

## **Environmental Assessment (EA) Revitalization Engagement**

### **Treaty 8 First Nations**

#### **Engagement Summary**

April 3, 2018, 9:00am – 4:00pm

#### **Attendees:**

Bruce Muir - Prophet River First Nation  
Jim Webb - West Moberly First Nations  
Lisa Macarthur and Naomi Owens - Saulteau First Nations  
Roslyn Notseta - Halfway River First Nation  
Jan Calvert - Blueberry River First Nation  
Laureen Whyte, Dave Flanders, Cec Heron - Doig River First Nation  
Nathan Prince (phone) – McLeod Lake Indian Band  
Ricardo Toledo - EAO  
Nathan Braun – EAO  
Mark Haines – EAO

#### **Treaty Rights, UNDRIP and EA Revitalization:**

- First Nations are not all the same. Treaty 8 First Nations have treaty rights. The EA process needs to be revitalized in a way within Treaty 8 territory that demonstrates the Province understands what Treaty 8 rights are, and how they are different than the rights of other First Nations. We cannot be all painted with the same brush.
- EAO must engage Treaty 8 nations in a nation to nation dialogue to develop a Treaty 8 specific methodology for EAs. Treaty 8 should have its own EA process that is different from the rest of the province.
- The regulatory regime needs to achieve optimal economic development with optimized exercise of Treaty rights.
- Clean drinking water is a fundamental human right. This is not being achieved in the Northeast with current discharge practices. Treaty right to occupy crown land includes access to safe drinking water.
- Indigenous laws need to inform industrial practices. The EA process should require proponents to abide by Indigenous laws including discharge requirements. Provincial discharge standards do not meet Indigenous legal requirements. We are willing to support development if it is done with reasonable environmental standards. Current provincial standards aren't reasonable in the context of preventing harm to our legal rights.
- FPIC needs to be grounded in serious approach of recognition and respect for Treaty rights. The Province needs to be clear about what it considers Treaty 8 rights to be and the steps it will take to optimize our ability to exercise our rights.
- Treaties are upstream from provincial legislation and should be viewed as such. Treaty First Nations should have a governance role for EA projects.
- UNDRIP is beyond enhanced consultation. First Nations want to see a completely different standard of accountability.

- How can you “ensure our legal rights ...are respected” if you do not understand what our rights are. Treaty 8 First Nations should hold workshops for EA staff to educate on what the treaty is and what treaty rights are. A cultural awareness workshop.

### **Relationship between Treaty 8 Nations and EAO in EA**

- We want the opportunity to enter into government-to-government (G2G) partnership agreements that create a structured G2G relationship between ourselves for the review and approval process, the permitting process, and post-approval monitoring and compliance processes for resource development. Such an agreement should formalize the First Nations Independent Technical Review process into a life cycle model for projects.
- G2G agreements need to provide capacity funding. Funding can be provided either through agreements with proponent and government or through revenue sharing.
- We want a G2G relationship that is formalized through a partnership agreement funded to participate fully in independent technical review process. Timelines and processes of EA is flawed and unrealistic.
- We want to jointly define what type and scope of projects should have an EA.
- We want to see a regional agreement, similar to the Regional Strategic Environmental Assessment (RSEA) and the Regional Coal Agreements that allows us to define what types of projects are subject to EA. A good starting point for EA revitalization would be to establish an agreement similar to RCA and RSEA.
- It does not make sense to separate consultation processes from the broader EA process. Impact assessment on rights is tied to technical assessments and the technical assessments need to accommodate impacts on rights. How do you create a knowledge base to ensure understanding of rights and ensure impacts are addressed?

### **Early Engagement**

- Need to build organizational structure in government and industry to understand this fundamental difference. If we participate in this structure in good faith then we can avoid fighting because we will have time before app review to address major issues.

### **Capacity Funding**

- We need sustainable base funding. Right now with the up and down of project funding, we are often asked to do work without funding in place and are at risk of breaking other agreements by using other people’s funding to fill the gap.
- We have experts called elders but we don’t get enough funds to access them.

### **Decision Making**

- G2G agreements should also outline what we are going to do, how and what info will be used to inform the EA, and what weight it will carry when public interest decisions are made to achieve

optimization of protection of treaty rights and furtherance of the economy where one of these does not subordinate the other.

- Process without requiring First Nation consent at the end doesn't work well. If people are not worried about a "no" then they won't do the work.
- If there is no risk of losing a project then the proponent has no incentive to work with First Nations. Engagement with First Nations needs to be more than just consultation obligations. It needs to be about identifying meaningful ways to change standards if there will be negative impacts and look more broadly regarding benefits to communities.

### **Regional and Strategic Assessments**

- We have a massive amount of development happening that isn't subject to EA. A lot of things require more intense examination but are falling through the cracks. Shale gas, LNG, coal, wind power, large dugout construction for water for fracking, drilling wells into aquifers, water licenses. It is the wild west up here and very little of it is subject to EA review. Need to take a strategic view to understand and address cumulative impacts.
- There is a big gap between the regulatory environment, approval processes and what members are actually seeing on the ground.

### **Traditional Knowledge and Information Requirements**

- We did not like losing "culture" as a focus of EAs when the Act was changed the last time.
- EAs should also look at benefits of a project. But indigenous and non-indigenous communities have different measures of community wellness. You can be making a lot of money but you won't be healthy. There is a threshold of cultural sustainability that must be met before economic benefits.
- Notion of peaceful enjoyment that comes out of the RSEA process needs to be considered as a part of impacts assessment process. This is something that was committed to by treaty negotiators. This notion is the same as property rights to not be interfered with unreasonably. We view this as a right against which the use of the area by others needs to be balanced.
- Our First Nation Independent Technical Review is not coupled well with the federal and provincial processes. We are not stakeholders. We are a government doing a technical review of a project. Independent technical review breaks down when a proponent will not work with us. We need the Province's support in these situations. We have treaty rights, the proponent doesn't.
- If a First Nation identifies a Valued Component, it should be included in the assessment.
- Best way to incorporate traditional knowledge into decision making is to give the traditional knowledge holder a legitimate role in the decision making process. Traditional knowledge cannot simply be used to augment western science. Need a regime where there is enough respect for knowledge holders to keep them from walking away from the table. Protection is

also needed for knowledge holders and their knowledge. People are worried that disclosing knowledge will lead to damage to traditional sites.

### **Post Certificate/Compliance Monitoring**

- Treaty 8 Nations need to be involved throughout the lifecycle of a project not just during EA and permitting. First Nations should have a formal role in post approval, post permitting monitoring and reporting on whether conditions are complied with. We believe that we as First Nation governments would do a better job at holding Crown governments and the proponent to account for the things they agreed to do as conditions of their operations.
- There needs to be a better connection between EAO and permitting. Right now we are often filling the knowledge gap between the EA process and subsequent permitting processes.

### **EA Revitalization Process**

- The timelines for EA revitalization won't work. We cannot meaningfully participate in a comprehensive review if we do not have funding and time to do the work.
- 6 month timeline is not adequate. If you want this process to work you need more funding and longer timelines. There needs to be trust for a process like this to be effective. You have planned one day for this engagement. This is the same colonialization attitude where you come and say what you think should happen. This message needs to be conveyed to the Minister. Your timelines are out of sync with community based processes.
- We have no faith that the members of the Minister's Environmental Assessment Advisory Council (EAAC) understand Treaty 8. Also the First Energy and Mining Council does not understand Treaty 8. You need to have a process with us. This needs to be done in G2G model. Model needs to include technical involvement, legal teams to model the relationship, and political involvement with our chiefs and councils with funding for all elements. We need to create a process for Treaty 8 First Nations that are willing to engage to go back to their leadership and ask for a mandate to enter into G2G discussions about the EA in Treaty 8.
- We are appalled at the list of people on the EAAC. There is no one from Treaty 8 on the committee. There has been bad relationships with some of these people. It is striking that given the amount of industrial activity in the northeast that there is no one from this region on the committee.
- We have information from the federal process that is applicable to the provincial process that we will share with you.