

## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** is dated as of September 29, 2021.

### **B E T W E E N :**

**NADLEH WHUTEN**, as represented by its Chief and Council

(“**Nadleh**”)

- and -

**SAIK’UZ FIRST NATION**, as represented by its Chief and Council

(“**Saik’uz**”)

- and –

**STELLAT’EN FIRST NATION**, as represented by its Chief and Council

(“**Stellat’en**”, and together with Nadleh and Saik’uz, are hereinafter referred to as the “**Nechako First Nations**”)

- and –

**THE REGIONAL DISTRICT OF BULKLEY-NECHAKO**, as represented by the Board of Directors

(the “**Regional District**”, and collectively with the Nechako First Nations, are hereinafter referred to as, the “**Parties**” and each, a “**Party**”)

### **CONTEXT:**

- A. As a result of the construction and operation of the Kenney Dam and the Nechako Reservoir by Rio Tinto Alcan Inc. (“**RTA**”) and its corporate predecessor, the Nechako River has experienced unnatural and non-seasonal water flows, causing lasting, major damage to the health of the River, the River’s ecosystem functioning and processes, as well as to the populations of sturgeon, salmon, and a variety of other species of fish and other aquatic species reliant on natural and functional flows that live in or use the Nechako River.
- B. The Parties have a mutual interest in implementing a new flow regime in the Nechako River and its affected tributaries to restore the health of the Nechako River, which will benefit the Nechako First Nations’ communities and other non-Indigenous residents of the Nechako Watershed.

- C. The Board of the Regional District adopted a resolution dated February 25, 2021, pursuant to which the Regional District:
- i. recognized the need for a balance between the economic benefits and the environmental and ecosystem impacts as a result of the Nechako Reservoir;
  - ii. considered it desirable to explore a new governance mechanism involving the Nechako First Nations, other impacted First Nations, and local governments within the Nechako Watershed, to collectively represent the Nechako Watershed Region in a new adaptive co-management regime to ensure the achievement of functional flows, and to respect the constitutionally protected rights of the Nechako First Nations and other impacted First Nations within the Nechako Watershed; and
  - iii. resolved to urge Canada, the Province of British Columbia (the “**Province**”), and RTA to do all things necessary to support the efforts of the Nechako First Nations to restore the ecosystem functioning of the Nechako River and its affected tributaries.
- D. The Parties believe that working together on restoring the health of the Nechako River will strengthen the relationship between the Nechako First Nations and other non-Indigenous communities and residents within the Nechako Watershed.
- E. The Parties wish to set out the basic terms upon which they will work together to restore the health of the Nechako River in this Memorandum of Understanding (the “**MOU**”).

**NOW THEREFORE, the Parties agree as follows:**

1. The Parties will work together to restore the health of the Nechako River, its affected tributaries, and the fish populations that live in or use the River, with a particular focus on sturgeon and salmon populations that are on the precipice of extinction.
2. The Parties agree that successfully achieving Section 1, requires that the 1987 settlement agreement between RTA, Canada, and the Province be replaced with a new, multi-lateral agreement that will:
  - a) establish a new government-to-government governance regime, including an adaptive co-management framework, for the Nechako River and Reservoir. This new regime will include a robust engagement process with, and co-developed by, local stakeholders;
  - b) deliver a new flow to the Nechako River, which mimics the shape of the natural hydrograph and, at minimum, delivers a new flow equivalent to the lowest natural flow in the Nechako River prior to the construction of the Kenney Dam (as recommended by Dr. Eaton);
  - c) require the parties to the new multi-lateral agreement to carry out stewardship projects to:
    - i. enhance the health of the Nechako River and its affected tributaries;

- ii. help restore robust fish populations, with a particular focus on the sturgeon and salmon populations that are on the precipice of extinction;
  - iii. restore the health of the river, including biodiversity and fish populations, to enable the Nechako First Nations' River-based traditional livelihoods and ceremonies; and
  - iv. increase opportunities for non-Indigenous peoples to enjoy the benefits of a healthy Nechako River and robust fish populations within the Nechako River and downstream.
3. The Parties will take the following steps in carrying out, and discharging, their reciprocal commitments set in out Sections 1 and 2:
  - a) exchange all necessary information that is relevant to the issues regarding their restoration efforts for the Nechako River;
  - b) work together to seek out and develop solutions to problems arising from time to time that may present barriers to the Parties' efforts to restore the health of the Nechako River;
  - c) use reasonable efforts to convene discussions with stakeholder groups and other levels of government to share information and expand the support for restoring the health of the Nechako River; and
  - d) collaboratively develop a work plan to outline how the Parties will seek to implement the objectives set forth in this MOU, which, once finalized by the Parties in writing, will be appended to and will form a part of this MOU.
4. The Parties agree that all information provided by one Party to another Party relating to the matters contemplated by this MOU, and that is marked or otherwise identified in writing as being confidential, will be considered "confidential information" (the "**Confidential Information**"). The Parties will maintain all such Confidential Information in confidence and will not disclose Confidential Information received from another Party to any third party without the prior written consent of the Party who disclosed the Confidential Information, except that a Party may disclose Confidential Information to those within its organization who need to know such information.
5. The Parties agree that all documents created pursuant to this MOU, including drawings, plans, field data, notes, test data, reports, photographs, surveys, calculations, and other documents (the "**Joint Documents**") are the joint property of the Parties. A Party may not use, rely on, disclose, or share the Joint Documents for a purpose other than the matters contemplated by this MOU, without the express written consent of the other Parties.
6. The provisions of Sections 4 and 5 will survive the expiration or termination of this MOU.

7. The term of this MOU commences upon execution, and continues in force until December 31, 2022 (the “**Initial Term**”) unless otherwise terminated by a Party upon providing written notice to the other Parties. The Parties will have an option to agree in writing, prior to the expiry of the Initial Term, to renew the terms of this MOU.
8. With the exception of Section 4, which constitutes binding obligations of the Parties enforceable in accordance with their terms, the other sections of this MOU are non-binding and intended only to outline the broad terms and next steps upon which the Parties agree to proceed in relation to the subject matter herein, and do not constitute any binding obligations between the Parties, nor impose any liability on any Party to another.
9. This MOU is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of British Columbia and the federal laws of Canada applicable in that Province.
10. This MOU may be executed and delivered in any number of counterparts, and may be delivered by facsimile or electronic mail, each of which when executed and delivered is an original but all of which taken together shall constitute one and the same instrument.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date noted on the first page.

**NADLEH WHUTEN on its own behalf and on behalf of its members**

Per:  \_\_\_\_\_  
Authorized Signatory

Name: Chief Larry Nooski

**SAIK'UZ FIRST NATION on its own behalf and on behalf of its members**

Per:  \_\_\_\_\_  
Authorized Signatory

Name: Chief Priscilla Mueller

**STELLAT'EN FIRST NATION on their own behalf and on behalf of their members**

Per:  \_\_\_\_\_  
Authorized Signatory

Name: Chief Robert Michell

**THE REGIONAL DISTRICT OF BULKLEY-NECHAKO, as represented by the Board of Directors**

Per:  \_\_\_\_\_  
Authorized Signatory

Name: Chair Gerry Thiessen