



ENVIRONMENTAL IMPACT ASSESSMENT AND IMPACT AND BENEFIT AGREEMENTS: CREATIVE TENSION OR CONFLICT?

Problem statement



- public policy issues raised by the implementation of IBAs and the implementation of SEAI processes;
- tension between of socio-economic impact assessment as a mechanism to identify and mitigate impacts and private negotiated agreements between the proponent and First Nations which provide benefits to mitigate social and economic impacts from development; and
- coordination of these two mitigation approaches so that matters of fairness and participation are not lost

Content



- SEIA and IBA requirements in Nunavut, Yukon and the NWT
- recent experience for large development approvals
- tension between public SEIA processes and private IBAs and mitigating for socio-economic impacts
- approaches to reconcile the issue and encourage public participation and effective public decision-making

Northern land claim areas



Land claim SEIA requirements



- Legislated SEIA based on land claims includes strong socio-economic assessment provisions
 - regional and community demographics and mobility;
 - local, regional and territorial/national economies;
 - education, training and skills;
 - subsistence, sport and commercial harvesting;
 - human health and community wellness;

Land claim SEIA con't



- social and cultural patterns and cohesion;
- land use;
- infrastructure and institutional capacity;
- revenue, royalties, rents and taxes;
- incremental costs to different levels of government; and
- net revenues to the territorial and federal governments.

Types of impact and benefit agreements



- legally required by land claims e.g., Nunavut, Inuvialuit Settlement Region (focus of this discussion);
- *ad hoc* arrangements supported by government (focus of this discussion);
- social and economic agreements between the proponent and the territorial governments and/or municipal governments; and
- legislated requirements (e.g., COGOA) to ensure that benefits from a development stay locally.

IBAs required by land claims



- form of mitigation for potential social and economic impacts on the way of life and the environment utilized by aboriginal people
- negotiations begin before the SEIA is completed
- does not apply to the non-aboriginal population, or the territorial / municipal governments

IBA content for land claim related arrangements



- employment;
- training;
- economic development and business opportunities;
- social, cultural and community support;
- financial provisions and equity participation; and
- environmental protection and cultural resources.

Reviewing the issue



- tension between IBA and SEIA on socio-economic matters
- fairness and access to the SEIA process
- access to evidence in the SEIA process

Tension



- Both SEIA and IBAs cover the same socio-economic ground, but concentrate on different populations
- Both processes have similar mitigation solutions, namely contractual arrangements (socio-economic agreements vs. IBAs)
- One is public and the other is private

Fairness and Access



- Northern EIA processes are based on and encourage procedural fairness and public participation
- Fairness and participation is the ability of affected and interested parties to be heard and express their views e.g., hearings, written comments
- Minimum periods of consultation and seeking of input
- Proponents encouraged to seek public input and opinion early and often
- Expectation that decision-makers will make their decisions based on the evidence on the public record

Accessing evidence



- Decision-makers are boards of public government and operate in a quasi-judicial manner handling evidence like a court i.e., relying on information filed on the public record including the EIA report prepared by the proponent
- The proponent or the affected First Nations will make declarations saying that all social and economic issues have been dealt with in the IBA
- IBAs are private contractual matters and are not put on the public record
- Decision-makers must make decisions regarding socio-economic matters blindly and not unduly burden the proponent

Solutions / options



- Tailor the SEIA process on only impacts to the non-aboriginal population and government
- Tailor the SEIA process to not consider matters that would typically be covered in the IBA process
- Require the proponent to better distinguish between the populations to be affected by the project and more clearly identify the impacts on discrete portions of the population
- Require the completion of a draft IBA prior to the completion of the EIA and require a summary of mitigation results to be put on the public record

Conclusion



- Two new mechanisms for addressing social and economic impact of development have emerged in northern Canada
- IBAs and strengthened SEIA processes are important approaches to identifying and mitigating socio-economic impacts
- These mechanisms must be reconciled in order to ensure effective mitigation of these impacts