Evolution of Indigenous Engagement in Environmental Assessment

IAIA - May 1, 2019

Fern Stockman, co-author Scott Bailey
Environmental Assessment Office, British Columbia, Canada
“It is the relationships we forge, and the trust we create, that matters most to our success at the end of the day.”

- David K. Williams (entrepreneur)

By working in partnership with Indigenous nations in environmental assessments (EAs) in trust relationships, we generate more fully informed durable decisions and advance reconciliation.
Evolution of Indigenous Engagement in EA

1996 - 2016

- Legal Duty to Consult
  - Review and comment on the proponent’s and EAO’s materials

2016 - 2019

- Collaboration
  - Seek consensus with EAO
  - Co-draft assessment of impacts on Aboriginal Interests

2019 -

- UNDRIP
  - Freely determine participation
  - Conduct own assessment
  - Seek consensus and expression of consent
Legal Context for Indigenous Consultation in BC
Journey to the new Act: Collaboration

Indigenous nations become *partners* in the EA process, rather than just *participants*
Collaboration Approaches

1. Collaboration agreements between the EAO and Indigenous nations
2. Collaboration between proponents and Indigenous nations
3. Separate but linked provincial and Indigenous assessments
4. Independent Indigenous assessment
Separate but Linked Provincial and Indigenous Assessments
Collaboration Agreements: EAO and Indigenous Nations

Agreement Principles:

• Government to Government relationship
• Mutual accountability
• Respectful, constructive and effective communication
• Seeking solutions to issues raised by Indigenous nations in EA
• Seeking consensus in relation to process and substantive decisions in the EA
• Transparency
• Administrative fairness
Collaboration Starting with Proponent

Amazay Lake Photo by Patricia Halley
Collaborative Achievements: Community Meetings
Collaboration Achievements

- Community meetings
- Co-drafted report on impacts to Aboriginal Interests
- Collaboratively developed conditions for the EA certificate
- Agreement that at the EA stage:
  - Adequate mitigation and accommodation of potential project effects on Aboriginal Interests
  - Meaningful consultation
Indigenous Nations’ (TKN) Letter of Support

At the end of the EA, the Indigenous nations submitted a letter of support for the project, including EA approval:

“TKN’s view is that, within the constraints of the EA process, by and large TKN’s concerns and interests were adequately addressed through that process when combined with other forms of accommodation with the province including proposed collaboration with permitting agencies, ongoing Government-to-Government discussions and the negotiation of Economic and Community Development Agreements with TKN First Nations.”
New EA Legislation

• Received royal assent November 27, 2018
• Will be brought into force in fall 2019
• Implements the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
• Legislated opportunities for co-designing and administering the process with Indigenous nations
Early Engagement Phase

A new phase prior to determining whether a project is ready to commence an EA

• Opportunity for Indigenous nations to identify interests, issues and concerns with the project proceeding through an EA or issues that need to be resolved in the EA

• Ensure Indigenous nations are well informed before a decision is made on whether to conduct an EA on a proposed project
Options for Indigenous Participation in EA

Indigenous nations can freely determine how they wish to participate in the EA:

• Seeking consensus with the EAO throughout the process
• Conduct a portion of the assessment
• Conduct the entire assessment on behalf of the Province provided certain conditions are met (Indigenous-led assessments)
Consent – Based Process

• Explicitly allows for and integrates any consent decision taken by an Indigenous nation on a proposed project
• Designed to ensure that these decision are free, prior and informed
• Two decision points where Indigenous nations may express their consent decision
• It is hoped that in the majority of cases - by working together - it will be possible to reach consensus on major issues so that the decisions of Indigenous nations and the provincial decision makers align
Conclusion

By changing how the Province works with Indigenous nations to work in partnership with Indigenous nations in trust relationships, EA decisions are more fully informed and durable, and the Province’s goal for reconciliation with Indigenous nations is supported.