

# Environmental Assessment Revitalization Indigenous Implementation Committee Meeting November 26, 2019 – 9:15 AM to 4:00PM

## Attendees:

**Co-Chairs:** Ang Smith and Scott Bailey

**Attending IIC Members:** Angel, Dave, Sunny, Anna (phone), Nicole, Nalaine , Bruce, Melanie,

**EAO Attendees:** Trish, Danielle, Tanner, Nathan (phone), Amy

**Guests:** Paul Blom (FNEMC Observer), Wade Prystay (SIC Member), JoAnne Deneron (Chair, MVRB), Brett Wheler (MVRB), Mark Cliffe-Phillips (MVRB)

## Opening Comments

- EAO proposed sharing a quote for use in Communications materials with endorsement by the IIC with their assistance in development.
- IIC member commented that they would prefer to co-draft the quote rather than have EAO draft the quote.
- EAO noted that the request from provincial communications had just been received and the timeline was tight for drafting, which is why EAO offered to draft for IIC's review
- IIC expressed that it may be acceptable if the wording was reviewed and accepted by the IIC as a whole. Further discussion would be required in the afternoon.

## MVRB Presentation

- Introduction and outline of presentation was provided to the IIC.

## Part 1 – Context:

- The evolution of land claims of the Northwest Territories (NWT) was shown.
- Principles of NWT Resources Management
  - **Co-Management** – some decisions are made by board and others are made with individual communities
  - **Integrated and Coordinated** – review board is integrated with other areas of decision-making including land use planning, renewable energy, etc. strength of these connections need constant attention as this is where most of the challenges can come from; this is where many of the bigger issues come from if coordination is not strong.
- Review Board
  - Composed of 9 members not representing their regions or land claim area and operate on a consensus-based system. Four members are elected by Indigenous groups and 4 by the government with 1 chair elected by the 8 members.
  - The MVRB focus primarily on larger, more controversial projects. At this point diamond mines are the main projects the MVRB has been involved in.
  - There are 2 pathways to enter process:

1. Potential impacts on environment
  2. Potential for public concern
- Roles/Responsibilities
    - Not an agency of the Crown, instead an independent review board, MVRB does not hold the duty to consult despite the Crown requiring this process to occur.
    - MVRB conducts the assessment; Board makes recommendations on how to proceed; Minister then makes final decisions and is responsible for ensuring duty to consult is met.
  - The Resource Management Act (or the claim – which overrides the Act) is the main item that is applied by the MVRB to projects. The Act was actually developed in a collaborative manner between the MVRB and government, not by the government alone. The legal requirements of the Act includes Indigenous/public includes: Indigenous/public concerns; timelines; fairness; evidence-based; Indigenous knowledge; and transparency.
  - Reconciliation has been a key goal of the MVRB, this includes: historic treaties and modern agreements; resources management systems and principles (which are based on the agreements); and the instrument of reconciliation.
    - IIC member asked for clarification regarding MVRB ensuring section 35 rights are being met.
      - MVRB explained that they are not responsible for ensuring consultation occurs (as per section 35), that is expected separately, rather the MVRB does the assessment and then provides a recommendation to proceed or no proceed, and after that recommendation it is evaluated if section 35 requirements are met or to then meet them.

## Part 2 – Well-Being

- MVRB focuses on the holistic approach to Impact Assessment.
  - IIC member noted strong support of the visualization provided on the slide regarding holistic approach to help explain the process more clearly in a visual manner rather than via text alone.
  - MVRB member explained that not all processes are intuitive, especially if it is something that has been focused on or used for a long period of time as change can be difficult.
- Well-being is considered for the primary purpose that impacts need to be considered holistically to understand potential project impacts. The mandate is to consider the importance of conservation to the well-being and way of life of the Indigenous people of Mackenzie Valley, and protect the social, cultural and economic well-being of all residents of the Mackenzie Valley. There are six areas that the MVRB must consider: social, economic, health, cultural, biophysical environment, and Well-Being.
- Sustainability and Well-being have been two primary areas brought forward with importance recently.
- Socioeconomic Impact Assessment Guidelines are another method of evaluation for an assessment. However, it was developed in an earlier period where it was good first step but at this point it is no longer as applicable and there are more effect methods of evaluating these components. An updated set of guidelines is under development.
  - The key lines of inquiry include factors such as the impacts to the local community.

- The social well-being impacts adapted management process has the goal to “minimize adverse social impacts and maximize opportunities”, which involves: program monitoring and evaluation; modify or adapt programming; engage to inform changes and improvements; and report on progress and meaning.
- What needs to be considered is that a mine may initially only be proposed to be 20 or 30 years but then another phase of development may be added on (another 30 or 40) years, making a mine extend into multiple generations and may cause unforeseen effects.
  - IIC member asked how it is possible to plan ahead for something so far in advance and be effectively adaptive.
    - MVRB explained that items such as “reasonably foreseeable” do need to be considered. The idea is not to mimic what has been seen or done in the past but rather think about what is different and would could be different/done in the future.
    - MVRB also noted that other items such as how to ensure IK continuation despite presence of minimum information come up as concerns. This is then addressed by look to communities and to consider the worst-case scenarios to develop mitigation measures.
  - IIC member asked that if they did approve a project despite a low level of baseline data collection how could they be confident in the decision?
    - MVRB explained they focused on going to communities to hear their thoughts, opinions, and gain useful information including local knowledge.
    - MVRB noted that with half of their board being members of Indigenous communities this makes many communities more comfortable sharing the local knowledge and other information for consideration.

### Part 3 – IK Case Studies and Lessons Learned

- A particular project worked exceptionally well with socioeconomic impact and overall well-being. This especially focused on caribou and IK transition. The MVRB heard concerns from communities and from Indigenous groups specifically regarding a new road such traffic, safety, impaired drivers from workers, health and safety with women/children around work camp. There is a general tendency to look at overall benefits and not specific impacts on individual subsections. In this case monitoring adverse health and well-being impacts on the specific local community was developed rather than just an overarching one. It was agreed that to inform mitigation of significant cumulative and project-specific adverse impacts on the health and well-being of the Indigenous community the developer will support the community in the monitoring and evaluation of direct and indirect impacts of the Project on health and well-being of this specific community.
- Two smaller projects were assessed based on local/community concerns. In these cases, it was determined that it would not be a significant concern to the environment but rather specific impacts to social or well-being. Based on this, the MVRB recommended they were rejected, and this decision was supported by the NWT government.
  - IIC questioned as to how traditional knowledge and local opinions can be heard in this manner by the MVRB effectively?

- MVRB has previously written a paper on how to evaluate socioeconomic impacts based on how this is important. MVRB noted that this board understands these people and so many members of the board are there from Indigenous communities, all being factors to assist with effectiveness.
    - **ACTION:** EAO to ask MVRB for this paper
  - IIC noted that some of what the IIC has struggled is that without having a strong relationship it is not possible to effectively provide IK and have it effectively considered.
- EAO asked that if a conflict arises between environmental impacts and Indigenous knowledge impacts how it is addressed.
  - MVRB explained that these are not viewed as conflicts but instead as different lenses to apply to a situation and then work to find a solution that works to address both concerns.
  - MVRB noted that it is also important for the board to consider and integrate a community's information or internal issues and concerns that they bring forward after internal evaluation.
- A systematic approach to assessing well-being is applied which includes four main components. (1) Reflect the different contexts in which people experience impacts and the different value systems within the Mackenzie Valley. (2) Define and track impacts against community-driven indicators. (3) Go beyond socio-economic and cultural impacts assessments to consider communities' visions of their own well-being and whether a proposed project contributes or hinder that vision. (4) Incorporate sustainability to seriously consider all aspects of well-being for current or future generations.
- As part of the MVRB assessment process there are various methods Indigenous knowledge can enter the EA process including: (1) direct communication between traditional knowledge holders and the MVRB, for example during community scoping sessions and public hearings; (2) formal traditional knowledge studies; and (3) communication between traditional knowledge holders and the developer, such as those participating in the EA on behalf of the communities.
- An example was provided to help improve multiple programs including a cultural camp focused on Indigenous knowledge transfer (fish and fish habitat concerns). The method of knowledge transfer was developed with the consultants who were already hired by the proponent for aquatic effects assessment. This helped educate these consultants as well as integrate biophysical information in the knowledge sharing with the working on site.
- Another example was provided where a water narrows was being evaluated by the proponent and nations differently. The water was being evaluated on impact to fish by the proponent, but elders/nations were actually concerned about impacts to caribou. This was because it was the primary migratory route for thousands of caribou in the area and shallow water would increase the risk of caribou injuries.
- Another example regarding caribou management was explained where caribou were collared and the mitigation was developed to track the caribou so that as they got closer to the roadway they became more rapidly monitored (hourly), then when close quite close to the roadway they became monitored every few minutes and traffic was halted for long periods of time as caribou passed across the roadway.
  - EAO asked if this mitigation was built in after project approval.

- MVRB explained that as part of the mitigation a number of general items were in place that allowed specific ones been developed afterwards to address concerns such as that. The mitigations could be expanded on as projects progressed rather than being looked at too much on a project-by-project basis.
- MVRB noted that Indigenous knowledge has been evolving and is not static, certainly not in terms of how it is applied in an EA. What a community provides to apply to a project may include western knowledge from the communities own monitoring report/project, general community knowledge, Indigenous knowledge, etc. and this is all considered by the MVRB.
- **ACTION:** EAO to circulate MVRB contact information and public registry of resources.

## Committee Administration

- EAO is currently developing a one-page document summarizing what the IIC has focused on.

## Linkages with Stakeholder Implementation Committee

- IIC has found having a member at the SIC meeting was seen as quite valuable to both provide and gain information. It was noted as similar at the IIC meetings with the benefits that have been found from having external parties, such as the SIC and MVRB, participate.
  - SIC member attending the IIC meeting voiced agreement with this observation.

## Effects Assessment and EA Methods

- The goal of the presentation is to show an overall goal of the effects assessment and EA methods. A PowerPoint presentation was provided by the EAO.
- IIC member asked whether there will be standard valued components
  - EAO explained that a guidance document for developing Application Information Requirements and valued components is being developed to work towards consistency across projects. While not all projects will not have the same valued components and will be adapted based on the project. The standard list will assist with clear comparisons between similar projects.
- IIC member asked for clarification as to what will happen to ICs if they are no longer present in EAs, this could lead to a nation's concern been screened out.
  - EAO stated that as proponents will no longer evaluate significance of VCs, the EAO will expect all of these VCs (including what may formally have been deemed ICs) to be measured and then the EAO will assess the significance.
- IIC member asked why mitigation measures are excluded from positive effects.
  - EAO explained that the mitigations will be assessed to reduce negative effects so that counting them as a positive effect here would be "double counted".
  - IIC noted that maybe this will mean that a positive effect of the mitigation measure is not something that would be taken into consideration.
    - EAO responded that these situations could be considered to determine if they would be appropriate to be incorporated. This can be something that the EAO incorporates into the guidance document.
    - IIC provided an example of project that provided a renewable energy project and was put on a brownfield site that required remediation pre-development.

This being an example of a situation where the mitigation measure could be considered also a positive effect.

- EAO explained that remediation of brownfields is a separate regulatory requirement that a company takes on the responsibility of remediation by buying a brownfield site. However, EAO acknowledged that situations such as this would mean that the potential impacts of a projects are immediately affected due to is current state.
- EAO will be asking Proponent's for any thresholds that have been established through scientific literature or by Indigenous Nations (in some cases a nation's threshold may be the only relevant ones)
- IIC member recommended that as part of the scoping stage the potential effects based on IK are established, such as community impacts, especially for potential cumulative effects.
  - EAO state that this would be considered at the beginning of an EA during early engagement.
- IIC member commented that missing from the guidance were potential techniques to use for assessments (i.e. networks analysis) and that these could be referenced upfront in the guidance as potential tools that could be used. It was suggested to focus less on process and more on what/how tools could be used by Nations that may not have much experience with EAs.
- IIC asked for clarification regarding the types of cumulative effects and what is meant by effects on current and future generations in the document.
  - EAO noted that the four types of cumulative effects that are in the guidance documents could benefit by a better term/label then "types" to clarify what they entail. The intent is to reference some of the ways that cumulative effects present themselves.
  - IIC asked where these types of cumulative effects were selected from and how they were selected.
    - **ACTION:** EAO to send the IIC the list of academic resources used to establish cumulative effects types.
    - **ACTION:** IIC to provide additional sources that should be used to cite or reflect in the EA methods guidance.
  - An IIC member felt that some of these types are not cumulative and some are missing.
    - EAO explained that the idea was to explain how cumulative effects are present and represent.
    - IIC member felt these are out of date and needed to be reassessed and updated.
      - **ACTION:** EAO stated further conversation can occur with IIC and EAO to work toward updating these cumulative effects
- IIC member asked that since EAO looks alignment with federal requirements is it just upstream not downstream effects? IIC member specifically voiced concern regarding downstream impacts.
  - EAO noted that we are being recommended to develop our own not follow IAA alone. This is being done with consultation with Climate Action Secretariat.
    - **ACTION:** IIC member to follow up with EAO separately regarding GHGs.
- IIC member asked what the next steps on this guidance are.

- EAO plans to post a draft mid January and would appreciate any feedback from IIC before end of 2019. The hope is released a “final” version at some point later in 2020. However, this document will continue to be developed as it is applied to projects and feedback is provided and lessons are learned.

## Capacity Funding

- Capacity funding will be brought back for discussion at the next IIC meeting on December 10.

## December 10<sup>th</sup> Meeting Topics

### Dispute Resolution Paper

- Dispute resolution intentions paper will (after being updated based on feedback from IIC and SIC) be provided at the December 10<sup>th</sup> meeting. The formal release of the paper will be contingent on the feedback provided by the IIC

### IK Guidance Document

- Updates to the document have been made based on feedback from the last IIC meeting. This will be discussed at the Dec. 10 meeting.
  - **ACTION** – IIC members to review the IK Guidance (specifically the principles) and provide feedback

### Consensus and Consent Seeking Guidance

- The first draft will be brought forward to the IIC for review on December 10.