

CEAA FIVE YEAR REVIEW

PROVINCIAL AND TERRITORIAL INPUT

APPENDIX ONE - CASE STUDIES

ALBERTA

APRIL 2000

Alberta Case Study

CHEVIOT COAL PROJECT

Brief Project Description

- Cardinal River Coals Ltd. (CRC) has proposed building the Cheviot Coal Project about 60 km south of Hinton. It would be a replacement mine for the current Luscar Mine that is reaching the end of its productive life. The Luscar Mine has been operating beside Jasper National Park for over 30 years and has employed 450 to 500 miners in recent years.
- The Cheviot surface coalmine would produce about 3.2 million tonnes of clean coal annually for at least 20 years.
- The proposed project consists of a series of open pit mines, a coal processing plant, and associated infrastructure that includes a rail line, access road and power line. The mining is done sequentially using a truck and shovel operation. Pits will be backfilled and reclaimed to meet Alberta's reclamation requirements. Wastewater releases must meet Alberta's standards.
- The proposed Cheviot Coal Project is consistent with all applicable land use policies and management plans, including the Coal Development Policy for Alberta, the Policy for Resource Management of the Eastern Slopes, and the Coal Branch Integrated Resource Plan. The policies and plans allow coal mining to occur providing the mine is in the public interest and the mining can be done in a manner that is compatible with environmental considerations.

Type or Staging of CEAA Review

Joint federal-provincial review panel.

- Pursuant to the 1993 Canada-Alberta Agreement for Environmental Assessment Co-operation, the Alberta Energy and Utilities Board (EUB) and the Canadian Environmental Assessment Agency (CEAA) signed an agreement for the Joint Review Panel for the Cheviot Coal Project. The Terms of Reference for the Joint Review Panel were attached to the agreement. In the case of the Cheviot Coal Project, the provincial regulatory information served as the basis for the review.

Type or Staging of Provincial Review

- Legislative – *Alberta Environmental Protection and Enhancement Act, Part II, Division I.*
- This project is on the mandatory list, (A/R 111/93); therefore, an environmental impact assessment (EIA) report was required for the new surface coal mine.
- Alberta's regulatory process provides for a single application to the Energy and Utility Board (EUB), which includes an EIA report. A discussion of the issues under the *Public Lands Act* and the *Historical Resources Act* is also required, as part of the EUB Application.
- A comprehensive EIA report was filed as part of the application to the EUB. The EUB held a public hearing pursuant to the *Energy Resources Conservation Act* and the *Coal Conservation Act*. This is the most comprehensive form of environmental assessment review undertaken through the *Environmental Protection and Enhancement Act* (EPEA).
- If the EUB finds the project to be in the public interest, the engineering and operational level of detail for specific aspects of the project are provided, prior to construction, through applications under the EPEA and the *Water Act*.

Nature of Provincial Review

- Mandatory preparation of the EIA report was confirmed October 3, 1994.
- Public Disclosure and the company's proposed Terms of Reference were made available for public input for 30 days. The draft Terms of Reference were advertised in Edmonton, Hinton, local and regional newspapers.
- Final Terms of Reference for the EIA report (information requirements) were issued by AENV January 23, 1995.
- A comprehensive environmental review was carried out. Issues addressed in the Terms of Reference included air quality, water quality and quantity, waste management, vegetation, forestry, wildlife, fish, reclamation, health, safety, infrastructure, historical resources, social factors, economic factors, cumulative effects, traditional use, and end land use.
- Consultation in the EA process was required by the Terms of Reference and sought to identify and provide opportunities for stakeholders to resolve issues of public concern. Prevention, minimization and mitigation were guiding principles for the government review of the project, which had an information seeking component, separated from and followed by decision making. Resolution of issues was also possible through both the EUB process and EPEA and *Water Act* approval processes. The EIA report was filed as part of the EUB application. Once the EIA report was submitted, the completeness of the environmental assessment information provided by the proponent is determined. The EIA report was analyzed by the provincial review team to determine that the nature of the project and the proponent's assessment of impacts are understood.
- For the Cheviot Project, the EUB application, including the EIA, was filed with the EUB on March 28, 1996. After provision of supplemental information by CRC, the EIA was declared complete on September 18, 1996. A joint federal-provincial review panel conducted a hearing for six weeks, starting January 13, 1997.
- Approvals are issued in a sequence – first the EUB decides. The EUB ensures that technical, economic and environmental information is considered, and that the project is in the public interest.

Once the EUB decides the project is in the public interest, detailed approvals (EUB, EPEA, *Water Act*, *Public Lands Act*) follow.

- For this project, the Report of the EUB-CEAA Joint Review Panel was issued June 6, 1997. The report included a decision by the EUB that the project was in the public interest. Subsequently, the Provincial Cabinet issued two Orders-in Council authorizing the EUB to issue a Mine Permit (August 19, 1997) and a Coal Processing Plant Approval (September 5, 1997). In the fall of 1997, CRC applied for the detailed environmental approvals for the project. In August and September 1998, Alberta Environmental Protection issued the provincial approvals, under the *Water Resources Act*, the *Public Lands Act* and EPEA, that were necessary to construct the access corridor and to begin preliminary earthwork at the plant site.
- Post-approval monitoring and follow-up are required under the terms and conditions of EPEA *Public Lands Act* and *Water Resources Act* approvals.
- Renewal applications are required for some regulatory approvals; for example, the EPEA approval for the Cheviot Project has a 10 year renewal requirement.
- Although the project had all the necessary provincial approvals to begin constructing the Cheviot Project, the project was stopped because of a judicial review of the environmental assessment done under CEAA. The Joint Review Panel will be reconvening a public hearing in March 2000, to address matters related to the federal environmental assessment.

Nature of Federal Review

- The project overview was submitted to Alberta Environment on September 30, 1994. A copy of the proposal was sent to the CEAA agency on October 3, 1994.
- Technically, the proposal was submitted under the Environmental Assessment and Review Process (EARP) initially.

- The federal Minister of the Environment denied requests to have the project referred for a joint panel review under CEAA when CRC first requested the review.
- In May 1996, CRC applied to the Federal Department of Fisheries and Oceans (DFO) for a federal authorization to alter, disrupt or destroy fish habitat, This was pursuant to s.35(2) of the *Fisheries Act*. The DFO was the responsible authority (RA).
- While the comprehensive study was being undertaken, it was determined that the project may result in “significant adverse environmental effects”; therefore, the project was referred to a federal review panel.
- October 1996, the Federal Minister of the Environment and the EUB agreed to establish a joint review panel as is provided under CEAA. The Canadian Environmental Assessment Agency and the EUB signed the Joint Panel Agreement. The Agreement set out the terms of reference for the EUB-CEAA Review Panel. EUB procedure was to govern the hearing processes.
- Six weeks of Joint Review Panel hearings were conducted in January and February 1997. One hearing day was held in April.
- On June 6, 1997, the Joint Review Panel report was issued. Under the mandate of the EUB, the Panel decided that the project was in the public interest, subject to a number of conditions. Under the mandate of the CEAA, the Panel concluded that the majority of the environmental effects are either positive, or where adverse, not significant. Where environmental effects were found to be adverse and significant, the Joint Panel found the effects to be justified through compensation measures. The report recommended that the Minister provide CRC with the necessary Fisheries Authorization. There was significant lobbying of the Federal Minister prior to the Federal Response to the Panel Report.
- On October 2, 1997, the Federal Response to the Joint Review Panel Report was issued, indicating that the DFO would issue an authorization.
- October 31, 1997, a number of environmental groups (known as the Alberta Wilderness Association (AWA) Coalition) filed for judicial review of the Joint Review Panel Report. This application was dismissed on June 12, 1998, because the court found that failure to challenge the Federal Response to

the Report operated as a barrier to the application to review the Joint Panel Report. This decision was successfully appealed.

- In August and September 1998, the DFO issued authorizations that allowed CRC to commence construction of an access corridor and begin preliminary earthwork at the site.
- On September 16, 1998, the AWA Coalition applied for judicial review of the authorizations by the Fisheries Minister, based on the positions that the federal environmental assessment had not be done in accordance with the requirements of the Canadian Environmental Assessment Act and that the issuance of the authorization in relation to the disposal of rock resulted in the deposition of a “substance harmful to migratory birds” and was therefore in contravention of the *Migratory Birds Convention Act (MBCA)* Regulations.
- In March 1999, both applications for judicial review were heard together. On April 8, 1999, the Federal Court ruled in favour of the AWA Coalition and quashed the federal fisheries authorizations that had been issued for the project.
- In June 1999, the Canadian Environmental Assessment Agency and the EUB agreed to reconvene the joint panel review to hear issues raised by the Federal Court as being incomplete for the purposes of adequately fulfilling CEAA requirements.

Defining Scope of Project and Assessment

Alberta Approach

- The Final Terms of Reference for the EIA report covers comprehensive environmental information and public consultation expectations (issued January 23, 1995). It includes any detailed needs of EUB for environmental information. Other needs of the EUB and Approval applications are covered under regulations and guidelines. Federal agencies have input into the Alberta Terms of Reference for the EIA report.

Federal approach

- A comprehensive study was undertaken, then it was determined that a Joint Review Panel would be necessary. Terms of Reference for the Joint Review Panel were developed. The federal process used the provincial EIA report as the basis for the federal review.

Delivering the Review Process

Lead Agency for Review

- Department of Fisheries and Oceans
- Environment Canada
- Parks Canada
- Natural Resources Canada
- All participated– no one federal agency was the lead.

Provincial Agencies Participating

Alberta Energy and Utility Board (lead and decision maker for the public interest review, including the EIA report as input, under the *Energy Resources Conservation Act* and *Coal Conservation Act*– *technical, economic, social, environmental factors and public interest decision*)

- Alberta Environmental Protection (Lead and administrative decision maker for the EIA report preparation and review under EPEA- *environmental protection and land use issues*.)
- Alberta Environmental Protection (Lead and decision maker for EPEA, *Water Resources Act*, and *Public Lands Act* approvals and dispositions.)
- Alberta Community Development (Participant in EIA review, lead and decision maker for the *Historical Resources Act*)

Federal Agencies Participating

- Departments of Fisheries and Ocean, responsible authority and fisheries habitat
- Environment Canada

- Parks Canada
- Natural Resources Canada
- Health Canada,
- Indian Affairs and Northern Development.

Other Groups Participating

- Local residents
- 12 ENGOs: four participated as a coalition (the AWA Coalition)
- Alexis First Nation
- Small Boy Camp
- United Mine Workers
- Town of Hinton
- Chambers of Commerce (Hinton and Alberta)
- Inland Cement
- Weldwood Canada

T i m e l i n e s

Federal/Provincial Review

- Project Disclosure by CRC- October 1994
- Submission and review of EIA report: 6 months (March 1996 - September 1996)
- Public hearing by Joint Review Panel: 6 weeks in total between January - April 1997
- Joint Review Panel Report: June 1997
- Provincial Cabinet approvals and EUB Permits and approvals: August 1997
- Duration from submission of application to provincial decision: 18 months
- (Provincial timelines are regulated)

Federal Review

- Federal Response to Joint Panel Report and Federal Cabinet
- Approval: October 2, 1997.
- Federal approval (fisheries authorization) quashed in April 1999 by the Federal Court.
- Duration from submission of application to federal approval:
46 months to date (18 months from submission to initial federal approval; additional 20 months due to judicial challenge of Joint Panel's review; 8 months to date for reconvened panel). The federal review is still underway.)

Public Consultation/Input

Provincial public input is invited at:

- review of Proposed Terms of Reference;
- consultation by the proponent during EIA report preparation (required by TOR);
- comments on EIA report to proponent (EIA report available to public for review);
- input to EUB on need for a public hearing and hearing issues/ logistics (notice of hearing, pre-hearing meeting);
- input to EUB public hearing, deals with substantive environmental matters and public interest, includes cross-examination when a hearing is called;
- input to approval decision makers for subsequent detailed approvals, (public notice of filing, opportunity to file a statement of concern, in some instances, draft environmental approvals are provided to stakeholders for comment before they are issued); and
- statement of concern filers who are directly affected and the proponent have a right to appeal environmental approval decisions to the Environmental Appeal Board.

Public involvement is handled by the decision making authority for that stage/ step, including Alberta Environment (Terms of Reference), EUB (public interest test) and Alberta Environment (approvals and dispositions). Some decisions arising from AEPEA or from the *Water Act* approvals can be appealed to the Environmental Appeal Board. All correspondence is acknowledged, and public input must be considered by the decision maker.

CEAA process:

- The public can comment on the Terms of Reference during the specified period. Concerned individuals and organizations can make submissions to the Joint Review Panel and participate in the public hearing process.

Review Closure

The Federal Court found that the federal process had not properly addressed matters related to the analysis of alternatives and cumulative effects. As a result, the Joint Review Panel is reconvening in March 2000.

Summary of Legal Action and Rehearing

An ENGO coalition made a successful application to the federal court based on the Joint Review Panel's actions with respect to the federal review process under CEAA. The federal court subsequently quashed the federal fisheries authorization. As a result, the Joint Review Panel will be reconvening in March 2000 to consider matters that the Federal Court found incomplete:

- information about the likely forestry activity in the vicinity of the Project and the cumulative effects of such activity;
- information about the likely mining activity in the vicinity of the Project and the cumulative effects of such activity;

- information regarding a comparative analysis between open pit mining and underground mining at the Project site, including the comparative technical and economical feasibility and comparative environmental effects of each; and
- two documents previously submitted by the Canadian Nature Federation.

The company has delayed start up of the project.

There are differences between the requirements under the Federal and Provincial legislation. For Alberta, the EUB must determine if the project is in the public interest by considering a broad range of technical, economic, environmental and social factors. The decision is documented in the EUB Decision Report.

The federal legislation requires the panel to submit a report to the Minister of Environment and the RA that provides the rationale, conclusions and recommendations relating to the environmental assessment of the project including mitigation and follow-up. No decision is made by the Joint Review Panel with respect to federal matters, only recommendations. The RA is required to make the decision. The Joint Review Panel had intended to issue a single report to address the regulatory needs of both the provincial and federal government.

Post-Review

Regulatory Approvals

Provincial– once the Provincial Cabinet approves the project and the EUB issues a Mine Permit, the proponent must apply for and obtain detailed operational approvals from the EUB and AENV.

Federal– once the federal fisheries authorization is granted, there are no other approvals necessary.

Ongoing monitoring and follow up Programs

Provincial– Comprehensive environmental monitoring, reporting and research required as per EPEA, and *Water Act* approvals. The Cheviot mine will be required to develop and implement a variety of workplans related to issues identified in the Panel's report. In addition, the province has implemented a number of regional initiatives that follow-up on the Panel's findings, including the establishment of the Whitehorse Wildland Park, establishment of a Forest Land Use Zone to control public access, initiation of a process to develop an integrated framework for grizzly bear conservation, initiation of a regional water quality program, and initiation of Harlequin duck research project in the Foothills Model Forest.

Federal– there may be more requirements, depending on the outcome of the Joint Panel Hearing which is scheduled for March 2000.

Effectiveness Monitoring

Provincial– Alberta has extensive monitoring requirements related to water quality, surface hydrology, wildlife and fisheries that will be evaluated as the project is developed. These programs will ensure that the proposed mitigation measures are effective.

Federal– the federal authorization contained monitoring requirements related to fisheries compensation and Harlequin ducks. It did not address any other environmental issues associated with the project. There may be different/more requirements in a subsequent authorization, depending on the outcome of the Joint Panel Hearing, which is scheduled for March 2000.

Review Outcomes and Conclusion**Summary Remarks**

- This project review has been ongoing for almost 4 years. The federal EA process has not been completed.

- Both Alberta and Canada have legal requirements for an EA: Alberta (mandatory list under EPEA) and Canada (initially EARP Guidelines Order and then CEAA, Fisheries Act trigger s. 35(2)).
- Each party managed its own process. Federal and provincial officials worked together to share information and tried to keep the processes on a common schedule. A joint panel review was held pursuant to the 1993 Alberta-Canada bilateral agreement.
- The Cheviot Coal project is located on provincial Crown land and involves major ongoing provincial responsibility for environment and renewable natural resource management.
- The Fisheries Act trigger relates to federal responsibility respecting habitat compensation. Most ongoing management of fish habitat and watercourse protection is delivered under provincial programs.
- The narrow fisheries responsibility provided an opportunity for federal agencies to become involved in provincial management of coal development and renewable resources in the Eastern Slopes. This is beyond the direct scope of the federal approval (fisheries authorization).
- Federal interest is based largely on proximity to Jasper National Park, concerns with movement of wildlife across park boundaries and wildlife habitat changes in a buffer area around parks.
- As a result of a federal court challenge, the Joint Review Panel will reconvene in March 2000.

Process Outcomes and Challenges

- The federal EA process is out of step with and frequently conflicts with the provincial EA and regulatory framework process. At key steps throughout the process, the complexity of the federal process created

uncertainty and delay. For example, the federal Fisheries Act Trigger was confirmed two years after project disclosure.

- CEAA provided federal agencies with no accountability or approval, decision making or follow up responsibilities with an opportunity to advocate for management actions, which the province will be responsible for delivering. (e.g. Environment Canada and Parks Canada).
- While the provincial process provided for an integrated review process which results in a single provincial position, the federal process did not. Each federal agency had its own position. Contradictions led to significant delays. For example, in the subsequent approval process for the access corridor to the mine, it took the federal government six months to resolve Environment Canada's concerns about Harlequin ducks.
- DFO and the province were prepared to issue their respective approvals based on the use of large culverts on Prospect Creek. Environment Canada wanted DFO, the only federal authority with an approval, to require CRC to construct a bridge at an added cost of \$0.5 million. Environment Canada proposed a three party agreement on Harlequin duck monitoring between the federal government, the province and the company. Subsequently, Environment Canada dropped the requirement for a bridge, but a number of conditions relating to Harlequin duck monitoring were included in the DFO authorization. The province has similar conditions in its approval for the access corridor. In addition, the federal fisheries authorization contained a condition on vegetation clearing for migratory birds which is outside the scope of a fisheries authorization.
- Further, Environment Canada, in its recent submission (January 7, 2000) to the reconvened Cheviot Panel, has asked the Panel to direct CRC to use large arched culverts to cross Prospect Creek instead of the culverts approved in the previous fisheries authorization (which was quashed by the federal court).

- The underlying sources of most of these conflicts related to the fact that the federal and provincial processes take different approaches to information gathering, administration and decision making in EAs.
- In the Alberta process, the EIA Report was determined to be adequate and complete, and then a decision was made by the Energy and Utilities Board (EUB) as to whether the project is in the public interest, having regard for social, economic and environmental factors. Subsequently, the proponent applied for detailed environmental approvals as required under provincial legislation.
- CEAA does not seem to separate the environmental assessment information seeking and administration tasks of EA from the tasks of critical information evaluation and determination of significant environmental effects. The responsible authority takes on parts of all three roles and may assign more than one to the same official (a fairness problem when both external and internal advice must be weighed). In Alberta, a legally appointed decision-maker "weighs" the acceptability/significance of information provided.
- The two processes take different approaches to the findings of the Joint Review Panel. Alberta's approach is to implement the Panel findings. The federal government takes the report as recommendations only. The federal government prepared a response to the Panel report, which disagreed with some of the Panel recommendations. It did not accept Alberta's regulatory requirements as adequate to address the s.35(2) Fisheries Act requirements. In addition, this review provided an opportunity for further stakeholder lobbying after the Panel conducted its public hearings. This process creates added uncertainty and delay and can be perceived as open to outside influence.
- In general, structural and process changes are needed to address these concerns. They cannot be readily addressed through administrative change or improved delivery.

Substantive Elements of Environmental Assessment

- Some project planning matters were resolved to the mutual satisfaction of provincial and federal regulators. These included: a) that the EA provided sufficient information to understand the project and the proponent's assessment of impacts and mitigation measures b) a process was developed to bridge issues raised in EUB Decision Report with the subsequent EPEA approval; and c) that the proponent is required to develop and implement workplans to address key environmental issues.
- Outside the specific regulatory trigger under CEAA, the federal process added little to the environmental assessment or project planning and design.
- The federal fisheries authorization requires monitoring and follow up. These requirements create duplication and overlap with provincial environmental monitoring and management programs.
- As a result of federal-Alberta discussions during the review, federal agencies were invited to participate in several Alberta committees dealing with environmental approvals for the project and regional land management. Alberta and Parks Canada are working together on an integrated framework for grizzly bear conservation.
- The successful ENGO coalition court challenge was based on the Joint Review Panel's actions related to the Terms of Reference of the Joint Panel. As a result, the federal Fisheries authorization was quashed and a Joint Review Panel will be reconvened in March 2000 to consider matters that the Federal Court found incomplete. In requiring additional information, the court took on a substantive decision-making role based on the technical correctness of information provided.

Alberta Case Study

GENESIS LAND DEVELOPERS LTD.

Brief Project Description

Genesis Land Developers Ltd. subsidiary corporations proposed to develop a four-season resort (ski, cross-country trails, hiking, 400 room hotel, 27-hole golf course and supporting infrastructure) at Spray Lakes and a helicopter assisted skiing facility and snow cat operation on Mount Sparrowhawk (operating from a combined facility that will also accommodate a summer tour boat operation). The tour boat and skiing components were proposed in the early 1990s, but approval was not obtained at that time for the skiing component. The docks and stand-alone portions of the Tour Boat operation are not part of the EIA report).

The project is located in Kananaskis Country, within 1 km of Banff National Park at the south and east side of Spray Lake and less than 250 metres from the boundary of Peter Lougheed Provincial Park.

Genesis Land Developers Ltd. is the parent company for Kananaskis Pathways and Spray Development Corporation. Capital costs for the projects as currently defined by the company are publicly reported to be \$500 million.

Type or Staging of CEAA Review

Yet to be determined.

Type or Staging of Provincial Review

- A comprehensive EIA report and an Alberta Natural Resources Conservation Board hearing (*EPEA and Natural Resources Conservation Board Act*) are required.
- Legislative – *Alberta Environmental Assessment and Enhancement Act* (EPEA) Part 2, Division 1
- Mandatory Environmental Impact assessment under Alberta Regulation AR111/93.
- On December 8, 1999, the two projects (resort and heli-skiing) were combined into one EIA report.
- The 1999 Canada-Alberta Agreement for Environmental Assessment Cooperation is in place.

Nature of Provincial Review

- The Alberta regulatory process will include 3 major applications: Natural Resources Conservation Board (NRCB) (includes EIA report), *Environmental Protection and Enhancement Act* (EPEA), and the *Water Resources Act* (WRA). As well, land use dispositions are required under the *Public Lands Act* (includes Alberta Tourism and Recreation Leasing process).
- A Public Disclosure and proposed Terms of Reference for the EIA are being made available for public comment from January 11, 2000 to March 7, 2000. (See Public Consultation/Input section for further details on consultations.)
- Final Terms of Reference are expected in March 2000.
- When the EIA report is submitted, it will be made available to the public (opportunity to discuss with proponent) and a government review will identify any information clarifications required to ready the report for substantive review. A substantive review will be conducted by the Natural Resources Conservation Board.

- Approvals will be issued in a sequence – first the NRCB and, if the NRCB decides that the project is in the public interest, detailed approvals (EPEA, *Water Act*, *Public Lands Act*, *Municipal Government Act* and Alberta Infrastructure) follow.
- Post-approval monitoring and follow-up are required under the terms and conditions of EPEA, *Water Act* and *Public Lands Act* approvals.
- Renewal applications are required for some regulatory approvals, for example under EPEA, which has a 10-year typical renewal requirement.

Nature of Federal Review

- On December 22, 1999, Fisheries and Oceans Canada identified as s.5(1) trigger under CEAA and indicated that they will be the Responsible Authority for the CEAA review. Details of the trigger and the basis of the decision are undetermined.

Defining Scope of Project and Assessment

Provincial Approach

- Final Terms of Reference for the EIA report will cover comprehensive environmental information and consultation expectations. It is anticipated the Final Terms of Reference will be issued in March 2000. These will include any detailed NRCB requirements for environmental information. Other NRCB and Approval applications requirements are covered under regulations and guidelines. Federal agencies currently have input into the Alberta EIA Terms of Reference and have committed to a cooperative environmental assessment process under the provisions of the Canada – Alberta Agreement for Environmental Assessment Cooperation (1999).

Federal Approach

- A determination of the scope of project and scope of assessment has not been formally issued. It is expected that these requirements can be reflected in the Alberta Final Terms of Reference, in keeping with the intent of the bilateral agreement.

Delivering the Review Process

Federal Review

LEAD AGENCY FOR CEAA REVIEW will be :

- Department of Fisheries and Oceans.

Provincial Review

PROVINCIAL AGENCIES PARTICIPATING:

- Alberta Environment (lead and administrative decision maker for EIA report preparation and review under EPEA).
- Alberta Infrastructure
- Alberta Community Development (participant in EIA review, lead and decision maker, *Historical Resources Act*)
- Alberta Energy and Utility Board (lead and decision maker for the public interest review, including EIA report as input, under *Oil Sands Conservation Act*)
- Alberta Environment (lead and decision maker for EPEA, *Water Act*, *Public Lands Act*, *Municipal Government Act*, *Forests Act*, Approvals and dispositions)

Federal Agencies Participating in Cooperative EA Process

- Department of Fisheries and Oceans, RA and fisheries habitat
- Department of Natural Heritage (advisory role)
- Environment Canada (advisory and some delegated authority under *Fisheries Act*)

KEY ENGOS AND PUBLIC STAKEHOLDERS IN COOPERATIVE EA:

- Kananaskis Coalition (which represents 13 provincial and local organizations including Canadian Parks and Wilderness Society), leaseholders\quota holders.
- Federal and provincial agencies will work together to deliver a cooperative EA as defined in the 1999 bilateral agreement. The details of the working relationship are being developed.

Timelines

- EIA requirement confirmed December 08, 1999 (Alberta) and December 22, 1999 (CEAA, DFO)
- Public Disclosure December 22, 1999, project description and proposed Terms of Reference available for public comment to March 07, 2000
- The timing of the remainder of EA process is not yet scheduled.

Are there regulated provincial timelines?

- Yes, there are minimum periods for the public notice requirements and for participating in the Final Terms of Reference and the public hearing.

Public Consultation/Input

Alberta EA Process

- Consultation in the EA process is required under regulation at key stages: preparing the Terms of Reference, preparing the EIA report and consideration of the regulatory approval applications. Public consultation seeks to identify and provide opportunities for stakeholders to resolve issues of public concern. Public input is invited at:

- review of Proposed Terms of Reference for EIA report;
- consultation during preparation of EIA (required by Terms of Reference);
- comments on EIA report to proponent (EIA available to public for review);
- input to the NRCB Hearing issues/ logistics (Notice of hearing, prehearing meeting);
- Input to NRCB on substantive environmental matters and public interest, includes cross-examination when a hearing is called;
- input to approval decision makers (public notice of filing, opportunity to file a statement of concern, in some instances, draft Environmental approvals are provided to stakeholders for comment before they are issued); and
- statement of concern filers who are directly affected and the proponent have a right to appeal environmental approval decisions to the Environmental Appeal Board where matters under appeal have not been heard by the NRCB.

The decision authority under EPEA responsible for that stage/ step includes: Alberta Environment (EIA Terms of Reference), NRCB (public interest test) and Alberta Environment (Approvals and dispositions) and Environmental Appeal Board (appeals of EPEA approvals and dispositions not heard by the NRCB). All correspondence is acknowledged, and the decision maker must consider public input. Decisions are provided directly to the person who submitted comments (as well as being generally available).

CEAA Process

In addition to consultation opportunities in the Alberta led cooperative EA process, CEAA may provide additional opportunities. These will depend upon the type(s) of federal review process selected. Screening, Comprehensive Study and Panel review all have different levels and types of opportunities.

Review Outcomes and Conclusions

Summary

- Alberta and federal officials are working together on a cooperative environmental assessment as defined in the 1999 Canada-Alberta Agreement for Environmental Assessment Co-operation (bilateral agreement). Alberta is required to undertake a mandatory assessment under EPEA. A federal assessment is required under the Fisheries and Oceans s.5(1) trigger under CEAA. Both parties are making significant efforts to deliver on the agreement.
- The EA process is in the initial stages.
- Federal interest is based largely on proximity to Banff National Park and concerns expressed by park officials regarding movement of wildlife across park boundaries and buffer areas around parks. This is beyond the scope of the *Fisheries Act* trigger.
- Resource planning and management of wildlife and habitat in Kananaskis Country is a provincial responsibility. There are other and better mechanisms for inter-jurisdictional discussion and planning of resource management, for example Integrated Resource Plans (IRPs).
- A single co-operative EA meeting the legal requirements of Alberta and Canada is complex and challenging.

Co-operative EA Process to Date

- Confirmation of provincial and federal requirements. Agreement to use the co-operative EA assessment approach outlined in the bilateral agreement.
- Alberta designated as the lead part in the assessment process. Federal agencies identified. The use of joint project advisory review team as set out in s.6(5) of the bilateral agreement is being considered.
- Alberta is experiencing varied degrees of federal agency understanding of the co-operative EA process and the bilateral agreement. DFO has not yet identified the specific nature of law list triggers.
- Proposed Terms of Reference for the EA are currently available for public comment and will be reviewed by government agencies prior to the issuance of the final Terms of Reference.

Substantive Outcomes

- Federal involvement in the process has not identified any environmental, project planning or project innovation outcomes. This is likely because the EA process is in its early stages.

Alberta Case Study

GLACIER POWER HYDROELECTRIC PROJECT

Brief Project Description

A hydroelectric power generating plant with a capacity of less than 100 megawatts, and with a varying headpond (reservoir) capacity with potential to exceed 30 million cubic metres.

Glacier Power Limited proposes to develop a 40 MW, low head, “run-of-river” hydroelectric power plant on the Peace River near Dunvegan. The facility will consist of a concrete powerhouse with forty 1MW turbine/generator units, an adjustable weir type spillway, a 138 kV power line, access roads on both banks of the river, a boat passing facility and boat launch. The proposed headworks structure will raise the present water level at the powerhouse by 6m to approximately 9m, forming a headpond on the upstream side. The headpond will normally (flood conditions excepted) be contained within the active river channel and banks and will extend upstream approximately 22.5 km. Water level changes will decrease from 6m at the powerhouse to 0m at the upstream limits of the headpond.

Type or Staging of CEEA Review

Screening or Comprehensive Study, decision pending further project definition, could also be referred to Panel or Joint Panel from either.

Type or Staging of Provincial Review

- Legislative – *Alberta Environmental Assessment and Enhancement Act (EPEA) Part 2, Division 1*

- A comprehensive EIA report and an Alberta Energy and Utility Board and Natural Resources Conservation Board review (*Hydro and Electric Energy Act, Natural Resources Conservation Board Act*) is required.
- The 1999 Canada-Alberta Agreement for Environmental Assessment Cooperation was signed shortly after the EA process was initiated.

Nature of Provincial Review

- The Alberta regulatory process will include 4 major applications: Energy and Utilities Board (EUB) under the *Hydro and Electric Energy Act* (includes EIA report), Natural resources Conservation Board under the *Natural Resources Conservation Board Act* (includes EIA report), EIA preparation and approval applications under the *Environmental Protection and Enhancement Act (EPEA)*, and applications under the *Water Resources Act (WRA)*. As well, land use dispositions are required under the *Public Lands Act*. The review of this information also facilitates decisions under the *Historical Resources Act*.
- A requirement for preparation of an EIA report was confirmed June 22, 1999.
- A Public Disclosure and proposed Terms of Reference for the EIA were made available for 30 days for public comment from July 13 to August 14, 1999. The Proposed Terms of Reference were referred to CEAA. Input from the RA (DFO) on August 25, 1999 was considered. (See Public Consultation/Input section for further details on consultations.)
- Final Terms of Reference (information requirements) for the EIA report were issued by AENV on October 21, 1999. The terms of reference was developed with consideration for public input and advice from a joint federal-provincial technical review team, created in accordance with the current bilateral agreement. DFO, in a letter on behalf of the federal government departments, indicated that the Terms of Reference met the federal requirements on October 20, 1999.

- Issues addressed in the Final Terms of Reference included a regulatory summary, scope of project, general scope of factors and detailed requirements for project description (alternatives, details of proposed project), air, land, water, ice formation, methyl mercury formation, wildlife, fish, wildlife, water use (boating) and land use, health, safety, infrastructure, historical resources, social factors, economic factors, cumulative effects. The government review of the EIA report will ensure adequate information is available to understand the proponent's view of the effects and consequences related to these issues.
- Prevention, minimization and mitigation are guiding principles for the government review of the project, which has an information seeking component, separated from and followed by decision making. Resolution of issues is also possible through both the EUB/ NRCB process and EPEA and Water Act Approval processes.
- Approvals are issued in a sequence – first the EUB/NRCB (or Joint Panel if a joint federal-provincial Panel is created)-and if the Board decides the project is in the public interest, detailed (EUB, EPEA, *Water Act, Public Lands Act*) approvals follow.
- Post-approval monitoring and follow-up are required under the terms and conditions of EPEA, *Water Act and Public Lands Act* approvals.
- Renewal applications are required for some regulatory approvals, for example under EPEA, which has a 10 year typical renewal requirement.

Nature of Federal Review

- The *Fisheries Act* s.35(2) and the *Navigable Waters Protection Act* are the triggers for CEAA on this project. DFO was confirmed as the RA on July 08, 1999.
- The project scope and factors were determined as part of the review of the proposed terms of Reference for a cooperative environmental assessment under the terms of the Canada – Alberta

Agreement for Environmental Assessment Cooperation 1999. The Final terms of Reference were issued by Alberta Environment (the lead party) on October 21, 1999.

- The cooperative environmental assessment process includes the development of a single federal-provincial technical review team.
- The preparation of the EIA report is underway. When it is submitted, the joint technical team will review it and report to both federal and provincial decision-makers.
- Alberta is aware that the federal government is conducting a screening and is also seeking additional information to determine if a Comprehensive Study may be needed.

Defining Scope of Project and Assessment

Provincial Approach

(Lead party in cooperative EA)

- Final Terms of Reference for the EIA report, covering comprehensive environmental information and consultation expectations, were issued October 21, 1999. It includes any detailed needs of EUB/NRCB and the needs of federal agencies for environmental information under CEAA, in accordance with the bilateral agreement provisions for cooperative EA. Other needs of the EUB/NRCB and Approval applications are covered under regulations and guidelines.

Federal Approach

- The project scope and assessment scope are based on the Final terms of Reference issued by Alberta Environment. Pursuant to the bilateral agreement, the lead party is committed to make provision for the information needs of the other party through the lead party process.

Delivering the Review Process

FEDERAL REVIEW - LEAD AGENCY FOR CEAA REVIEW:

Department of Fisheries and Oceans.

PROVINCIAL REVIEW - PROVINCIAL AGENCIES PARTICIPATING IN COOPERATIVE EA AND PROVINCIAL REGULATORY PROCESSES:

- Alberta Environment (lead and administrative decision maker for EIA report preparation and review under EPEA).
- Alberta Health and Wellness
- Alberta Community Development (participant in EIA review, lead and decision maker, *Historical Resources Act*)
- Alberta Infrastructure
- Alberta Energy and Utility Board (lead and decision maker for the public interest review, including EIA report as input, under *Oil Sands Conservation Act*)
- Natural Resources Conservation Board (joint decision maker for the public interest review, including EIA report as input, under *Natural resources Conservation Board Act*)
- Alberta Environment (lead and decision maker for EPEA, *Water Act*, *Public Lands Act* Approvals and dispositions)

Note that this is a cooperative EA, so EA report expectation (terms of reference), review of the EA report for completeness of information and potentially the substantive review process are cooperative efforts between Alberta and Canada. A Joint Panel review of the EIA report and related applications is possible, but not yet determined.

FEDERAL AGENCIES PARTICIPATING IN COOPERATIVE EA AND FEDERAL REGULATORY PROCESSES:

- Department of Fisheries and Oceans, RA, fisheries habitat, navigation

- Department of Indian and Northern Affairs (advisory role)
- Parks Canada (advisory role)
- Environment Canada (advisory and some delegated authority under Fisheries act)

INTERESTED PARTIES AND POTENTIAL INTERVENERS

Town of Fairview, Government of Northwest Territories, British Columbia, may include others as review proceeds.

KEY ENGOS AND PUBLIC STAKEHOLDERS

Friends of the Peace, Idlewilde Ranch, Pembina Institute for Appropriate Development, local residents, may include others as review proceeds. The proponent has prepared a detailed consultation plan.

Timelines

Provincial Review

- 1) EIA report preparation and review - ongoing
- 2) EUB/NRCB or Joint Panel review: to be determined
- 3) Environmental approvals: to be determined
- 4) Total duration: 6 months (public disclosure July 13, 1999 to mid-January 2000, ongoing)

Regulated provincial timelines exist, including minimum periods for the public notice requirements, for participation in the Final Terms of Reference, and for participation in the public hearing.

Federal Review

Participation in cooperative EA process and further project definition will allow a determination of the type of CEAA review required

Public Consultation/Input

Alberta EA Process

- Consultation in the EA process is required under regulation at key stages: preparing the Terms of Reference, preparing the EIA report and consideration of the regulatory approval applications. Public consultation seeks to identify and provide opportunities for stakeholders to resolve issues of public concern. Public input is invited at:
 - 1) review of Proposed Terms of Reference for EIA report
 - 2) consultation during preparation of EIA (required by Terms of Reference)
 - 3) comments on EIA report to proponent (EIA available to public for review)
 - 4) input to EUB on need for a public hearings and Hearing issues/ logistics (Notice of hearing, prehearing meeting)
 - 5) Input to EUB on substantive environmental matters and public interest, includes cross-examination when a hearing is called.
 - 6) Input to Approval decision makers (public notice of filing, opportunity to file a statement of concern, in some instances, draft environmental approvals are provided to stakeholders for comment before they are issued.)
 - 7) Statement of concern filers who are directly affected and the proponent have a right to appeal environmental approval decisions to the Environmental Appeal Board.

The decision authority under EPEA responsible for that stage/ step includes: Alberta Environment (EIA Terms of Reference), EUB/NRCB (public interest test) and Alberta Environment (Approvals and dispositions) or Environmental Appeal Board (appeals of EPEA approvals and dispositions). All correspondence is acknowledged, and public input must be considered by the decision maker. Decisions are provided directly to the person who submitted comments (as well as being generally available).

CEAA Process

- Screening reports must be placed on a Public Register and completed CEAA projects are listed on a CEAA website index of projects.
- Additional consultation opportunities are available if the project is found to fall within the thresholds for a comprehensive study or referred for Panel or Joint Panel review.

Review Closure

No closure yet as EA report preparation is underway.

Post-Review

Provincial

- Approvals lead to ongoing project specific environmental management (monitoring, enforcement, corporate environmental management, approval renewal reviews by government).
- EA and project decisions are inputs to regional environment and renewable natural resource management systems. Operators are expected to participate in regional multi-stakeholder forums and actions to deliver sustainable development objectives.

Federal

- Follow –up programs specified by the RA, if any.

Review Outcomes and Conclusions

Summary Remarks

- An EA process is its early stages.
- The Glacier Power assessment process was initiated just before the bilateral agreement was signed and it is being pursued in the spirit of the bilateral. AENV appreciates the strong and positive contribution of federal officials to the cooperative process to date.
- Both Canada and Alberta have a legal requirement for an EA: Alberta (mandatory under EPEA) and Canada (a *Fisheries Act* s.35(2) and a *Navigable Waters Protection Act* trigger under CEAA).
- Alberta is responsible for environment and resource management and the Alberta Power Grid located on provincial Crown lands. The project is reviewable by the Alberta Natural Resources Conservation Board (NRCB). The NRCB will consider whether the project is in the public interest, having regard for environmental, social and economic effects.

Review Process

Co-operative review outcomes to date:

- Confirmation of RA and CEAA triggers within eight weeks of submission of the project description
- Identification of federal agency experts and confirmation of participation in joint project advisory review teams as per s.6(5) of the bilateral agreement.
- Written confirmation received within 15 weeks of federal and provincial agreement on the information requirements for the final Terms of Reference
- The proponent is currently consulting with public stakeholders as part of the preparation of the EIA report.

Review Challenges, to date

- More timely confirmation of RA and triggers in future.
- More timely confirmation of information requirements with respect to the proposed Terms of Reference by federal agencies in future.

- RA officials are located outside Alberta, complicating co-operative efforts on a practical level.

Substantive Outcomes

- Joint federal and provincial expectations for environmental and project information have been established in the final Terms of Reference.

Alberta Case Study

SUNCOR MILLENNIUM PROJECT

Brief Project Description

An oil sands mine and commercial oil sands operation including heavy oil extraction, upgrading or a processing plant producing more than 2000 cubic meters of crude bitumen or its derivatives per day.

Suncor Energy Inc. proposed an expansion to its Fort McMurray oil sands operations by developing a new oil sands mine, extraction facility and upgrading facilities. This would include expansion of the Steepbank Mine on the east side of the Athabasca River, modifications to existing plant facilities and new plant components. The mine and processing capacity additions are intended to allow production of 210,000 barrels per day of bitumen at a capital cost of \$2.2 billion.

Type or Staging of CEEA Review

- Environmental Assessment – S.5(1)(d) of CEEA
- Comprehensive Study Regulation, Part IV, 11(b)

Type or Staging of Provincial Review

- Legislative – *Alberta Environmental Assessment and Enhancement Act* (EPEA) Part 2, Division 1
- Mandatory List project (by regulation AR1111/93)

A comprehensive EIA report and an Alberta Energy and Utility Board hearing (*Oil Sands Conservation Act*) was required.

- A Canada-Alberta Agreement for Environmental Assessment Cooperation was in place.

Nature of Provincial Review

- The Alberta regulatory process included three major applications: Energy and Utilities Board (EUB) (includes EIA report), *Environmental Protection and Enhancement Act (EPEA)*, and the *Water Resources Act (WRA)*. As well, land use dispositions were required under the *Public Lands Act*. The review of this information also facilitated decisions under the *Historical Resources Act*.
- Mandatory preparation of an EIA report was confirmed August 7, 1997.
- A Public Disclosure and proposed Terms of Reference for the EIA were made available for 60 days for public comment from August 1, 1997 to September 30, 1997. (See Public Consultation/Input section for further details on consultations.)
- Final Terms of Reference (information requirements) for the EIA report were issued by AENV on March 4, 1998.
- Issues addressed in the Final Terms of Reference included air, land, water, waste, wildlife, fish, wildlife, health, safety, infrastructure, historical resources, social factors, economic factors, cumulative effects, traditional use, end land use. Because applications were submitted together, both predictive information and preliminary engineering level information (necessary for Approvals) were provided.
- The EIA report was submitted for government review and made available to the public (opportunity for public to discuss with proponent) on April 21, 1998. The objective of this review is to ensure that information is available in accordance with Terms of Reference expectations and to clarify the information.
- Prevention, minimization and mitigation are guiding principles for the government review of the project, which has an information seeking component (described above), separated from and followed by

decision making. Resolution of issues is possible during EA preparation and related consultations. It is also possible in the substantive decision stage, through both the EUB process and EPEA and Water Act Approval processes. For this project, the EIA report was determined to be complete and referred to the Energy and Utilities Board (EUB) on September 28, 1998. The Board conducted a hearing from January 15, 1999 to Mar 29, 1999 (6 days in total).

- Approvals are issued in a sequence – first the EUB and if the EUB decides the project is in the public interest, detailed approvals (EUB, EPEA, Water Act, Public Lands Act) follow.
- The EUB decision report was issued March 29, 1999, followed by an Order in Council confirming the decision August 31, 1999. A detailed approval under EPEA was issued on November 18, 1999. Other Alberta approvals were issued in a similar time frame.
- Post-approval monitoring and follow-up are required under the terms and conditions of EPEA, *Water Act* and *Public Lands Act* approvals.
- Renewal applications are required for some regulatory approvals, for example under EPEA, which has a 10 year typical renewal requirement.

Nature of Federal Review

- DFO was confirmed as the RA on August 25 and October 03, 1997. Suncor applied for a s. 35(2) authorization on March 26, 1998. An environmental assessment in the form of a comprehensive study was required and this was confirmed May 1, 1998.
- The project scope and factors were set out in the May 01 letter. Factors were to include all of CEAA 16(1) and 16(2), with no specific details.
- The Comprehensive Study review and report addressed a broad range of issues.
- The Comprehensive Study was approved by the CEAA Minister in December 1998

- Due to litigation in Federal Court, the CEAA process is incomplete. The application for judicial review to the Federal Court Trial Division, commenced by ENGOs in February 1999 is proceeding in early 2000.

Defining Scope of Project and Assessment

Provincial Approach

Final Terms of Reference for the EIA, covering comprehensive environmental information and consultation expectations, were issued March 04, 1998 after a 60 day public notice period and consultation process in the fall of 1997. It includes any detailed EUB requirements for environmental information. Other EUB and Approval application requirements are covered under regulations and guidelines. Federal agencies provided input into the Alberta EIA Terms of Reference.

Federal Approach

The project scope and assessment scope are described in general terms in a May 1, 1998 letter. Federal requirements, guidance and best practice as well as the provincial EIA report (filed in April 1998) were used as inputs.

Delivering the Review Process

Federal Review

- Department of Fisheries and Oceans (Responsible Authorities for CEAA review)
- Canadian Environmental Assessment Agency
- Parks Canada
- Department of Indian and Northern Affairs
- Health Canada

- Environment Canada

Provincial Review

PROVINCIAL AGENCIES PARTICIPATING:

- Alberta Environment (lead and administrative decision maker for EIA report preparation and review under EPEA).
- Alberta Health and Wellness
- Alberta Community Development (participant in EIA review, lead and decision maker, *Historical Resources Act*)
- Alberta Infrastructure
- Alberta Energy and Utility Board (lead and decision maker for the public interest review, including EIA report as input, under *Oil Sands Conservation Act*)
- Alberta Environment (lead and decision maker for EPEA, *Water Act*, *Public Lands Act* Approvals and dispositions)

Federal Agencies Participating in Alberta Review

- Department of Fisheries and Oceans, RA and fisheries habitat
- Department of Indian and Northern Affairs (advisory role)
- Health Canada (advisory role)
- Environment Canada (advisory and some delegated authority under Fisheries act)

Other

- Fort McMurray, Regional Municipality of Wood Buffalo, Fort McKay, Fort Chipewyan, and other communities in the Regional Municipality of Wood Buffalo, Northern Lights Regional Health Authority, Saskatchewan Environment and Resource Management.
- Oil Sands Environmental Coalition, four First Nations or Aboriginal groups, business advocates, school boards, college.

Federal and provincial agencies worked together with the proponent to ensure duplication arising from administrative measures was minimized to the extent possible. Federal agencies were full participants in the provincial review. The proponent and public participated in both the provincial and federal reviews.

Timelines

Provincial Review

- EIA report preparation and review, 13 months, (disclosure: August 1997, EIA reports submitted April 21, 1998, EIA report declared complete September 28, 1998)
- EUB review, six months, decision report March 29, 1999, Order in Council August 1999
- Environmental approvals, seven months, issued November 1999
- total duration, 26 months

Federal Review

- Determination of federal trigger and RA, ten months (disclosure August 1997 to Application for Fisheries Act Approval, March 1998 to May 1, 1998 Comprehensive Study decision).
- Comprehensive Study review, eight months, May to December 1998 (ministerial approval of Comprehensive Study) but no federal approvals due to ongoing court review;
- August 1999, an application for judicial review of the federal approvals was made by an ENGO to the Federal Court of Canada.
- Total duration – incomplete at more than 29 months.

Are there regulated provincial timelines?

- Yes, there are minimum periods for the public notice requirements and for participating in the Final Terms of Reference and in the public hearing.

Public Consultation/Input

Alberta EA Process

- Consultation in the EA process is required under regulation at key stages: preparing the Terms of Reference, preparing the EIA report and consideration of the regulatory approval applications. Public consultation seeks to identify and provide opportunities for stakeholders to resolve issues of public concern. Public input is invited at:
 - review of Proposed Terms of Reference for EIA report
 - consultation during preparation of EIA (required by Terms of Reference)
 - comments on EIA report to proponent (EIA available to public for review)
 - input to EUB on need for a public hearings and Hearing issues/ logistics (Notice of hearing, prehearing meeting)
 - Input to EUB on substantive environmental matters and public interest, includes cross-examination when a hearing is called.
 - Input to Approval decision makers (public notice of filing, opportunity to file a statement of concern, in some instances, draft Environmental approvals are provided to stakeholders for comment before they are issued.)
 - Statement of concern filers who are directly affected and the proponent have a right to appeal environmental approval decisions to the Environmental Appeal Board.

The decision authority under EPEA responsible for that stage/ step ensures consultation meets legislated expectations. They are: Alberta Environment (EIA Terms of Reference), EUB (public interest test) and Alberta Environment (Approvals and dispositions) or Environmental Appeal Board (appeals of EPEA approvals and dispositions). Public input must be considered by the decision maker. Decisions are provided directly to the person who submitted comments (as well as being generally available).

CEAA Process

- The federal review utilized the results of Suncor's ongoing provincial public consultation program and project-specific consultations concerning Project Millennium. DFO completed the public consultation for the comprehensive study including a Public Registry requirement under CEAA, consultation with the Agency and Federal Authorities participating in the review (Environment Canada, Indian and Northern Affairs, Parks Canada, Health Canada, Natural Resources Canada), Province of Alberta, First Nations and Environmental Groups.
- Completed Comprehensive Study available for public comment for 45 days (August 1 to September 15, 1998).

Review Closure

- Substantive review of environmental matters and public interest:
Alberta: through EUB public hearing, with input to the hearing from federal agencies
Federal government: DFO issued authorizations under s.35(2) following CEAA Ministerial determination that the Comprehensive Study was complete. Comprehensive Study process completed. RA decisions on the Comprehensive Study challenged under judicial review process. Judicial review did not request that the s.35(2) authorization be set aside while the review is carried out.
- The case is before the courts.

Post-Review

Provincial

- see above

Federal

- The post review process is incomplete. A number of environmental organizations have applied to the Federal Court to overturn the decision by the Minister of Fisheries and Oceans to issue an authorization to Suncor under s.35(2) of the *Fisheries Act*.

Review Outcome and Conclusions**Summary Remarks**

- Both Alberta and Canada have legal requirements for an EA: Alberta (mandatory list under *EPEA*) and Canada (*Fisheries Act* s.35.2 Law List Trigger under *CEAA*).
- Each party managed their process and tried to keep their processes on a common schedule. Officials worked to share information and consolidate information requirements when possible.
- The project involves major ongoing provincial responsibility for environmental and renewable resource management on provincial Crown land.
- The federal government has minor responsibilities; the project affected a relatively small amount of fish habitat. Most ongoing management of fish habitat and watercourse protection is delivered under provincial land, water and fish management programs.
- A narrow federal Fisheries Act responsibility led to an EA under CEAA that was used by Federal agencies to involve themselves in provincial resource management (oil sands) and matters within provincial responsibility.
- The federal approval has been challenged in the Federal Court by ENGOs on issues related to the application of adaptive management as a mitigative strategy.
- For the majority of the EA process, the 1993 bilateral agreement was in place.

Review Process

- The principle of "one project-one assessment" was difficult to follow, particularly in substantive review stages, because of Comprehensive Study Report (CSR) requirements. Cooperative information sharing and attempts to coordinate federal and provincial EA process steps were limited by differences between the review process and structures. Federal agencies did receive early notification of the project, opportunities to comment on the Alberta Terms of Reference, input to both the Alberta government review and substantive public hearing review steps.
- The federal process was significantly out of step with the provincial process. The federal RA and Agency attempted to harmonize with the provincial process and provide relevant decisions and participation in the provincial review.
- It took ten months and three special studies to confirm the CEEA trigger. This decision was made eight months after Alberta's mandatory EA decision and after the Alberta EIA report was under review. The scope of the project and assessment for the CEEA review were also issued after the Alberta EIA report was submitted by the proponent and under review by both federal and provincial agencies. The Alberta EIA report was referred to the Alberta Energy and Utilities Board (EUB) for decision in September 1998, whereas a comparable step (including a tentative decision) was issued for the comprehensive study in December 1998.
- The Alberta process took longer to issue a Final Terms of Reference, in part to accommodate federal agency timing.
- The results of the Alberta regulatory process, including the EIA report, and supporting documents were used in the CSR process.
- The federal process relied heavily on information supplied by the proponent under provincial regulatory requirements.

Substantive Outcomes

- Project emission limits, and requirements for follow-up research, monitoring and reporting, and land disturbance reclamation are set out in provincial approvals. DFO issued the s.35(2) authorization, however the status of federal post-review requirements is uncertain pending the results of the court challenge.
- CEAA allowed the federal government to use a narrow Fisheries Act responsibility to become involved in regional resource management, including air issues. Federal and provincial governments should explore alternative cooperative mechanisms to provide for federal participation in regional land use and resource management. One example is the multi-stakeholder Regional Sustainable Development Strategy (RSDS) process which has been developed in Northeastern Alberta to address environmental impacts of oil sands development. The federal government is an active participant in this process. This alternative approach should be addressed on a cooperative basis through government to government partnerships. Development or implementation of regional strategies through revisions to CEAA would be inefficient and unnecessary.
- Ambiguity over the application of CEAA requirements with respect to the CSR resulted in a court challenge that relates to the application of adaptive management provisions. ENGOs are challenging the Suncor development in the Federal Court. EGOS exercised a full range of opportunities to participate in the Alberta EA process and public hearings. They had signed agreements with the company and had advised provincial regulatory agencies that they were not opposed to the project, subject to certain conditions. Unlike the Cheviot case, the Fisheries authorization is not a critical element in the project schedule and the court challenge did not seek to quash the authorization. Court challenges for non-project purposes creates uncertainty, delays and discourages investment. Proponents need to know what is required for an EA and when a decision is final.

Alberta Case Study

SUNPINE PROJECT

Brief Project Description

- Sunpine Forest Products harvests timber and holds logging rights for over one thousand square miles in West Central Alberta. Sunpine Forest Products has engaged in a provincial long-term timber harvest planning process that identified the need for a major haul road to transport logs from the areas of its logging rights to its Strachan Plant Site. The preferred option, the Mainline Road, required the applications for authorization to construct the two bridges under the federal *Navigable Waters Protection Act* (NWPA).

Type or Staging of CEEA Review

- Screening

Type or Staging of Provincial Review

- Provincial review of components of the forestry operations is ongoing, and was done prior to the application for a provincial license to construct the road and the bridges. Construction of the road on provincial Crown land and construction of the bridges required provincial approval under the Alberta's *Water Resources Act*.

Nature of Provincial Review

- The province actively manages the timber resource.
- Sunpine Forest Products Limited required various provincial approvals. Provincial environmental interests were considered in the issuance of various permits, licenses and dispositions under the *Water Resources Act*, the *Public Lands Act* and the *Forests Act*:
 - a) The company required a Forest Management Agreement (FMA), under the *Forests Act* and the *Timber Management Regulations*. These statutes and regulations control the operating requirements for the forestry company.
 - (1) The FMA required a long-term detailed plan called a Forest Management Plan.
 - (2) The company was also required to have an Annual Operating Plan.
 - (3) The company required a license of occupation for the road and the bridge. This license considers public access, erosion, clearing and habitat disruption, and other relevant environmental factors prior to the issuance of the license.
 - (4) Wildlife issues and natural resource management issues are built into the FMA.
 - (5) Sunpine was required to have a Forest Advisory Committee. This committee included the Friends of the West Country.
 - b) The proponent had to submit a detailed route selection evaluation prior to receiving a License of Occupation under the *Public Lands Act* for construction of the road, and was required to actively manage and enforce access restrictions on the road.
 - c) Stream crossings required approvals under the *Water Resources Act*.
 - d) Provincial approval of the existing wood treatment plant and wood processing (sawmill) plant was granted in 1989 and renewed until 2008 under Alberta's *Environmental Protection and Enhancement Act*. Ground water and soil monitoring near the plant are required. The plant required approvals for emissions, and for wastewater.

Nature of Federal Review

- The federal review of the project did not start until late in the provincial regulatory process.

- On December 13, 1995, applications were made to the Department of Fisheries and Oceans for a permit under the *Navigable Waters Protection Act* to construct the bridges across the two creeks. This triggered the CEAA. Separate environmental assessments of the two bridges were done. Each bridge had been determined to be a separate project. The federal department found that neither of the two bridges would have significant environmental effects.
- Under the *Navigable Waters Protection Act*, the approvals were granted on August 18, 1996, subject to the following conditions:
 1. Construction material and debris shall not be allowed to become waterborne
 2. Dredged or excavated material shall not be allowed to re-enter the waterway
 3. The bed and banks of the waterway shall be restored to their original contour and the banks are to be protected from erosion as necessary.
 4. All temporary piles, false works debris, etc. shall be completely removed from the waterway.
 5. Any recreational boating in the area of the bridge construction will be allowed to pass and be assisted if necessary during construction.
- A revised approval for the Ram River bridge was granted December 12, 1996.
- Mitigation measures were required to be implemented by the owner or the person in possession. Instream work was prohibited during the period from September 15th to April 15th of the year construction was being done. Disturbances of the bed and the banks of the creeks were to be kept to a minimum and confined to the immediate work site. Use of specific material to prevent sediments from escaping into the water was required.
- A sediment monitoring program was required to assess the effectiveness of mitigation and sediment control measures and to assess the need for remedial measures during construction and following construction. The monitoring program required DFO approval prior to commencement of construction.

- After the federal government issued the approvals, Friends of the West Country applied for a judicial review of the approvals. The Friends of the West Country argued that the road and the assessments of the two bridges should have been combined into one federal environmental assessment. There has been a Federal Court Trial Division decision and a Federal Court of Appeal decision. Currently, the Friends of the West Country have applied for leave to appeal to the Supreme Court of Canada.

Defining Scope of Project and Assessment

Provincial Approach

- Separate provincial and federal regulatory processes were conducted. Under Alberta's legislation, the activity (building bridges) did not require EIA report. Therefore, the 1993 Canada/Alberta bilateral agreement did not apply. Alberta's environmental review of the bridges was carried out in the approvals process.

Federal Approach

- The "Mainline Road" connecting the bridges had not been included in the "scope" of the project. The scope of the projects had been determined to include the construction and maintenance of the bridge and other undertakings directly associated with the construction of the bridge. The Department of Fisheries and Oceans determined that the scope of the environmental assessment did not include the environmental effects of the road construction project nor the forestry operations.
- The potential environmental effects identified by the federal government were bank de-stabilization, fish habitat destruction and interference with navigation. These items were dealt with via mitigation measures or conditions on the approvals, because the effects were found to be insignificant. The federal government used provincial information and expertise to perform their assessments.

Delivering the Review Process

Lead Agency for Review

Canadian Coast Guard, acting on behalf of the Minister of Transport

Provincial Agencies Participating

Alberta Environmental Protection (Administrative decision maker with respect to the FMA).

Federal Agencies Participating

The Minister of Transportation, The Canadian Coast Guard, (Navigable Waters).

Department of Fisheries and Oceans. (Fish Habitat)

Department of Indian Affairs and Northern Development: (First Nations)

Environment Canada (Canadian Wildlife Service)

Natural Resources Canada (Forestry)

Other Agencies

The Municipality of Sundre

Friends of the West Country Association.

Municipal District of Clearwater

Timelines

Timeframe for:

coordinated review: N/A

provincial review:

- Initial consultations: 1994,
- Approval for the Mainline Road issued: August 1995.
- Duration: (1 year)

federal review:

- DFO inspected the route April 1995,
- Fish habitat specialists inspected the site in September 1995.
- Applications for *Navigable Water Protection Act* approval: December 1995,
- Approval August 16, 1996,
- Revisions for the Ram River Bridge and final approval December 3, 1996.
- Duration (1 year) Note: 1 year after the province had finished the approvals, the federal government issued their approvals.

Are there regulated provincial timelines?

- No. Under the license of occupation, the company applies for the required approvals prior to commencing the activity. The Department of the Environment undertakes to provide a timely review. The timelines vary depending on the complexity of the approval, the issues involved, and the completeness of the application.

Public Consultation /Input

Provincial Consultation

- The public was consulted through the Forest Advisory Committee, as required under legislation, prior to the provincial approvals. The Forest Advisory committee directly participated in developing the road option. The Committee provided the department of Environmental Protection with a consensus recommendation in support of the “Mainline Road” option. Over one year was spent developing the option for the road. The conclusion from the public consultation and the Forest Advisory Committee was that the “Mainline Road” was the most favourable solution after consideration of the communities needs, the company’s needs, and environmental, social, environmental and economic factors.

Federal Consultation

- Public comments were requested by the federal authorities in an advertisement on January 31, 1996 in local newspapers and on February 3, 1996 in the Canada Gazette.
- Plans for the project were deposited in the local Land Titles Office.
- Public consultation was done by advertisements placed in the local newspapers, July 17, 1996, which indicated that the screening reports for the two bridges were available at the Department of Fisheries and Oceans office in Sarnia, Ontario. The Department of Fisheries and Oceans also met with local environmental groups. There was a public consultation period of one month allowed. Several members of the public made comments on the environmental assessment reports.
- Environmental effects identified were potential archaeological and paleantological, native interaction.
- Addenda to the reports were completed on August 16, 1996.

Review Closure

- The provincial review was completed prior to the federal responsible authorities becoming involved. Provincial approvals were issued.
- The federal review was completed when the approvals for the bridges were issued.
- After the federal approvals were granted, the company was allowed to build the bridges subject to the identified mitigation measures.
- This decision was challenged by the Friends of the West Country Association who requested a judicial review in the Federal Court.

Summary of Judicial Review of CEAA Decisions

- The Friends of the West Country Association argued that the road and the two bridges should not have had separate environmental assessments. The Federal Court trial division initially decided in favour of the Friends of the West Country. However, the decision was subsequently overturned in the Federal Court of Appeal. This prolonged court action took 23 months to go from application for judicial review to an initial decision at the Federal Court Trial Division. The Appeal took 13 months. The appeal decision clarified the roles of the federal responsible authorities and the factors that could be considered under the CEAA. However, the Friends of the West Country have applied for leave to appeal to the Supreme Court of Canada.
- The Federal Court of Appeal Decision states that the Responsible Authority has the discretion to determine the scope of the project, and can determine whether or not two separate proposals are to be considered as one project. The Responsible Authority does not have to consider elements that are outside the definition of scope of the project.
- With respect to cumulative effects, the Federal Court of Appeal found that the Responsible Authority must exercise its discretion and decide what to include in the consideration of cumulative effects. Matters within provincial legislation may be considered; however, matters within federal jurisdiction must be considered. The Court found that duplication of environmental assessments was not required.
- The details of the Federal Court trial decision are listed below:

- The interpretation of CEAA is a question of law; therefore, the standard of review on the proper interpretation of CEAA is correctness.
 - a) Section 15 interpretation:
 - i) The Responsible Authority can determine the scope of the project under s.5(1).
 - ii) Under subsection 15(2), the Responsible Authority can determine that each bridge is a separate project.
 - iii) Subsection 15(3), the Responsible Authority does not require that the environmental assessment include anything outside the scope of the project as determined under s. 15(1).
 - iv) The words “in relation to” used in the definition of “project” in s.2 and in subsection 15(3) refer to “construction, operation, modification, decommissioning, abandonment or other undertakings that pertain to the lifecycle of the physical work itself, or that are subsidiary or ancillary to the physical work that is the focus of the project as scoped.”
 - b) Section 16 interpretation:
 - i) Subsection 16(3) allows the “scope” of the cumulative effects to be considered. The responsible authority must decide which other projects or activities to include and which to exclude for the purposes of cumulative environmental effects assessment under paragraph 16(1)(a). The consideration of cumulative effects happens under s.16, and occurs once the project has been scoped under s.15.
 - ii) The responsible authority can consider the work done by the province in its cumulative effects assessment under paragraph 16(1)(a). Duplication of environmental assessments is not required.
 - iii) Provided the RA does not decline to exercise its discretion by misinterpreting paragraph 16(1)(a) and s.16(3), the responsible authority can include or exclude other projects– in this case the Mainline Road or forestry operations, as it considers appropriate.
 - c) The RA must consider environmental effects touching all areas of federal jurisdiction. Given the divided constitutional jurisdiction over environmental assessments between the federal government and the provinces, it follows that the federal responsible authority is to focus its environmental assessment on effects within federal jurisdiction.
 - d) Section 55 interpretation:

- i) Requiring the public to resort to the Access to Information Act was the “antithesis” of what s.55 requires.
- ii) There must be convenient public access to the public registry.
- e) Conclusion:
 - i) The appeal was dismissed. The federal responsible authority must review the screening report and demonstrate the exercise of its discretion under s.16 by deciding whether to include or not to include matters that are not within federal jurisdiction. The federal responsible authority must include in its review matters that effect areas of federal jurisdiction.

Post-Review

Provincial

- Approvals were granted with conditions. One of the conditions of the approval was to obtain the necessary federal approvals for the bridge construction.
- Monitoring and enforcement are incorporated into the approvals process. Generally, there is not a monitoring requirement for licenses of occupation. Most environmental concerns involve the construction stage of the project.
- Provincial monitoring is done as part of the daily business of AENV. Although AENV does not actively monitor a site like the bridge, department officials work with the company to ensure a dialogue on all aspects of the forestry operations. In the Annual Operating Plan, the company and AENV review the company's operations. In addition, with respect to the "Mainline Road", the License of Occupation requires that the company have an access management plan. Any problems reported to AENV staff or found by AENV staff are investigated and enforced where appropriate.

Federal

- The Canadian Coast guard issued approvals subject to mitigating conditions.
- No federal monitoring.

Review Outcomes and Conclusions

Summary Comments

- Forest haul roads and stream crossings for haul roads are routine regulatory and management tasks, handled under the Water Resources Act authorization process and forest management operating requirements. Responsibility for the management of forest operations on provincial Crown lands is clearly within the sole mandate of Alberta.
- Fish habitat protection, erosion prevention and shore protection measures for stream crossings are well understood and consistently applied under provincial and federal regulatory authority (provincial *Water Resources Act* and federal *Fisheries Act*).
- The Navigable Waters Protection Act trigger was applied to a small project with little environmental impact.
- The federal review led to an ongoing round of court cases, which has lasted more than three years. In 1996, the Friends of the West Country Association challenged the federal permits issued under the Navigable Waters Protection Act for the two bridges in the Sunpine project. This was an attempt to use the ambiguity in CEAA to delay forest development plans with which they did not agree and to seek an federal review of forest management practices in the Eastern Slopes (well beyond the NWPA trigger and constitutional responsibility).
- The initial Federal Court ruling of the Trial Division had significant implications for all of Canada. The Federal Appeal Court decision clarified the situation, however, the decision may be appealed to the Supreme Court by the Friends of the West Country Association.

Process Outcomes of CEAA Review

- Federal approvals were issued with conditions concerning the construction and mitigating measures were imposed relating to instream flow and disturbances of the creek beds and banks.
- The federal government used provincial regulatory information in the CEAA review. DFO initially managed the review, including the public registry, from Sarnia. The registry was subsequently relocated to Winnipeg. Situating the registry so far from the project region did not provide reasonable public access. The Federal Court indicated that if there is to be a federal EA review, it must provide a significant involvement opportunity with local access to information.
- Conflicts in this project review were due to uncertainties and ambiguities over the legislative requirements under CEAA, which led to the court challenge.
- The current bilateral agreement and CCME Harmonization Accord were not in place during the major parts of the review. Alberta did share information with federal officials.

Substantive Outcomes

- There was no added value from the application of the CEAA process. No added environmental protection was created as a result of the CEAA review.
- The case demonstrates how narrow CEAA triggers can be used to attempt to give the federal government and stakeholders a role in provincial resource management. The Sunpine case has had significant implications for economic development and employment.
- The design of the bridge was changed by the proponent part way through the federal review process, adopting a clear span design. The change was done to facilitate the review of the project by DFO and not to address environmental concerns. The revised bridge design did not significantly alter the amount of disruption of fish habitat (small for both designs), but did comply with the anticipated preference of federal officials for one design over the other, at increased expense.

- A complex review process was applied for routine, small type of project (stream road crossing). The environmental consequences of stream crossings are well understood and mitigation needs known.
- The ambiguity over CEAA requirements in Sections 15 and 16 (scope of the project and the assessment) opened the door for court challenges, which resulted in lengthy delays and costs to the proponent. Uncertainty about the interpretation of CEAA influences decisions on many projects across Canada.
- It was not until the Sunpine appeal decision that the responsible authorities requirements under CEAA became clear. Other Federal Court decisions have provided further clarity on these issues.
- Alberta's ongoing management plans for the forest were made more difficult to achieve by delay in providing the desired haul road access. The review process significantly delayed the construction of the bridges. (Note: the proponent has decided not to proceed with one of the bridges.)
- Participation in the legal reviews under CEAA was expensive and time consuming.