities, culture, and spiritualties are all tied to the land. Having an intact, healthy landscape is integral to the continuity of Nadleh Whut'en intergenerational knowledge transmission and the practice of Nadleh Whut'en way of life.

The effects of colonization on Nadleh Whut'en and its members have adversely affected cultural continuity. Nadleh Whut'en members are working to protect their laws, RTI, and cultural, ceremonial, and spiritual traditions. Potential Project interactions with cultural continuity include, but are not limited to:

- impeding cultural practices which rely on clean (undeveloped) land;
- interrupting transmission of traditional knowledge due to loss of preferred area and plants in the vicinity of the transmission line;
- increasing conflict between Nadleh Whut'en and neighbouring Nations due to competition for scarce resources; and
- increasing strain from the associated infrastructure development and human activity on habitat and animal population behaviours.

Where mine effects further reduce access to resources (e.g. animals move further away or population levels are impacted), cultural transmission and harvesting practices can decline or be lost.

Since learning processes in Aboriginal societies, including Nadleh Whut'en, are traditionally oral based, any reduced access or use of the land could negatively affect cultural transmission.

Saik'uz First Nation

Information related to the effects on Saik'uz traditional knowledge and transmission of traditional knowledge was unavailable at the time of writing.

5.4 Project Impacts on CSFNs' Socio-Economic Conditions

The following section provides the CSFNs' assessment of the socioeconomic impacts of Blackwater. Blackwater will cause the following socio-economic impacts on the CSFNs:

- economic effects, including changes to employment and labour market conditions are expected; and

- social effects, such as changes in individual and family income, training and skills development, work rotation schedule and family dynamic effects following from employment effects. Other types of social effects, such as change in land use, may also occur.

These impacts are discussed in detail below based on the information available for each CSFN at the time of writing.

Stellat'en First Nation

Blackwater will have the following social and economic effects on Stellat'en:

Social Effects

- Housing: Housing access, quality and affordability are already serious concerns for Stellat'en members on and off reserve. Blackwater could affect the housing situation further through population increases or speculation that could (i) increase the cost of living in general and reduce access to affordable housing, and (ii) reduce affordability and lengthen timelines for major repairs as a result of inflationary pressures on trades and skilled labour in the region.

- Health and social services: Among Stellat'en members, the most significant perceived Project risk is adverse health effects. Reports note that instances of depression and even suicide have been associated with psychosocial effects related to fear of accidents and long-term contamination related to mining projects. Moreover, increased income can lead to increased drug and alcohol abuse among members, which, in turn, can lead to increased risk of criminal behaviour. A further concern relates to the influx of a large, almost exclusively male workforce in an area subject to existing strong concerns about violence against women. Impacts on Stellat'en RTI and its members' ability to meaningfully practice their culture may also have adverse effects on mental and physical health. In addition to affecting cultural continuity and mental and physical health, other social determinants of health such as food and income security can be affected if decreased access to traditional food sources leads to greater reliance on more expensive and less nutritious store-bought foods.

- Safety and security: Safety concerns include (i) workplace safety, (ii) environmental safety, and (iii) physical and social safety in the community. If Blackwater negatively affects cost of living or housing access, it could have a detrimental effect on Stellat'en members' access to adequate food, shelter and clothing.

Cultural Effects

Cultural concerns are a high-priority, with an emphasis on language, place names and cultural practices. As noted above, Blackwater may adversely affect Stellat'en traditional land use and disrupt the transfer from traditional knowledge that requires members to have meaningful access to the land.

Economic Effects

Employment and training opportunities are of significant interest to Stellat'en members. However, there is a risk that initial opportunities will not translate into future opportunities for advancement and long-term job security. Adopting and achieving substantial Aboriginal hiring targets for employment at Blackwater may increase successful rates of hiring and retention of local Stellat'en members.

Stellat'en members have also expressed an interest for implementing community-driven education and training based on community needs and priorities. These programs must be accessible for Stellat'en members and reflect real-time vocational needs.

Without adequate mitigations, Blackwater could exacerbate existing inequalities, excluding members from Project benefits. Mitigation measures could include the development of education and training programs that empower Stellat'en members to pursue trades and social infrastructure careers.

Camp Effects

Work camps and an influx of people in the area will lead to increased traffic and pressure on waste, water and sewage systems. Further, road safety may worsen further on the nearby notorious "Highway of Tears".

Nadleh Whut'en First Nation

Most of the potential benefits of industrial development and the cash economy in the region have bypassed Nadleh Whut'en members, driving a large gap in income and well-being between members without jobs, and those with jobs and the wider regional population. This gap is evident across indicators of well-being from education and income to mental health. The cumulative effects are evident, with members reporting reduced access to traditional resources and culture. With these vulnerabilities, cultural engagement, family and community cohesion, and other social determinants of Aboriginal health and resilience are increasingly important.

Blackwater will have the following social and economic effects on Nadleh Whut'en:

Social Effects

The pre-Project level of vulnerability is important as mines can strengthen cohesion in families when there are limited prior vulnerabilities; however, when the existing level of vulnerability is high, more money can also weaken vulnerable families, exacerbate social issues and undermine family cohesion.

- Health and social services: There can be increased demand on health and other social services through increased population and/or negative health effects (mental and physical) as a result of industrial projects. For example, industrial projects can be associated with poorer overall mental health and increased addictions.

- Infrastructure and community sustainability: Short-term industrial development can lead to unsustainable excess investment in infrastructure creating boom/bust scenarios for local communities.

- Safety and security: The higher risk of accidents on busier roads, increased drug and other offences and an increase in domestic violence, as well as workplace based accident and injury, can all reduce safety. Women are particularly vulnerable as inequality rises, housing options are limited, there is a higher population of younger and transient males, and employment options for women are limited.

- Inequalities: With industrial expansion, gaps in income and well-being can grow within communities, between communities and between Aboriginal and non-aboriginal communities. Income inequality is also a key social determinant of health.

The negative indicators to social well-being described above mean that, should Blackwater proceed, Nadleh Whut'en could see a significant reduction in quality of life of its members. Although there can be positive effects from increased income and employment, without adequate mitigations and supports, there is a substantially higher risk to safety, health and risky behaviours.

Cultural Effects

- In-migration associated with the prosperity of mining projects as well as project employees can mean increased concentration of hunters and recreational users in a relatively small area, increasing competition as well as avoidance by local First Nations.

- Concurrently, Project employment means that less time can be spent on the land exercising Aboriginal rights and interests, including hunting and fishing. A study of the Slave Lake Metis community, for example, found 71 percent of workers employed by the mine reported less time on the land.

Economic Effects

- Some of the positive benefits of industrial development in Indigenous communities can include: increased income security, improved self-esteem, improved food

security and resiliency in terms of ability to sustain traditional cultures. However, positive economic effects such as direct, indirect and induced employment and income can be quite limited in instances where industry chooses to use "fly in, fly out" workers. Those workers are not generally entering the local community and therefore do not stimulate the local economy.

- Negative economic effects include: unrealistic expectations for growth; economic dependence and reduced diversity; and negative effects on traditional and rights-based economic activity such as trapping, guiding, and arts and crafts.

- Blackwater may lead to a temporary positive increase in employment in the construction phase followed by a dramatic decrease in local employment after the construction phase is complete. Such rapid economic growth, followed by rapid decline, has been shown to cause numerous adverse effects. For example, research in similar industrial and regional contexts in the United States indicates that, overall, communities that have experienced a resource boom are worse off in the long term than those that did not have resource wealth and development.

Camp Effects

- Fly over effect: Some resource communities may not experience economic benefits of the construction and operation of a new mine, a phenomenon referred to as the fly-over effect. For example, in northern B.C., some companies fly their employees in for work and bus them directly between the regional centre/airport and the industrial camp; as a result, the employees never enter the adjacent community. In other cases, a non-local company purchases and delivers food for workers, sometimes from out of the region entirely.

- Health care: The impact of camp-based worksites on local health care services varies. Some camps offer nurses, doctors and other services on site for regular health care needs as well as employee assistance programs.

- Social: The social effects of a largely male, transient workforce in the region depend on the access to local communities by workers. Social effects associated with such in-migration and demographic changes require ongoing monitoring and adaptive management.

- Transportation: Increased transportation volumes from both camp construction and operations can have adverse effects on safety for local community members as well as wildlife. The effects of transportation go beyond local traffic volumes, as location of parking lots and access to personal vehicles are important considerations in camp design. For example, bussing workers from a parking lot into camp reduces the likelihood of hunting and fishing equipment coming in and offers more control over recreational access. However, it may also reduce purchases by workers of local services and supplies that would otherwise be accessed on a daily basis depending on bus schedules.

- Cumulative effects: Cumulative effects are an important concern for camp impacts. Depending on the intensity of development in the region, the needs of industrial camps can exceed local capacities. Corresponding effects vary depending on the type, planning, and location of a particular project, and corresponding camp.

Saik'uz First Nation

Information regarding the socio-economic effects of Blackwater on Saik'uz was not available at the time of writing.

5.5 Project Impacts on Governance Components of the CSFNs' RTI

This section presents the results of CSFNs' assessment of Blackwater's impacts on the governance components of their RTI.

The CSFNs have the right to determine how lands within their Territories will be used, particularly in terms of resource extraction and related developments that alter and/or alienate lands from their preferred use and their ability to exercise their RTI. The CSFNs also i have the right to proactively use and manage the lands, water, air, and resources within their Territories.

As set out above, CSFN members continue to use and manage the lands, water, air, and resources in a manner reflective of their historical and inherent role as stewards of their Territories, including by using their detailed collective (traditional) knowledge and historical occupation of their Territories to maintain an understanding of their overall health and to ensure their long-term sustainability.

Blackwater has the potential to cause adverse effects to the lands, water, air, and resources in the CSFNs Territories, and corresponding adverse impacts to the CSFNs' RTI.

Importantly, B.C., New Gold and the CSFNs are working together to recognize and accommodate the CSFNs' role in deciding how the lands, water, and resources in their Territories will be used and managed. B.C. is doing so through the collaboration with CSFNs on this EA, commitments for future collaboration during the permitting stage and life of mine, as well as through the current G2G negotiations with the CSFNs outside of the EA process. New Gold is doing so through IBA negotiations with CSFNs. Both of these efforts are aimed at seeking consensus with CSFNs in relation to Blackwater.

There remains a need to secure CSFNs' ongoing ability to discharge its stewardship responsibilities and obligations through EAC terms and conditions, terms and conditions for future Project-related permits, as well as G2G agreement(s) and the IBA.

The CSFNs note that the accommodation of the CSFNs' RTI, including their governance rights, through the implementation of the Collaboration Plan and the application of collaborative decision-making processes throughout this is EA is only a partial accommodation of their RTI which falls short of the standard of free, prior, and informed consent set out in the United Nations Declaration on the Rights of Indigenous People.

Accordingly, it is the CSFNs' view that, (i) the parties must move to joint decision-making on the EA and future regulatory processes, including reviews of applications for authorizations for Blackwater, and (ii) adequate economic accommodation and compensation must be secured for the CSFNs.

5.6 Summary of CSFNs' Assessment of Project Impacts

As outlined in this section 5, the CSFNs' Territories have been the subject of substantial historical development and alteration that have resulted in adverse environmental effects and impacts on the CSFNs' RTI. The infestation of the MPB and related forest health crisis was responded to in a manner that maximized the available economic value of the infected/dead component of the forests, understanding the economic value of those components would decline post-infestation. Further, climate change trends have contributed to aquatic and terrestrial issues that are adverse to the ecological integrity of the CSFNs' Territories and their RTI. As a result of the forest health issues and large scale salvage logging that has ensued since 2002, the CSFNs' Territories have been heavily altered. The economic benefits that were created from salvage logging and that have been generated by other industrial activities have largely bypassed the CSFNs and their members, as demonstrated above in the descriptions of the community profiles.

The combined impacts of the forestry and other activities have resulted in a highly altered landscape and extensive cumulative environmental affects within the CSFNs' Territories. When assessed via quantifiable disturbance indicators that are known to correlate with risks associated with environmental health, ecological function and biodiversity, risk is classified as high in many instances (Delong 2016, Toth and Tung 2016, Toth and Tung 2017, Daust and Price 2017). Available monitoring records for a variety fish and wildlife confirm that the predicted high-risk levels have manifested, and the status/health of many species within the CSFNs' Territories is declining and/or poor. This includes many species that are highly important to the CSFNs' RTI, including traditional cultural practices. **Thus, the CSFNs view their current ability to meaningfully exercise their RTI as highly constrained**.

When considering the potential effects of land and resource use decisions on the CSFNs' RTI, this "current state of affairs" provides the context through which the "Seriousness of Impacts" on the CSFNs' RTI must be assessed. Given the highly constrained nature and therefore "sensitive" current state, any effects that incrementally contribute to factors linked to causation (e.g. cumulative environmental effects), are likely to be characterized as impacts on the "Serious" end of the spectrum. In order for a project to be supported by the CSFNs and "Certifiable" within this unfortunate context, the full suite of accommodation measures, including impact avoidance, mitigation, offsetting, compensation and economic accommodation measures, must be implemented. This context also infers that impact avoidance and mitigative measures may dampen adverse effects, but remaining residual effects may still be incremental to causation factors that have exceeded significance and/or high risk thresholds, and therefore impacts may still be characterized as Serious. **Alterations of Blackwater, including the re-alignment of the transmission line, do not eliminate residual effects, and impacts remain characterized as Serious.**

In recognition of this context and the underlying policy and regulatory deficiencies that have facilitated it, B.C. and the CSFNs are working through their G2G negotiation and reconciliation processes to implement forest management measures intended to recover and/or maintain biodiversity objectives, understanding that the timeframe over which "recovery" is anticipated is long-term.

6. ACCOMODATION MEASURES AND EA CONDITIONS

Accommodation includes mitigation, including avoidance (spatial or temporal or both), and effect-minimization measures, and compensation, including offsetting activities, and other measures (business/economic opportunities, education/training opportunities, financial benefits, etc.). Accommodation discussions are informed by New Gold's proposed mitigation measures, the EAO's proposed conditions, conditions included in the federal EA Decision Statement, and the Eco Report.

6.1 New Gold's Proposed Mitigation Measures

Prior to conducting a residual effects assessment New Gold applied or proposed measures to accommodate impacts to the CSFNs' RTI, including but not limited to the following:

- Re-alignment of the transmission line in order to avoid important harvesting areas (i.e. effects on the current use of lands and resources for traditional purposes) and avoid elevating disturbance indicators within areas of the CSFNs' Territories that have yet to reach or exceed thresholds for moderate or high risk to biodiversity/ ecosystem health (i.e. effects of the transmission line on increased access and mobility, and core intact habitat). That approach included following existing rights-of-way wherever practicable;
- Implementation of a Country Food Monitoring Plan;
- Implementation of a 'no hunting, fishing, and gathering' policy for workers at the mine site;
- Use of vegetation and coarse woody debris to form visual barriers on cutlines, trails or other linear features (i.e. transmission line) to reduce predator access and efficiency;
- Avoidance of gathering sites along linear features where possible;
- Implementation of a caribou awareness program and protocols for mine workers;
- Payment of compensation to affected trapline holders in accordance with industry and provincial protocols with associated proof of lost revenue;
- Implementing progressive reclamation using local natural vegetation wherever possible;
- Providing opportunities for Aboriginal peoples to participate on New Gold's proposed Environmental Monitoring Board so that a presence on the land within their traditional territory can be maintained;

- Access management to minimize increased access of non-Aboriginal harvesters;
- Developing alternative access plans with Aboriginal groups;
- Implementing a chance find procedure and a process for reporting to applicable Aboriginal groups with respect to the physical remains of cultural sites, such as cabins, archaeological sites, culturally modified trees, and trails as outlined in the Archaeology and Heritage Resources Management Plan;
- Avoiding known campsites; and
- Implementing reclamation and closure plans to allow cultural practices to resume following closure of Blackwater.

New Gold's commitment to work collaboratively with the CSFNs to consider routing the transmission line in a manner that respected the unique contexts of the CSFNs' Territories and the Nation's interests (at considerable cost) demonstrated good faith.

The CSFNs and New Gold have committed to work collaboratively to implement access control measures on the transmission line RoW. The EAO and CSFNs collaborated to include in the proposed EAC condition for a Wildlife Management and Monitoring Plan a requirement for a vegetation and access management plan along the transmission line RoW.

6.2 Compensation

The CSFNs have assessed that the current environmental state of the CSFNs' Territories and the current state of many biological indicators therein, which are central to the exercise of the CSFNs' RTI, are indicative of past and ongoing management regimes that have not considered and have had adverse effects on the CSFNs' RTI. The legacy of natural resource development in and around the CSFNs' Territories has, in CSFNs' view, led to the current state that is not easily or quickly reversible, and some adverse effects are likely to continue to worsen even without further disturbance.

The CSFNs are of the view that economic accommodation and compensation are required to address the serious residual impacts that Blackwater will visit upon the CSFNs' RTI even after the EAC conditions are taken into account. These include the serious residual impacts to the economic and governance elements of the CSFNs' Aboriginal title. For example, proceeding with Blackwater would: (i) prevent CSFN members from using their lands, water, and resources in the areas of the Territories affected by Blackwater for their economic benefit; and (ii) worsen the already constrained state of their ability to harvest fish, wildlife, plants, and other resources in their Territories.

6.2.1 Off-Setting

The Eco Report identified that the high density of linear features (largely roads) within the CSFNs' Territories is implicated in the decline of a number of important species to the CSFNs and their RTI, including moose. Linear features increase access for humans

and predators resulting in increased wildlife mortality through predation, hunting, poaching and conflict, while also increasing disturbances and dislocations of wildlife from habitats and diminishing habitat suitability for some species. They also facilitate increased exploitation of other resources and increase the efficiency of predators such as wolves. The Eco Report noted that the adverse effects associated with road density are a direct contributor to the diminished state of several species of wildlife important to the CSFNs and their RTI.

As described in Section 5, the CSFNs' have assessed that their Territories have been heavily impacted by the MPB outbreak and associated high levels of salvage logging. This has resulted in:

- extensive areas of young plantation forest, and a reduction in the amount of old and mature forests. Both conditions alter the characteristics of available terrestrial/wildlife habitats; and,

- acceleration of climate change trends such as altered stream hydrology and warmer summer water temperatures.

These effects, along with broader climate change trends, have adversely affected key fish and wildlife resources fundamental to the CSFNs, including salmon, moose and caribou. The CSFNs note that forest health issues and salvage harvesting have also severely impacted the future economic potential of the CSFNs' Territories.

The CSFNs have identified many opportunities for specific habitat and fish/wildlife restoration and enhancement projects within the CSFNs' Territories that could counter the adverse effects summarized above, resulting in improvements to the current state of the CSFNs' Territories, the resources and ecosystems therein, and their members' abilities to meaningfully exercise their RTI.

(a) Road Decommissioning

A focused regime of road decommissioning with the intent to reduce the associated adverse effects (i.e. eliminate access, reduce predator use/travel and sight-lines, etc.) applied to key geographical areas with the CSFNs' Territories has the potential to produce beneficial results for biodiversity. The CSFNs and B.C. have developed tools through their G2G process that can guide the selection of areas and candidate roads.

The CSFNs propose that CSFNs, B.C. and New Gold engage in the development of a plan to support road decommissioning. Funding to support implementation should be incorporated into an ongoing stewardship fund. The road decommissioning work is appropriate given the additional/incremental linear feature effects that will result from the transmission line.

(b) Stewardship Legacy Fund

There are substantial opportunities for large and small-scale habitat enhancement projects that could produce wide-ranging benefits, including treating impacted forests to

minimize the threat of uncontrolled burns, replacing canopy cover, and re-establishing riparian zones with living, mature trees. Benefits generated could include terrestrial and wildlife habitat enhancement, wildfire threat mitigation and carbon sequestration.

There are also specific conservation issues that could benefit from additional resourcing and CSFN engagement. This includes specific sockeye and chinook stocks that require conservation-based enhancement action.

Current key priorities for the CSFNs include:

- Wildlife habitat enhancement (linked to road decommissioning described above); and

- Sockeye and chinook stock productivity improvement initiatives.

It is the CSFNs' view that New Gold and B.C./Canada should commit to resourcing an ongoing stewardship legacy fund that supports the CSFNs' interests in undertaking activities of this nature to help fulfil what the CSFNs' view as outstanding accommodation on Blackwater.

6.2.2 Socio-Cultural and Economic Benefits

The CSFNs have identified that New Gold and B.C. are uniquely capable of providing a range of accommodative-compensation for Blackwater and corresponding impacts on the CSFNs' RTI.

(a) New Gold

In respect of New Gold, the range of accommodative-compensation measures include:

- Life skills/employment readiness training, skills training/capacity development, and employment opportunities and targets for CSFN members;

- Set-aside contracting and business opportunities for CSFNs;

- Powerline ownership;

- Exploration and mine development partnership options;

- Revenue stream; and

- Cultural and stewardship enhancement initiatives.

The CSFNs are of the view that the residual impacts to the CSFNs' RTI and the proposed use of CSFNs' Aboriginal title lands for Blackwater must be accommodated through financial compensation and other forms of accommodation. This normally occurs through an impact benefits agreement (IBA) between a proponent and impacted

Indigenous groups. While New Gold and the CSFNs are engaged in IBA negotiations, no agreements have been reached at this time.

As a result, the CFNs state that the serious residual impacts to the CSFNs' RTI have not yet been adequately accommodated.

(b) B.C. and Canada

The CSFNs have been requesting that B.C. agree to establish a G2G table with them in relation to Blackwater for some time.

The main purpose of the table would be to discuss the economic and stewardship accommodation that B.C. and Canada could provide to the CSFNs in exchange for their support of Blackwater. The CSFNs are looking to take an innovative approach to the issue of economic accommodation given that the mine site for Blackwater is not in the CSFNs' Territories (although key Project infrastructure including the proposed transmission line and the Klusklus Forest Service Road are located within the CSFNs' Territories). Some examples of potential forms of economic and stewardship accommodation that the CSFNs would like to discuss with B.C. and Canada include:

1. Exploring options for converting the transmission line from a temporary to a permanent line to facilitate CSFNs' ownership;

2. Extending the transmission line from the mine site to the Lhoosk'uz Dene Nation and Ulkatcho First Nation communities to electrify those communities;

3. Obtaining EPAs for renewable energy generation projects in the CSFNs' Territories;

4. Negotiating an Economic and Community Development Agreement (ECDA) for Blackwater; and

5. Obtaining grants of Crown land in fee simple (and corresponding commitments to re-habilitate and/or protect the ecosystems on that land) to compensate the CSFNs for the lands being used for the transmission line.

The CSFNs propose to negotiate a short negotiation protocol with B.C. and Canada to create the requisite G2G table and secure capacity funding to support the CSFNs' participation at such table.

The CSFNs have urged that this request is time sensitive. The G2G table should be activated as soon as possible to ensure that a meaningful accommodation package is developed and agreed to in a timely way.

For the reasons set out above in s. 6.2.2(a), the CSFNs conclude that financial compensation or other form of economic accommodation is required. In the G2G context, such accommodation is typically provided through ECDAs and other revenue sharing agreements.

The CSFNs, B.C., and Canada have not yet initiated any revenue or other benefit sharing negotiations. **As a result, the CSFNs conclude that the serious residual impacts caused by Blackwater on the CSFNs' RTI have not yet been adequately accommodated.**

6.3 EA Conditions

6.3.1 Summary of EA Condition Development Process

The Collaboration Agreement adopted by CSFNs and EAO for Blackwater contains a commitment by CSFNs and EAO to work collaboratively to draft and work towards consensus on proposed EAC conditions (should it be issued) related to the CSFNs' RTI.

The Agency, EAO, and the CSFNs worked towards a collaborative assessment and consensus on conclusions regarding the severity of potential adverse impacts on the CSFNs' RTI. These parties then collaboratively developed potential federal and proposed provincial conditions to the corresponding EA authorizations to address or reduce those impacts where possible.

During the preparation of the Agency's draft EA Report and the EAO's Assessment Report, the CSFNs raised concerns that the Agency was not collaboratively developing the potential federal conditions and the 30-day comment period on the draft EA report and potential conditions was not enough time. Accordingly, on December 4, 2018, the CSFNs requested a 45-day extension to the federal timeline from the federal Minister of Environment and Climate Change. This request was not officially granted however the Agency altered its workplan within the remaining time available to allow for an additional 45 days of collaborative work on conditions.

The CSFNs also requested a 45-day extension to the provincial EA from the EAO to allow for the completion of the collaborative drafting of the provincial conditions as well as finalisation of the assessment of impacts of Blackwater on the CSFNs' RTI. The EAO responded that the request was not an unreasonable amount of time within which to attempt to reach consensus, or at least exhaust the opportunities to do so, and extended the provincial EA workplan timeframe by 45 days to discuss the draft provincial conditions, which postponed the date of referral to provincial Ministers for decision.

The Agency and EAO offered additional engagement on the development of conditions, including nine days of in-person meetings and six teleconferences in January 2019, with additional opportunities in February and March 2019 to discuss the draft provincial conditions. The Agency and EAO maintained and shared documents to track verbal and written comments to the CSFNs in order to document changes as a result of the ongoing dialogue, and provided rationales when changes were not made as requested.

The Agency made a number of changes to the potential federal conditions in response to comments and concerns from the CSFNs and others, including:

- A requirement for the Proponent to strive to reach consensus with Indigenous groups where consultation is a requirement of a federal condition;

- Changes to the Indigenous consultation conditions;

- Reviews of draft documents that are to be prepared by the Proponent if Blackwater is approved;

- Requirements for the Proponent to notify or provide specified information to Indigenous groups;

- The inclusion of the *Yinka Dene Water Law* in a condition related to water treatment;

- Specific provisions for monitoring potential contaminants in country foods and in a chance find procedure for cultural or heritage finds; and

- An independent environmental monitor for the potential federal conditions, who is responsible for observing, recording, and reporting on the implementation of the conditions, and who will advise the Proponent, the Agency and Indigenous groups if, in its view, the Proponent's activities do not comply with the conditions.

EAO made a number of changes to the draft provincial conditions in response to comments from the CSFNs and others, including:

- The inclusion of certain minimum requirements for the Construction Environmental Management Plan;

- A stand-alone condition regarding the Adaptive Management Plan, including qualitative and quantitative triggers for the development of new or additional mitigation measures;

- Specific measures within the Aboriginal Group Engagement Plan and the Aboriginal Group Monitoring Plan, including details about how the Proponent must retain Aboriginal monitors;

- A Cultural and Spiritual Resources Management Plan to identify and protect areas of cultural and spiritual importance and measures to deal with chance finds;

- Defining and incorporating the *Yinka Dene Water Law* into the Water Quality Management and Aquatic Effects Monitoring Plan conditions;

- A Mine Waste and Water Management Plan that looks to address a number of key issues specific to this EA around acid rock drainage / metal leaching management;

- The addition of a plan to avoid potential adverse effects from sedimentation in CSFNs' identified Class 1 waterbodies as a result of construction and maintenance on the transmission line;

- Baseline water quality data collection, reporting, and monitoring in waterbodies of importance to the CSFNs that overlap with Blackwater; and

- Transmission Line Routing Plan that addresses multiple routing options of the transmission line, the differing effects, and ensuring the right mitigations are applied for the final route.

On January 24, 2019 the CSFNs sent a second request to the Minister to extend the timelines of the federal EA by 45 days (for which the previous request was not granted). The CSFNs requested this time to finalize the work of co-developing the federal conditions with the goal of minimizing the adverse effects of Blackwater, and to carry out internal meetings and discussions with CSFN leadership and communities to inform whether to support the EA conclusions on environmental effects and impacts to their RTI. On February 15, 2019 the Minister approved a 45-day timeline extension for the federal EA of Blackwater.

Since the approval of the 45-day timeline extension, each of the CSFNs have carried out further internal engagement with their leadership and communities regarding the EA conclusions and potential/proposed conditions. Saik'uz had a community meeting in March 2019, at which time Chief and Council discussed the draft conditions and overall EA with their membership. Nadleh Whut'en has been carrying out regular engagement at its leadership table regarding the EA and draft conditions. Finally, Stellat'en has also carried out regular engagement with its leadership and membership. All three Nations have actively engaged both within the EA process and with their members on the application of the *Yinka Dene Water Law* in the EA process.

6.3.2 CSFNs' view of EA Conditions

On the conditions for the federal EA authorization, the CSFNs are generally pleased with the results of the collaborative discussions between the Agency, the CSFNs and the other Aboriginal groups, and appreciate the efforts carried out by the Agency staff to advance these conditions. In particular, the CSFNs are pleased that the conditions in the Federal Decision Statement issued on April 15, 2019, include a specific condition incorporating the *Yinka Dene Water Law* and requirements for the Proponent to strive to reach consensus on various matters with Indigenous groups, including the CSFNs.

The CSFNs remain concerned regarding the limited oversight over, and lack of approval on, a change of the Proponent or to the designated Project. In this regard, the CSFNs have repeatedly indicated the importance of the relationship that the CSFNs are building with New Gold (the current Proponent), and concerns regarding the potential for a new entity to take over Blackwater that may not take a proactive approach to relationship building and/or not have the technical experience and financial stability to carry out Blackwater in a mindful manner.

The CSFNs are also concerned that the federal conditions currently allow the Proponent to make changes to the designated project without formal approval (albeit after having carried out some consultation activities where the Proponent considers that the change may result in adverse environmental effects). The designated Project is what has been

assessed in the EA process, and changes thereto should undergo similar assessments. The CSFNs strongly recommend that these considerations be taken into account, with changes made to address these outstanding concerns.

On the draft provincial EAC conditions, the CSFNs are also generally pleased with the results of the collaborative discussions between EAO, the CSFNs and the other Aboriginal groups, and appreciate the efforts carried out by EAO staff. The CSFNs do, however, remain concerned regarding the conditions on transfer of the EAC and of Blackwater, as described above with respect to the federal conditions.

6.4 CSFNs' Conclusions on Adequacy of Consultation and Accommodation

The honour of the Crown is informed by the case law, the Province's commitment to collaborative decision-making in the Collaboration Agreement, and by this government's commitments to implement: (i) the United Nations Declaration on the Rights of Indigenous Peoples without reservation (Article 32(2) is of direct application here); (ii) the Truth and Reconciliation Commission's Calls to Action; and (iii) the Province's own 10 Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples. In particular, Principles 6 and 7 are applicable to these circumstances and provide as follows:

> Principle 6. The Province of British Columbia recognizes that meaningful engagement with Indigenous peoples aims to secure their free, prior and informed consent when B.C. proposes to take actions which impact them and their rights, including their lands, territories and resources.
>
> Principle 7. The Province of British Columbia recognizes that respecting and implementing rights is essential and that any infringement of section 35 rights must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown's fiduciary obligations.

In view of these circumstances, CSFNs are of the view that the honour of the Crown requires that the Province (i) obtain the CSFNs' consent before issuing an EAC, or (ii) "meet a high threshold of justification", which cannot be met at this time. Central to both of those issues, in CSFNs' view, is the economic accommodation and compensation the Province must provide to the CSFNs to address the serious, residual impacts to the CSFNs' RTI set out above.

The CSFNs have been engaged in the EA process since October 2012. The "pre-collaboration" period consisted of a status quo EA consultation process; i.e. the Proponent led engagement on the basis of assumed good faith, but with an inaccurate assessment of how the CSFNs would be impacted by Blackwater. This limited the productivity of the engagement.

The CSFNs, B.C., Canada and the Proponent benefited from the collaborative process that was implemented to guide the relationship of the parties within the EA process. The collaboration supported an open and transparent flow of information between the agencies and the CSFNs, and with New Gold. The parties were able to regulate the speed of the process to adaptively manage issues, concerns and new information.

The CSFNs' assessment of Blackwater's effects and their potential impacts on the CSFNs' RTI (Eco Report) was key to reconciling information and perspectives between the parties. The Eco Report provided guidance to accommodation discussions, including mitigation and compensation measures and opportunities. The CSFNs review of the CEMs found that alterations to Blackwater subsequent to the submission of the Application/EIS, including the re-alignment of the transmission line, do not alter the findings of the Eco Report.

The Proponent's good-faith commitment to engage in routing the transmission line with the CSFNs' guidance was indicative of the post-collaboration relationship. The changes to the transmission line reflect the interests of the CSFNs, and provide some mitigation of specific matters of concern (i.e. minimizing the adverse effects of additional disturbance and fragmentation within an already highly altered landscape, avoiding important areas). However, **the environmental effects and impacts on the CSFNs' RTI from the re-aligned transmission line route cannot be fully mitigated, and accommodation and compensation is required.**

The CSFNs are presently pursuing accommodative-agreements with the Proponent and B.C. and Canada in relation to Blackwater. However, no such agreement(s) is in place—**meaning that the serious residual impacts Blackwater will have upon the CSFNs' RTI have not yet been <u>adequately</u> accommodated**. **In other words, the CSFNs are of the view that neither B.C. nor Canada has adequately discharged its duty to consult and accommodate the CSFNs at this time.** The CSFNs are of the view that the honour of the Crown is at stake and more work is required before it can be upheld in respect of a decision by B.C. or Canada to issue EA authorizations for Blackwater.

7. WEIGHING OF RESIDUAL IMPACTS

In B.C.'s view, the Crown has a responsibility to weigh the potential impacts and accommodations on the CSFNs' RTI with other societal interests, including the social, environmental and economic benefits of Blackwater. This section sets out some relevant factors that Ministers can consider in determining whether the Crown's duty to accommodate has been fulfilled. Given the collaborative context of this EA, the CSFNs have provided their perspectives on Blackwater and its EA certification, and expects the Crown to contemplate those perspectives through the lens of collaboration and its reconciliation and recognition objectives.

The following sections provide a summary of New Gold's assessment of the forecasted economic impacts of Blackwater, Blackwater's regional context/importance, the potential benefits of Blackwater for the CSFNs, and weighing of overall Project benefits and risks.

7.1 Forecasted Project Economic Impacts

Blackwater is expected to have a two-year construction phase, followed by 17 years of operations. After the mine closes, reclamation activities are expected to continue for approximately 24 years. Monitoring and post-closure activities are expected to run for an extended period after closure.

The initial capital cost of construction is estimated at $1.814 billion over the two-year construction period, with approximately 88 percent of construction expenditures expected to made within B.C. ($1.294 billion, excluding contingencies), including $398 million within central B.C.

Operating costs, over the life of mine are expected to be $314 million, of which $207 million are expected be expended in B.C.

At peak, as many as 1,500 workers may be at the work site. Total construction labour will comprise 1.2 million hours of direct labour, and another 4.7 million hours of contract labour. This represents the equivalent of about 2,436 PYs and it is estimated that 20 percent of the BC portion of total labour would amount to 485 PY. Construction is expected to generate $296 million of household income for people directly employed in Blackwater.

During operations, Blackwater is estimated to employ approximately 495 people, with 80 percent of these (396) being B.C. residents, including 320 residents of central B.C.

Project closure activities are expected to create 363 PY of direct employment for B.C. residents, 479 PY of indirect employment, and 116 PY of induced employment.

During Project construction, $296 million in household income is expected to be generated for people directly employed with wages, including benefits, averaging $120,000 per year. During Project operations, household income for people directly employed in Blackwater is expected to total $43 million. During this phase, wages, including benefits, will average $110,000 per PY. Finally, during closure, Blackwater is expected to provide average salaries of $75,000 per PY.

The following revenues are forecast to accrue from Blackwater to federal, provincial and local/regional governments:

- During construction, total federal government revenues (including direct, indirect and induced revenues) are estimated at $86 million, total provincial government revenues (including direct, indirect and induced revenues) are estimated at $82 million, and total local/regional government revenues are estimated at $13 million.

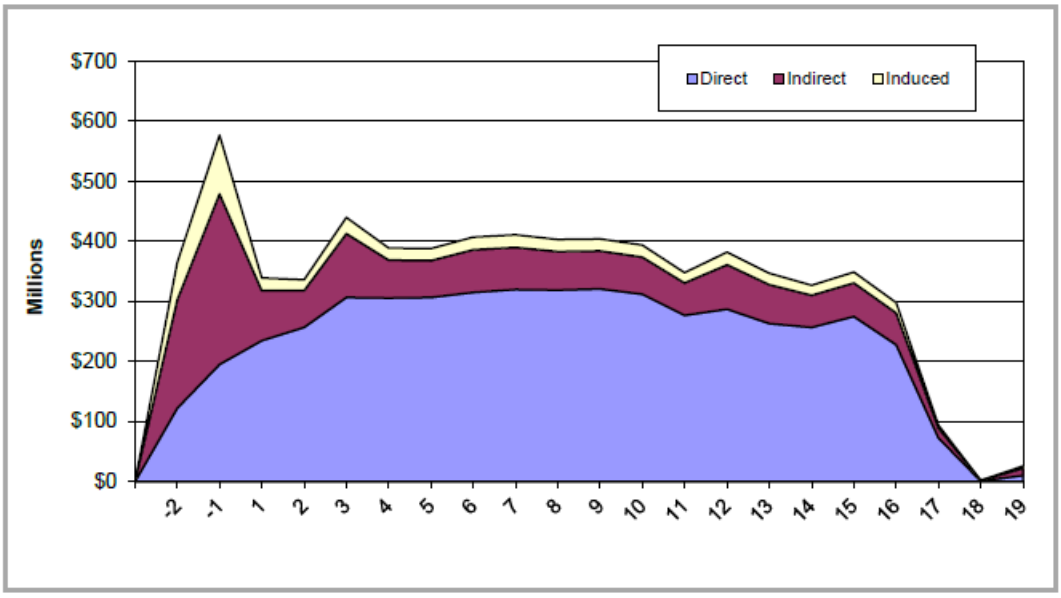
- During operations, federal government revenues (including direct, indirect and induced revenues) are estimated at $33 million per yea, provincial government revenues (including direct, indirect and induced revenues) are estimated at $21 million per year, and regional government revenues are estimated at $4 million per year.

- During closure, the direct effect on federal revenues is estimated at $6 million, total provincial government revenues are estimated at $7 million, and local and regional government revenues are estimated at $1 million.

Over its entire life, Blackwater is expected to create nearly 30,000 PYs of employment for B.C. residents. Total tax revenues over the life of Blackwater are estimated to amount to approximately $1.2 billion, of which $656 million are anticipated to accrue to the federal government and $83 million to local governments. Total revenues for B.C. are estimated at approximately $511 million, which includes $450 million in taxes and $61 million in royalties.

Blackwater's forecasted direct, indirect and induced contributions to Provincial GDP for a 3-year construction period, 17-years of operations, and years 1 and 2 of closure, is presented in Figure 5.

Figure 5: Project Effects on Provincial GDP Over the Life of Blackwater



7.2 Project Socio-Economic Contributions

As described above, Blackwater is expected to contribute to social and economic well-being in B.C., especially in central B.C., from Project expenditures on labour, goods, and services. Project employment and business opportunities are also expected to provide opportunities for regional residents and bring additional workers and their families into the region. By providing well-paying jobs, reducing local unemployment levels, purchasing goods and services from regional businesses, and contributing to economic and population growth, Blackwater may also improve economic and community stability, including by incrementally contributing to the rebalancing of the economic asymmetry that exists between the CSFNs' communities and surrounding non-aboriginal communities.

The District of Vanderhoof, the Village of Fraser Lake, and the City of Prince George are expected to be the major urban beneficiaries of Blackwater, although Project benefits are also anticipated to spill over into other communities, both Aboriginal and non-

aboriginal, within central B.C., within the broader province, and within the rest of Canada.

Blackwater is intended to be self-contained, with its own accommodations, water and sewage facilities, access roads and electrical transmission line. The sole use of local or regional facilities is anticipated to be for disposal of some Project-generated wastes. The payment of tippage fees will result in no net costs to the regional governments. Blackwater is not anticipated to use other local or regional facilities, with no direct costs accruing from Blackwater on local or regional government infrastructure.

Blackwater's potential economic stimulation effects are particularly important given its regional context. In particular, Blackwater could help replace some of the regional employment losses that have occurred within the local forestry industry (B.C. Stats, 2013; Statistics Canada, 2007, 2013) as a result of processing efficiencies and commodity price fluctuations. Further, uplifts to the Allowable Annual Cut (AAC) that were implemented within the Prince George Timber Supply Area beginning in 2002 in response to the MPB epidemic and the intent to maximize the economic value of infested stands, have severely impacted mid-term[2] timber supply (B.C. FLNORD 2017). Gradual reductions from the uplift began in 2012 and were continued in the most recent determination in 2017 (33 percent reduction), with a further 12 percent reduction planned for 2022.

The CSFNs have indicated that the implications of the forest health issues, previous uplifts and declining AAC on the existing forestry industry in the area of Vanderhoof are evident now and are expected to degrade further on an annual basis. This has and will continue to result in shortages of available timber/fibre for local processing facilities, relative to current levels. The creation of Project construction and operation jobs, and associated use of local businesses, is expected to help supplement and diversify employment and business opportunities in the region, making the regional economy less dependent on the existing forestry sector.

7.3 Project Benefits to the CSFNs

As described above, the CSFNs have identified that their Territories and RTI are already substantially adversely affected from large scale forest health issues, MPB salvage harvesting, and other historical and ongoing resource development and extraction activities. The CSFNs have indicated that economic benefits from some previous activities have largely bypassed their communities and members. The CSFNs are concerned that Blackwater has the potential to incrementally contribute to a worsening of this current state.

Accordingly, the CSFNs participated in the EA of Blackwater's effects and impacts. Throughout their participation, the CSFNs have consistently articulated their

[2] Mid term refers to that portion of a harvest projection when dead pine is no longer an economically viable source of timber and before regenerating pine stands have reached harvestable condition

perspectives on Blackwater's adverse effects and potential serious and residual impacts to their RTI.

As a result of some of the CSFNs' concerns regarding impacts from the transmission line, the CSFNs and the Proponent collaboratively (and iteratively) identified a re-routing of that line to avoid areas of significant concern and reduce its adverse environmental effects on their Territories and RTI. The re-alignment is a mitigation and accommodation measure that reduces the potential for the transmission line to adversely impact CSFNs' RTI, but the CSFNs maintain that a long linear development in an already fragmented habitat remains a serious residual impact on their RTI.

The CSFNs are in the process of negotiating accommodative measures with the Proponent and hope to negotiate accommodative measures with Canada. In that regard, B.C. has provided the CSFNs with a commitment to continue working with them on a mandate to seek an economic benefits package in relation to Blackwater, should it proceed. However, no such mandate has yet been secured, and B.C. has also not provided the CSFNs with a firm commitment that an economic benefits package will be provided that is satisfactory to the CSFNs.

Concurrently, as set out above, no accommodation agreements have yet been finalized. **As a result, the CSFNs have concluded that Blackwater's serious residual impacts on their RTI have not yet been adequately accommodated.**

7.4 CSFNs' Conclusions on Weighing of Potential Impacts on their RTI

The CSFNs' assessment of the current state of their Territories and RTI, along with Blackwater's potential impacts on their RTI (as presented in the Eco Report) indicate that Blackwater's adverse environmental effects would be incremental to cumulative environment effects that are already at exceedingly high levels, and linked to causation in their constrained ability to exercise their RTI.

Following the completion of the Eco Report, the CSFNs reviewed New Gold's CEMs to consider changes to Blackwater made subsequent to the submission of the Application/EIS, including the re-alignment of the transmission line. That review found that alterations to Blackwater subsequent to the submission of the Application/EIS, including the re-alignment of the transmission line, did not alter the findings of the Eco Report. While the re-alignment of the transmission line avoids and reduces its environmental effects and adverse impacts on the CSFNs' RTI, residual effects from the transmission line and Project as a whole remain as all residual effects are not eliminated.

Further, based on their RTI, the CSFNs have expressed that they have a right to benefit from uses of the land and resources within their Territories. This includes deriving benefits from the use of their Territories and pursuing economic development opportunities in a variety of ways; whether related or unrelated to modern forms of natural resource development and extraction. In addition, this encompasses accessing and using natural resources by preferred means, which uses include harvesting wild

foods for the contemporary CSFNs communities and their ancestors, as well as for sale, trade, or barter similarly to such uses by their ancestors.

The CSFNs have determined that Blackwater has the potential to impact the economic elements of their RTI. For the reasons set out above, the CSFNs have determined that proceeding with Blackwater would: (i) prevent their members from using the lands, water and resources in the Blackwater area for their economic benefit; and (ii) worsen the already constrained state of their members' abilities to harvest fish, wildlife, plants, and other resources in their Territories.

If, however, accommodative agreements are concluded, Blackwater has the potential to provide significant economic benefits to the CSFNs and their members, including through: (i) stewardship and cultural initiatives: (ii) employment opportunities; (iii) contracting opportunities; and (iv) revenue sharing arrangements.

Importantly, CSFNs, B.C., and New Gold are taking steps to seek to address the CSFNs' economic development interests. **In conclusion, as no accommodation agreements have yet been finalized, the CSFNs are hereby recommending to the provincial Ministers that they exercise their discretion pursuant to s. 17(3)(c)(iii) of the *Environmental Assessment Act* to order that further assessment be carried out in connection with the required economic accommodation and compensation owing to the CSFNs with respect to Blackwater proposed in their Territories and corresponding serious and residual impacts on their RTI.**

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Appendix A

CSFNs Blackwater Collaboration Plan

BACKGROUND:

New Gold Inc. (the "**Proponent**") is pursuing provincial and federal environmental assessment ("**EA**") certification of an open pit gold and silver mine located 160 km south west of Prince George - the proposed Blackwater Gold Project ("**Project**"). The following components of the Project are proposed to be located in the Territories as defined in the Collaboration Agreement referenced below, of Nadleh Whut'en, Saik'uz and Stellat'en First Nations (collectively, the "**Carrier Sekani First Nations**" or "**CSFNs**"): (i) a transmission line and associated access that will provide power to the proposed mine site; and (ii) vehicular access routes to the mine site (existing and proposed new roads). Construction and operation of the mine portion of the Project, although not located within CSFNs' Territories, could also cause downstream effects and corresponding adverse impacts within CSFNs' Territories.

COLLABORATIVE CONTEXT:

British Columbia ("**BC**") and the CSFNs signed a Collaboration Agreement in April 2015 (the "**Collaboration Agreement**"). The Collaboration Agreement provides a framework for BC and the CSFNs to engage in collaborative decision-making for major projects. Key aspects of that framework include seeking (i) to develop consensus recommendations in relation to the design and implementation of EAs and regulatory review processes in relation to major approvals, and (ii) consensus in relation to decisions on major approvals.

The Environmental Assessment Office ("**EAO**") and the CSFNs (collectively, the "**Parties**") agree to treat the Project as a major project within the meaning of that term in the Collaboration Agreement. They also recognize that (i) the EA of the Project was initiated before the Collaboration Agreement came into force and has been ongoing for some time, and (ii) BC and the CSFNs have not finalized how the collaborative decision-making framework will be applied to major projects.

The Parties have therefore drafted and agreed to this Blackwater Collaboration Plan (the "**Plan**") to facilitate their collaboration on recommendations related to the EA process and decisions in relation to the Project to ensure that the EA is carried out in accordance with the spirit and intent of the Collaboration Agreement, including addressing the potential adverse effects of the Project on any CSFNs' Aboriginal title, rights, and interests in accordance with the Collaboration Agreement ("**CSFNs' Aboriginal title, rights, and interests**"). For ease of reference, a schematic showing conceptual factors relating to the CSFNs' Aboriginal title, rights, and interests is included in Appendix B.

The Plan is unique and specific to this Project and to the remaining stages of the EA at the time the Collaboration Plan discussions were initiated.

The primary focus of the Plan is to facilitate the Parties' collaboration on recommendations related to the potential Project impacts to CSFNs' Aboriginal title, rights, and interests that are primarily related to:

- construction of the proposed transmission line and required access roads;
- construction and operation of the Project in relation to potential downstream impacts on water quality;
- vehicles accessing the mine site through CSFNs' Territories via the existing Kluskus Forest Service Road; and
- other potential Project effects, including but not limited to:
    - cumulative effects, including consideration of information generated by the collaborative Environmental Stewardship Initiative;
    - loss of moose habitat or effects of increased access and predation; and
    - changes to CSFNs' access to the area, and/or management of increased access by the public.

PRINCIPLES:

- In the interest of avoiding conflict, producing durable outcomes, and facilitating mutual economic development objectives, the Collaboration Agreement commits the Parties to seek consensus in relation to decisions on major projects.
- Collaboration can facilitate BC discharging its constitutional duty to consult the CSFNs and accommodate CSFNs' Aboriginal title, rights, and interests. However, the focus of collaboration will be on the Parties working together on a government-to-government basis.
- The collaborative process for the Project will be informed by its unique circumstances – i.e. that its EA started before the Collaboration Agreement came into force, and the nature of its potential impacts on CSFNs' Aboriginal title, rights, and interests.
- Collaboration on a major project requires a predictable, practical, and timely process that appropriately addresses the Parties' interests.

- The Parties agree that third party interests, sufficiency of information, administrative fairness obligations and constitutional obligations to the CSFNs inform the collaborative process set out in this Plan.

- The Parties will avoid taking positions and will attempt to resolve issues in an interest-based manner.

- The Parties will, within the context of their respective mandates and authorities, continue to require the Proponent to support meaningful participation of CSFNs in the EA process.

- The Parties will treat the Plan as a living document. They may incorporate new collaboration ideas into the Plan if and as they arise and are agreed to by the Parties. Such ideas may also inform EA reform discussions contemplated by the Collaboration Agreement.

- The CSFNs have agreed to work collectively for the purposes of completing technical work necessary to engage in the EA process for the Project and this Plan. However, each CSFN will make its own decisions in relation to the Project.

- The Parties agree to be guided by the Principles described in Section 2 of the Collaboration Agreement and Section 3.1 of the Environmental and Socio-Cultural Initiatives Agreement in implementing this Plan.

OBJECTIVES OF THE BLACKWATER COLLABORATION PLAN:

This Plan provides the framework for the Parties to work collaboratively in seeking consensus in relation to EA decisions for the Project. The Parties recognize that different levels of collaboration may be required for the various decisions that BC will make in relation to the EA of the Project. The Plan is intended to guide the Parties' work to identify the mechanisms, measures, and activities through which they will facilitate the collaborative outcomes envisioned throughout the EA process for the Project.

COLLABORATION STEPS:

Progress and collaborative measures to be pursued and to be considered are captured under the following two headings:

1) Blackwater Collaboration Plan Development; and
2) Collaborative Activities and Mechanisms.

Each of these are described in detail below.

1) Blackwater Collaboration Plan Development:

The Parties have established the "**Blackwater Collaboration Team**", as set out below, to develop and implement this Plan. The team consists of representatives of:

2. Nadleh Whut'en First Nation;
3. Saik'uz First Nation;
4. Stellat'en First Nation; and
5. The EAO.

2) Collaborative Activities and Mechanisms

a) CSFNs Screening Period – The Parties will make use of the time available prior to the EAO's screening decision for the CSFNs to assess the potential for the Project to adversely impact CSFNs' Aboriginal title, rights, and interests. This work will continue into the Application Review phase.
b) Best Available Information – The Parties will collaboratively develop approaches and options to support the integration of the best available traditional use and socio-economic information in the assessment of the Application.
c) Financial Resources – The Parties will collaboratively seek financial resources necessary to:
    i) support the CSFNs in undertaking an assessment of the Project's effects on CSFNs' Aboriginal title, rights, and interests; and
    ii) support the CSFNs' costs related to engaging in this Plan. The EAO has provided additional capacity funding to support this.
d) Engagement with Proponent – The Parties will meet with the Proponent to review and understand:
    i) the Project's key design components;
    ii) changes the Proponent made to the Application in its most recent versions; and,
    iii) the Proponent's understanding of CSFNs' Aboriginal title, rights, and interests, and their effects assessment findings in relation to those title, rights, and interests.
e) Federal Review Components – The Parties will meet with the Canadian Environmental Assessment Agency ("**CEAA**") to discuss how to integrate relevant elements of the federal review into the implementation of the Plan.
f) Information Requirements – The Parties will work towards developing a consensus approach to understanding and addressing information requirements for the purposes of the EA, where CSFNs are of the view that these are not adequately addressed in the Application.

g) Transmission Road Information – The Parties will work towards developing consensus recommendations on whether the final materials provided by the Proponent address the application information requirements related to transmission line access roads.
h) Information Requirements for Review – The Parties will work towards developing consensus recommendations for additional information requirements (including time deadlines for that information to be provided and potential consequences if the Proponent does not adhere to the deadlines) for the EAO to include in its letter communicating the evaluation decision to the Proponent if the Application is accepted for review.
i) Community Engagement – The Parties will conduct community engagement meetings during early Application Review (within the Public Comment period) if requested by any of the CSFNs.
j) Information during Application Review – The Parties will work towards identifying other information requirements during the Application Review phase that are important for completing the assessment of the Application.
k) Information subject to Time Constraints – Where additional information identified in paragraph 2(j) is not available in a time frame to allow it to be adequately considered during Application Review, the Parties will work towards developing consensus recommendations on requests for timeline extensions or suspensions, or consensus recommendations for alternative approaches to address the limits to information or analysis.
l) Ongoing Meetings – The Parties will hold ongoing meetings, including with the Proponent and CEAA (as appropriate), to review the implications of the Plan for Application Review and opportunities going forward.
m) Broader Collaboration Discussions – The Parties will meet as required with Ministry of Energy, Mines and Petroleum Resources, Major Mines Office, Ministry of Environment and Climate Change Strategy, Ministry of Forests, Lands and Natural Resource Operations and Rural Development, and Ministry of Indigenous Relations and Reconciliation to consider broader collaboration required on the Project, including permitting and life of mine.
n) Impacts to Aboriginal Title, Rights, and Interests – The Parties will discuss how they may collaborate during the Application Review phase to assess and consider the Project's potential impacts to CSFNs' Aboriginal title, rights, and interests, including:
    i) reviewing existing EAO methodology to consider impacts to CSFNs' Aboriginal title, rights, and interests and discussion of opportunities for enhancement; and
    ii) receiving and considering a report from CSFNs relating to their views on the impacts of the Project to CSFNs' Aboriginal title, rights and interests.

o) Linear Corridor Sub-Working Group – The Parties will establish a Linear Corridor Sub-Working Group to jointly assess potential impacts of the transmission line and access roads to CSFNs' Aboriginal title, rights, and interests, and consider how such effects can be avoided, or where it is not possible to avoid, mitigated and/or accommodated.

p) Water Quality Sub-Working Group – The Parties will establish a Water Quality Sub-Working Group to (i) discuss assessment of potential impacts on water quality arising from Project construction and operation, including by carefully reviewing the Proponent's assessments of alternative means for tailings management, and (ii) discuss how the *Yinka Dene 'Uza'hné Surface Water Management Policy* and *Yinka Dene 'Uza'hné Guide to Surface Water Quality Standards* (collectively, the "**Yinka Dene Water Law**") can be incorporated into the EA for the Project.

q) Avoidance, Mitigation and Accommodation – The Parties (and the Proponent where invited by the Parties) will discuss the potential for the Project to impact CSFNs' Aboriginal title, rights, and interests and how those effects will be avoided, or mitigated and/or accommodated if unavoidable.

r) Part C Drafting – The Parties will collaboratively develop Part C – Effects to CSFNs' Aboriginal title, rights and interests - of the EAO's Blackwater Assessment Report (the "**Assessment Report**").

s) Collaborative Work on Conditions – The Parties will collaboratively draft and work towards consensus on proposed EA Certificate conditions (should one be issued) related to:
   i) construction of the proposed transmission line and required access roads;
   ii) construction and operation of the Project in relation to potential downstream impacts on water quality, including how to incorporate the Yinka Dene Water Law;
   iii) vehicles accessing the mine site through CSFNs' Territories via the existing Kluskus Forest Service Road; and
   iv) other potential Project effects, including but not limited to:
      - cumulative effects, including consideration of the information generated by the collaborative Environmental Stewardship Initiative,
      - loss of moose habitat or effects of increased access and predation, and
      - changes to CSFNs' access to the area and/or management of increased access by the public.

t) Involvement of Other Parties – The Parties will include the Proponent, key Working Group members, and government agencies as appropriate and available to support their discussions.

u) Assessment Report – The Parties will work towards development of consensus conclusions in the Assessment Report on:

i) Project-related impacts to CSFNs' Aboriginal title, rights, and interests;
ii) the adequacy of consultation and accommodation with CSFNs; and
iii) any other recommendations related to CSFNs' Aboriginal title, rights, and interests.

v) Issue Resolution Process – Where the Parties are unable to reach consensus on issues relating to paragraphs 2(r), (s), and (u), they will implement the issue resolution process set out in Appendix A.

w) Consensus Recommendations – The Parties will seek to develop consensus recommendations to the Ministers in relation to the issues set out in paragraph 2(s) and the decision the Ministers will make under s. 17(3)(c) of the *Environmental Assessment Act* ("**Act**"). As part of that process, CSFNs' representatives, the EAO's Project Assessment Lead, and the EAO Executive Director ("**ED**") will meet, at either Parties' request, no later than 10 days before the anticipated date that the assessment decision package will be referred to the Ministers. The Parties may bring other representatives from their respective organizations to attend the meeting, as needed.

x) Other Impacts – The Parties acknowledge that the ED's recommendations will also need to consider the Project more broadly than only the impacts related to the CSFNs' Aboriginal title, rights, and interests, including the extent to which the Project is likely to cause significant adverse environmental effects, the adequacy of consultation and accommodation in relation to other First Nations, and other matters in the public interest.

y) Procedural Fairness – The Parties also acknowledge that the ED must consider matters of procedural fairness and may need to share the discussion with the CSFNs with the Proponent or other parties where matters discussed may materially impact the Proponent's or other parties' interest(s) or where matters agreed to are contradictory to what is in the Assessment Report. The ED will provide notice to the CSFNs before sharing any such information, and provide the CSFNs with an opportunity to requests limits to such sharing, which the ED will consider before sharing such information. As well, the Parties agree that discussions may not be shared publicly until the Ministers' decision is announced, at which time documentation of the discussion will form a part of the public record.

z) Separate Submissions – The CSFNs will have an opportunity to provide a separate submission to Ministers.

aa) Meeting of Leaders – If the ED and the CSFNs do not reach consensus on recommendations to the Ministers on matters referenced in (w), the ED will recommend to the Ministers that they offer to meet with the CSFNs prior to making a decision on whether to issue a Certificate. The purpose of this meeting

is to provide CSFNs an opportunity to express directly to the Ministers the reasons underlying their position on the issuance of a Certificate for the Project.

bb) If the Ministers offer to meet with CSFNs and that offer is accepted by the CSFNs within five business days of the offer being made, the EAO will work with the CSFNs to arrange for that meeting. The CSFNs must make themselves available to meet within the legislated timeframe for the Ministers to make a decision. The EAO will notify the Proponent of the meeting.

cc) The Parties acknowledge that the Ministers must consider matters of procedural fairness and may need to share the discussion with the CSFNs with the Proponent or other parties where matters discussed may materially impact the Proponent's or other parties' interest(s) or where matters agreed to are contradictory to content in the Assessment Report or recommendations from the ED. The Ministers will provide notice to the CSFNs before sharing any such information, and provide the CSFNs with an opportunity to requests limits to such sharing, which the Ministers will consider before sharing such information.

dd) Ongoing Collaboration – The Parties will continue to discuss opportunities for collaboration in relation to the EA of the Project.

Appendix A - Issue Resolution Process

SECTION 1– SEEKING CONSENSUS

1.1 **Consensus.** The Parties will seek to reach consensus on the issues identified in paragraphs 2(r), (s) and (u) of the Collaboration Plan.

SECTION 2– ISSUE RESOLUTION PROCESS

2.1 **Issue Resolution Process.** Where the Parties are unable to reach consensus under 1.1, either Party may trigger the following process (the "**Issue Resolution Process**") not less than 30 days prior to the anticipated referral date to attempt to resolve the outstanding issue(s).

2.2 **Notice.** Either Party may initiate the Issue Resolution Process by providing written notice (the "**Notice**") to the Issue Resolution Group that includes:

i. a description of the outstanding issue;

ii. the applicable CSFNs' Aboriginal title, rights, and interests; and

iii. potential measures to resolve the issue in a manner that addresses the applicable interests.

2.3 **Issue Resolution Group.** The Issue Resolution Group will consist of the Chiefs of the relevant CSFNs, the representatives of the CSFNs on the Blackwater Collaboration Team, the Assistant Deputy Minister, Environmental Assessment Operations and the EAO Project Assessment Lead (the "**Issue Resolution Group**"). The Parties may bring other representatives from their respective organizations to attend the meeting of the Issue Resolution Group, as needed.

2.4 **Meeting of the Issue Resolution Group.** Unless one or more of the suggested solutions provided in the Notice is agreeable to each applicable Party, the Issue Resolution Group will meet and attempt to resolve the outstanding issue(s) within 10 days of receiving the Notice under section 2.2 (not less than 20 days prior to the anticipated referral date).

2.5 **End of Issue Resolution Process**. Where the Issue Resolution Group is unable to resolve the issue within 10 days of receiving the Notice, each Party may proceed with its decision-making process.

SECTION 3- ASSESSMENT REPORT

3.1 **Assessment Report**. Where the Parties reach consensus under section 1.1, this will be recorded in Part C of the Assessment Report.

3.2 **Issue Resolution Results.** Where the Issue Resolution Process is triggered, the results of the Issue Resolution Process, any consensus views and any non-consensus views of any Party, will be recorded in a report ("**Issue Resolution Report**"), and its content incorporated into the Assessment Report.

3.3 **Separate Submissions.** Nothing in this Issue Resolution Process precludes any CSFN from making a separate submission to Ministers, to be received by the EAO not less than 10 days prior to the anticipated referral date. The CSFNs may request an additional 5 days to prepare their separate submission to Ministers, and the EAO will not unreasonably deny this request.

SECTION 4 – PROPONENT PARTICIPATION

4.1 **Proponent Participation.** The Parties may agree to invite the Proponent to participate in the Issue Resolution Process.

4.2 **Information Sharing**. The Parties acknowledge that any of the following may be provided to the Proponent at the relevant stage in the Issue Resolution Process, where it may materially impact the Proponent's interest(s):

i. the Assessment Report;

ii. a high-level summary of the Notice provided under section 2.2;

iii. proposed solutions suggested for the Issues Resolution Report to resolve the outstanding issue(s);

iv. the Issues Resolution Report; and

v. any separate submissions.

Appendix B – Conceptual Factors Relating to Aboriginal Title, Rights and Interests of the CSFNs