

Environmental Assessment (EA) Revitalization Engagement

Ktunaxa National Council (KNC)

February 28, 2018, 9:00am – 2:30pm

Summary

The EAO is in engaging with KNC to gather specific feedback about their views, experiences and proposed options to revitalize the environmental assessment process. Paul Craven (EAO) presented an overview of the EA Revitalization process as well as a draft conceptual model designed to present a possible future state for discussion purposes. KNC highlighted a desire for long term and durable changes to EA are not satisfied with the status quo. The following represents a summary of what the EAO heard from KNC during the discussion:

Early Engagement

- Early planning phase with First Nation (FN) funding is essential. Funding shouldn't be too prescriptive.
- Early engagement phase needs a timeline. Long timelines create situations where KNC has to do duplicative work because of staff turnover with the proponent.

Decision Making

- Transparency in decision making: Need to understand how decision maker is weighing the individual pillars. Currently, we don't really know how EA decisions are reached.
- Need an early decision point in EA. Government needs the ability to say no more applications of a certain type or in a certain area. We need to be able to prevent projects from even entering the EA if they are clearly not going to go forward. This will also prevent proponents from investing millions of dollars in a project only to get a No. It seems like the more a proponent invests in a project, the less likely it is for them to get a no at the end of the process.
- What if FNs want FN led EA processes and proponent doesn't want to engage in these? What are the pros and cons of different ways FNs can participate? What happens if consensus isn't reached? Need a clear approach for how FN and Provincial decisions relate to one another and inform one another.
- First Nations want a say in determining which projects are reviewable. Often projects are sub-threshold (by design) but due to other factors they may have major effects on the environment.
- Impact Benefit Agreements are really Impact Management Agreements. Need to establish that relationship with FN is long term and that there are always ongoing stewardship responsibilities.
- KNC would like to change "consensus" to "join" decision making. Need to identify how joint decision making happens in a multi-nation context and the appropriate role of strength of claim.

Regional and Strategic Assessments

- Regional assessments for different areas. With Elk Valley this is top of mind for us. Regional assessments should provide for heavily used areas to not be accessible to further projects.

- Regional assessments help us get a big picture understanding instead of project by project. How can you move to a project by project assessment without this broad baseline of the region? Regional assessments should be done earlier.

Traditional Knowledge and Information Requirements

- Once project description is completed, reluctance to change anything. Being open to when Indigenous government says that something is needed, proponent should probably do it. Government experts should also inform project design. From Indigenous perspective there is often TK that can inform go/no-gos for projects.
- Often we have strong knowledge of an area that can help proponents avoid sensitive areas.
- Need dispute resolution to resolve disagreements between western knowledge and traditional knowledge.
- Valued Component selection should reflect Indigenous values. This is essential for joint decision making. Our decision makers need certain information. Proponents don't provide this because they say they are not legally required to and we don't get a lot of support from EAO. Then when we get to reviewing the application, essential information is missing and we cannot make good recommendations to our leadership. If the right info isn't included then the whole process is illegitimate to us. Informed consent requires full incorporation of Indigenous knowledge.
- Cultural values should be interwoven into all assessments, not just assessed separately. First Nation information and perspective should inform environmental assessment, not just assessment of impacts on rights and title. Aboriginal Consultation Report shouldn't be separate from the main EA report.
- The process should start with a wide scope of VCs and then go through a process to narrow the scope. Sometimes it seems like local knowledge is not applied. VCs should be informed by local and traditional knowledge.
- Doing in house analysis allows us to avoid trust issues with sharing TK. Collaborative drafting also helps maintain confidentiality. We take the info from the proponent and apply our own knowledge to assess impacts on our rights and interests.
- Confidentiality of TK is important.

Capacity and Capacity Funding

- Capacity funding is necessary to participate in a deep review of a project but receiving capacity funding from the proponent is problematic. Provision of funding is often viewed by proponent as fulfilling consultation obligations. The provision of funding creates expectations so First Nations are often wary of entering into a funding agreement when they are unsure of the project impacts. Don't want to be perceived as supporting the project because of the provision of capacity funding.
- Previous research on capacity funding contemplated a provincial fund that would provide support to First Nations.

- Capacity funding should also support First Nation decision making process. There are multiple layers in KNC government that need to be funded. Technical staff, land and resource council, citizen participation. All these require funding for consensus based decision making.
- In house capacity funding is better for us than hiring consultants. Some work cannot be effectively done by consultants. Annual funding for First Nations with many projects would help build in house capacity that can support multiple projects.
- Conceptual model will require substantially more resources for First Nations. Will take time for First Nations to have capacity.

EA Revitalization Process

- Assembly of First Nations stopped participating in federal EA review process back in October. Biggest issue was with respect to not including First Nations in the drafting of the legislation itself. Government talks about UNDRIP, FPIC, and reconciliation but still delivers change through top down approach. Need nation to nation relationship, not consultation. Is there a way to be involved in legislation drafting? Perhaps through FNEMC? It is important to see where KNC input has been used.
- We need to start thinking differently about the traditions of how we work together. Let's see what we can do to change instructions.

Independence

- We have observed that EAO staff seem afraid of reprimand for not aligning with political direction. EAO staff seem to have their concerns overridden by political direction. Take EAO out of government and have a body that does independent impacts assessments.
- There is a trust issue with proponent's assessments when they have a conflict of interest. We need to do our own assessment of impacts on KNC rights and interests. It's better for our decision makers if KNC staff do the work. It also allows us to fill gaps in the assessment that the proponent isn't willing to support (such as VCs).
- KNC wants a formal role in determining what legally established role of First Nations in an EA looks like.

Strength of Claim

- Strength of Claim (SOC) is not a good place to start a relationship. Engage First Nations as they want to be engaged and leave SOC only to places where consensus cannot be reached.