

Meeting Summary
Environmental Assessment Revitalization Engagement
Stk'emlupsemc te Secwepemc Nation
Kamloops, BC
March 8, 2018, 9:00 am – 3:00 pm

Participants

Stk'emlupsemc te Secwepemc Nation

Don Ryan
Sunny LeBourdais
Otis Jasper
Amanda Watson
Jeanette Jules
Robert Simon

Environmental Assessment Office

Scott Bailey
Nathan Braun
Erin McGuigan

Meeting Introduction and Environmental Assessment Revitalization Engagement

The Environmental Assessment Office (EAO) met with Stk'emlupsemc te Secwepemc Nation (SSN) to gather specific feedback about their views, experiences and proposed options to revitalize the environmental assessment (EA) process. The EAO presented materials including an overview of the EA revitalization process and a draft conceptual model designed to present a possible future EA process for discussion purposes.

SSN will provide the EAO with a written submission that will further articulate their views. SSN said that information shared during the meeting should be considered as their preliminary input and that they will need additional time to contemplate EA revitalization and to fully articulate their views.

SSN noted that they are not happy with the involvement of First Nations Energy and Mining Council in revitalization as they do not speak for SSN. SSN said that they have previously provided the EAO with letters expressing their dissatisfaction with FNEMC being used as a provincial lead on EA for all First Nations as they are not a consultative body. SSN also emphasized the importance of the direct EA revitalization engagement with them and with other Indigenous groups, because each group is different (e.g., different cultures, different laws) and these differences need to be taken into consideration.

Meeting Discussion

The following is a theme-based summary of what EAO heard from SSN during the meeting.

Strength of Claim

- First Nations should be responsible for resolving overlapping territorial issues
- Current strength of claim model drives proponents away from engaging with SSN.

- Provincial approach to desktop assessments of Strength of Claim is inadequate and does not take historical context (e.g. relocation of people and confusion over names) into consideration.
- The EAO should not embrace the Indian Act and Band consultative model or rely on *Haida*; the law has changed.

Consultation and the Current Consultative Model

- Provincial legalistic consultative model limits proponent engagement and undermines the relationship that SSN is pursuing in standing up our jurisdiction and sovereignty.
- The consultative model only engages First Nations where there are significant impacts proposed/assessed and this then triggers potential provision of accommodation
- Consultative model is not appropriate on title lands such as Secwépemcúlecw (Secwepemc territory)
- A revitalized EA process needs to be based on a model which respects SSN jurisdiction.
- The Province and proponents have to enter into relationships with the SSN if they are going to work together and propose projects in SSN territory. Once that relationship is built, SSN will outline how to determine how to demonstrate integrity (integrity test).

UNDRIP

- Need an EA process that respects and recognized First Nations' governance systems per UNDRIP section 5, including:
 - A flexible transition stage from reliance on the *Indian Act* to more traditional approaches because different groups are at different stages in this transition.
 - In Secwepemcúlecw engage the caretaker unit as is their responsibility to bring together the other nations (e.g., Ajax SSN Assessment Process)
- Regional/ cumulative/ strategic impact assessments create an opportunity to consider and recognize traditional governance structures and approaches.
- Consent is not a veto at a specific time in the process; it is an ongoing and must be embedded throughout the process.

First Nations' Role in EAs

- A new EA process must create space for hybridization between provincial EAs and FN-led EAs to evolve, including getting to a point where FN processes are fully substitutable for the provincial environmental assessment. SSN plans on evolving their capacity to do their own full assessments, and is working toward putting infrastructure in place.
- The EAO should not be assessing impacts on SSN or interpreting traditional knowledge; this should be done by SSN.
- A revised EA process should consider past infringements/historical impacts. This needs to inform a government to government agreement that has a negotiated understanding of "what is a project". The SSN must determine what are to be considered "reviewable" projects in their territory.

- First Nations must not be required to sign away or adversely impact their title and rights in order to participate in an EA.

Land Use Planning and Project Locations

- First Nation land use planning should inform EAs.
- Free entry model doesn't work and has a legacy of adverse impacts to Indigenous groups including rights and title.
- SSN wants the best company/projects in their territory. SSN should determine potential land uses in their traditional territory (e.g., ore bodies appropriate for mining) and seek proponents to develop projects, thus generating the need for proactive EAs instead of reactive EAs.

Capacity Funding, Fees and Accommodations

- EAs are expensive for Nations and funding should come from both the Province and proponent
- If a "gated" EA process is developed, SSN would require additional funding at each stage/gate.
- SSN requires financial security in a process and to achieve that, a clear understanding of the process.
- Different levels of funding are required depending on the project and process.
- Funding needs to be flexible to accommodate process changes (e.g., ongoing funding for SSN community panel during Ajax suspension).
- SSN intends to set fee levels (including activities such as funding cultural heritage studies).
- An EA process needs to create room for First Nations to have their own sources of funding. It is a problem that SSN would not get any money unless there was a project proposed because there are ongoing costs that needed to be covered to support internal capacity.

Role of the Environmental Assessment Regulator

- EA in BC should be overseen by an independent agency. SSN doesn't trust the EAO because it is driven by the tax model and there is a conflict of interest for government.

Conceptual Model: Pre-EA and Early Engagement

- If a Proponent is not responding to a call for proposals for development opportunities from SSN, then they need to come directly to SSN during very early stages. First Nations need to speak for themselves and not have the Province translating.
- Four years of pre-EA and possibly early EA discussion between a proponent and SSN are needed, and this needs to be based on a commercial engagement model, not based on a consultation model. This process needs to include traditional use studies, cultural heritage studies, review of project feasibility and time to consider the integrity, history and credentials of the proponent (see Sir Wilfrid Laurier and the integrity test in the Trout Children Story).

Conceptual Model: Early “Decision”

- If the pre-EA work for Ajax had been done including a cultural heritage study and an early decision, the rest of the cost associated with the EA could have been spared.
- Early “decision” points are better thought of as “gates” where SSN and BC processes come together and determine path forward for proponent who can then make an informed decision if they want to proceed.
- SSN and Province could caution proponents that a negative decision would be likely if issues were unresolved. If proponent chooses to proceed, they would be responsible for the risk and accountability, including the choice to tie up others’ resources.

Conceptual Model: Consensus

- Need a common understanding of what constitutes consensus. Consensus points and processes are going to provide opportunities for “reconciliation”. How we disagree is just as important than how we agree.

Project Benefits

- SSN requires clarity regarding the provincial and federal calculations of project value and what is being offered to them.