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Post-Approval Field Review Report: Nam Theun 2 Hydropower Project

World Bank and Asian Development Bank

Country: Laos

Risk category: A

Total project cost: est. \$ 1.1 billion

WB/AsDB Board Dates: 2005

Site visit: February 5-26, 2017

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LIST OF ACRONYMS

AsDB	Asian Development Bank
GoL	Government of Laos
IMA	Independent Monitoring Authority
MDB	Multilateral Development Bank
NTPC	Nam Theun 2 Power Company
NNT NPA	Nakai Nam Theun National Protected Area
NT2	Nam Theun 2 Hydropower Project
NT2DF	Nam Theun 2 Development Fund
POE	Panel of Experts
RIP	Resettlement Implementation Period
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
USAID	United States Agency for International Development
USAID E3	USAID's Bureau for Economic Growth, Education, and Environment
WMPA	Watershed Management and Protection Authority
WB	World Bank

EXECUTIVE SUMMARY

Public Law No. 113-235 directs the United States Agency for International Development to undertake post-approval field reviews of selected multilateral development bank (MDB) proposals. USAID selects projects for post-approval field reviews (i.e., monitoring) that are particularly likely to have significant adverse impacts on the environment, natural resources, public health or indigenous peoples. USAID also considers previous USG recommendations submitted to the MDB regarding environmental and social performance of the project. The purpose of these field-based reviews is to: 1) assess the adequacy of safeguard implementation for the project; 2) evaluate the incorporation and effectiveness of any U.S. Government (USG) recommendations; or 3) provide additional recommendations to improve the environmental and social performance of the project.

This post-approval field review is on the World Bank (WB) and the Asian Development Bank (AsDB) financed trans-basin diversion Nam Theun 2 hydropower project (NT2). This review was conducted in February 2017, approximately one year before the planned closure of Resettlement Implementation Period (RIP). The RIP closure had been delayed by two years based on the findings of the Panel of Experts (POE), an independent monitoring body, which recommended a two-year extension in 2015.¹ Touching on all three aspects of a field-based review, this review is focused on the material improvement of Nakai Plateau resettler livelihoods, the effectiveness of the Watershed Management and Protection Authority (WMPA) to meet its biodiversity conservation objective in the Nakai Nam Theun National Protected Area (NNT NPA), and restoration of Brou (ethnic minority) livelihoods due to downstream adverse impacts along the Xe Bang Fai River.

This report is the fifth in a series of reviews based on site visits to the project before and after financing. The comments in this report reflect the views of those interviewed during the February 2017 visit. Reviewers used convenience sampling techniques aimed at understanding the diversity of stakeholder perspectives. Quotations or paraphrasing of village comments in the report are illustrative of particular perspectives and are not intended to be generalized across the population. Information provided in the report from villagers was not selectively filtered or censored to promote a particular view.

USAID developed a draft report soon after the field visit and subsequently engaged in dialogue regarding the draft findings and recommendations with the U.S. Department of the Treasury, the WB, and the Nam Theun 2 Power Company (NTPC) through November 2017. The focus of this report is on conditions, findings and recommendations as determined at the time of the February 2017 field review. USAID has made significant efforts to incorporate information and changing conditions emergent after the February field visit. Considering the dynamic nature of

¹ The Panel of Experts (POE) derives its mandate from the concession agreement which assigns the POE a contractual responsibility to provide independent review of, and guidance on, the treatment of environmental and social issues associated with the Project, along with some executive functions, and towards the conclusion of the Implementation Period, to review and report on whether the Resettlement Objectives and the Resettlement Provisions “have been achieved and maintained for a reasonable period of time.” The POE remains a standing body for the period of the concession.

the project and the context, USAID anticipates that information and perhaps findings and recommendations of this report will be overtaken by events after it is publicly disclosed.

In response to the POE's 2015 recommendations, a Joint Working Group was formed by the GoL to develop an action plan that clarifies the requirements for closure of the RIP based on the concession agreement and other legal agreements.² Since the USG February 2017 site visit, the NTPC, the GoL and the WB have been actively addressing the list of actions and building local capacity to achieve RIP closure by December 2017. As of September 2017, approximately half of the list of actions required for RIP closure had been determined to be completed by the GoL and NTPC, with 49 actions at various stages of completion and 12 actions that had not yet been achieved. Since the USG February 2017 site visit, the Prime Minister has approved the decree to transfer the WMPA to the Ministry of Agriculture and Forestry, and prioritized the Nakai Nam Theun as one of Laos' first national parks. A Lao NGO consortium has been designated to support the WMPA with co-management responsibilities of WMPA's budget.

Summary of Findings and Recommendations

Finding 1: In February 2017, the NTPC and the GoL were focused on finalizing and implementing an action plan, including measurable indicators, to achieve closure of the RIP on the Nakai Plateau per the concession agreement obligations, by December 2017. This process is being supported by the WB and the AsDB.

Recommendation:

- a. The action plan and progress on meeting indicators should be made available to project-affected villagers and the public.

Finding 2: Actions to “materially improve Resettler livelihoods on a sustainable basis” is a key objective in the concession agreement and required for RIP closure. However, the definition and metrics to determine “sustainable basis” were not provided either within the concession agreement or at project approval. This lack of clarity leads to different interpretations for determining RIP closure.

Recommendations:

- a. To determine RIP closure, the action plan's definition of sustainability should incorporate at a minimum the following components:
 - i. Income generating activities that do not deplete the natural resource base
 - ii. Securing the well-being of second generation families
 - iii. GoL and village institutions have the capacity to support continued livelihood development in a culturally appropriate manner
- b. All future concession agreements in Laos, beyond NT2, that seek to ensure sustainability of livelihoods should incorporate the above components into the definition

² Members of the Joint Working Group include NTPC, WB, AsDB. The action plan is not publicly available and as of February 2017, was in the final approval stages. USAID/USG has not had the opportunity to review the action plan, so our knowledge is based on POE (2016) Twenty-Fifth Report and discussions with NTPC, WB, and GoL.

of sustainability, along with indicators of sustainable outcomes, in addition to identifying indicators beyond socio-economic measurements.

- c. Although the action plan is intended to provide continuing support for resettlers' livelihoods (e.g., five-year medium-term development plan, NT2DF), the determination of RIP closure needs to be based on fulfilling the concession agreement obligations.

Finding 3: While NTPC survey results indicate that villagers are achieving income targets, discussions with reliable stakeholders on the economic performance of the project's livelihood pillars indicate continuing challenges. Villagers interviewed acknowledged improvements in infrastructure, including health clinics, schools and roads. However, they also explained that essential elements of their livelihoods have either stayed the same or worsened.³ These include access to good and sufficient land for agriculture (especially rice, which is the key resettler food), livestock grazing, and access to non-timber forest products.

Recommendations:

- a. Where necessary, identify and provide additional land and technical support for growing rice and other agricultural products.
- b. Where necessary, provide additional technical assistance to support the livestock pillar, including management of grazing areas and a comprehensive vaccination program to cover all cattle and buffalo on the plateau.
- c. To address illegal fishing, either the WMPA must become an effective institution able to coordinate reservoir patrols or that responsibility must be solely designated to the Reservoir Management Committee.
- d. Conduct a survey to determine tree stocks and, with community involvement, develop a forest management plan that includes non-timber forest products use. Given the apparent low management capacity at the local level, the village forestry pillar will likely require additional support both financial and technical.⁴
- e. Expand the range of livelihood opportunities for ethnic minorities to prevent inadvertent income inequities between the ethnic minorities in comparison to Lao Tai and immigrants to the plateau.
- f. Establish a mentorship program for ethnic minorities with businesses that are already operational on the plateau, such as the hotel and restaurant sectors.
- g. Build on early efforts establish the area as a tourist destination. This is an opportunity to maintain the culture, history, and languages of the ethnic minorities.⁵
- h. Establish a specific role for the Vietic ethnic minority⁶ in which they can apply their indigenous knowledge as it relates to the conservation of the NNT NPA as part of an ecotourism program.

³ Based on the March 2017 Nakai Socio Economic Survey, (received by USAID November 2017), "99% of the respondents reported that their life was as good or better than before resettlement, the highest level of satisfaction since the question was first asked in 2011."

⁴ USAID understands that this is already a component in the action plan. However, given the dysfunction of this pillar, USAID believes it is important to include as part of this report's recommendations.

⁵ A model already exists in Luang Prabang at the Traditional Arts and Ethnology Centre which is the only independent resource center in Laos dedicated to the country's diverse ethnic groups. (<http://www.taeclaos.org>)

⁶ The Vietic ethnic minority is one of the groups living on the Nakai Plateau and as hunter-gatherers, with extensive knowledge of the forest.

Finding 4: A key element of the success of handing over control to the GoL and resettler institutions on the Nakai Plateau will be the financial and institutional capacity of these organizations to undertake the associated responsibilities of resettlement on a sustainable basis.

Recommendations:

- a. Mechanisms should be put in place to ensure sustainability of the on-going capacity building efforts.
- b. Parallel capacity building should be provided for provincial and district staff responsible for the Xe Bang Fai Downstream Program to ensure that GoL resources are not overstretched.
- c. Financial commitment is required to ensure continuity of livelihood development programs so project affected communities do not fall behind if there is a gap in funding support programs. NT2 revenues should be made available on a consistent and timely basis for planning and implementation of programs.

Finding 5: The project may not have provided the NT2 ethnic minorities with all the protections and opportunities afforded in the concession agreement and under the WB safeguard policy on indigenous peoples.

Recommendations:

- a. Prior to RIP closure, proposed for December 2017, and as part of the decision-making process, retain an independent anthropological expert to review all available data on the ethnic minority dimensions of the current socio-economic and cultural sustainability of resettler livelihoods to inform the design and subsequent implementation of specific ethnic minority development plans. The design and development of these plans need to be done in consultation with ethnic minorities and made available to the public. If during this process, the review shows significant disparities between ethnic minority groups and the Lao Tai, additional assistance should be provided and postponing RIP closure considered until the objective to “materially improve Resettler livelihoods on a sustainable basis” is achieved.
- b. Consistent with the POE recommendations, and based on the findings from the above recommendation, develop specific Ethnic Minority Development Plans relevant for this stage in the resettlement process for Vietic, Brou, and Tai-Bo ethnic minorities.
- c. Hire an experienced sociologist or anthropologist, with local language competency, to work with the Department of Ethnic and Religious Affairs, to guide the development and implementation of the Ethnic Minority Development Plans.
- d. Design a culturally appropriate monitoring system for tracking the well-being of ethnic minority households.
- e. Fully apply the concession agreement obligations, which require the “advancement and equitable treatment of ethnic minority resettlers.”
- f. Engage with Department of Ethnic and Religious Affairs as advisors and, if possible, provide resources for the Department to develop recommendations for future MDB-funded projects that will impact ethnic minorities.
- g. Redesign the NT2DF to address the needs of both ethnic minorities and vulnerable groups separately.

- h. The WB should remain actively involved in satisfactorily addressing the ethnic minority issues that have been identified by the POE and, where appropriate, provide additional assistance until the above recommendations addressing ethnic minority issues are fulfilled.

Finding 6: NTPC is committed to extending the reach of the rural development efforts initiated under the concession agreement by creating a demand-driven development program through: 1) providing resources to support medium-term (five-year) development, including the French Development Agency's Nakai Plateau Livestock Agriculture and Forestry Program; and 2) providing resources to support the NT2 Development Fund (NT2DF) through the end of the concession agreement (2035) for livelihood activities.

Recommendations:

- a. Consistent with the POE recommendations, give special attention to ethnic minorities based on the development of ethnicity-specific Ethnic Minority Development Plans through integrating cultural advisors into the existing participatory process.
- b. Conduct an assessment of the WMPA management structure to incorporate lessons learned to ensure the NT2DF management structure is effective in meeting its objectives.

Finding 7: The WMPA has not fulfilled its original objective of conserving biodiversity within the NNT NPA. In February 2017, reliable stakeholders reported that the GoL plan for fulfilling its original objective of conserving biodiversity within the NNT NPA was unclear. The Prime Minister has since approved the decree to transfer the WMPA to the Ministry of Agriculture and Forestry, and prioritized the Nakai Nam Theun as one of Laos' first national parks. A Lao NGO consortium has been designated to support the WMPA with co-management responsibilities of WMPA's budget. The political implications and substantive effectiveness of this move is yet to be realized.

Recommendations:

- a. Fully implement the POE and the IMA recommendations on restructuring the WMPA. The recommendations, including co-management with an international NGO with protected area experience, are fundamental to addressing the underlying issues of the WMPA.
- b. Conduct an independent, in-depth review of the WMPA that would be publicly available, to learn and catalogue lessons for future application to biodiversity compensation projects (including offsets) and support for cultural diversity of enclave villages⁷ in Laos.
- c. The WB should remain actively engaged and monitor the proposed restructuring of the WMPA, identify key benchmarks for determining that the fundamental underlying management issues with WMPA are resolved and that WMPA is demonstrating an ability to fulfill its conservation mandate. If benchmarks are not met, the WB should consider providing additional technical assistance.

⁷ Enclave villages are located within the NNT NPA.

Finding 8: Project-affected villagers living upstream and downstream of the NT2 outlet on the Xe Bang Fai River were inadequately considered within the concession agreement, resulting in reduced financial and technical assistance, and a premature handover of livelihood program responsibilities to the GoL in comparison to resettled villagers on the Nakai Plateau.

Recommendations:

- a. Conduct a socio-economic survey supplemented by a mix of qualitative and quantitative inquiry into income sources at the household, village and ethnic minority levels to identify factors that may affect both the sources and levels of income. This information would include not only consumption and income but also maintenance, depreciation, and debt information, along with evidence that dietary requirements are being met, disaggregated by ethnic group. Based on the survey results, identify and develop programs to support the original intent of the concession agreement.⁸
- b. Provide a mechanism for NT2 revenue to be allocated in a consistent and timely manner to the Resettlement Management Unit so it can continue fulfilling its role and responsibilities.

Finding 9: A number of impacted villages along the Xe Bang Fai River and hinterlands are inhabited by the ethnic minority Brou, which the VVB classifies as indigenous peoples under its indigenous peoples safeguard policy. A specific Ethnic Minority Development Plan was not developed for the Brou, as required by the VVB's indigenous peoples safeguard policy and, consequently, they may not have been afforded the appropriate safeguards.

Recommendations:

- a. Develop a specific Ethnic Minority Development Plan relevant for this period of NT2 operation addressing economic displacement of Brou communities.
- b. Hire an experienced sociologist or anthropologist, with local language competency, to guide the development and implementation of the Ethnic Minority Development Plan.
- c. Design a more culturally appropriate monitoring system for tracking the welfare of ethnic minority households.

⁸ Concession Agreement, Schedule No. 4 Part 1: 5.1 Objectives of the Mitigation, Compensation and Resettlement Process including: “b) at least restore livelihoods of Project Affected Persons in the Downstream Areas on a sustainable basis”.. “e) apply special measures as required towards ethnic minorities and vulnerable persons to take care of their needs and foster self-reliance and to improve their socioeconomic status” pg 117-118.

INTRODUCTION

USAID Legal Mandate

Title XIII of the International Financial Institutions (IFI) Act directs the U.S. Government (USG) to strengthen the environmental and social performance of each multilateral development bank (MDB) in which the USG is a shareholder: African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, the World Bank Group. Toward this end, the United States Agency for International Development (USAID) leads pre-approval and post-approval field reviews of selected MDB projects in consultation with the Departments of the Treasury and State and relevant U.S. federal agencies.

Public Law No. 113-235 directs USAID to undertake post-approval field reviews of selected multilateral development bank proposals. USAID selects projects for post-approval field reviews that are particularly likely to have significant adverse impacts on the environment, natural resources, public health or indigenous peoples. USAID also considers previous USG recommendations submitted to the MDB regarding environmental and social performance of the project. The purpose of these field-based reviews is to: 1) assess the adequacy of safeguard implementation for the project; 2) evaluate the incorporation and effectiveness of any USG recommendations; or 3) provide additional recommendations to improve the environmental and social performance of the project.

This report is the fifth in a series of reviews based on site visits to the project before and after financing. This monitoring review, conducted in February 2017, is focused on the WB and AsDB approved financing of the 1,070 MW NT2 in 2005. Its construction physically displaced 6,289 persons; inundated 170 square miles; affected indigenous peoples (referred to as ethnic minorities in the concession agreement), critical habitat, and endangered species; and economically displaced over 100,000 people, including ethnic minorities.

As part of USAID's review responsibilities under Title XIII, USAID made two visits (May and October 2004) to the project site before both WB and AsDB board approvals. Since the board approvals, USAID and other USG representatives have visited NT2 on two separate occasions (2008, 2010) to follow up on biodiversity and ethnic minority (indigenous peoples) concerns. Each of these visits consisted of meetings with GoL officials, the project sponsor (NTPC), civil society (development and conservation NGOs), project-affected ethnic minorities, and the WMPA. Additional information can be found in the following MDB Reports to Congress: September 2002-October 2004; October 2004-September 2005; April 2009; April 2010. Recommendations from the most recent site visit (2010) are included in the Annex. A number of the issues reflected in those recommendations are also raised in this report.

Scope of Field Review

USAID frames its analysis from relevant U.S. legislation,⁹ previous USG recommendations, MDB safeguard policies and associated guidance, and international best practice standards. Analysis may focus on any aspect of environmental and social assessment and management including, but not limited to: screening; scoping; definition of the project area; assessment of borrower capacity for environmental and social management; analysis of alternatives; baseline data; direct, indirect, and cumulative impacts; and impacts from associated facilities. USAID may particularly focus on environmental and social issues formally raised to MDBs by the USG through policy reviews or other processes. Findings and recommendations of this field review may highlight good practice as well as areas for improvement, such as additional alternatives and means to identify, avoid, and mitigate adverse impacts.

METHODS

The methodological aim of the review was to understand key environmental and social issues from a diversity of perspectives. The field review team triangulated methods as much as was practical by using multiple data and information collection techniques, multiple sources, and multiple analysts.

Data and information collection techniques included:

- Identification and review of project documents, MDB policies, conservation organization reports, documents from related MDB and bilateral development projects, technical literature, and academic literature;
- Interviews with selected subject-matter experts;
- Semi-structured and open-ended interviews with interested and project-affected people; and
- Biophysical and social observations in and around the project area.

As part of this monitoring review, USAID staff, with participation from U.S. Departments of Treasury and State and the U.S. Embassy, conducted a visit to the NT2 project area in February 2017, including the operational facilities, dam site, and areas downstream of the power station, along the Xe Bang Fai River. The trip included meetings with the WB country team, AsDB (in Manila), NTPC, and GoL ministries in Vientiane and in the provinces and districts, as well as villagers in resettled communities on the Nakai Plateau and economically-displaced villages along the Xe Bang Fai River. On the Nakai Plateau, four villages were visited – on both the north and south sides. Several Brou and Lao Tai villages along the Xe Bang Fai were visited. Interviews with villagers were informal and based on convenience sampling during various times of the day and different days of the week. Due to a recent IFI visit to the Nakai Plateau, the team was sensitive to consultation fatigue by resettlers and opted against a series of village meetings.¹⁰

⁹ Relevant U.S. legislation includes Title XIII of the IFI Act and subsequent appropriations laws that refer to Title XIII.

¹⁰ POE (2017) Twenty-Sixth Report of the International Environmental and Social Panel of Experts (pg 24) “Villagers are already experiencing “consultation fatigue”,...”

For this review, specific areas of focus were on the effectiveness of the WMPA in meeting its biodiversity conservation objectives in the NNT NPA, materially improving Nakai Plateau resettler livelihoods on a sustainable basis, and restoring livelihoods and treatment of the Brou (ethnic minority) due to downstream impacts along the Xe Bang Fai River.

The comments in this report reflect the views of those interviewed during the February 2017 visit or shortly afterward. Reviewers used convenience sampling techniques aimed at understanding the diversity of stakeholder perspectives. Quotations or paraphrasing of village comments in the report are illustrative of particular perspectives and are not intended to be generalized across the population. Information provided in the report from villagers was not selectively filtered or censored to promote a particular view. Findings and recommendations are based on consultations, the February 2017 site visit observations, and environmental and social documentation available at the time of the February 2017 site visit or afterward.

BACKGROUND – NAM THEUN 2 HYDROPOWER PROJECT

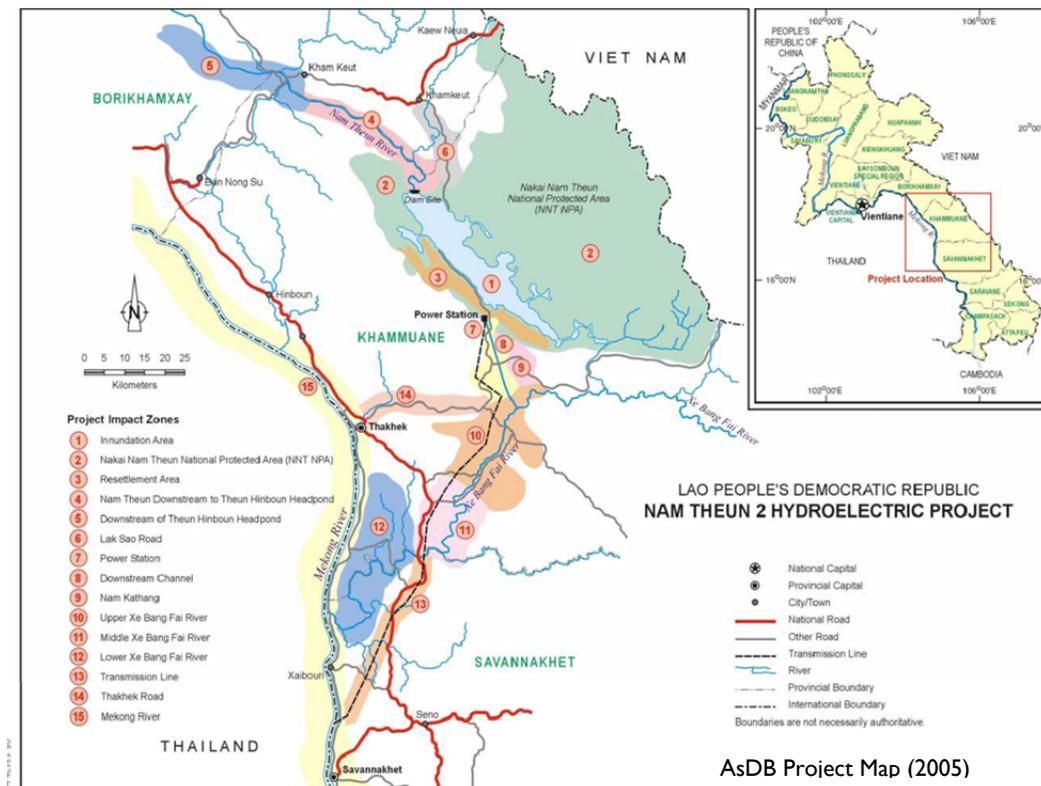
NT2 is a \$ 1.1 billion, 1,070 megawatt, public/private sector hydroelectric project in Laos that entered into operation in 2010. This project had been under consideration by the GoL and various developers since the late 1980s. The project objective is to generate electricity, mainly for export to Thailand, via the Electricity Generating Authority of Thailand, with GoL revenues used for poverty reduction and environmental protection activities.

The 39-meter-high NT2 is a trans-basin diversion hydropower dam located on the Nam Theun River, a major tributary of the Mekong. The reservoir for NT2 flooded approximately 40 percent of the Nakai Plateau, requiring the resettlement of more than 5,700 people from three ethnic minorities and impacting numerous rare and endangered species. Operation of the dam requires annually diverting approximately seven billion cubic meters (approximately 30 percent of the Nam Theun River's annual flow volume) to generating station turbines, and releasing the water into the Xe Bang Fai River through the Nam Phit River. The Nam Phit was dredged and widened to become the outflow channel. Along the Xe Bang Fai River,¹¹ there are approximately 155,000 people in 159 villages, including 56 hinterland villages that were impacted by the diverted Nam Theun water releases into its channel. The NNT NPA has been designated as a natural habitat compensation for loss of the Nakai Plateau under the WB's Natural Habitat safeguard policy.¹² This project triggered all 10 of the WB's safeguard policies.

¹¹ PM Decree 293, dated 15 June 2010, "Establishment and Activities of River Basin Committee." It covers such a committee for each of Laos' river basins and comes under the jurisdiction of the Ministry of Natural Resources and Environment.

¹² In 1993, the Prime Minister's Decree 164 (PM 164) established the new system of 18 national protected areas, depicting the western boundary at the Nam Theun, including the eastern half of the Nakai Plateau and the area's eastern boundary set as the international border with Vietnam. In 2000, the GoL issued a new Prime Minister's Decree, PM 193, "on the establishment of the Nakai-Nam Theun NBCA, Corridor Areas, NT2 Project Reservoir Area, and Resettlement and Forest Area for people affected by the Project."¹² The decree shifted the western boundary of NNT from the Nam Theun eastward to the eastern shoreline of its reservoir excising part of the plateau from the NPA.

The WB board approved the International Development Association (IDA) Partial Risk Guarantee, Multilateral Investment Guarantee Agency guarantees, and the IDA grant to Laos on March 31, 2005; the AsDB board approved a public sector loan to finance part of the GoL's equity contribution in the project, a private sector loan (NTPC) and a political risk guarantee on April 4, 2005.¹³ The USG abstained on the project due to environmental, social, and revenue management concerns that were not effectively addressed when the project came to the respective WB and AsDB boards for a vote.



Since the NT2 project began the following resettlement successes have been achieved:

- There are 1,330 newly built houses in the Nakai Plateau resettlement villages, with 330 water pumps, 104 community buildings and 120 km of access roads.
- Each resettler house has a toilet and bathroom, electricity and rainwater collection tank.
- Over 4,000 children on the Nakai Plateau are going to school. School enrollment among children five to nine years old increased to 90 percent post-resettlement compared to 31 percent pre-resettlement.
- Sixteen primary schools and 16 nursery schools have been built and equipped.
- Malaria bed nets are used by 97.7 percent in the resettled population.
- Immunization rates among children under five years old are at 90 percent in the resettled population.
- Two health centers have been built and equipped.

¹³ In addition to WB and AsDB, financing was also provided by the French Development Agency and the European Investment Bank, along with a number of commercial lenders providing the majority of the financing.

- Increased nutrition among children below five years old have resulted in 34.2 percent post-resettlement of stunted children compared to 43.1 percent pre-resettlement. Underweight children are 18.3 percent post-resettlement compared to 27.6 percent pre-resettlement.

Since the USG February 2017 site visit, the Prime Minister has approved the decree to transfer the WMPA to the Ministry of Agriculture and Forestry, and prioritizing the Nakai Nam Theun as one of Laos' first national parks. A Lao NGO consortium has been designated to support the WMPA with budgetary control. As of September 2017, approximately half of the list of actions required for RIP closure have been determined to be completed by the GoL and NTPC, with 49 actions at various stages of completion and 12 actions that have not been achieved.

FINDINGS AND RECOMMENDATIONS

Finding 1: In February 2017, the NTPC and the GoL were focused on finalizing and implementing an action plan, including measurable indicators, to achieve closure of the RIP on the Nakai Plateau per the concession agreement obligations, by December 2017. This process is being supported by the WB and the AsDB.

The significance of RIP closure is that it is the last legal responsibility of NTPC regarding resettlement activities on the Nakai Plateau, at which point those responsibilities are permanently transferred to the GoL. This transfer is viewed as a project milestone for all the above parties.

The concession agreement sets out the Village Income Targets and Household Income Targets that should be reached by the end of the RIP, in addition to non-economic objectives to be achieved during this period, such as materially improving resettlers' livelihoods on a sustainable basis, culturally sensitive development for ethnic minorities, and protections for vulnerable resettlers.¹⁴

In January 2014, the NT2 Resettlement Committee declared that the Household Income Target had been achieved "in accordance with the Concession Agreement."¹⁵ This finding was based on the 2013 Nakai Socio-Economic Survey, which found that "not only have 97% of the resettler households achieved the Household Income Target (above the poverty line), but in fact their average consumption levels are nearly three times higher than the poverty line."¹⁶

Under the terms of the concession agreement, the POE is mandated to determine whether the Village Income Targets along with other aspects of the concession agreement resettlement objectives were achieved.¹⁷ Following a site visit in 2015, the POE recommended a two-year extension of the RIP to December 2017.¹⁸ The POE's recommendation was based on the fact

¹⁴ Concession Agreement, Schedule 4, Part 1, Clause 3.1

¹⁵ POE (2014a) Twenty-Second Report of the International Environmental and Social Panel of Experts

¹⁶ POE (2014a) Twenty-Second Report of the International Environmental and Social Panel of Experts

¹⁷ Concession Agreement, Schedule 4, Part 1, Clause 1.2 and Clause 3.4(a).

¹⁸ POE (2015) Twenty-Fourth Report of the International Environmental and Social Panel of Experts

that the “Resettlement Objectives and Provisions had not been fully met as yet, notably but not solely in terms of livelihood development and sustainability.”¹⁹ The POE made 84 specific recommendations; the POE considers 20 of these recommendations to be binding and they need to be achieved by the planned RIP closure of December 2017.²⁰

In response to the POE’s recommendation, a Joint Working Group was formed by the GoL to develop an action plan that clarifies the requirements for closure of the RIP based on the concession agreement and other legal agreements.²¹ The action plan is expected to contain specific recommendations to ensure compliance with WB/AsDB safeguards. As part of this process, in late 2016, two months of consultations were held with villagers to obtain feedback and socialize the action plan, with the end goal of obtaining villagers’ support for the action plan.

The action plan²² is divided into four livelihood pillars (agriculture and livestock, fisheries, forestry, and off-farm activities) and three cross-cutting pillars (poor and vulnerable households, ethnic groups, and gender). Each pillar has a specific set of actions which either NTPC or GoL are accountable. The action plan is currently under implementation and at the time of USAID/USG site visit was in the final stages of approval by all parties.

The action plan also includes a five-year medium-term development plan which is neither part of the concession agreement nor a legal obligation of the concession agreement. The five-year plan is expected to be financed by Agence Francaise de Development (Afd), NTPC and GoL.²³ In discussions with the USG team, it was proposed that some actions of the medium-term plan can provide a social safety net in case the concession agreement obligations for RIP closure have not been met by December 2017, allowing the action plan concession agreement-related activities to continue until the end of the concession period, in year 2035. The social safety net is separate from the Afd project. It is a safeguard mechanism that is designed to ensure a minimum level of support for vulnerable households. The social safety net is a concession agreement requirement until the end of the RIP. However, shareholders decided to extend it beyond the RIP to the end of the concession agreement as a component of NTPC’s corporate social responsibility. The POE has stated that the obligations of the concession agreement need to be met independent of additional resources, which are not part of the concession agreement and subsequently not legally binding.²⁴

¹⁹ POE (2015) Twenty-Fourth Report of the International Environmental and Social Panel of Experts and POE (2016) Twenty-Fifth Report of the International Environmental and Social Panel of Experts

²⁰ POE (2015) Twenty-Fourth Report of the International Environmental and Social Panel of Experts

²¹ Members of the Joint Working Group include NTPC, WB, AsDB. The action plan is not publicly available and as of February 2017, was in the final approval stages. USAID/USG has not had the opportunity to review the action plan, so our knowledge is based on POE (2016) Twenty-Fifth Report and discussions with NTPC, WB, and GoL.

²² NTPC and the GoL are responsible for the implementation of the action plan.

²³ The GoL will provide both budget and implementation support.

²⁴ USAID understands that the project can, in principle, be in compliance with WB safeguards requirements without accomplishing all of the actions in the concession agreement and action plan. For example, WB safeguard on Involuntary Resettlement can be met by improving (or at least restoring in real terms to pre-project or pre-displacement levels, whichever is higher) their livelihoods and standards of living with due regard to the sustainability of the natural resource, whereas the concession agreement requires more than income-based metrics.

The Household and Village Income Targets set out in the concession agreement were determined to have been met based on the report on the Nakai Socio-Economic Survey Round 7 survey of March 2013. NTPC is undertaking a socio-economic assessment which will provide the basis for determining whether the concession agreement's socio-economic conditions and income targets for RIP closure are stable and sustainable.^{25, 26}

In accordance with the concession agreement, the POE will conduct an independent assessment approximately six months before intended RIP closure to determine whether the concession agreement conditions have been met.²⁷ The WB and AsDB will also conduct their own assessments.

Recommendation:

- a. The action plan and progress on meeting indicators should be made available to project-affected villagers and the public.²⁸

Finding 2: Actions to “materially improve Resettler livelihoods on a sustainable basis” is a key objective in the concession agreement and required for RIP closure. However, the definition and metrics to determine “sustainable basis” were not provided either within the concession agreement or at project approval. This lack of clarity leads to different interpretations for determining RIP closure.

The word “sustainable” occurs in the concession agreement 30 times and frequently in relation to resettlement livelihoods. For example, Provision 3.1 of the concession agreement refers to the resettlement objectives to “(c) materially improve Resettler livelihoods on a sustainable basis;” and “(d) restore livelihoods of Project Affected Persons (other than resettlers who are

²⁵ POE (2017) (pg iv) “Indicators show a decline in incomes since 2014 as project employment has reduced and cash compensation has all been paid, but also as the supply of rosewood in the reservoir has virtually run out. The economic status of ethnic groups and other groups at risk need to be kept under review; and information on sources of income will help with an assessment on sustainability of livelihoods.”

²⁶ POE (2017) Twenty-Sixth Report of the International Environmental and Social Panel of Experts (pg 68) “Our broad conclusion is that there has been some progress in securing livelihoods for the resettlers, and some good planning for the future, but some big challenges remain if RIP is to be closed at the end of December.” (pg 69) “But there are some significant more general issues relating to meeting the conditions of the CA. First, the actions in the plan will have had little real impact on livelihoods by December. Major outcomes are mostly projected into the medium term. Agriculture and livestock depends on the AfD-NTPC funded project, which will only be in the field towards the end of the year. There are major decisions to be made about land use, and some disputes are not yet resolved. There is little likelihood of a significant improvement in fisheries enforcement by the end of the year. Forestry is nowhere near a consensus on what needs to be done, particularly about the future of village production forestry, and a new strategy requires support at all levels of government. Off-farm projects are still to yield significant results for business or employment. Effectively, therefore, a judgment in December will require an act of faith that these results will emerge in the medium term. The history of development planning gives plenty of examples to the contrary. We trust that this plan will do better than many.”

²⁷ USAID understands that the POE's recommendation can be overridden by consensus on the part of the IFIs (including the WB and AsDB), the GoL and NTPC.

²⁸ POE (2017) (pg 13) “The villagers were well involved in drawing up the sectoral Action Plans. This was a participatory process and well conducted. The villagers are unanimous on this score. But they have not had adequate feedback on the content of the consolidated Plan and say they have seen little impact as yet on the ground.”

covered by paragraph (c)) on a sustainable basis.” The project proponents and POE have been in discussions to define and measure “sustainable” since 2012.²⁹

A relevant definition of sustainability for resettlement, based on one of the POE member’s research efforts on involuntary resettlement over several decades,³⁰ could be an approach “that brings the resettlement process to a successful end as project areas and populations are integrated into the political economy of a region or nation. The three conditions that need to be met are: 1) a handing over process whereby specialized project agencies hand over assets to resettler institutions and to line ministries, 2) the second generation of resettlers’ living standards must continue to improve at least in line with improvements in neighboring areas and 3) community members must have the institutional and political strength to compete for their fair share of national resources.”³¹ Clearly, meeting these conditions will not necessarily be linear.

Based on this definition, key elements that contribute to sustainability include households with a portfolio of income-generating activities that do not depend on the depletion of natural assets, equity between at least the first two generations of resettlers, resilience to likely stresses and shocks over some reasonable time in the future, and the capacity of the GoL and resettler institutions to undertake resettlement responsibilities. Based on the evidence available to the POE in 2015, they concluded that the resettlers had not yet achieved the “path to sustainable livelihoods.”³²

On the other hand, some project proponents believe that within the context of the concession agreement, sustainability can be defined as the achievement of the Household and Village Income Targets, provided there is an additional agreement made outside of the concession agreement for NTPC to continue funding development projects and institutions (e.g., the five-year medium-term development plan and the NT2DF). However, the POE has raised concerns in the past with this approach outside of the concession agreement.³³

Missing from this equation is how villagers define “sustainable.” In conversations, rice availability is a key concern for villagers and appears to drive their livelihood efforts; this is likely key to their view of sustainability.

Recommendations:

- a. To determine RIP closure, the action plan’s definition of sustainability should incorporate at a minimum the following components, as discussed above:
 - i. Income generating activities that do not deplete the natural resource base

²⁹ POE (2012) Nineteenth Report of the International Environmental and Social Panel of Experts

³⁰ Scudder, T (2012) Resettlement Outcomes of Large Dams in A.K. Biswas et al. (eds.), Impacts of Large Dams : A Global Assessment, Water Resources Development and Management

³¹ POE (2015) Twenty-Fourth Report of the International Environmental and Social Panel of Experts

³² POE (2017) (pg 68) “Our broad conclusion is that there has been some progress in securing livelihoods for the resettlers, and some good planning for the future, but some big challenges remain if RIP is to be closed at the end of December.”

³³ POE (2017) (pg 15) “We need to make one consideration clear at this point regarding the ongoing work on the CAP [comprehensive action plan], which is that while the Plan is a valuable step forward and is taken seriously by the POE it does not replace the CA [concession agreement] as the basis of the POE’s mandate and work.”

- ii. Securing the well-being³⁴ of second generation families
- iii. GoL and village institutions have the capacity to support continued livelihood development in a culturally appropriate manner
- b. All future concession agreements in Laos, beyond NT2, that seek to ensure sustainability of livelihoods should incorporate the above components into the definition of sustainability, along with indicators of sustainable outcomes, in addition to identifying indicators beyond socio-economic measurements.
- c. Although the action plan is intended to provide continuing support for resettlers' livelihoods (e.g., five-year medium-term development plan, NT2DF), the determination of RIP closure needs to be based on fulfilling the concession agreement obligations.³⁵

Finding 3: While NTPC survey results indicate that villagers are achieving income targets, discussions with reliable stakeholders on the economic performance of the project's livelihood pillars indicate continuing challenges. Villagers interviewed acknowledged improvements in infrastructure, including health clinics, schools and roads. However, they also explained that essential elements of their livelihoods have either stayed the same or worsened.³⁶ These include access to good and sufficient land for agriculture (especially rice, which is the key resettler food), livestock grazing, and access to non-timber forest products.

Project proponents believe that meeting the Village Income Targets as specified in the concession agreement reflects the overall socio-economic status of the villagers and their increase in living standards, regardless of the individual performance of each livelihood pillar.³⁷

Prior to resettlement, the resettlers from the original 17 hamlets were supported by diversified production systems based on agriculture, livestock, fishing, aquatic resources, and the collection of non-timber forest products, some of which were the major source of income for women (as buffalo were for men in emergency situations).³⁸ This extensive and diverse livelihood system is important in ensuring sustainability and is reflected in other production systems throughout Southeast Asia and in other parts of the world.

Prior to reservoir inundation, the villagers moved from close proximity to a year-round water supply to inland hilly sites with infertile and erodible soils. They no longer have access to riverside gardens, productive land for rice, and ample areas for grazing livestock and collecting non-timber forest products. One household told us that they now have electricity and a road but not enough to eat, whereas in their old village, they had enough to eat but no electricity or

³⁴ Well-being should be defined by each ethnic minority and not dictated from the outside.

³⁵ The POE will provide their final recommendation following a visit in November 2017.

³⁶ Based on the March 2017 Nakai Socio Economic Survey, (received by USAID November 2017), "99% of the respondents reported that their life was as good or better than before resettlement, the highest level of satisfaction since the question was first asked in 2011."

³⁷ POE (2015) (pg 4) In January 2014, the NT2 Resettlement Committee declared that the Household Income Target had been achieved "in accordance with the Concession Agreement." This finding was based on the 2013 Nakai Socio-Economic Survey, which found that "not only have 97% of the resettler households achieved the Household Income Target (above the poverty line), but in fact their average consumption levels are nearly three times higher than the poverty line."

³⁸ POE (2015) Twenty-Fourth Report of the International Environmental and Social Panel of Experts

roads. From their perspective, there is not enough land to survive on.^{39,40} In discussions with villagers interviewed, there appears to be a generational difference in perception of whether livelihoods are better or worse since resettlement. But it is also the perception of some of those villagers that the NT2 project benefits the wealthier minority, but not the majority who consider themselves poor.⁴¹

Prior to resettlement, it was a long-standing practice for villagers to trade or sell wildlife to purchase rice.^{42,43} Resettled villagers continue to go into the NNT NPA for collection of forest products, including rosewood, *Dalbergia cochinchinensis*, listed as vulnerable by IUCN.⁴⁴ One assessment indicated that over a one-year period of active WMPA anti-poaching patrols, over 70 percent of the 268 suspected poachers caught were from resettlement villages. However, the socio-economic surveys and interview data that are being used to measure the achievement of income targets do not attempt to determine the legality of hunting, logging, or non-timber forest products trade to the contribution household income. Evidence of illegal activity is possibly reflected in the high levels of consumption.⁴⁵

Agriculture pillar:⁴⁶ More than 10 years after resettlement, villagers continue to struggle with low productivity soils and insufficient land. Poor rice yields have resulted in villagers interviewed reporting food insecurity, appearing to lack steady income to ensure food security, and

³⁹ POE (2017) (pg v) “Housing and agricultural land allocation for subsequent growth (SG) households is 70% completed, but 45% of original resettler households still have not received their entitlements of additional land, although some of these would not be eligible.”

⁴⁰ Based on the March 2017 Nakai Socio Economic Survey, (received by USAID November 2017), “99% of the respondents reported that their life was as good or better than before resettlement, the highest level of satisfaction since the question was first asked in 2011.” “Housing and Services are improved from Pre-Project Levels. Household wellbeing (and poverty) is a multidimensional issue and includes more than just income and consumption. One of the most important improvements for the resettler households has been in housing, utilities, infrastructure and access to services. All households now have a well-constructed wooden house, with access to sanitation, year-round secure water supply, and mains electricity. Resettlers have access to improved health care and educational facilities both in the new villages themselves and in the District Town of Oudomsouk. Overall, 87% of resettlers said their lives are better than before resettlement. Ninety three percent of resettlers nominated housing (including facilities and services such as electricity) in their assessment of top three improvements and 83% of respondents nominated infrastructure such as road access, and phone coverage.”

⁴¹ According to an AsDB financed Participatory Poverty Assessment (2006) villagers identified the primary cause of poverty to be limited access to cultivation land for rice production and second cause was livestock disease.

⁴² Social and Environmental Management Framework and 1st Operational Plan (SEMFOP I) (2005) The purpose of the SEMFOP is to develop a management framework and operational plans to effectively protect the watershed, and its forests, habitats, wildlife and biodiversity values, and at the same time, safeguard the wellbeing, traditional livelihoods and culture of its human inhabitants.

⁴³ Robichaud, W. G., A. R.E. Sinclair, N. Odarkor-Lanquaye, and B. Klinkenberg. (2009) Stable forest cover under increasing populations of swidden cultivators in central Laos: the roles of intrinsic culture and extrinsic wildlife trade. *Ecology and Society* 14(1): 33.

⁴⁴ POE (2015). Although, at this point, stocks of rosewood have been significantly depleted.

⁴⁵ POE (2015) (pg 66) “The Panel has serious reservations about the methodology employed in the calculations, the use of consumption rather than reported income in the survey and the legality and sustainability of some income-generating activities.”

⁴⁶ Based on the March 2017 Nakai Socio Economic Survey, (received by USAID November 2017), “Twenty eight percent of household income (mean of household income shares) was obtained from agriculture in 2017”. The agriculture and fisheries pillars “account for more than half of household income and therefore represent the key to sustaining incomes at their current levels”.

considering moving off the plateau to obtain access to better agricultural land.⁴⁷ Two families interviewed indicated significant food insecurity, but at the same time stated that they know they cannot hunt on the plateau or risk getting fined. It was reported by reliable stakeholders that rice quality was good in the first year post-resettlement, but declined afterwards. To compensate for poor rice yields, some villagers are planting rice in their vegetable plots during the rainy season and others are switching from planting rice to trees. Farm animals, vegetables, and fish are sold to buy rice from the local market or markets in Gnommalath and Thahkek. Some resettlers along the dirt road south of Oudomsouk do not have regular access to markets to sell their vegetables.

Irrigation is a possibility for increasing crop yields, as the cost for running electric pumps is low. However, while well water is reliably available during the rainy season, it dries up during the dry season. There are concerns over the depletion of soil nutrients due to the extensive planting of cassava. Additionally, the price of cassava is low and, in one case that we encountered, a villager ended up in debt after he hired a vehicle to take his cassava to market and was unable to obtain a high enough price to cover the rental of the truck and driver.

Livestock pillar: Although the herd size was initially reduced during the RIP, it is not clear whether there is enough fodder for the now increasing number of cattle and buffalo currently on the plateau. Based on discussions with reliable stakeholders, there does not appear to be adequate technical assistance to manage a more crowded livestock husbandry.

In 2014, the POE highlighted that despite higher levels of vaccination than in surrounding areas, resettlers' large livestock (e.g., cattle and buffalo) continue to be at risk because the majority of livestock continue to graze outside larger villages that are situated in a semi-urban environment meaning greater contact between livestock and easier spread of disease. A target has been set to vaccinate more than 70 percent of all livestock. There is the potential for foot and mouth disease and hemorrhagic septicemia introduced from the watershed and Gnommalath and Khamkeut Districts, where diseases have been reported and rates of vaccination are low.^{48,49}

⁴⁷ Based on the March 2017 Nakai Socio Economic Survey, (received by USAID November 2017), "Consumption of meat and fish has increased during resettlement. Meat and fish are important sources of protein in diets and, because of their higher prices, are a form of discretionary spending on luxury food. The combined consumption of fish and meat has increased from around 4.5 to 6.6 kg/person/month in the early years of resettlement (2006 to 2008) to around 6 to 9 kg/person/month in recent years (2011 to 2017). The consumption of both fish and meat is toward the higher end of values reported for the Lao PDR. Rice consumption has decreased over the same period. Early levels of rice consumption were extremely high (25 kg/person/month) when resettlers were being provided with food support (2006- 2008). Rice consumption has progressively decreased since then and the current average consumption of 14.5 kg/person/month is the lowest recorded, despite record low prices, and probably reflects a change in diet to a more meat oriented food consumption."

⁴⁸ POE (2014b) Twenty-Third Report of the International Environmental and Social Panel of Experts; POE (2017) (pg 31) "There have been sporadic outbreaks of haemorrhagic fever and foot and mouth disease amongst both cattle and buffalo. Vaccination rates have been increasing – more for cattle than for buffalo, which are harder to catch – and are still ahead of national averages, but not enough for herd immunity. "

⁴⁹ Based on the March 2017 Nakai Socio Economic Survey, (received by USAID November 2017), "Livestock numbers and incomes have increased but stock deaths are down. Creation of the Nakai reservoir results in the loss of a significant portion of land suitable for grazing. The size and value of the livestock herd was substantially reduced between 2006 and 2011, partly by sales and partly due to stock deaths. In 2006, 87% of households owned livestock with households owning an average of 4.1 buffalo /household. By 2013 this had been reduced to

Fisheries pillar: Fisheries continue to be the most successful of the livelihood pillars,^{50,51} but it is at risk for several reasons noted below. There have been fisheries workshops with continuing support to value added processing on the plateau, such as the production of fish jerky.

At the Thalang Landing, discussions with several fish buyers reported that the number of fishers has remained the same, but the fish catch has decreased. It is unclear whether this observation is due to seasonality, other fish landing sites opening up, or a decline in fish population due to overfishing – legal or illegal. The fish that are caught go mainly to markets in Lak Sao and Vientiane.

There continues to be a problem with illegal fishing. Reasons provided in interviews included the fact that people are not well educated, so they do not understand the rules and/or that the rules are not adequately enforced resulting in illegal fishing. Several discussions suggested that immigrants to the plateau are the sources of illegal fishing, especially in the lower portion of the reservoir (North Thalang Bridge), which is closer to the Lak Sao market. This area of the reservoir falls in two separate districts that are also in separate provinces, which means that enforcement efforts are split between district and provinces. Under current management conditions, it will be difficult to address illegal fishing. To resolve the problem, either the WMMPA must become an effective institution able to coordinate reservoir patrols with the appropriate patrol members or that responsibility must be solely designated to the Reservoir Management Committee.⁵²

At the time of inundation, there were 74 species of fish in the Nam Theun, of which 28 percent were endemic and 10-15 species were considered commercial.⁵³ Non-native fish species (primarily carp species) were introduced as a result of villagers' fish ponds being inundated when the reservoir was filled. Our interviews with reliable sources suggested that a number of indigenous species either are declining or are no longer present in the reservoir, though there is speculation that they may be found upstream of the reservoir. The majority of the reservoir catch is carp.⁵⁴

an average of only 1 buffalo/household. Livestock ownership has increased since that low and now households own an average of 1.5 buffalo/household, 1.9 cattle/household, and 1.4 pigs/household. Livestock incomes have also increased, from 16,000 LAK/person/month in 2013 to nearly 50,000 LAK/person month”.

⁵⁰ Based on the March 2017 Nakai Socio Economic Survey, (received by USAID November 2017), “Twenty nine percent of household income (mean of household income shares) was obtained from fishing in 2017.”

⁵¹ At the time of our visit, the prices for fish were: 8,000 kip/kg at landing site, 10,000 kip/kg at the market, and as much as 15,000 kip/kg in Vientiane.

⁵² POE (2017) (pg 40) “patrolling on the other side of the reservoir where breeding zones are particularly at risk is sporadic; the WMMPA, who are supposed to be jointly patrolling, but are completely absorbed in their restructuring, haven’t been on the water now since last rainy season, although some patrols instigated by DAFO have continued.”

⁵³ Kottelat, M. (2015) The fishes of the Nam Theun and Xe Bangfai drainages, Laos. Hydrobiol. Appl.

⁵⁴ Cottet et al., (2015) Fish population dynamic in the newly impounded Nam Theun 2 Reservoir (Lao PDR). Hydrobiol. Appl. One of the conclusions of this study is that “Identification of the productive areas at this early stage is a good asset for fish population management which is used of fishery purpose. This will help the sustainability of fisheries by defining important production areas, but also, by the monitoring of newly introduced exotic and potentially invasive species (e.g., *P. siamensis*). The NT2 Reservoir could follow the same trend as observed in other reservoirs in Asia, which implies the development of exotic species.”

Several villagers noted that most of the boats provided to each household by the project are no longer functional. For those villagers with functional boats, some noted that it was difficult to fish in the reservoir due to high winds and that they were not able to catch enough fish from the reservoir for their own consumption. One villager, a member of the village fishing association, stated he purchased an annual fishing permit, but is not able to catch enough to feed his family. The cost for fishing licensing and boat registration is 35,000 kip (approximately four USD) for a single fisher for one year. It is 70,000 kip for a household fishing license for one year. The Agreement for licensing and registration is agreed and distributed by the district government each year.

Forestry pillar: This pillar has not been a viable livelihood income option for villagers.⁵⁵ The forestry pillar was designed to contribute up to one third of resettlers' incomes. This goal was not achieved due to a number of factors, including the high official royalties and taxes that are a disincentive to processing timber for the local or regional lower value markets, the tax/royalty on higher value products being proportionately lower, and the reduction of the number of trees available for harvest in comparison to past tree stocks. As a consequence, resettlers have not been paid dividends for several years. It is suspected that because of this sectoral failure, resettlers have had to seek income sources elsewhere. The USG team also heard from more than three sources that the amount of timber per household established in the forestry pillar targets was based on household income targets, rather than on a stock assessment.

The POE has been raising concerns about this pillar for a number of years. The POE reported that the size of the forest estate has been reduced by encroachment, including the conversion of some forest area to swidden cultivation.⁵⁶ One assessment estimated that swidden cultivation replaced approximately 700 hectares of community forests in 2013, which is approximately four to five percent of the total forest area allocated to the Village Forestry Development Committee.⁵⁷

NTPC inputs to the forestry pillar were capped by cost in the concession agreement, and once the fund limit was reached, NTPC disengaged from the sector. However, NTPC's responsibility to help develop a Forest Management Plan is listed in the concession agreement as lasting until RIP closure date.⁵⁸ The inadequate support for the whole operation in recent years by the relevant GoL agencies and NTPC influenced the POE's conclusion that the state of this sector was a key reason for extending the RIP beyond 2015.

⁵⁵ Based on the March 2017 Nakai Socio Economic Survey, (received by USAID November 2017), "Income from timber is now very low. Income from forests (mostly timber income) has decreased from 38% of income (mean share of income) in 2011 to 5% of incomes in 2017. This decline in the importance of timber income is supported by anecdotal evidence provided by the monitoring team and the QSEM survey which found that only 5% of households ranked timber as their most important source of income in 2016, compared with 28% of households in 2014."

⁵⁶ Swidden cultivation refers to a technique of rotational farming in which land is cleared for cultivation (normally by fire) and then left to regenerate after a few years.

⁵⁷ POE (2014b) Twenty-Third Report of the International Environmental and Social Panel of Experts

⁵⁸ Concession Agreement, Schedule 4, Part 1, Clause 9.6.6 and Clause 9.6.7

Discussions with GoL confirmed that the village forestry program has produced less than 20 percent of projected harvest volumes. It was reported that the Village Forestry Association sold less than 1,000 m³ in 2016 as there are not enough suitable trees to reach the 6,000 m³/year target.

Off-farm programs: The off-farm programs struggle from the boom and decline of markets after the major civil works associated with the dam construction were completed.⁵⁹ Younger villagers interviewed discussed moving off the Nakai Plateau to seek employment opportunities, whereas the older villagers felt they had no alternative but to stay on the Nakai Plateau.

The POE reported in 2014 that in two Village Development Councils there were still unfulfilled ambitions and the need for further training in the art of weaving,⁶⁰ which is a way for women to increase their own incomes.⁶¹ The concession agreement specifically mentions weaving as an example of required skills training. Three years later, we were told that, although there have been many discussions, some villages still lack weaving training.⁶² However, two villages, (Sop Hia and Nam Niam) have developed an active weaving program, selling to both passing tourists and to buyers in Vientiane as part of the Happy Nakai program.

Discussions with a family in a relatively isolated Brou village highlighted that their children only go to school if there is fuel for the household's motorbike. As a consequence, it will be difficult for the training component on off-farm livelihoods to engage with ethnic minorities who are less educated. NTPC provided information that there is a primary school for the first three years in every hamlet and between 1.5 and 3.4 km to a hamlet with a full primary school. The concession agreement requested a full primary school at maximum distance of 5 km. Therefore, school attendance on the plateau (94 percent) is higher than the national rural average (84.9 percent in 2012), with Brou attendance reportedly at 89 percent.

Tourism appears to be a burgeoning endeavor on the plateau and is receiving attention from the GoL as an additional income opportunity for resettled communities. The Social and Environment Management Framework and Operational Plan (SEMFOP I) suggests that tourism development in the NNT NPA should begin with a community-based nature tourism program. Several studies have been completed, but there has not been a concentrated effort to implement the recommendations from any of these studies by the WMPA.⁶³

Recommendations:

- a. Where necessary, identify and provide additional land and technical support for growing rice and other agricultural products.

⁵⁹ Based on the March 2017 Nakai Socio Economic Survey, (received by USAID November 2017), "Income Sources have diversified and off-farm incomes have increased. Source of household incomes have diversified since 2011. Income from livestock has increased between 2011 and 2017. Income from off-farm employment has also increased from 29,000 LAK/person/month in 2011 to 110,000 LAK/person/month in 2017. The proportion of households reporting off-farm employment has also increased from 17% in 2011 to 42% in 2017".

⁶⁰ Weaving is a cultural practice of the Lao Tai groups. To USAID's knowledge there are no comparable programs for ethnic minority women to enhance their own cultural skills.

⁶¹ POE (2014b) Twenty-Third Report of the International Environmental and Social Panel of Experts

⁶² It is not known if these are the same two villages.

⁶³ POE (2013) Reports 21A and 21B of the International Environmental and Social Panel of Experts

- b. Where necessary, provide additional technical assistance to support the livestock pillar, including management of grazing areas and a comprehensive vaccination program to cover all cattle and buffalo on the plateau.
- c. To address illegal fishing, either the WMPA must become an effective institution able to coordinate reservoir patrols or that responsibility must be solely designated to the Reservoir Management Committee.
- d. Conduct a survey to determine tree stocks and, with community involvement, develop a forest management plan that includes non-timber forest products use. Given the apparent low management capacity at the local level, the village forestry pillar will likely require additional support both financial and technical.⁶⁴
- e. Expand the range of livelihood opportunities for ethnic minorities to prevent inadvertent income inequities between the ethnic minorities in comparison to Lao Tai and immigrants to the plateau.
- f. Establish a mentorship program for ethnic minorities with businesses that are already operational on the plateau, such as the hotel and restaurant sectors.
- g. Build on early efforts establish the area as a tourist destination. This is an opportunity to maintain the culture, history, and languages of the ethnic minorities.⁶⁵
- h. Establish a specific role for the Vietic ethnic minority⁶⁶ in which they can apply their indigenous knowledge as it relates to the conservation of the NNT NPA as part of an ecotourism program.

Finding 4: A key element of the success of handing over control to the GoL and resettler institutions on the Nakai Plateau will be the financial and institutional capacity of these organizations to undertake the associated responsibilities of resettlement on a sustainable basis.

One of the most important steps in the resettlement process is the handing over of control from the project sponsor to government and resettler institutions. Consequently, RIP closure requires NTPC to transfer all resettlement and livelihood responsibilities to the GoL at the provincial and district levels.⁶⁷ In preparation for the handover, training programs have been conducted for provincial and district staff with support from the WB and AsDB. For future success, it will be critical that the financial and institutional capacity of the GoL and resettler institutions to undertake these responsibilities is sustainable.⁶⁸ Part of this capacity depends

⁶⁴ USAID understands that this is already a component in the action plan. However, given the dysfunction of this pillar, USAID believes it is important to include as part of this report's recommendations.

⁶⁵ A model already exists in Luang Prabang at the Traditional Arts and Ethnology Centre which is the only independent resource center in Laos dedicated to the country's diverse ethnic groups. (<http://www.taeclaos.org>)

⁶⁶ The Vietic ethnic minority is one of the groups living on the Nakai Plateau and as hunter-gatherers, with extensive knowledge of the forest.

⁶⁷ POE (2016) (pg 9) "DAFO is grossly over-committed, understaffed, and has a policy of circulating staff between districts every two or three years. This agency has not only to oversee and provide technical advice to the resettlers on the whole range of livelihood activities but also has been handed responsibility under Decree 471 for fostering livelihood development across the 31 watershed villages with a population of over 7,000 dwellers. DAFO will also be involved in helping implement the new Government's (very welcome) Prime Ministerial Order 15 banning the export of unprocessed logs and timber."

⁶⁸ In 2015, the POE raised concerns over the GoL capacity based on the inadequacy of the budget and low capacity of district governments to carry out even routine tasks, let alone the more complex tasks as required for the community resettlement process.

heavily on the GoL making NT2 revenue available to the provincial and district governments on a timely and consistent basis.

Due to the unsatisfactory experience with the handover to the GoL of Xe Bang Fai downstream livelihood responsibilities, a handover plan has been developed for the plateau. In preparation for the transfer, the District Governor appointed a committee to facilitate the plan. More than 90 people have been appointed by the District Governor to participate in the resettlement handoff. Training in each of the action plan components has been conducted for 30 staff.⁶⁹ A meeting was planned for the last week of February to discuss the handover to the selected action plan points of contact. A work plan is expected to be developed with actions completed in October 2017.

Recommendations:

- a. Mechanisms should be put in place to ensure sustainability of the on-going capacity building efforts.
- b. Parallel capacity building should be provided for provincial and district staff responsible for the Xe Bang Fai Downstream Program to ensure that GoL resources are not overstretched.
- c. Financial commitment is required to ensure continuity of livelihood development programs so project affected communities do not fall behind if there is a gap in funding support programs. NT2 revenues should be made available on a consistent and timely basis for planning and implementation of programs.

Finding 5: The project may not have provided the NT2 ethnic minorities with all the protections and opportunities afforded in the concession agreement and under the WB safeguard policy on indigenous peoples.

Laos has the most ethnically diverse populations on mainland Southeast Asia with 49 ethnic groups and at least 240 subgroups identified. The GoL does not use the terminology “indigenous peoples,” but refers to Laos as a multi-ethnic society. Although the GoL recognizes ethnic minorities, there is concern that the concepts of ethnic minorities or indigenous peoples may encourage feelings of separateness within the nation.⁷⁰

The GoL is officially committed to embracing the multi-ethnic dimension of Laos through both national and international commitments. This is reflected in its constitution, which states “All ethnic groups have the rights to protect, preserve and promote the fine customs and cultures of their own tribes and of the nation.”⁷¹ In addition to the 1992 Ethnic Minority Policy,⁷² Laos

⁶⁹ POE (2017) (pg xi) “The handover of the project from NTPC to District and villages requires a corresponding enhancement of management and support capability in the District, and in the villages a greater capacity to handle project planning and implementation.” and “A truly participative approach to planning under the Sam Sang principle requires a changed relationship between government officials and villagers. Within villages themselves, it is particularly important that all voices are heard including those of incorporated hamlets.”

⁷⁰ International Fund for Agricultural Development (2012) Country Technical Notes on Indigenous Peoples’ Issues Lao People’s Democratic Republic.

⁷¹ Lao People’s Democratic Republic’s Constitution of 1991, Article 8

has ratified and is party to the International Covenant of Civil and Political Rights⁷³ and the International Covenant on Economic, Social and Cultural Rights,⁷⁴ part of international law that protects the rights of indigenous peoples. Laos has not ratified the UN Declaration on the Rights of Indigenous Peoples, but is reported to use it as a basis for formulating its policies with respect to ethnic minorities.

The NT2 concession agreement provides clear guidance on the resettlement of ethnic minorities, including a key focus on mitigating risks to ethnic minority groups and promoting culturally sensitive development. The concession agreement aimed to accomplish this, in part, through additional training and options for livelihood development for ethnic minority groups to be detailed in Ethnic Minorities Development Plans. Likewise, the objective of the WB safeguard policy on indigenous peoples is to “ensure that the development process fosters full respect for their dignity, human rights, and cultural uniqueness.”⁷⁵

There are 28 distinct ethnic groups found in the Nakai Plateau, NNT NPA, and the adjacent periphery of the project.⁷⁶ These distinct groups are represented in three linguistic stocks based on ethnolinguistic phylogeny.⁷⁷ The pre-resettlement project assessments determined that three distinct ethnic minorities - the Brou (32.7 %), the Tai Bo (31.8%) and the Vietic-speaking Ahoe (2.9%) were approximately two-thirds of the resettler population (67.4%) in the 2002-2003 dry season. The WB recognized these groups under their indigenous peoples safeguard policy⁷⁸ and argued that these ethnic groups “can be considered ‘indigenous’ as a whole since the distinctions between the groups are not nearly as significant as the distinction between them and the lowlanders and the newly arrived lowland Lao groups.”⁷⁹

However, studies have identified distinct cultural differences for these groups which would argue against the assertion that “One can speak of a ‘Nakai culture,’ a kind of melting-pot culture, consisting of a shared material culture, common socio-religious beliefs and livelihood systems.”⁸⁰ For example, the Ahoe are a matrilineal group with matrilineal residence. They are not strictly endogamous and may intermarry with Tai Bo. The Vietic peoples were hunters and gatherers until quite recently. The Ahoe differ considerably from the Brou and Tai Bo in that their tutelary spirits⁸¹ cannot be moved. Their tutelary spirits are fixed to the ancestral territory which usually resides in specific big trees. The Ahoe are the only Vietic group living on the plateau with the other groups living in the NNT-NPA. The Brou represent the Western Katuic language and are strictly patrilineal with patrilineal residence. Culturally, they are quite

⁷² The 1992 ethnic minority policy, Resolution of the Party Central Organization Concerning Ethnic Minority Affairs in the New Era, focuses on gradually improving the lives of ethnic minorities, while promoting their ethnic identity and cultural heritage. It is the cornerstone of current national ethnic minority policy.

⁷³ Lao People's Democratic Republic's Constitution of 1991, Article 1

⁷⁴ Lao People's Democratic Republic's Constitution of 1991, Article 27

⁷⁵ WB OD 4.20

⁷⁶ Chamberlain et al., (1996) Socio-Economic and Cultural Survey – Nam Theun 2 Project Area. CARE International Lao PDR.

⁷⁷ The three ethnolinguistic stocks are: Vietic-Katuic (Austroasiatic), Be-Tai and Hmong-Mien.

⁷⁸ OD 4.20 Indigenous Peoples

⁷⁹ Nam Theun 2 Social Development Plan, Resettlement Action Plan Appraisal Draft (2004)

⁸⁰ Nam Theun 2 Social Development Plan, Resettlement Action Plan Appraisal Draft (2004)

⁸¹ Tutelary spirits are guardians or protectors of a particular place, geographic feature, lineage/kinship, or culture.

distinct from the Ahoé. The Brou are exogamous in marriage patterns. The Tai Bo have a definite identity and will always respond that they are Bo. The Bo seem to have been originally Vietic peoples from various groups. Older Tai Bo still speak Kri in one of the villages.⁸² The Tai Bo have an identity distinct from the Brou and the Ahoé and should be considered a separate group.⁸³

Ethnic minorities' participation in hamlet and village governance at all levels is often reduced due to shyness (especially with regard to ethnic minority women) and inadequate training and experience.⁸⁴ A recent survey showed that, in terms of fish catch, the three most effective hamlet fishery groups are in communities dominated by Lao Tai, while three of the five least effective groups are in ethnic minority villages.⁸⁵

In 2015, the POE highlighted the fact that “with the partial exception of the Ahoé, virtually no ‘Ethnic Minority Development Plans’ have been developed, let alone implemented, nor appropriate GOL and Nakai Resettlement Office staff training undertaken.”⁸⁶ The POE also noted that the Lao language was used as an indicator of ethnicity in the NT2 Living Standards Measurement Survey (2013), which resulted in a significant percentage of ethnic minorities being underreported. The POE concluded in 2015 that the combined effect of the absence of Ethnic Minority Development Plans and the inaccurate identification of ethnic minorities, as Lao-Tai (Lao Loum), seriously under-represented the proportion of ethnic minorities in the resettler population and resulted in insufficient NT2 project emphasis placed on the welfare of the ethnic minorities, who were two-thirds of the population at the time of resettlement.⁸⁷ Given the major constraints facing ethnic minorities and the delay in addressing them, the POE recommended that it was necessary during the remainder of 2015 to plan and implement an appropriate (and sustainable, after responsibilities are handed over to GoL) Ethnic Minority Development Program for the remainder of the RIP. To our knowledge this did not occur.⁸⁸

⁸² Kri is an Austroasiatic language of the Vietic branch of Eastern Mon-Khmer. It is spoken by approximately 250 people living in the upper reaches of Nam Noy in Lao, a tributary of the Nam Theun. The village is Sop Phene.

⁸³ Chamberlain et. al., (1996) Socio-Economic and Cultural Survey – Nam Theun 2 Project Area. CARE International Lao PDR.

⁸⁴ POE (2017) (pg ix) “The situation regarding ethnic groups is a cause for concern. The Resettlement Objectives in the CA include to “apply special measures as required towards ethnic minorities and vulnerable persons to take care of their needs and foster self-reliance and to improve their socio-economic status. Many groups however seem to be lagging behind in developing livelihoods and to have difficulty accessing the training and other support provided by the project. Most are also under-represented in village planning and governance.”

⁸⁵ POE (2015) Twenty-Fourth Report of the International Environmental and Social Panel of Experts

⁸⁶ POE (2015) Twenty-Fourth Report of the International Environmental and Social Panel of Experts

⁸⁷ POE (2015) Twenty-Fourth Report of the International Environmental and Social Panel of Experts

⁸⁸ The POE (2017) (pg ix) “There is a considerable risk that in December the project will not be able to demonstrate compliance with the CA provisions for ethnic groups or the IFI Safeguard Policies. Although all ethnic groups have achieved the CA income targets, some groups are lagging behind in developing new livelihoods and have difficulty accessing the training and other support provided by the project. Most are also under-represented in village planning and governance or encounter language difficulties which inhibit their participation in these activities.

It is clear to the POE that the project is not affording some ethnic groups the special treatment required by the CA, covering matters such as language and tailored development programmes.”

Ethnic minorities on the plateau are also affected by the GoL policy on village consolidation, which has tended to be carried out in poor upland ethnic communities where the GoL views consolidation as a cost-effective mechanism to increase villagers' access to health, education, and other services.⁸⁹ Consequently, village consolidation occurred during implementation of the NT2 project with resettlers on the plateau, enclave villages in the NNT NPA, and peripheral impact zone villages. The POE has provided examples during the course of its reviews of the negative impacts of village consolidation on ethnic minorities. The POE concluded that the NT2 experience of consolidation has increased poverty, mortality, and the loss of culture in ethnic minorities.⁹⁰

Another issue that affects the ways in which ethnic minorities are treated by the project is the handling of these groups as vulnerable populations. Although not explicit, ethnic minorities were referred to as vulnerable populations in a number of discussions and it was inferred that village success is more dependent on the spatial location of the village than on its ethnic composition. This is reflected in the apparent design of the NT2DF, which reportedly will not differentiate between vulnerable Lao Tai (Lao Loum) and ethnic minorities. This is problematic because the designation of vulnerability does not provide adequate levels of protection to ethnic minorities. The status of ethnic minorities under both GoL and WB indigenous peoples policy does not confer special status to any group, but rather provides protections that are relevant to indigenous peoples, who are among the most marginalized and vulnerable segment of the population. Villagers can move in and out of vulnerability, but their status belonging to a specific ethnic minority is permanent.

Recommendations:

- a. Prior to RIP closure, proposed for December 2017, and as part of the decision-making process, retain an independent anthropological expert to review all available data on the ethnic minority dimensions of the current socio-economic and cultural sustainability of resettler livelihoods to inform the design and subsequent implementation of specific ethnic minority development plans. The design and development of these plans need to be done in consultation with ethnic minorities and made available to the public. If during this process, the review shows significant disparities between ethnic minority groups and the Lao Tai, additional assistance should be provided and postponing RIP closure considered until the objective to “materially improve Resettler livelihoods on a sustainable basis” is achieved.

⁸⁹ There is awareness in parts of the GoL that the practice of consolidation creates conflicts between original and introduced resettlers. Therefore, instead of promoting this type of practice, some proposed that it would be better to encourage the GoL to build facilities in these remote areas to avoid consolidation.

⁹⁰ POE (2012) Nineteenth Report of the International Environmental and Social Panel of Experts. The POE reported their understanding that there was a GoL-IFI agreement on village consolidation of ethnic minorities in their discussion of Ban Nahao. The WB 2005 Operational Manual OP 4.10 on indigenous peoples states "Because physical relocation of Indigenous Peoples is particularly complex and may have significant adverse impacts on their identity, culture, and customary livelihoods, the Bank requires the borrower to explore alternative project designs to avoid physical relocation of Indigenous Peoples".... and in exceptional circumstances, the borrower will not carry out such relocations without obtaining broad support for it from the affected Indigenous Peoples' communities as part of the free, prior and informed consultation process."

- b. Consistent with the POE recommendations, and based on the findings from the above recommendation, develop specific Ethnic Minority Development Plans⁹¹ relevant for this stage in the resettlement process for Vietic, Brou, and Tai-Bo ethnic minorities.
- c. Hire an experienced sociologist or anthropologist, with local language competency, to work with the Department of Ethnic and Religious Affairs, to guide the development and implementation of the Ethnic Minority Development Plans.
- d. Design a culturally appropriate monitoring system for tracking the well-being⁹² of ethnic minority households.
- e. Fully apply the concession agreement obligations, which require the “advancement and equitable treatment of ethnic minority resettlers.”⁹³ Specific actions should include:
 - i. Assessing the impacts of village consolidation on the plateau and in NNT NPA and identifying mitigation measures.
 - ii. Identifying any potential deficiencies of the project's training and capacity building components for ethnic minorities.
- f. Engage with Department of Ethnic and Religious Affairs as advisors and, if possible, provide resources for the Department to develop recommendations for future MDB-funded projects that will impact ethnic minorities.
- g. Redesign the NT2DF to address the needs of both ethnic minorities and vulnerable groups separately.
- h. The WB should remain actively involved in satisfactorily addressing the ethnic minority issues that have been identified by the POE and, where appropriate, provide additional assistance until the above recommendations addressing ethnic minority issues are fulfilled.⁹⁴

Finding 6: NTPC is committed to extending the reach of the rural development efforts initiated under the concession agreement by creating a demand-driven development program through: 1) providing resources to support medium-term (five-year) development; and 2) providing resources to support the NT2 Development Fund through the end of the concession agreement for livelihood activities.

Although the concession agreement includes “materially improve Resettler livelihoods on a sustainable basis” as an objective for RIP closure, it is understood by all parties that achieving this objective does not signal the end of the development process. The intent of the additional resources is to continue development while promoting villager initiatives and encouraging autonomy. The action plan is reported to look beyond RIP closure to a five-year development program, which NTPC will co-finance in collaboration with AfD with GoL participation. AfD’s contribution will be focused on agriculture and livestock. These efforts are seen by project proponents as a bridge to ensure sustainability beyond RIP closure.

⁹¹ Concession Agreement, Schedule 4, Part 1, Clause 9.1.4 and WB OD 4.2

⁹² Well-being should be defined by each ethnic minority and not dictated from the outside.

⁹³ POE (2015) Twenty-Fourth Report of the International Environmental and Social Panel of Experts

⁹⁴ POE (2017) (pg ix) “There is a considerable risk that in December the project will not be able to demonstrate compliance with the CA provisions for ethnic groups or the IFI Safeguard Policies. Although all ethnic groups have achieved the CA income targets, some groups are lagging behind in developing new livelihoods and have difficulty accessing the training and other support provided by the project. Most are also under-represented in village planning and governance or encounter language difficulties which inhibit their participation in these activities.”

NTPC will contribute \$750,000 per year through the end of the concession period to the NT2DF. NTPC will co-manage the NT2DF with the GoL while supporting the GoL to develop its governance capacities to successfully manage the Fund.⁹⁵ Similar to the five-year development program, the NT2DF will be directed toward livelihood activities, social safety net for the vulnerable and scholarship funds for Nakai students. Toward that end, a participatory planning process was developed with the villagers to help ensure that their local needs and desires were incorporated into the planning for the use of the medium-term fund and NT2DF. Support for new and continued maintenance of existing infrastructure will be financed by the Social and Environmental Remediation Fund.⁹⁶

Recommendations:

- a. Consistent with the POE recommendations, give special attention to ethnic minorities based on the development of ethnicity-specific Ethnic Minority Development Plans through integrating cultural advisors into the existing participatory process.
- b. Conduct an assessment of the WMPA management structure to incorporate lessons learned to ensure the NT2DF management structure is effective in meeting its objectives.

Finding 7: The WMPA has not fulfilled its original objective of conserving biodiversity within the NNT NPA. In February 2017, reliable stakeholders reported that the GoL plan for fulfilling its original objective of conserving biodiversity within the NNT NPA was unclear. The Prime Minister has since approved the decree to transfer the WMPA to the Ministry of Agriculture and Forestry, and prioritized the Nakai Nam Theun as one of Laos' first national parks. A Lao NGO consortium has been designated to support the WMPA with co-management responsibilities of WMPA's budget. The political implications and substantive effectiveness of this move is yet to be realized.

Major challenges to biodiversity in the watershed include: 1) hunting of wildlife using snares; 2) harvesting of illegal timber and non-timber forest products; 3) illegal fishing in special conservation areas and below the Thalang Bridge; 4) illegal transport of timber out of the watershed; and 5) inadequate livelihoods of enclave and resettlement villagers.

The POE, the Independent Monitoring Agency (IMA),⁹⁷ GoL ministry officials, and the WB unanimously agree that the WMPA has failed to prevent poaching and logging from destroying

⁹⁵ The NT2DF will be managed through the village development planning process, consistent with the national Sam Sang policies within a framework agreed between the local government and NTPC.

⁹⁶ This Fund was established by NTPC and is used for ongoing infrastructure maintenance and some operational purposes.

⁹⁷ An Independent Monitoring Agency (IMA) was established through the concession agreement. The members of the IMA, are selected in consultation with WB and report directly to the GoL. The IMA conducts external monitoring and undertakes semi-annual missions to review progress, provide future direction, make sure that activities are consistent with the SEMFOP and WMPA objectives, and aim to ensure that the WMPA budget is being correctly used and properly accounted for. Their conclusions in this respect will be conveyed to the World Bank, the WMPA Board of Directors and NTPC who, under the concession agreement, may withhold budget disbursements until any outstanding issues have been rectified to the satisfaction of the IMA.

the area intended to offset the biodiversity lost to NT2 development and that it needs to be completely restructured. As a result of WMPA ineffectiveness, a task force was created to determine how best to restructure the WMPA. During the period of restructuring, the IMA has withheld a significant portion of NTPC's payments for 2016. WMPA is currently in institutional limbo, and the GoL needs to make some significant decisions on the management and structure of the WMPA going forward.

At this point, NTPC is providing limited funds to WMPA. A five-year plan is under development, which will be submitted to the WB Second Lao Environment and Social Project⁹⁸ for WMPA funding through the Environmental Protection Fund. The task force, POE and IMA have made a number of recommendations to support the restructuring of the WMPA including:

- Naming an international NGO as a co-management partner
- Amending the WMPA Board of Directors
- Moving control of the Chairmanship to the Ministry of Agriculture and Fisheries from the provincial governor
- Replacing all existing staff and using an independent third party to hire new staff
- Strengthening WMPA's fiduciary capacity by contracting a consultant or firm to conduct independent audits.

The Prime Minister is currently reviewing a new decree in response to recommendations to restructure the WMPA. Reportedly, the GoL is not interested in partnering with an international NGO for full co-management, but is interested in contracting with an NGO for technical advice. It is unclear how this type of arrangement will be different from previous experiences where WMPA hired international technical advisors. There is also discussion concerning the use of an independent third party to hire new staff.

To address the issue of ongoing threats (e.g., poaching) to the NNT NPA as the WMPA is restructuring, the WMPA is proposing the following actions: 1) reactivate army cooperation along the Laos-Vietnam border; 2) resume monitoring and patrolling Village Conservation Monitoring Units; and 3) conduct reservoir patrolling. However, the implementation status of each of these actions is not clear, nor is how each action will be able to effectively reduce the ongoing threats during this restructuring period.

The only current anti-poaching patrols in the NNT NPA are conducted by a small NGO - Project ANOULAK, with the permission of WMPA. The area being patrolled is only a fraction

⁹⁸ Second Lao Environment and Social Project (LENS2) - The first Lao Environment and Social (LENS) Project was designed by the World Bank as a complementary program to prevent NT2 from being an isolated, stand alone "enclave" project by extending environmental and social standards beyond NT2 project area. There are three main components of LENS one of which is the Environmental Protection Fund (EPF). The EPF was established in 2005 with US \$5 million from AsDB as an endowment and US \$4 million from WB for its operations. The original LENS project ran between 2005 and 2013. The LENS2 project was an important part of the World Bank Lao PDR Country Partnership Strategy for 2012-2016. It aimed to strengthen overall government capacity in environmental assessment management, while continuing to improve the management of National Protected Areas and reduce the trade in illegal wildlife in eight provinces. LENS2 was approved in 2015 with US \$15 million additional funding.

of what is necessary to deter poaching, but it is an important experiment in the various management approaches that could be used in the NNT NPA.

Recommendations:

- a. Fully implement the POE and IMA recommendations on restructuring the WMPA. The recommendations, including co-management with an international NGO with protected area experience, are fundamental to addressing the underlying issues of the WMPA.
- b. Conduct an independent, in-depth review of the WMPA that would be publicly available, to learn and catalogue lessons for future application to biodiversity compensation projects (including offsets) and support for cultural diversity of enclave villages⁹⁹ in Laos.
- c. The WB should remain actively engaged and monitor the proposed restructuring of the WMPA, identify key benchmarks for determining that the fundamental underlying management issues with WMPA are resolved and that WMPA is demonstrating an ability to fulfill its conservation mandate. If benchmarks are not met, the WB should consider providing additional technical assistance.

Finding 8: Project-affected villagers living upstream and downstream of the NT2 outlet on the Xe Bang Fai River were inadequately considered within the concession agreement, resulting in reduced financial and technical assistance, and a premature handover of livelihood program responsibilities to the GoL in comparison to resettled villagers on the Nakai Plateau.

It is well-recognized within the development community that involuntary resettlement includes both physical and economic displacement. Downstream impacts along the Xe Bang Fai include reduction in fish catches and/or ability to fish, the loss of ability to harvest aquatic food products, the loss of riverside gardens, and soil erosion due to increased and rapidly fluctuating river flows.

The concession agreement provides for livelihood restoration of downstream project affected populations “on a sustainable basis” and seeks “a self-sustained livelihood.” This implies that sustainability is a prime objective for downstream communities as well as on the plateau.¹⁰⁰ Additional obligations include mitigating or compensating (at replacement cost) for the physical impacts from the Project and applying special measures as required toward ethnic minorities and vulnerable persons to take care of their needs, foster self-reliance, and improve their socio-economic status. According to the concession agreement, “PAPs¹⁰¹ are entitled to participate in livelihood restoration programs so as to ensure that their level of fish, protein and fisheries income lost, are at least restored to pre-Project levels¹⁰² and “PAPs are entitled to receive the full benefit of the technical assistance and extension services to be provided by the Company.”¹⁰³ Unlike the plateau entitlements, there is no list of detailed entitlements for

⁹⁹ Enclave villages are located within the NNT NPA.

¹⁰⁰ POE (2014) Twenty-Second Report of the International Environmental and Social Panel of Experts.

¹⁰¹ Project-affected Persons

¹⁰² Concession Agreement, Schedule No. 4 Part 1 pg 126.

¹⁰³ Concession Agreement. Schedule No. 4 Part 1 pg 126. According to the 2012 Socio-economic survey revealed that fishing was the largest source of income for the majority of the households in the study area. POE (2013) Twentieth Report of the International Environmental and Social Panel of Experts

villagers impacted in the downstream areas and they were not required to reach any particular livelihood benchmarks.

The concession agreement allocated \$16 million from the project sponsor to satisfy the obligations for downstream communities.¹⁰⁴ This was a distinct approach from that taken on the plateau, where no budget limitations were set for the project sponsor to fulfill the concession agreement obligations. The POE repeatedly stated that the resources dedicated to downstream efforts for project-affected villagers were insufficient.

In 2008, NTPC allocated the concession agreement-designated funds for the Downstream Program mitigation, compensation, and livelihood restoration activities for Xe Bang Fai riparian villages and hinterland villages that depended on the Xe Bang Fai River for fish and aquatic species. The planning for the Downstream Program began in 2005, with the Downstream Implementation Plan released in 2009, and activities in 20 pilot villages ongoing in 2006-07. The program was intended to compensate 155,000 people in 159 villages, including 56 hinterland villages. Ninety-two of the 159 project affected villages were provided with technical assistance, advice, and equipment for livelihood development programs.

The WB and AsDB's March 2011 midterm review of NTPC's Downstream Program concluded that the handing over process to the GoL needed to be accelerated due to the expected exhaustion of the \$16 million "around the end of 2011."^{105,106} NTPC provided an additional \$2.3 million to the Downstream Program during 2011 for 92 villages and to include the additional 67 hinterland villages that had yet to be covered.¹⁰⁷ The additional funding enabled the Downstream Program to operate through 2012. The Downstream Program was handed over to the GoL on January 1, 2013, when 67 of the 159 project affected villages received only cash compensation per household.¹⁰⁸ The concession agreement emphasized "fish for fish" compensation so it is questionable whether the use of cash compensation for livelihood restoration fulfills the concession agreement obligations.¹⁰⁹

As part of the Downstream Program, a Village Development Fund was established for 92 villages to access in order to offset the impacts of fisheries loss. Reliable sources explained that if a village is not able to fish, their allocation is 2,950,000 kip versus a non-fishing village which receives 850,000 kip. This fund enables each household to borrow small amounts of money at low interest rates. There is, however, a wide range of capacity among villagers to effectively use the Village Development Fund. Researchers and others have reported that a number of ethnic minority (Brou) women have chosen not to borrow from the fund for fear of not being able to

¹⁰⁴ USAID understands that this figure was not based on benchmark studies.

¹⁰⁵ May 25, 2011 Aide Memoire POE Report

¹⁰⁶ The concession agreement states that the mitigation, compensation and resettlement process in the downstream areas shall continue until the later of the fifth anniversary of the commercial operations date and exhaustion of the available funds. NTPC funds ran out more than two years before the estimated end of the RIP.

¹⁰⁷ POE (2011) Reports 18A of the International Environmental and Social Panel of Experts

¹⁰⁸ POE (2013) Twentieth Report of the International Environmental and Social Panel of Experts

¹⁰⁹ POE (2013) (pg 16) "The tenor of the Concession Agreement, with its emphasis on "fish for fish" we believe supports our concern about the use of cash compensation for livelihood restoration in those of the 67 villages in which fishing is important 17 as does information in the Final Report of the NTPC 2012 Socio-Economic report."

pay the money back.¹¹⁰ Villagers who do borrow from the fund use the money in a variety of ways ranging from inputs into a small business to buying livestock. Audits are conducted by provincial and district officials on a regular basis, but there is a need to develop capacity of the officials to monitor the fund.

To fund ongoing Downstream Program activities, the provincial government through the Resettlement Management Unit is responsible for preparing and submitting to the central government a three-year and annual budget plan, including individual district plans. The requested budget was not made available to the province and districts during mid-2013 and October 2015 due to the national fiscal crunch. The three annual budget plans for Financial Years 2012-2016, approved by the National Assembly, were fully repaid and made available for province and districts in November 2015 for Downstream Program implementation and monitoring. As of February 2017, the 2017 budget had been submitted for supporting the Downstream Program but it is unclear whether the full amount will be provided and when it will be released. Reportedly, the funds are still not adequate to meet the needs of the Downstream Program.

The opinion of NTPC and the WB/AsDB is that the expenditure of the \$16 million ends NTPC's obligations under the concession agreement even though restoration of livelihoods of affected people has not been achieved.¹¹¹ The POE believes that NTPC's implementation responsibilities should remain with NTPC until the concession agreement-required "restoration of livelihoods" has been fully met.¹¹²

A socio-economic survey of project-affected downstream villages carried out by NTPC in the first quarter of 2014 apparently found contradictory consumption, asset, and income trends. The WB recently conducted an internal assessment of the downstream area. The assessment is not yet finalized, but it does suggest that some concerns about livelihoods remain, and notes this is a government responsibility. The WB is advising the GoL on measures to help address the situation, including trying to identify and obtain additional funding.

Recommendations:

- a. Conduct a socio-economic survey supplemented by a mix of qualitative and quantitative inquiry into income sources at the household, village and ethnic minority levels to identify factors that may affect both the sources and levels of income. This information would include not only consumption and income but also maintenance, depreciation, and debt information, along with evidence that dietary requirements are being met, disaggregated by ethnic group. Based on the survey results, identify and develop programs to support the original intent of the concession agreement.¹¹³

¹¹⁰ Manorom K., Baird I., and B. Shoemaker (2017) The World Bank, Hydropower-based Poverty Alleviation and Indigenous Peoples: On-the-Ground Realities in the Xe Bang Fai River Basin of Laos. Forum For Development Studies.

¹¹¹ POE (2011) Reports 18A of the International Environmental and Social Panel of Experts

¹¹² POE (2011) Reports 18A of the International Environmental and Social Panel of Experts

¹¹³ Concession Agreement, Schedule No. 4 Part 1: 5.1 Objectives of the Mitigation, Compensation and Resettlement Process including: "b) at least restore livelihoods of Project Affected Persons in the Downstream Areas on a sustainable basis"... "e) apply special measures as required towards ethnic minorities and vulnerable

- b. Provide a mechanism for NT2 revenue to be allocated in a consistent and timely manner to the Resettlement Management Unit so it can continue fulfilling its role and responsibilities.

Finding 9: A number of impacted villages along the Xe Bang Fai and hinterlands are inhabited by the ethnic minority Brou, which the WB classified as indigenous peoples under its indigenous peoples safeguard policy. A specific Ethnic Minority (indigenous peoples) Development Plan was not developed for the Brou and consequently they may not have been afforded the appropriate safeguards.

Approximately 10 percent of the affected persons along the Xe Bang Fai are classified as ethnic minorities under WB indigenous peoples safeguard policy and represent about 30-35 percent of highly vulnerable households. However, the project determined that because some ethnic minority groups are integrated socially and economically with the mainstream population, confirmed by the social assessment and subsequent studies, a separate Ethnic Minority Development Plan was not necessary, but instead a description of impacts, basic socio-economic characteristics of ethnic minorities, and suggested mitigation measures should be included.¹¹⁴

Recommendations:

- a. Develop a specific Ethnic Minority Development Plan relevant for this period of NT2 operation addressing economic displacement of Brou communities.
- b. Hire an experienced sociologist or anthropologist, with local language competency, to guide the development and implementation of the Ethnic Minority Development Plan.
- c. Design a more culturally appropriate monitoring system for tracking the welfare of ethnic minority households.

persons to take care of their needs and foster self-reliance and to improve their socioeconomic status” pg 117-118.

¹¹⁴ Volume 3 – Chapter 7 Ethnic Minority Development Plan – Downstream Areas

ANNEX – USAID Recommendations from 2010 Post-Finance Site Visit

The primary objective of the 2010 site visit was to determine whether the biodiversity commitments made by the MDBs, the Government of Laos (GoL), and the Nam Theun 2 Power Company (NTPC) as part of the financing for the NT2 project are being successfully met. The MDBs, GoL, and NTPC established these commitments as an explicit compensation offset under the World Bank's Natural Habitat Policy, and they are intended to help mitigate the negative environmental impacts of inundating a significant portion of the Nakai Plateau.

WB Biodiversity Offset

- WB needs to ensure the success of maintaining the NNT-NPA as a biodiversity offset, otherwise it will be out of compliance with its own safeguard policy. This will involve WB providing support and resources as needed without depending on external aid organizations or NGOs to provide funding resources.
- WB and GoL need to reassess the status of the Northern Extension since this area provides additional contiguous habitat that forms an integral component of any conservation plan for the NNT-NPA and the critically endangered saola (which the SEMFOP mandates a conservation action plan). Contrary to earlier beliefs, conservation funds for this area have not proven forthcoming and consequently the area is not being adequately managed or protected.
- Conduct a review of financial and staffing resources required for WMPA to meet both its patrolling and conservation mandates as outlined in the SEMFOP.
- International biodiversity experts need to be hired under WMPA technical assistance or another equally effective mechanism to support both patrolling activities and research/wildlife monitoring activities, including implementation of SEMFOP conservation and management programs.

Access into the NNT-NPA

- Since the increased pressures into the NNT-NPA are a combination of direct and indirect impacts of the project, it seems appropriate for NTPC to provide additional mitigation funds for both the WMPA and RMC patrolling activities.
- The 2004 Laos-Vietnamese Cooperative action plan needs to be resourced and implemented without further delay.

WMPA anti-poaching activities

- Law enforcement measures need to be adequate to provide an effective deterrent mechanism for illegal logging and wildlife poaching.
- There needs to be a different style of patrolling where WMPA patrols are not depending on other government officers and villagers as part of their composition.
- Independent audits of patrol teams to assess effectiveness of patrols and to reduce any potential illegal activity by team members.
- Under the current scenario, incentives for more effective engagement of local villagers are important to ensuring the success of patrolling efforts, in addition to stricter penalties, as appropriate.

- Full-time mobile checkpoints should be seriously considered given that experts in enforcement have determined them to be more effective in controlling illegal transport of wildlife and other resources.

Wildlife

- Based on the SEMFOP biodiversity conservation activities, it is critical to undertake a robust biodiversity monitoring program that is scientifically valid and begin implementing species specific conservation and management plans as described in the SEMFOP. Priority needs to be given for critical species such as saola, tiger etc.
- Since the end of Phase II there have been no studies on the wild elephants; NTPC should undertake a follow-up assessment.

Reservoir

- NTPC/GoL need to provide adequate financial and staff resources in order for the RMC to conduct regular patrols on the reservoir.

Village Forestry Association

- NTPC/GoL need to provide support to the VFA in order that a long-term financial and production sustainability plan is developed.

Cross-cutting

- Monitoring data (water quality, grievance complaints, biodiversity survey data etc.) needs to be made available to the public.
- NTPC needs to liaise once again with WMPA and ensure that the Reservoir Fisheries Association and Village Forestry Association are achieving their original objectives as laid out in the project development plans.