



Regulatory Challenges in NWT




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Outline of Presentation

- Brief overview of NWT approval process
- Summary of challenges
- Potential solutions
- Conclusions



Presentation Approach

- Challenge of presenting complicated environmental assessment and regulatory process in NWT and keeping to the theme of the session
- Brief summary of the approval process in NWT
- Decided to interview a number of key individuals who have been through the "process" in NWT and gather their thoughts, perspectives and ideas
- Presentation will be a compilation of ideas



Acknowledgments

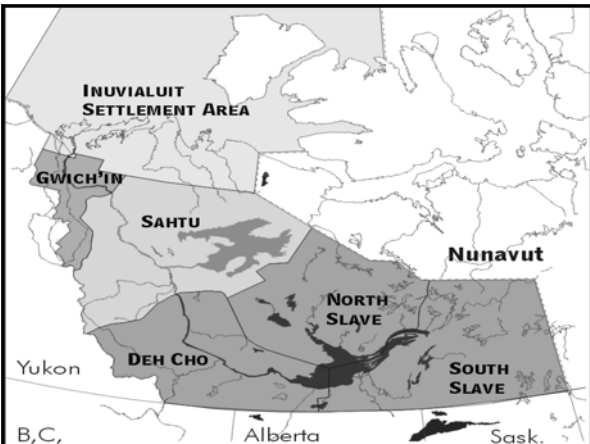
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Land Claims Settled in NWT

- Inuvialuit Settlement Region: The Western Arctic Claim, Inuvialuit Final Agreement (1984)
- Gwich'in Settlement Area: Gwich'in Comprehensive Land Claim (1992)
- Sahtu Settlement Area: Sahtu Dene and Metis Comprehensive Land Claim (1993)
- Tlicho Settlement Area: Tlicho (tlee-chon)-Comprehensive Land Claim (2003)





Land & Water Management in the NWT

- Inuvialuit Final Agreement (IFA)
- Mackenzie Valley Resource Management Act (MVRMA)
- Related processes:
 - Tlicho Agreement (currently being integrated into the Act)
 - Deh Cho Interim Measures Agreement
 - Gwich'in Comprehensive Land Claim Agreement
 - Sahtu Comprehensive Land Claim Agreement
- Land and water management follows a **co-management approach**
- Driven by land claims process
- Principally board process that is open, transparent and community driven



Land & Water Management in the NWT

- Co-Management Words:
 - Institutional arrangements whereby governments and aboriginal entities (and sometimes other parties) enter into formal agreements...with reference to to the management and allocation of resources in a particular area of Crown lands and waters (Royal Commission on Aboriginal Peoples, 1997).
 - Inclusionary and consensus-based approach to resource use (Campbell, 1996)
 - Stresses negotiation rather than litigation as a means to resolving conflict (Campbell, 1996)
 - Process of combining western scientific knowledge and traditional environmental knowledge for the purpose of improving resource management (Campbell, 1996)



Land & Water Management in the NWT

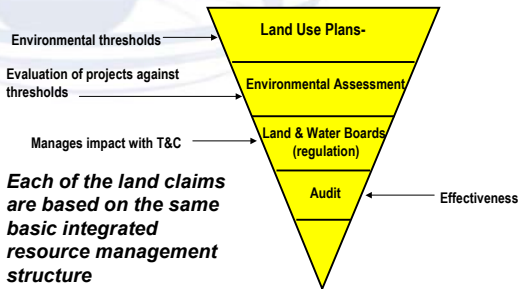
- Co-Management:

“The Review Board will give traditional knowledge equal weight, along with scientific information, which we have heard over the last five days.”

- Gordon Wray, MVEIRB Chair for Snap Lake Diamond Project, Public Hearing



Integrated Resource Management – Central to Land Claims and MVRMA

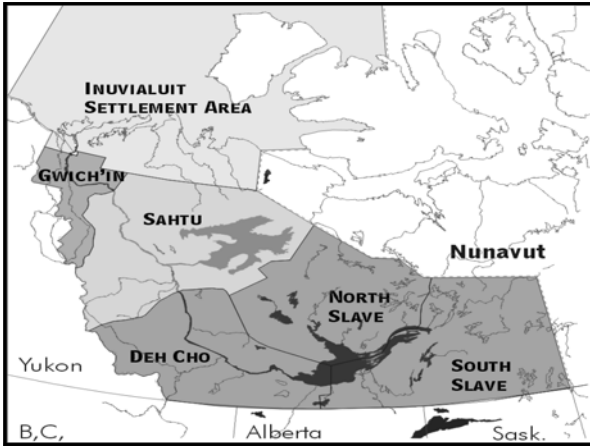


Guiding Principles of Land Use Planning

- To protect and promote social, cultural and economic well-being of residents and communities in the settlement areas
- Special attention shall be devoted to the rights of the Gwich'in and Sahtu First Nations under their land claim agreements, to protecting and promoting their social, cultural and economic well-being and to the lands used by them for wildlife harvesting and other resource uses
- Land use planning must involve the participation of the first nation and of residents and communities in the settlement area (section 35 MVRMA)

Environmental Assessment - Overview

- EA originally a planning tool used by government to ensure that public funds were not used in a manner that would negatively impact the environment
- Court challenges confirmed the need for rigorous and timely EA prior to regulatory approvals
- Used to achieve sustainable development objectives
- Northern Canada is evolving to a system where all EA and regulatory decisions are made through public boards which are community driven
- Northern Canada process unique and is driven by Land Claims agreements and political evolution-otherwise known as "devolution" of natural resources management authorities to territorial governments (e.g. Yukon)



Inuvialuit Settlement Region (ISR)

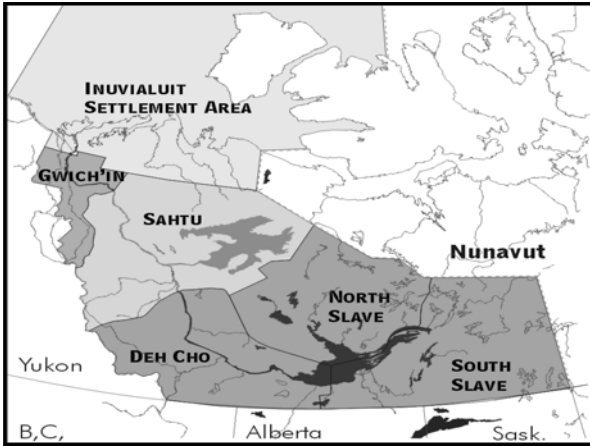
- Environmental Impact Screening and Review Process conducted by two co-management bodies, established under the Inuvialuit Final Agreement (IFA)- Chapter 11:
 - Environmental Impact Screening Committee- screenings (vast majority completed within 60 days)
 - Environmental Impact Review Board- deals with larger and/or complex projects
- Applies to Crown or Inuit-owned lands
- CEAA is fully applicable in the ISR. CEAA and IFA process can be triggered for the same project



Inuvialuit Settlement Region (ISR)

- Land use planning is handled through communities, with the development of Community Conservation Plans
- Regulation of land and water within the region (outside of Inuvialuit private lands) remains with DIAND, NWT Water Board, and federal government.
- No requirement in the claim for cumulative impact monitoring, but EIA bodies request cumulative impact analysis in their assessment reports





Mackenzie Valley Resource Management Act (MVRMA) - Overview

- Born out of the *Gwich'in and Sahtu Dene and Metis Comprehensive Land Claim Agreements*
- Came into force in December 1998
- Provides northerners decision-making participation and responsibility in environmental and natural-resource matters
- Jurisdiction – does not include Inuvialuit Settlement Region (ISR) and Wood Buffalo National Park



MVRMA – Six Integrated Parts

- Composed of 6 “integrated” parts:
 - Board administration / General provisions of boards
 - Land use planning
 - Regional land and water boards
 - Valley-wide land and water board
 - Environmental impact assessment
 - Cumulative impact assessment (CIM) and environmental audits



General Provisions of Boards

- Quasi-judicial
- By-laws, rules and other instruments
- Hearings (natural justice)

Land use planning

- MVRMA establishes the Gwich'in Land Use Planning Board and Sahtu Land Use Planning Board
- The MVRMA empowers these Boards to prepare and implement regional land use plans for:
 - Gwich'in Settlement Area (approved)
 - Sahtu Settlement Area (in draft)
- Development proposals must conform with approved land use plans
- Tlicho claim allows for land use planning
- Deh Cho land use planning process is underway through interim measures

Regional land and water boards

- Two regional boards currently in place:
 - Gwich'in Land and Water Board
 - Sahtu Land and Water Board
- In process of being set up: Wek'eezhii (way-keh-zi) Land and Water Board
- Issue land use permits and water licences for the respective settlement areas
- Preliminary screener

Valley-wide land and water board

- Mackenzie Valley Land and Water Board
 - Membership includes representatives from the following First Nations: Gwich'in, Sahtu, Tlicho, and Deh Cho as well as nominations from the federal and territorial governments
- Issue land use permits and water licences in unsettled claim areas and where development proposals are transboundary
- Conducts preliminary screening

Objectives of Land and Water Boards

- To “regulate use of land and waters and the deposit of waste so as to provide for the conservation, development and utilization of land and water resources in a manner that will provide optimum benefit to the residents of the settlement areas and of the Mackenzie Valley and to all Canadians” (section 58 of the MVRMA)

Mackenzie Valley Environmental Impact Review Board

- Administers Part 5 of the MVRMA
- Considers environmental, socio-economic and cultural impacts under sections 114 and 115 of the MVRMA
- Board members appointed on the nomination of first nations and territorial Minister, chair appointed by INAC
- Conduct EAs and Environmental Impact Reviews based on Rules of Procedure
- Objective is for the process to be transparent, community based following the rules of natural justice

Environmental Auditing

- Environmental audit every five years:
 - First audit is taking place this year
 - Determine trends in environmental quality and the significance of those trends
 - Review of effectiveness of methods used for cumulative impact monitoring
 - Review effectiveness of the regulation of uses of land and water and deposits of waste on the protection of the key components of the environment from significant adverse impact
 - Review of response to recommendation of previous environmental audits

Summary of NWT Approval Process

- ISR:
 - Regulatory approvals through NWT Water Board & INAC
 - Environmental assessment carried out through Screening Committee, Impact Review Board under the authority of the claim and CEAA can also be triggered
- Mackenzie Valley:
 - Regulatory approvals under MVLWB where claims have not been settled and acts as a "valley wide" board
 - Regulatory approvals under regional land and water boards (e.g. Sahtu settlement area)
 - Preliminary screenings carried out by regulatory boards
 - Referred projects assessed by MVEIRB

Interview Questions

1. What key words would you use to characterize the environmental assessment and regulatory regime in NWT ?
2. What in your view are the major challenges associated with the environmental assessment and regime in NWT ?
3. What 3 things would you change, add or remove from the environmental assessment and regulatory regime in NWT ?
4. How would you characterize NWT's environmental assessment and regulatory regime in comparison to other jurisdictions in Canada ?

Interview Responses

- Q1: Key words?
 - Complex/complicated
 - Awkward/cumbersome
 - Political
 - Inclusive
 - Intensive
 - Unique
 - Inconsistent/confusing/repetitive
 - Exhausting
 - Intimidating
 - Progressive
 - Personalized
 - Immature
 - Biased
 - Improving

Interview Responses

- Q1: Key words?
 - Reflective of northern values
 - Local decision making
 - Evolving
 - Exploring (testing limits)
 - Not technically based

Interview Responses

- Q2: Challenges?
 - Effective application & implementation
 - New scope for environmental assessment- environmental, economic and social (incl. TK)
 - Political interference with the process
 - Capacity of north to serve boards (people) to meet the scale of resource development
 - Scoping projects to the "real" issues
 - Accountability for positions/statements during the process
 - Process is not adequately financially resourced to allow the north to mature and evolve
 - Time required to let the north mature and evolve in the presence of major industrial projects
 - The "board style" of decision making is poorly understood by industry, in some areas of government and in some communities

Interview Responses

- Q2: Challenges?
 - Resistance to change to effectively implement land claims decisions
 - Response to northern concerns and how NWT moves forward as a northern society
 - Managing differing expectations in terms of conventional decision making versus co-management approach
 - Keeping board process as consistent as possible across NWT
 - Intimidation due to legal nature of process
 - Timeliness of process
 - Fairness of process
 - Lack of consistent scientific approach



Interview Responses

- Q3: 3 things you would change/add/remove?
 - Change:
 - Manage public participation more effectively to ensure the process moves ahead
 - Ensure accountability for all parties such as the provision of information or statements to boards such that process stays on track and deals with the issues at hand
 - Clarity for referring projects to environmental assessment ("public concern" and significance" tests are both vague) and an appeal process for proponents
 - Provide for firm scoping of environmental assessment such that the process is reflective of the size and complexity of a project (e.g. level of effort for smaller projects can be similar to much larger projects)
 - Improve management processes to streamline stages such as "Information Requests or IRs" and technical workshops (e.g. Diavik Comprehensive Study) help manage the issues during an environmental assessment



Interview Responses

- Q3: 3 things you would change/add/remove?
 - Change:
 - Boards should consider issuing draft reports for review and comment
 - Appointment of board members should be a full time commitment with appropriate compensation
 - Funding arrangements for boards should be through central agency (e.g. Treasury Board) versus INAC
 - Board members should be appointed on technical and/or northern merit versus political appointments



Interview Responses

- Q3: 3 things you would change/add/remove?
 - Add:
 - Delegated responsibilities to board staff
 - Timelines as a formal part of the process should be considered
 - Remove:
 - Board actions that may be fettering enforcement responsibilities of government
 - Board reviews that are intruding into proponent decisions to the point that they may be assuming liability through specific directions at the engineering level

Interview Responses

- Q4: NWT process in comparison to other jurisdictions?
 - More onerous, not as efficient, more costly and less mature (short history)
 - Inconsistent, poorly implemented and less predictable
 - More responsive to local concerns
 - Appropriate for the north and is very thorough for major projects in comparison with the provinces
 - Trying to provide balance among the different expectations in a complicated environment
 - Large challenge in northern Canada due to the lack of baseline information and a lack of standards in comparison to the provinces
 - Process has potential to serve the north, its residents and the people of Canada well
 - No worse than other northern jurisdictions
 - Thresholds for involvement of boards in the north is lower than for the provinces

Interview Responses

- Q4: NWT process in comparison to other jurisdictions?
 - NWT is moving in an opposite direction from the provinces where government is moving toward self audit and self regulatory compliance
 - Innovative and leading edge due to scope and extent of assessments, input from the public and consultation requirements
 - Multidisciplinary and integrated where boards can reflect on the larger picture in the interest of northern society and the environment in comparison to the provinces

Summary of Interviews

- Challenge Themes:
 - Requirement for legal certainty
 - Requirement for regulatory and process efficiency
 - Requirement for effective project management
 - Requirement for adequate financial support
 - New immature regime that needs time to evolve
- However, all participants agreed that the current process is appropriate for NWT and has great potential to manage natural resources effectively

Recommendations re MVRMA (from Hardin 2000)

- Provide Adequate Resources
 - Utilize Past Experience
 - Improve Definition of Cumulative Impacts
 - Define Consultation Process
 - Relate MVRMA Requirements to IBA Requirements
 - Maintain an On-going Dialogue Among Stakeholders
- (p.18 to 24)

Potential Solutions

- Refinement of MVRMA to deal with major issues
- Use 5-year audit in a positive manner to refine MVRMA processes
- Consider developing a "fast track" process (e.g. 90 day screening) for smaller projects referred to environmental assessment
- Consider a "lessons learned" exercise (conference) for all boards across NWT
- Enter into a NWT wide strategic planning process upon completion of the lessons learned exercise
- Develop management processes for all boards to promote consistency between boards
- Strong northern policy development is required at the federal, territorial and community levels to facilitate and assist the Board process.

Overall Conclusions

- Resource management is about managing "people issues and perceptions"
- The Board process can facilitate this - co-management is the best approach, but will take time.
- Mistakes will be made - natural resources development will continue.
- Northern Canada will continue to evolve and will demand control over their resources.
- Reaching consensus and decisions making in the public forum is the norm due to influences such as:
 - **Traditional aboriginal government;**
 - **Small population base;**
 - **Land claims; and,**
 - **Local political climate.**
