



## Court finds Rio Tinto Alcan harming Nechako fisheries and infringing Aboriginal rights

### ***BC Supreme Court releases judgment in case involving First Nations' fight to save Nechako salmon and sturgeon***

#### FOR IMMEDIATE RELEASE

Saik'uz, BC, January 7, 2021 – The British Columbia Supreme Court released its decision today in *Thomas and Saik'uz First Nation v. Rio Tinto Alcan*, finding that the Saik'uz and Stellat'en First Nations have proven that Alcan's operation of the Kenney Dam has caused significant historic and ongoing harm to the Nechako River and its fisheries.

For many years, Saik'uz and Stellat'en have tried to have Rio Tinto Alcan and the government take seriously their experience of the harm caused to the river and its fisheries that are integral to their culture, but to no avail. As a result, they brought this court action to prove that harm and to stop it from continuing.

In a 222-page judgment, the Court held that Saik'uz and Stellat'en have a constitutionally protected Aboriginal right to fish for food, social and ceremonial purposes in the Nechako watershed, including for sockeye, Chinook, and the highly endangered Nechako White Sturgeon.

The Court agreed with the First Nations that Alcan's operation of the Kenney Dam, constructed in 1952, has fundamentally altered the natural hydrograph of the Nechako River with devastating impacts for its ecological health and that of its fisheries. The Court found that the Kenney Dam and related reservoir have:

...caused or contributed to a substantial decline in the population of both Nechako White Sturgeon and sockeye salmon to the extent that the former is at risk of extinction and the fishery of the latter has become a mere shadow of its former abundance.

The harm Alcan has caused to these fisheries, which are "central to the plaintiffs' very existence since time immemorial", constitutes the tort of private nuisance.

Councillor Jackie Thomas, the named plaintiff for Saik'uz and Chief when the case was brought in 2011, said, "We are pleased that the Court has recognized how important the river and its resources are to our community and our culture, and we're grateful to the community members who testified at trial as well as the generations before us who have long fought to

protect the Nechako."

While the Court held that Alcan could not be legally responsible for the nuisance since the dam and Alcan's operations were authorized by Canada and British Columbia, the Court declared that, based upon "the 'new reality' articulated in these reasons", both levels of government have "an obligation to protect the plaintiffs' Aboriginal right to fish by taking all appropriate steps to protect the fish and to act honourably in doing so." The Crown is obliged to re-assess its previous authorizations and to work in good faith to address the harms.

While Stellat'en and Saik'uz wanted an order requiring changes to how the dam is operated, they are very pleased that the Court has recognized the harm to the river, the fish and their rights which have long been denied by Alcan and both levels of government.

Saik'uz Chief Priscilla Mueller said, "While we are disappointed that Alcan has not been directly required today to restore the flow of the river, we are glad that the court has recognized that the Crown has a duty to take positive action to protect the fish and our rights as First Nations people."

Chief Mueller calls on the company and both levels of government to work quickly and collaboratively to improve the health of the river, reverse the harm to fish, and protect and uphold the Nations' constitutional rights.

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