

Topic: Community Specific Impact Assessment and Mitigation.

Reference: Mackenzie Gas Project Socioeconomic Agreement. Recitals.
Mackenzie Valley Environmental Impact Review Board: Guidelines for Conducting SEIA. http://www.mveirb.nt.ca/upload/ref_library/SEIA_Guidelines_Chapter_2.pdf
Mackenzie Valley Resource Management Act.

Rationale: This socioeconomic agreement purports to contain provisions to optimise beneficial opportunities (which optimisation is later defined as maximisation of an effect within the constraints of reasonable commercial efforts), mitigate negative impacts of the project, and ameliorate the conditions of certain disadvantaged individuals or groups, in addition to the commitments made in the EIS and to the JRP. We take it as a self evident truth that Aboriginal Peoples themselves are the only ones competent or entitled to define what a negative effect to them is, or to determine what mitigations would be suitable to them. The MVEIRB Guidelines for Conducting SEIA and the MVRMA both highlight the importance of considering the social, cultural and economic well being of communities in the Mackenzie Valley, recognising that specific communities may experience different effects and may have different abilities to adapt to the induced changes. This agreement makes no mention whatsoever of the property rights of indigenous Aboriginal People, the value of the non-renewable resource being removed from their territories, or any compensation for this depletion of their natural resources, and does not include a consideration of “disadvantaged” individuals or communities on the basis of lack of recognition of property rights. Later on in the agreement (4.1.1) a commitment to the fundamentals of a competitive market to contribute to the optimization of the NWT economy is stated, but there is no commitments or discussions in the agreement how to ensure that market failure, such as imperfect competition, externalities, information asymmetry, coercion, and contested property rights problems, are addressed in an equitable manner.

Request:

1. Please explain how this agreement supports the community specific definition and identification of impacts and mitigation, as recommended by the MVEIRB guidelines. In particular, how will the impacts of this project on the North Slave Métis be identified, quantified, and assessed, and who would be responsible for providing the valuation of non-market impacts?
2. Who will be responsible for determining the relative values of costs and benefits in order to determine the optimum level of impacts vs. benefits? If the costs accrue to a different party than the benefits do, how will the tradeoffs be made, and by whom?
3. Who will be responsible for determining how impacts on the North Slave Metis will be mitigated and to what extent?
4. Please explain why the same benefits and guarantees are extended, through this agreement to Aboriginal People (whose ancestors have resided in the NWT since long before Canada arrived) as to any person of any nationality who “represents” that they currently reside in the NWT.
5. How are Aboriginal People to be compensated for the removal of their non-renewable

resources? Who has been involved in establishing the price to charge for the “publicly” owned resource, and in the allocation of the proceeds of the sale?

6. Is the NSMA community included in the “Northwest Territories community focussed human resource employment and training database”, or involved in the POTC?

Topic: “Aboriginal Authorities”, “Benefits and Access Agreements” and “Regions”

Reference: Mackenzie Gas Project Socioeconomic Agreement.
Definitions
Priority of Documents.
Appendix A – NWT Oil and Gas Socio-Economic Advisory Board

Rationale: This agreement excludes the NSMA from its definition of “Aboriginal Authorities”, leaves the North Slave Region out of its definition of “Region”, and thus leaves any “Benefits and Access Agreements” between NSMA and the proponent out consideration out of the list of agreements that take priority over this SEIA. This definition also excludes other Aboriginal residents of the Mackenzie Valley and causes them to have no say on the evaluation and development of indicators, effectiveness of mitigation, and recommendations for amended mitigation measures. Given that there are expected to be socio-economic effects throughout the NWT, including on the NSMA in the North Slave Region, we must consider all these decisions to exclude us to be intellectually, ethically, and legally wrong.

Request:

1. Please explain why NSMA is not included as an Aboriginal Authority.
2. Please explain why the north slave region was not considered as a region. Who defined the boundaries of the regions, and why weren't all affected Aboriginal People consulted?
3. Please explain why the definition of Benefit and Access Agreements only recognises those agreements signed with a defined Aboriginal Authority?
4. Please explain why GNWT feels that any benefits agreements reached between the proponent and the NSMA should not take priority over this agreement.
5. Please explain why the NSMA was not consulted on the development of this agreement.
6. Please explain why all the Aboriginal Peoples of the Mackenzie Valley are not Parties to this agreement.
7. Please explain why participation in the advisory board is restricted to those Aboriginal Organisations defined as Aboriginal Authorities?
8. Does this agreement provide for the participation of the NSMA in the POTC, Aboriginal Futures, and the communities preparation programs associated with this project, and how?

Topic: Definition of “resident” and “NWT Business”.

Reference: Mackenzie Gas Project Socioeconomic Agreement. Definitions.

Rationale: This agreement defines anyone who claims to reside in a self contained domestic establishment in the Northwest Territories as a “resident”, and then requires the proponents to provide hiring opportunities to residents of the specified regions in preference to aboriginal residents of the other regions of the Mackenzie Valley. There is no requirement for residents to demonstrate any length of residency or citizenship. Likewise, businesses mostly owned or which mostly benefits residents, as defined, are given priority awards of work in those specified regions in preference to NWT businesses including aboriginal businesses in the other regions of the Mackenzie Valley.

Request:

1. Please explain GNWT’s rationale for guaranteeing economic rights to non-aboriginals, including foreign citizens who may have just arrived in one of the specified western Mackenzie Valley regions, which exceed the rights recognized for the indigenous aboriginal residents of the Mackenzie Valley.
2. Please explain GNWT’s rationale for guaranteeing a business owned by non-aboriginals, including foreign citizens who may have just arrived in one of the selected regions, economic rights greater than those guaranteed to a business owned by or employing indigenous aboriginal residents of the Mackenzie Valley.

Topic: Definition of “primary communities”

Reference: Mackenzie Gas Project Socio-Economic Agreement.

Rationale: Certain communities are given special status in this agreement.

Request:

1. What is the purpose and rationale for defining certain communities as Primary Communities?
2. Which communities were consulted in order to differentiate primary from other communities?

Topic: Meaning of “reasonable commercial efforts”.

Reference: Mackenzie Gas Project Socio-Economic Agreement. Interpretation.

Rationale: The explanation for the meaning of the phrase “reasonable commercial efforts” is confusing, imprecise, and subject to a wide range of interpretation, but is to be used as the constraint for the optimization of an effect.

Request:

1. Please define “reasonable”, “normal”, “diligent”, “good faith”, “prudent”, “motivated”, “practicable”, and “relevant commercial factors”.
2. Alternatively, please specify who will be responsible for determining what a “reasonable”, “diligent”, and “good faith effort” is? Who will determine what efforts would “normally” be devoted to an applicable task? Who will decide what efforts a “prudent” commercial enterprise would devote? Who will determine which other prudent commercial enterprises have “similar resources” to devote?

Topic: Objective of the agreement.

Reference: Mackenzie Gas Project Socio-Economic Agreement.

Rationale: This agreement states that the project has the potential to “provide significant direct employment benefits”, and estimates those “benefits” at 16% of the construction employment and 72% of the operations employment as being able to be filled by Aboriginal Persons and NWT residents. Since, by definition, Aboriginal Persons must have Treaty rights in the NWT, there should be a reasonably accurate estimate of the total available Aboriginal Person workforce, with little potential to change significantly over the course of the Project. On the other hand, since the number of NWT residents is not controlled in any way by a cut-off date (such as the date of signing a Treaty with Canada in past generations), there is no way to estimate what the number of NWT residents might be on any particular date. The number of NWT residents, as defined, has the potential to rise and fall as fast as individuals can “make representations”.

Request:

1. Please provide a breakdown of how many Aboriginal People from each geographic community are estimated to be the beneficiaries of direct employment benefits.
2. Please provide a breakdown of how many NWT residents from each geographic community are estimated to receive direct employment benefits, and please explain how the number was estimated.
3. Please explain why this agreement lumps a finite and well defined number of Aboriginal People together with an unlimited and unknown number of current, future, and potential NWT residents in all the provisions for assuring “direct employment benefits” of this project.
4. Please explain how you determined that the project could provide “significant direct employment benefits”. In what way did you calculate the net benefit of employment? What assumptions were made about the value of alternate possible uses of time? What non-market costs of direct employment were deducted from the gross benefits of direct employment, and how were those non-market costs assigned a monetary value? Was there a community-specific contingent valuation study done for each of the Aboriginal People in each affected geographic community to determine the magnitude, duration and extent of the direct employment benefits in comparison to alternative “employment” (including non-market economic activities such as the traditional subsistence economy)?
5. Why is sustainable development not mentioned as an objective of this agreement?

Topic: Measurable performance criteria, enforcement process, and penalties.

Reference: Mackenzie Gas Project Socio-Economic Agreement.

Rationale: This agreement contains nothing other than vague commitments which are unenforceable, and therefore do not “ensure” that the desired positive effects will occur. Therefore, the “significant” benefits predicted for this project for the indigenous residents of the Mackenzie Valley should more accurately be defined as the hypothetical benefits, using the same criteria for certain, reasonably foreseeable, and hypothetical as used in the cumulative effects assessment.

Request:

1. Please list each measurable performance criteria contained in this agreement, together with the penalty for failure to meet the performance criteria.
2. Please explain the enforcement process associated with determining non-compliance and imposition of the penalty. What level of certainty is there that a penalty will be imposed in instances of non-compliance?