

Environmental Assessment (EA) Revitalization Engagement

Tahltan Central Government

March 12, 2018, 9:00am – 3:00pm

Attendees

Nalaine Morin - Tahltan

Norm McLean – Tahltan

Scott Bailey – Environmental Assessment Office (EAO)

Ricardo Toledo – EAO

Fern Stockman – EAO

Mark Haines – EAO

Cory Waters – Ministry of Indigenous Relations and Reconciliation (MIRR)

Summary

The EAO is in engaging with Tahltan to gather specific feedback about their views, experiences and proposed options to revitalize the EA process. Fern Stockman, Scott Bailey and Ricardo Toledo 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 Tahltan during the discussion:

Early Engagement

- Early engagement on project design can help avoid problems later with the project design and its interactions with important areas or Tahltan interests. For example, alternative tailings impoundment locations.
- Really like the concept of having a readiness test stage. Often we are wasting time with proponents. Would like to see key indigenous decision making criteria in readiness test.
- Early engagement should be opportunity for EAO and First Nations to get together to identify what the framework for consensus based decisions are and frame out what decision making will entail.
- Need to avoid situation where proponents have invested significant amounts of money in their project design and are unwilling to go back and redesign project components. Earlier engagement with First Nations would help to avoid this.
- This stage could be where you identify the preferred assessment approach for key issues (e.g. water balance)

Decision Making

- Would like to see better alignment between decision makers under different processes (BC, Canada, First Nations). Concerned with uncertainty in decision making process. Need to recognize First Nations as decision makers. Structure of how decisions are made will vary. Some First Nations may want a broader role than others.

- There is language in the current *Environmental Assessment Act* acknowledging Treaty First Nations decision making. Would like to see this expanded.
- Need to define what “consensus” means. What does implementing Tsilhqot'in mean?
- UNDRIP and consensus/consent decision making should allow First Nations to more meaningfully inform provincial decision makers without “fettering”. Government-to-government agreements can facilitate this.
- If a proponent wants to engage with decision makers, they should engage with all decision makers including First Nations. This would remove concerns about fettering.
- The Province’s UNDRIP commitment currently has an implementation gap – when will we be able to see how the standards will be implemented?

Regional and Strategic Assessments

- EA toolbox needs to include more consideration for strategic assessments and First Nation land plans. Cannot fully assess cumulative impacts without this. Need a better method for addressing cumulative impacts from projects that are under review at the same time. A trigger for regional assessments is needed.
- Active exploration areas like the Golden Triangle are ideal for a regional assessment and land planning. This needs to be done in early exploration before impacts are realized.

Traditional Knowledge and Information Requirements

- Needs to have stronger accountabilities for how proponents develop applications. Applications shouldn’t pass screening until it meets the indigenous knowledge requirements that must be identified in the Application Information Requirements (AIR). Need to more effectively hold proponents accountable to provide the required information.
- Need additional tools to protect confidentiality beyond Freedom of Information and Protection of Privacy Act. Intellectual property rights of First Nations needs to be protected. Not sure Tahltan’s traditional knowledge protocol goes far enough.

Capacity and Capacity Funding

- We negotiate agreements with proponents using a budget attached to a work plan. A lot of proponents we work with are willing to do this. Others are a challenge. It is important to Tahltan to ensure the work identified in the work plan is being done.
- Proponents are learning that there is a benefit to early engagement and providing resources to support that.

EA Process

- Greater independence between proponent and the regulator. Proponent should not be so involved in setting the AIR and Section 11 Order requirements. Government (EAO, Canada, First

Nations) should be telling the proponent what they must do. Proponents should not have input into this.

- First Nations and Province should be on the same side of the table. Back and forth on requirements should be between governments.
- Whenever a proponent approaches the Province about a potential project on Tahltan territory, Tahltan should be at the table.
- Need to have a role in EA design (not just process, but the criteria and assessment itself) in Tahltan territory. Regional study areas and local study areas may work for certain issues but not for impacts to Tahltan communities.

Roles in EA

- A formal legislated role and recognition for First Nations in a revitalized EA Act is important. How do we create a system that recognizes all three levels of government (BC, Canada, First Nation). Need to approve projects together, not just consult.
- Want to see Collaboration Agreements reflected in the process.

Post Certificate

- Should revisit effectiveness of conditions to ensure working as intended.
- Greater role for First Nations in monitoring and compliance.

EA Revitalization Process

- Conceptual model doesn't clearly articulate a First Nation EA process. Need to produce a conceptual model of our own. Nations want to produce their own process.
- If we provide a written submission, we would like a formal response.