

**Supporting Inclusive Resource Development (SIRD)
East Africa
TRAINING PROGRAM
2019**



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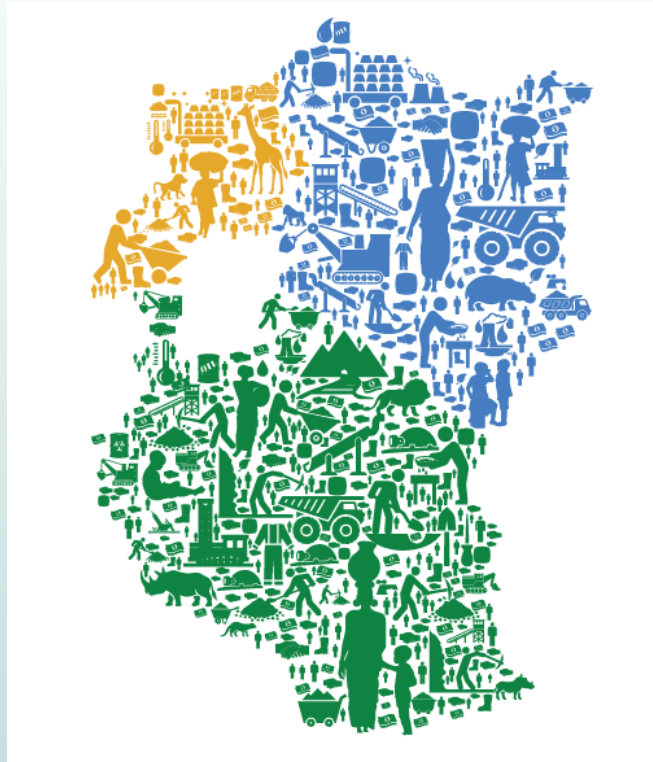
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Indigenous Community Consultation – Canadian Case Studies

Camille Vezina and Sara Mainville



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What you'll learn...

- ❖ Recent projects involving consultations with Indigenous communities:
 - ❖ Inadequate Consultation – The Honour of the Crown
 - ❖ Trans Mountain Pipeline Expansion (TMX)
- ❖ Canadian Experience – Mining Project



Trans Mountain Pipeline Expansion (2018)

Tsleil-Waututh Nation v Canada 2018 FCA 153



Project Overview

- Original Pipeline started operations in 1953 carrying crude oil from Alberta to British Columbia
- In 2004, Kinder Morgan (pipeline owner) began the process to add a second pipeline, running parallel to the first (which would be later called “TMX”)
 - Required additional pump stations – completed in 2008
- In 2013 Kinder Morgan filed application with national regulator for second pipeline
- Early 2016 British Columbia says it doesn’t approve the project expansion on its territory
- Late 2016 the national regulator approves the expansion project



Project Overview (cont.)

- Immediately after approval, several lawsuits launched by: provinces, municipalities, Indigenous communities, etc.
- 2018
 - April: Kinder Morgan wants to sell pipeline because of long delays, investor frustration, etc.
 - August: Kinder Morgan approves sale of pipeline to Government of Canada
 - Same day in August: Federal Court of Appeal quashes approval of the project



Federal Court of Appeal Decision

Honour of the Crown:

- Crown must provide its information/views on an Indigenous group's strength of claim so that all parties know what is on the table and where accommodations may be required

Inadequate consultation:

- Criticized Canada for failing to engage, dialogue and grapple with First Nations' concerns
- Court explains that “meaningful two-way dialogue” is required to fulfill the honour of the Crown
 - Crown representatives cannot just take notes
 - Someone attending must be able to respond meaningfully to the applicants' concerns
 - If Indigenous groups bring specific and focused concerns to Canada, then Canada's response must be equally focused and specific



Federal Court of Appeal Decision (cont.)

Meaningful consultation:

- Post-regulatory phase requires meaningful consultation
- In the past, the post-regulatory phase viewed by Industry as a stage where no real need to listen to Indigenous groups or to contemplate serious changes or accommodation
- Consultation must be meaningful at every step, and that substantive consultation is not over until the final decision is made
- Although difficult to achieve consent with several groups across a large territory for a pipeline, more effort was required



Effects of Court Case on the Project

- Court quashed approval of the \$9.3-billion Trans Mountain expansion
- Crown must “redo” consultation
- National regulator must redo certain aspects of the environmental assessment and make a new recommendation to Cabinet
- Company experienced severe losses – sold project
- Canada bought project and must now undergo parts of the regulatory process again both as the Crown and as the owner of the project



Canadian Experience – Mining Project



Project Experience

New Gold – Rainy river mine

The Rainy River project is an advanced-stage gold project situated in Richardson Township, approximately 65 kilometres northwest of Fort Frances in Northwestern Ontario. New Gold completed the feasibility study during the first quarter of 2014. The Rainy River project is being reviewed through a coordinated Federal Environmental Assessment (EA) – Provincial Individual EA process. The draft EA report was reviewed by local First Nations and Métis groups, Federal and Provincial regulatory agencies and other stakeholders. All comments received were addressed in the final EA report which was submitted to government for review.

Seven First Nations involved in early engagement:

Couchiching, Mitaanjigaming, Nigigoonsiminikaaning, Naicatchewenin, Rainy River First Nations, Seine River and Lac La Croix First Nations.



Fort Frances Chiefs Secretariat

- Had experience with Osisko/Agnico Mines working collectively for one Partnership Development Agreement as a collective of 7 First Nations (District of Rainy River, Ontario)
- Agreed to continue with the approach with New Gold Mine in the western portion of their traditional lands, all First Nations are Treaty #3 members.
- Advanced negotiations with the company, and coordination prior to the Environmental Assessment to signing ceremony of Partnership Development Agreement (all collectively share in benefits and advance their interests as collective)
- 7 Chiefs led the process, 2 of the Chiefs were women – Chief Sara Mainville and Chief Janice Henderson.
- All but two of the seven communities were upstream of the project, Rainy River First Nation and Naicatchewenin had downstream land interests.

Partnership Development Agreement

- Community engagement officer was from the First Nations, an employee of the Chiefs Secretariat.
- New Gold hired an archaeologist from community who worked in various senior positions with New Gold Rainy River Mine.
- Equity shares were given to each of the seven communities, a “Trust” was created for the collective to own these shares together, but for various reasons, they separated by community the benefits and some liquidated, others reinvested in a more diversified portfolio. Couchiching still has a \$2.3 million fund based on these benefits for economic development.
- Commitments to all the communities in the business development, a “Business Development Advisor” was entrusted to create partnerships/Joint Ventures.



First Nation IBAs

Just prior to the formal environmental assessment process

\$700,000 given to FFCS to review the EA report(s)

Rainy River First Nation joined with Naicatchewanin as the two designated directly impacted communities to establish a joint Impact Benefit Agreement. They established a business with an engineering company and worked hard to get all of this work. They also received the man camp contract and food services contract.

Other FFCS communities went forward with the Partnership Development Agreement and sought out direct benefits through the business development. Couchiching built the mill with a business partner and received \$1.7 million in profit sharing and direct training of members.

Inclusiveness of Women, Youth, Elders

As Chief, involved in the project review team (Sara Mainville)

Direct negotiations for training that was inclusive of youth, women.

Elders directly involved in the environmental monitoring,

Anishinaabe teachings shared in the cultural competency training,

each spring and fall there were feasts on site of the mine.

Still many issues with young women and the mine, domestic violence (new gold workers) and one related death of a young woman in a car accident after a late night party at the man camp.

The New Gold Rainy River Mine

The New Gold Mine is not a complete success.

First Nations have received windfalls, but the operations of the mine have been hampered by engineering problems.

Local benefits – community businesses from the local region (Thunder Bay) may have been driven to efficiencies in construction that cost the operations of the mill some operational difficulties.

The District itself is a high cost travel area in Canada and the cost of bringing New Gold employees to the site have been a problem.

The First Nations feel like owners of this mine, despite (wisely) divesting of their shares when the shares were higher. Now \$.90 or lower.



Resources

Community Engagement and Readiness: Compendium of Case Studies – Government of Canada (2017)

[NRCan Common Principles of Engagement](#)

Early Aboriginal Engagement: A Guide for Proponents of Major Resource Projects – Government of Canada (2017)

[MPMO Aboriginal Engagement](#)

