

Environmental Assessment (EA) Revitalization Engagement

Carrier Sekani First Nations

May 3, 2018, 10:30am – 4:00pm Vancouver, BC

Attendees

Carrier Sekani First Nations (CSFN): Chief Larry Nooski (Nadleh Whut'en), Rebecca Delory (Nadleh Whut'en); Tina Erikson (Nak'adzli Whut'en); Dave Radies (Saik'uz); Angel Ransom (Stellat'en); Ryan Tibbets (Ts'il Kaz Koh); Lynn Palmer (CSTC); Michelle Tan (CSTC); Brian Toth (CSTC); Scott Smith (legal counsel).

Environmental Assessment Office (EAO): Nathan Braun, Gina Delimari, Ricardo Toledo

Ministry of Energy Mines and Petroleum Resources, Major Mines Permitting Office (EMPR/MMPO): Andrew Rollo, Peter Csicsai.

Ministry of Indigenous Relations and Reconciliation (MIRR): Lloyd Roberts

Summary

The EAO is in engaging with CSFN to gather specific feedback about their views, experiences and proposed options to revitalize the EA process. The 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. The following represents a summary of what the EAO heard from CSFN during the discussion.

CSFN noted they are in the direct engagement process, and clarified that the First Nations Energy and Mining Council (FNEMC) does not represent the CSFN voice.

Early Engagement

- There is a need for an early engagement before getting into an EA. This should be funded, decision-focused, time-bound. No First Nation should be contacted by EAO about a potential project. Proponents should be required to talk to First Nations first.
- Proponents need direction for early engagement. BC-CSFN standard on what kind of information is required right at the beginning is good. A process that only produces findings at the end is not going to contribute to getting the required information.
- Desktop reviews are usually based on old information. Current information from the communities is important. BC should require that companies engage with First Nations before they submit an application.
- Need to have access to an active database of information for the CSFN territory. This would make it easier to respond to a proposal from a proponent. It should be scientific. The lack of regional data is problematic.

Roles in EA

- A process is needed prior to entering an EA to determine which First Nations are involved in projects. This process should be a nation-to-nation process that is funded, facilitated, and time-

bound. If issues cannot be resolved, then an EAO-to-First Nation engagement process should be used to avoid issues resulting from past experiences.

- Proponents will want some direction on whom they should engage with.

EA Revitalization Process

- Should be called EA “Innovation” not revitalization.
- Significant improvements to EAs in CSFN territory have been made through collaboration. EA revitalization should ensure the “high-water mark” of CSFN and EAO’s collaboration work on environmental assessments is protected and enshrined in legislation.
- Legislative reform should catch up with experience that CSFN has with Environmental Assessments (EA) in their territory.
- All the issues can’t be addressed by EA innovation. Other tools are needed.
- Strategic mapping of all government-to-government agreements should be the basis of EA. How do the various initiatives relate and fit together? Need to ensure that EA innovation is not incommensurate with the government to government initiatives.

Decision Making

- EA innovation has to be consistent with other government-to-government discussions in this area.
- Need to define the decision-making process and who is involved. Should figure this out before getting into EA. Parties need to agree on the process, dispute resolution, funding.
- For some projects, First Nations may choose to undertake independent indigenous assessments.
- Indigenous people have right to determine and develop priorities and strategies for their territories, consistent with the focus of ESI.
- UNDRIP specifies that the state will cooperate with nations to obtain their free and informed consent prior to approving a project. How will this occur? CSFN is developing a discussion paper on decision making and will share this to inform the discussion on EA innovation.
- The province and CSFN are making active decisions together, and based on CSFN experience there may be some decisions that are going to be so controversial that First Nations may want to do their own assessment.
- First Nations’ decisions will need to be compared to federal and provincial decisions. If it is a green/green light, fine, but what happens if there is a green/red light?
- Need to have recognition of CSFN decision making and authority. CSFN already have laws in place. How will these be applied and whose standards will we be using?
- It is difficult to imagine how BC will deal with overlapping territories with other First Nations. Or where potential impacts fall just outside a nation’s territory. This could result in different frameworks.
- First Nations should try to sort out any competing interests among themselves first. If they cannot, they can go to an EAO-led process.

Regional and Strategic Assessments

- The key issue is the lack of cumulative triggers on the landscape.
- What is the purpose of an EA? How does ESI, threshold development, stewardship development work get fed into an EA process? What about other issues (e.g., forestry, placer mining)?
- Forestry has the single largest impact on First Nations' rights, title and interests, and there is no process to assess it.
- Need what CSFN are doing with the Province at the ESI table: a cumulative effects assessment monitoring and management framework. How will this work influence or legally constrain decisions at the EA stage.
- Territorial planning processes should have a clear place in informing and constraining project EAs.

Traditional Knowledge and Information Requirements

- Need trusted baseline information. What kind of socio-economic and traditional use studies need to be done? Which ones do First Nations lead on as knowledge experts? Which ones do consultants that are trusted by First Nations take on?
- Collaborative efforts have created joint stewardship commitments. This is an improvement but this is not where the evolution should end.
- Starting point is rights, recognition and implementation. Federal and provincial commitments to implement UNDRIP.
- Developing recommendations on regional natural resource decision making. Need to take net neutral or net recovery approach if another project comes along that would cause a disturbance over the baseline. Need to sort out who will pay for that.
- Must start assessing impacts to culture.

EA Process

- CSFN has reviewed process of past EAs and identified process and methodological incongruences seen over the past three to five years.
- Baselines –Need to develop spatial, temporal and biological baselines for Valued Components that area meaningful for nations' territories. Traditional Use Studies provide a limited view of territorial level impacts of a project. It is the underlying ecological integrity of the territory that drives the meaningful exercise of rights. This information needs to be collected and kept available.
- Effect characterization – each proponent generally does a good job with the scientific data. But the 'use' of the scientific data to make conclusions about what is significant (ie. the human element) is a problem. If there is no residual effect, or if it has enough mitigation, the conclusion is that the interest cannot be impacted. The province or federal government does not identify a correct threshold or level.
- Cumulative effects – the scientific approach of compiling impacts is usually done well, but there is a lack of consideration of cumulative environmental effects on the landscape. Problem with the methodology is that it does not consider all of the factors that combine to have an effect on the landscape.

- Proponents' assessment of significance – creates a battle of experts. EAO doesn't have resources to bring appropriate balance to this.
- The professional reliance model is problematic and should be part of the EA innovation review.
- Consultation is based on the proponent's design. Need to scale back and look at the region to see what the impacts would be for species.
- Some information collection and assessments needs to be done by communities themselves. Communities should get funding for this work that feeds into the EA process.
- There should be legislative requirements on proponents to assess certain things. This could be where traditional knowledge or traditional use studies would be required and the proponent be directed to work with the nation and provide funding to develop this information and bring it into the EA process.
- Impact Benefit Agreements with proponents and Revenue Sharing Agreements with the Province should be worked out before entering into EAs.
- Another way to do this is through policy documents (e.g., CEAA). Not legally binding but demonstrates how the Agency will interpret information and how it will be used in the EA. Easier to change a policy directive to maintain flexibility.