



Canadian Environmental
Assessment Agency

Agence canadienne
d'évaluation environnementale



Indigenous Issues and Decision Statements in Federal Environmental Assessment: An examination through case studies

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Canada



Outline

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 - *Canadian Environmental Assessment Act, 2012* (CEAA 2012)
 - Review of the Federal Environmental Assessment Process

- Indigenous Issues in Decision Statements Pursuant to CEAA 2012
 - Identify Environmental Effects
 - Assess significance of adverse environmental effects
 - Working through effects and mitigation

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 - Rainy River Gold Mine
 - Côté Gold Mine

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Introduction

The Canadian Environmental Assessment Agency

- The Canadian Environmental Assessment Agency (the Agency) is accountable to the federal Minister of Environment and Climate Change
- The Agency provides high-quality environmental assessments (EA) that contribute to informed decision making, in support of sustainable development
- The Agency is the responsible authority for most federal EAs



Introduction

Overview of CEAA 2012

- Applies to “designated projects”
 - Identified in regulations or designated by ministerial order
 - Larger projects with greater potential for significant adverse environmental effects
- “Environmental effects” under legislative authority of Parliament or that are directly linked or necessarily incidental to federal decisions
 - Includes transboundary effects
- EA considers environmental effects as well as any change to the designated project that may be caused by the environment
- Types of assessment
 - EA by responsible authority or a review panel
 - National Energy Board (NEB) and Canadian Nuclear Safety Commission (CNSC) use their review processes to meet CEAA 2012 requirements.
 - Provincial process may also substitute for an EA by the Agency



Introduction

Ministerial Decision and Beyond

For assessments by the Agency or review panel, the Minister of Environment and Climate Change determines **whether the designated project is likely to cause significant adverse environmental effects** in areas of federal jurisdiction

- If significant, the Cabinet determines whether the effects are justified in the circumstances
- If the designated project is approved, a decision statement includes conditions (mitigation and follow-up) that must be implemented by the proponent

The Minister designates persons for the purposes of enforcement (**ss.89(1)**)

<http://www.ceaa-acee.gc.ca/default.asp?lang=en&n=618795C4-1>



Introduction

Review of Environmental Assessment Processes

The Government of Canada has committed to reviewing environmental and regulatory processes. The goal is to introduce new processes that incorporate science, protect the environment, respect the rights of Indigenous people, and support economic growth.

- Four-person Expert Panel established with Terms of Reference
- Funding to support Indigenous participation
- Multi-Interest Advisory Committee established to provide advice to Expert Panel with representatives from Indigenous organizations, environmental groups, provinces and territories
- The Expert Panel will travel the country from September 19 to December 15, 2016 to meet with Canadians and gather input
- The Expert Panel will submit their report to the Minister in January 2017

CANADA.CA/ENVIRONMENTALREVIEWS and EAREVIEW-EXAMENEE.CA/



Indigenous Issues in Decision Statements

General Approach

- Identification of Environmental Effects (s.5)
 - Building a body of knowledge of effects on Indigenous peoples and their interests in relation to the valued components
- Assessing potential for significant adverse environmental effects
 - Seeking input from Indigenous peoples to isolate technically sound mitigation to minimize effects

The Case Studies will focus on

- General Conditions
- Key Mitigation Measures
- Follow-up Programs

Follow-up Programs

There is existing draft Technical Guidance for Assessing Current Use of Lands and Resources for Traditional Purposes: <https://www.ceaa-acee.gc.ca/default.asp?lang=En&n=CDC35F2E-1>



Indigenous Issues in Decision Statements

Identification of Environmental Effects (s.5)

Building a body of knowledge of effects on Indigenous peoples and their interests in relation to the valued components

- Surface water
- Ground water
- Air
- Terrain and soils

Physical Environment



- Fish and fish habitat
- Birds and other wildlife
- Species at risk

Biological Environment



- Plant gathering
- Plant or animal harvesting
- Hunting, trapping
- Fishing, bait fishing
- Teaching sites
- Cultural ceremonies and sites
- Archaeological sites
- Cabins and outposts
- Swimming/recreation

Human Environment



The body of knowledge available to the Agency consists of information about multiple co-existing “environments”, the proponent’s information about changes to the environment and potential project effects, technical advice from government experts, and information gathered from Indigenous groups



Indigenous Issues in Decision Statements

Assessing Potential for Significant Adverse Environmental Effects

Significance of effects on biophysical components \neq significance of effects on Indigenous peoples

Example:

Effects of the designated project (i.e. noise) may alter the migration patterns of a migratory bird that is hunted by an Indigenous group. From a biophysical standpoint, this may have a minimal effect on the viability of the migratory bird population; however, this alteration may have a greater effect on the Indigenous group's ability to hunt the migratory birds in a preferred area.

*In cases like this, the Agency seeks input from Indigenous groups to isolate preferred, technically sound mitigation to minimize effects.





Indigenous Issues in Decision Statements

Working through effects and mitigation

Change to the environment resulting from the project	Effects on Indigenous peoples	Valued Component and Environmental Effect (S.5, CEAA 2012)	Mitigation	Enforceable condition in Decision Statement
The project may expose potentially acid generating rock which could cause changes to water quality in the area	-Indigenous groups harvest wild rice in local waterbodies for subsistence -The changes to water quality may cause reduced or complete loss of quality wild rice -reducing food security and impacting nutrition	Health and socio-economic conditions	?	?
The project may overprint waterbodies and waterways	-Indigenous groups canoe and portage via local waterways -loss to the ability to navigate and access areas used for hunting, fishing, trapping, harvesting and other activities	Current use of lands and resources for traditional purposes	?	?



Case Studies

Environmental Effects on Indigenous Peoples

Rainy River Gold Mine

New Gold Inc. (the proponent) proposed the construction, operation, decommissioning and abandonment of an open-pit and underground gold mine and on-site metal mill, located approximately 65 kilometres northwest of Fort Frances in the Township of Chapple, Ontario

<http://www.ceaa.gc.ca/050/details-eng.cfm?evaluation=80007>

Côte Gold Mine

IAMGOLD Corporation (the proponent) proposed the construction, operation, decommissioning and abandonment of the Côte Gold Mine Project, which included an open-pit gold mine, an on-site metal mill and four structures for diverting water, located 20 kilometres southwest of the community of Gogama in northeastern Ontario

<http://www.ceaa.gc.ca/050/details-eng.cfm?evaluation=80036>



Case Studies

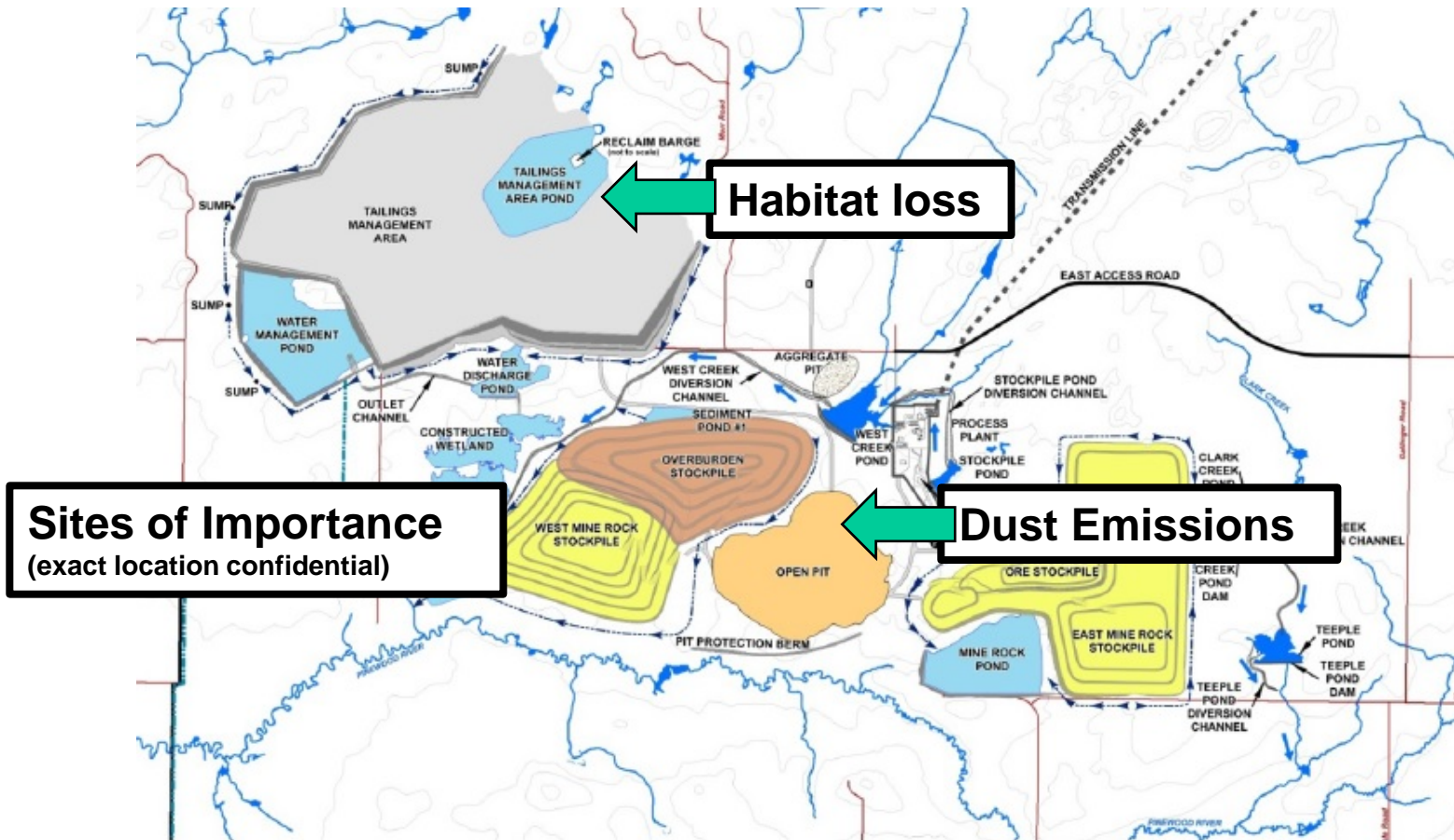
General Conditions

- **Identification of Indigenous Group(s)**
 - Indigenous groups identified based on likelihood of experiencing potential effects
- **Use of Best Available Information and Knowledge**
 - The proponent shall ensure its actions are informed by the best available information and knowledge, including community and Indigenous traditional knowledge
- **Instructions to Proponent on Ongoing Consultations**
 - The proponent shall, where consultation is a requirement of a condition, provide written notice, sufficient information and full consideration of views of the party being consulted
 - The proponent shall, where consultation is a requirement, communicate with each Indigenous group to determine the manner in which to satisfy the consultation requirements
- **Annual Reporting & Follow-up**
 - The Proponent shall submit to the Agency an annual report on the implementation of the conditions set out in this Decision Statement with a supporting analysis for each of the conditions
 - The proponent shall, where a follow-up program is required, undertake monitoring and reporting



Case Study – Rainy River Gold Mine Project

Environmental Effects on Indigenous Peoples





Case Study – Rainy River Gold Mine

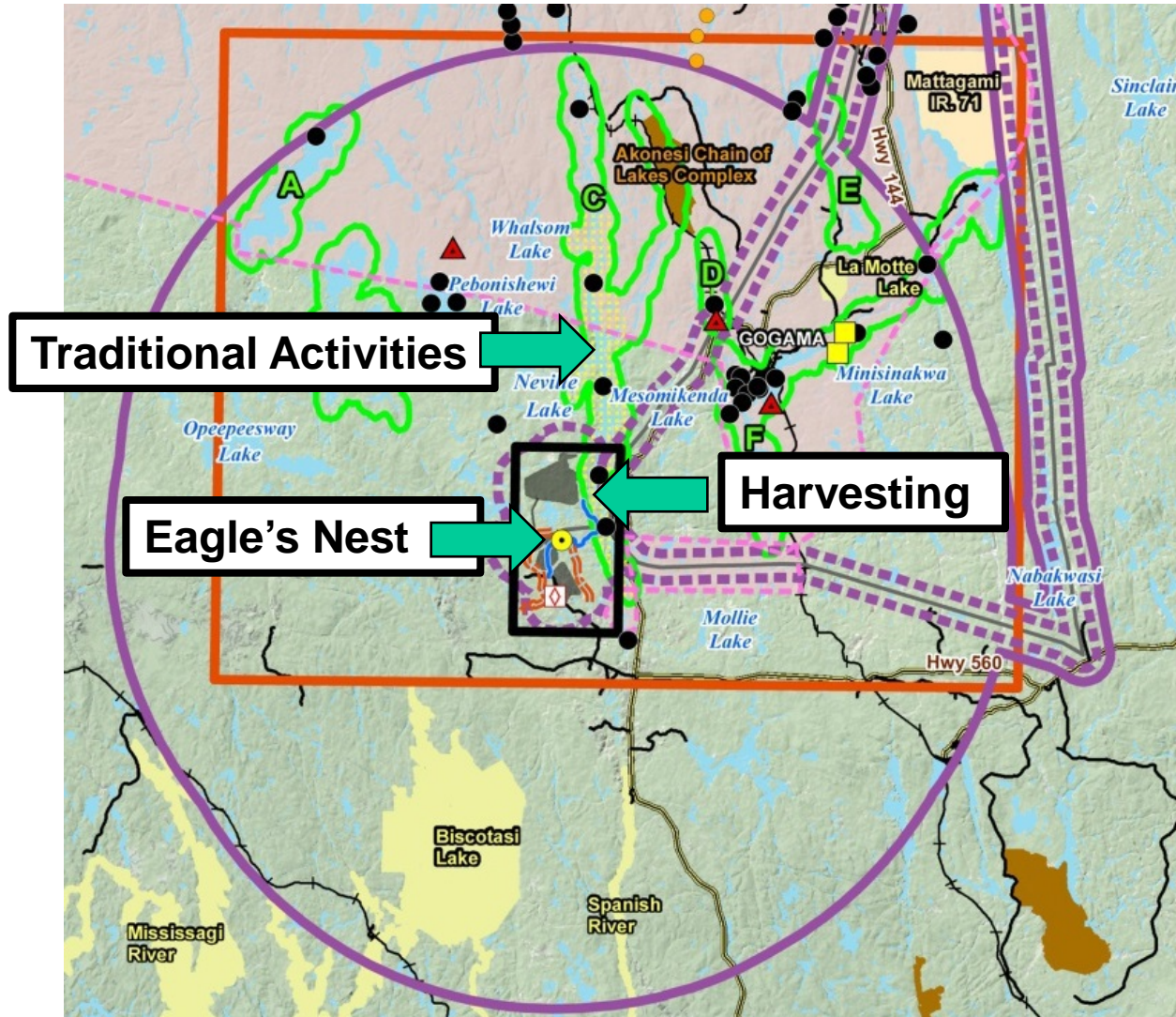
Environmental Effects on Indigenous Peoples

Change to the environment resulting from the project	Effects on Indigenous peoples	Valued Component and Environmental Effect (S.5, CEAA 2012)	Mitigation	Enforceable condition in Decision Statement
Emissions of total suspended particulate and fine particulate matter may exceed Ambient Air Quality Criteria at the project site boundary during operation	Human health effects for Indigenous groups may result from breathing in air emissions and dust	Health and socio-economic conditions	Control air emissions, use dust control equipment, manage fugitive dust, use pollution control equipment	The proponent shall meet air quality requirements, monitor air quality and alert Indigenous groups in cases of air quality exceedances
Vegetation clearing resulting from the project may affect archaeological sites through disturbance and removal of soils	Loss of or damage to or loss of access to sites of archaeological significance	Aboriginal archaeological, heritage and cultural resources	Avoid known sites, where possible, preserve discovered burial sites, salvage, preserve and manage artifacts	The proponent shall avoid known sites, assess newly discovered sites, salvage and transfer artifacts to a facility identified by Indigenous groups
The project will cause loss and fragmentation of terrestrial wildlife habitat, and loss of plants harvested	Hunting may be effected through direct impacts on wildlife and loss of access to lands; plants traditionally harvested may be lost	Current use of lands and resources for traditional purposes	Provide access for Indigenous groups to private lands for hunting and plant harvesting	The proponent shall provide access to private lands to Indigenous groups for current use purposes



Case Study – Côté Gold Mine

Environmental Effects on Indigenous Peoples





Case Study – Côté Gold Mine

Environmental Effects on Indigenous Peoples

Change to the environment resulting from the project	Effects on Indigenous peoples	Valued Component and Environmental Effect (S.5, CEAA 2012)	Mitigation	Enforceable condition in Decision Statement
A bald eagle nest found near the mine site will need to be removed to allow for the construction of the project	Bald eagles are of spiritual and cultural importance to Indigenous groups in the area	Physical and cultural heritage and structure, site or thing of historical, archaeological, paleontological or architectural significance	-Avoid and minimize disturbances to active eagle nests -When a nest must be removed, engage Indigenous groups prior to doing so	The proponent shall not disturb bald eagle nests that are occupied and will consult with Indigenous groups prior to removing unoccupied nests
The project will result in dust deposition on soils in plant harvesting areas	Dust and airborne contaminants, including metals, on soils may be available for uptake by traditional plants along identified canoe routes	Health and socio-economic conditions	Implement best measures to minimize the emissions of fugitive dust and airborne contaminants	The proponent shall implement measures to minimize emissions and monitor dust deposition rates in areas where plant harvesting occurs
Uncertainty in timeline for project construction may result changes in environmental baseline conditions	Traditional land uses may change as forest quality improves after logging and traplines transfer ownership	Current use of lands and resources for traditional purposes	Develop a traditional land and resource use follow-up program with Indigenous groups	If construction has not commenced within 5 years, the proponent shall determine if changes to current land use has occurred, identify effects and propose additional mitigation measures



Conclusions

- Indigenous groups that are to be consulted are identified in Decision Statements based on the analysis of potential environmental effects on those groups as a result of the project
- Decision Statements include requirements for proponents to use best available information, technology
- Proponents expected to engage Indigenous groups on key conditions material to Indigenous groups as specified in the Decision Statements