

December 22, 2016

Aaron Janzen
Enrolled in Masters of Natural Resource Management
University of Manitoba

Re: Written Submission to the Expert Panel on the Review of Environmental Assessment Processes

Meaningful public participation beyond CEAA 2012

Introduction

The review of federal environmental assessment (EA) processes is an opportunity to produce a next generation environmental assessment act for Canada. Canada's new environmental assessment act should ensure that sustainability is a core objective of assessments (Johnston, 2016). An assessment that prioritizes sustainability must account for outcomes of all three pillars of sustainability: environment, economy and society. West Coast Environmental Law describes "next-generation environmental assessment [as] broad, value-driven, aspirational and inclusive" (Johnston, 2016, p. 3).

It can be seen that in order for next-generation EA to target sustainability, social, economic and environmental impacts must be accounted for. Additionally, public trust in EA processes must be regained. Public trust in the efficacy of EA has waned, in part because projects are approved in spite of environmental and/or social impacts. Then very little follow-up is made available publicly, leading to unclear environmental impacts (Multi-Interest Advisory Committee, 2016). This impacts the public's ability to participate meaningfully in EA processes, even though this was cited as a clear direction of CEAA 2012.

Next-generation EA must ensure that meaningful public participation is incorporated in EA processes, including the follow-up and monitoring processes. Public participation in EA processes can produce a number of benefits to strategic, regional, and project EA.

Purpose

1. Describe CEAA 2012's inability to produce meaningful participation
2. Outline some of the key characteristics of meaningful public participation
3. Highlight in particular the potential benefits of meaningful public participation in follow-up and monitoring activities
4. Provide recommendations for incorporating meaningful public participation in Canada's next-generation environmental assessment process

Public Participation under CEAA 2012

One of CEAA 2012's stated purposes is "to ensure that opportunities are provided for meaningful public participation during an environmental assessment" (CEAA, 2012, p. 6). This commitment to meaningful public participation is consistent with established findings that "public participation... [is] foundational to effective, efficient and fair environmental assessment" (Sinclair & Diduck, 2016, p. 1). Despite this stated purpose there are indications that CEAA 2012, at present, is not eliciting meaningful public participation.

Meinhard Doelle (2012) identified a number of ways that CEAA 2012 was negatively impacting public participation in EA processes. First, noting that while CEAA 2012 identifies participation as a purpose, there are "few legislative requirements regarding public participation" (Doelle, 2012, p. 15). Second, under CEAA 2012, the EA process, and by extension public engagement, occurs after a proponent has completed a project design. If the project

design is already completed and defended, what meaningful contributions is the public able to make? Finally, CEAA 2012 stipulates that only direct “interested parties” should be allowed full participation in EA processes. Which members of the public are deemed to be “interested parties” is left up to the review panel’s decision, and section 43 suggests that members who do not meet the “interested party” description should be excluded from participating in the EA process (Doelle, 2012).

CEAA 2012 was explicitly designed to make the EA process more efficient and drastically cut the number of EAs being conducted, “from over 4000 assessments a year under CEAA 1992 to a few dozen under CEAA 2012” (Kwasniak, 2016). This focus on maximum efficiency reduced not only the number of opportunities for the public to become involved (because of fewer federal EA processes being conducted), but also by limiting the opportunities for meaningful participation (Doelle, 2012).

Characteristics of meaningful participation

Given the importance of meaningful public participation, which CEAA 2012 recognizes, it is essential that next generation EA move beyond the limited, passive participation that occurs under CEAA 2012. As the West Coast Environmental Law states, “meaningful public participation is early, ongoing, accessible and dynamic. It occurs at all levels of assessment and has the ability to influence outcomes” (Johnston, 2016). This statement neatly captures many of the essential elements of meaningful public participation in EA.

Participation must start early so that the public is able to provide comments before plans have been completed. If public participation only occurs after plans have been drawn up, then there is little chance for the public to influence the project meaningfully, and this erodes

confidence in the EA process (Multi-Interest Advisory Committee, 2016). When public participation occurs after plans have been completed, they are more likely to be passive participants and their participation may be portrayed as a rubberstamp of approval on a project (Parkins & Sinclair, 2014). Therefore, a characteristic of meaningful public participation is for that participation to occur early; that is, before plans are made, while there is still time to influence decision-making. This means that the public must be notified well in advance of any EA process. Engagement should occur at a strategic or regional level, which can help shape the types of projects that may then be produced.

Early notification and opportunities for participation begin to get at another crucial characteristic of meaningful public engagement: accessibility. In addition to engaging the public early, EA must include different methods for participation, and take responsibility for educating the public in order to enable their participation (Multi-Interest Advisory Committee, 2016). EA processes at present skew towards more legalistic and technical procedures, which tends to favour proponents by making it more difficult for members of the public to participate. EA's current legalistic skew is a type of procedural elitism which discourages public participation (Parkins & Sinclair, 2014). Preventing procedural elitism from excluding the public requires a sustained effort to build the capacity of participants, so that they have the skills and ability to participate fully in environmental assessments (Multi-Interest Advisory Committee, 2016).

Building the capacity of participants is one element that contributes towards making public participation dynamic. Building capacity necessarily brings a learning orientation to the EA process and allows participation to become an iterative process, whereby learnings may build upon each other. This strengthens the EA process by enabling mutual learning between

participants, proponents and regulators during individual project developments. This may be encouraged by providing the public with a variety of opportunities and methods whereby they can share their knowledge within the EA process. This is particularly important for the incorporation of indigenous knowledge (Multi-Interest Advisory Committee, 2016). A learning orientation also provides opportunities for future assessments to learn from the outcomes of previous assessments so that Canada's EA process can continue to improve (Andronak, 2017; Johnston, 2016). Essential to this continued learning is the transparency of assessment findings and outcomes.

Public Participation in Monitoring and Follow-up

Finally, public participation in the EA processes must be ongoing. Participation must extend beyond the initial planning and assessing phase prior to a project or strategic implementation. Public participation should be made part of fixing one of the poorest elements of present EA processes: monitoring and follow-up (Andronak, 2017; Hunsberger, Gibson, & Wismer, 2005). Monitoring and follow-up has been a problem under CEAA 2012, because there are a lack of requirements that ensure accountability of the proponent and its environmental projections (Gorrie & EcoJustice, 2016). The lack of trust in proponents and government regulator's ability to monitor and follow-up on ecosystems has led to increasing efforts to get involved in monitoring, by both the Canadian public, and environmental non-governmental organizations (Pollock & Whitelaw, 2005).

Deliberate public participation in monitoring activities has many potential benefits for EA processes, particularly for processes that focus on sustainability outcomes (Sinclair, Diduck, & Vespa, 2015). It builds trust in the EA process, by providing an accountability mechanism that

ensures proponents and their plans achieve stated outcomes. Having the public involved means that outcomes of development and EA processes are made understandable and accessible to communities that are directly impacted, while also informing the broader public and other proponents that may be anticipating similar projects (Andronak, 2017).

Public participation in monitoring is best exemplified by community-based monitoring programs. These programs generally involve members of the public in a particular geographical area, recording social and environmental observations (Andronak, 2017; Hunsberger et al., 2005). Community-based monitoring may produce significant benefits for sustainability assessments in Canada. In 2002, a study was conducted to test a framework for community based monitoring for sustainability in Canada. This study found that community-based monitoring “may increase citizen engagement in ecosystem management, contribute to participatory community development, and enhance community influence on policy directions” (Pollock & Whitelaw, 2005).

Presently, public participation typically ends once a decision has been made about a particular project’s environmental assessment. Brett Andronak’s research (2017) indicates that many participants want public participation to be a part of program design in order for it to continue through the life of a project, because participation in monitoring is seen as an important means of sharing information and addressing concerns during the operation and decommissioning of a project. Community-based monitoring thereby provides enforcement of regulations, and opportunities to take corrective action when needed (Hunsberger et al., 2005).

Conclusion

Research suggests that next-generation EA in Canada must include stronger provisions and incentives for improving meaningful public participation in EA. Of particular importance is the incorporation of public participation in the monitoring and follow-up stages of a project or program. Community-based monitoring programs have shown that not only does participation in monitoring produce benefits for programs, but communities also benefit from the participation and are more likely to become involved in other environmental initiatives (Pollock & Whitelaw, 2005).

Recommendations

- Meaningful public participation must be a requirement of EA processes.
- Participation must occur early in the EA process. Before plans are drawn up and while decisions can be made.
- Capacity building must be included to enable and encourage participation.
- Public participation should be built into all stages of next-generation environmental assessment.
- Community-based monitoring programs provide a good balance for incorporating public participation into follow-up and monitoring.
- Building trust is essential, which means that assessment findings and decisions should be transparent so future assessments might learn from preceding ones.

Works cited

- Andronak, B. (2017). *Approaches to Next Generation Impact Assessment Follow-up and Monitoring*. University of Manitoba.
- CEAA. (2012). Canadian Environmental Assessment Act Loi canadienne sur l' évaluation environnementale. *Minister of Justice*, 22(November), c. 37. Retrieved from <http://laws-lois.justice.gc.ca/PDF/C-15.2.pdf>
- Doelle, M. (2012). CEAA 2012: The end of Federal EA as we know it? *Journal of Environmental Law and Practice*, 1(24).
- Gorrie, M., & EcoJustice. (2016). The Federal Government ' s Review of Environmental Assessment ("EA ") Processes, 2016, 2005–2008.
- Hunsberger, C. A., Gibson, R. B., & Wismer, S. K. (2005). Citizen involvement in sustainability-centred environmental assessment follow-up, 25, 609–627. h
- Johnston, A. (2016). Federal Environmental Assessment Reform Summit Executive Summary. *West Coast Environmental Law*, (August).
- Kwasniak, A. J. (2016). *Regaining and Instilling Public Trust in Federal Environmental Assessment Processes*. Calgary.
- Multi-Interest Advisory Committee. (2016). *Advice to the Expert Panel Reviewing Environmental Assessment Processes*.
- Parkins, J. R., & Sinclair, A. J. (2014). Patterns of elitism within participatory environmental governance. *Environment and Planning C: Government and Policy*, 32, 746–761.
- Pollock, R. M., & Whitelaw, G. S. (2005). Community-Based Monitoring in Support of Local Sustainability Community-Based Monitoring in Support of Local Sustainability. *Local Environment*, 10(3), 211–228.
- Sinclair, A. J., & Diduck, A. P. (2016). Reconceptualizing public participation in environmental assessment as EA civics. *Environmental Impact Assessment Review*.
- Sinclair, A. J., Diduck, A. P., & Vespa, M. (2015). Public participation in sustainability assessment. In *Handbook of Sustainability Assessment*. Northhampton, MA, USA: Edward Elgar Publishing.