



Public Comment Analysis of Panel Reviewed Environmental Assessment Projects in Canada

Prepared as input to the Marathon PGM-Cu Mine Project Panel Review Environmental Assessment

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Executive Summary

Although public participation is recognized as a cornerstone of Canadian environmental assessment processes, it is unclear to what degree that involvement influences the outcome at the various stages. This review, undertaken as part of the participation of Ontario Nature and Environment North in the Panel Review of the Marathon PGM-CU Mine Project, provided an opportunity for an investigation into the efficacy of public comments on influencing the Environmental Impact Statement Guidelines of various past panel reviews. The purpose was two-fold. Firstly, the investigators wished to determine what types of comments had been made in previous assessments in order to determine if they had had some effect. Secondly, they wished to use this information to inform the comments they would put forward in the Marathon project.

1. Purpose of this Analysis

This project has been undertaken by Ontario Nature and Environment North as part of their participation in the Phase 1 Environmental Assessment of the Marathon PGM-CU Mine Project (proponent: Stillwater Mining Company). In order to provide effective commentary and constructive critique of the Draft EIS Guidelines for this project, Ontario Nature and Environment North have determined that it would be useful review the public input on the Draft EIS Guidelines for other Panel Review projects in Canada. The goal is to provide an analysis of this public input in order to determine whether there are specific comments that should be applied to the Marathon PGM-Cu project or lessons that can be generalized regarding the type, tone and detail of comments that have successfully influenced EIS Guidelines.

2. Methodology

2.1. Research Questions

Four research questions have been considered in this analysis:

- Which mining projects in Canada have been referred to Panel Review EAs?
- What kinds of public comments have been favourably considered by the CEAA and have been integrated into the final EIS guidelines of a project?
- What kinds of public comments have had no bearing on the final EIS guidelines of a project?
- What kinds of recommendations for public comment can be suggested to those stakeholders participating in phase 1 of the Marathon PGM-Cu project?

2.2. Collection and Analysis of Data

For each of the projects reviewed in this analysis, publicly available comments from government departments, First Nations, individuals and conservation organizations regarding the draft EIS Guidelines were compiled and summarized¹. The Draft EIS Guidelines and Final EIS Guidelines were then compared side by side and any changes or differences between the two versions were noted. Finally the changes between versions of the EIS Guidelines were compared against the public comments and an assessment of where these comments had and had not been integrated into the final EIS Guidelines was noted.

In order to assess the impact of the comments and recommendations made by the various public actors, the changes between the Draft EIS Guidelines and the Final EIS Guidelines were rated in terms of significance – where slight wording changes that made little difference to the content and/or requirements for the proponent would rate a “not significant” and changes that increased the scope of the review (temporal, spatial, etc), required greater consideration of sustainability criteria or recognition of First Nations rights and interests would rate anywhere from “somewhat significant” to “very significant”. While these ratings are somewhat subjective, they are grounded in an ethic of intergenerational equity and sustainability that incorporates environmental, social/cultural and economic values.

2.3. Projects Reviewed

The Intent of this Analysis was to review the projects referred to Panel Reviews that were similar in scope and activity to the Marathon PGM-Cu project, however access to the public comments for several mining projects was not readily available in the timeframe required to carry out this research. The following projects have therefore been reviewed for this analysis:

- Whites Point Quarry and Marine Terminal Project (2005)
- The Kemess North Gold-Copper Mine Project (2005)

¹ Comments that were very general in nature, expressing simply support or opposition to the project, were not included in the analysis.

- The Prosperity Gold-Copper Mine Project (2009)
- The Bute Inlet Hydroelectric Project (2009)

3. Summary of Input from Public Comments on Draft EIS Guidelines

3.1. White's Point Quarry and Marine Terminal Project (2005)

Comments Reviewed:

Provincial Government

The Ministry of Environment submitted comments on consideration and recognition of Aboriginal community's interests, informed consent to access knowledge and the inclusion of Traditional Environmental Knowledge in the Environmental Assessment. Additional comments included more information on the Proponent, such as; experience and involvement in similar operations, involvement in industry associations and voluntary environmental management initiatives; and a description of the corporate commitment to sustainable development and environmental protection goals. Other specific comments included the use of criteria in identifying alternative means of carrying out the project from an environmental or sustainability perspective, including GHG emissions from all stages of the project, loss of carbon sinks energy efficiency, water demand, use of toxics, wastes, risk of accidents and malfunctions, impacts on environmental quality and wildlife, and impacts of climate change on groundwater systems.

Environmental Groups

The Sierra Club of Canada - Atlantic Chapter questioned the effects of the project on marine mammals, asked for the Proponent to be transparent and allow the public to view and comment on applied methods and results from the effects prediction, to view the project from an ecosystem perspective, and to meet best practices of other recent panel reviews. Specific comments focused on the "need for" the project and asked proponent to; demonstrate that the need goes beyond the health of the company's bottom line, and that benefits derived from the project, such as jobs created and taxes paid to municipal units, are not to be construed as needs.

The Tusket River Environmental Protection Agency asked the proponent to; address and define significant adverse environmental effects, change specific wording from "may" to "shall", and provide an extensive hydro-geological investigation of the project.

North Mountain Preservation Group's comment requested the panel/ proponent to expand the scope of the project to include impacts on the entire Fundy coast of the North Mountain.

Tourism Groups/ business

Rambling Rowe's B&B expressed concern on the impact of project on the habitat of shore/ seabirds and whale populations, as these two activities are significant tourism attractions in the area.

Other Groups

Partnership for the Sustainable Development of Digby Neck and Islands Society submitted comments requesting the Proponent to include traditional knowledge from residents of the area and community, to include a more comprehensive public participation program, to define how the project contributes to sustainability with the use of a sustainability test, and to apply the precautionary principle in decision making. Other comments included the need for additional information on the proponent, such as corporate structure, location of sites and offices, scope of activities, and environmental performance. Further comments included a clear definition of the need for the project on multiple geographic scales, to identify and guarantee reclamation costs, to include information on residual impacts on future generations, and to expand on the project's impacts on the local/ regional tourism industry.

West Nova Fishermen's Coalition requested the use of local Traditional Ecological Knowledge of fishermen in fishery studies, asked for the inclusion of impacts of project activities on fisheries and threat of invasive species, the impact of increased traffic on roads and potential accidents, and questioned compensation to fishing communities.

An "interested party" submitted comments regarding dust levels, the impact of effluents from project development that may end up in several water systems, and requested the proponent provide detailed geologic maps of the site and neighbouring lands.

Individuals/ Citizens

Several individuals/ citizens submitted comments on the project, including;

- The use of Traditional Knowledge from all indigenous residents including settlers, consideration of traditional knowledge of fishermen including cumulative effects on migratory patterns of marine life.
- The addition of the value of place, heritage and peace of mind of place, to the list of VECs.
- Asking the proponent to; provide background information to reduce community confusion, to guarantee financial reassurance and to identify current and future plans for development in the area by the proponent.
- Suggesting the assessment of alternative means to also assess whether market demand is socially desirable, and to include a cost-benefit analysis of alternative means.
- The concern of the lack of connections to VECs in spatial boundaries and lack of discussion of ecology.
- Requesting that the proponent provide information on the impact of the project on climate change and GHG emissions, wildlife habitat, increase of invasive species, impact of extreme weather, and proponent's responsibility for emergencies and spills.

- Proponent to post performance bond to mitigate and compensate for all damages to not only those directly affected, but future generations who will not be able to make a traditional income because of the activities of the proponent, and to establish an independent body to speak for and compensate for the flora and fauna.

3.2. Kemess North Gold-Copper Mine Project (2005)

Comments Reviewed:

Provincial Government – British Columbia Environmental Assessment Office (BCEAO)

The BCEAO collected comments from Ministry of Energy, Mines and Petroleum Resources (MEMPR) and the Ministry of Environment (MOE) who offered 18 and 24 recommendations respectively. The recommendations from MEMPR generally addressed concerns relating to water management, geotechnical evaluations and acid rock drainage/metal leaching/tailings characterization and management. The recommendations from MOE were related to use of existing information, spatial boundaries, water quality/quantity and aquatic organisms, characterization of existing setting, wildlife/fisheries habitat and compensation program.

Federal Government (Environment Canada, Health Canada, Fisheries and Oceans)

Environment Canada’s comments included approximately² 35 recommendations which encompassed such concerns as defining the ‘precautionary principle’, migratory birds, species at risk, responses to accidents and malfunctions, air quality, tailings, wildlife and wildlife habitat and ongoing monitoring. These recommendations varied from minor word changes to very specific recommendations in terms of information gathering and recording.

Health Canada’s comments included 3 recommendations which included using an integrated assessment of the determinants of health, water quality and a list of health determinants.

Fisheries and Oceans Canada’s submission contained 8 recommendations that were specific wording changes for clarification and precision in the project description and throughout the document.

First Nations (Gitksan House of Nii kyap, Treaty 8 Tribal Association)

The *Gitksan House of Nii kyap* provided approximately 22 recommendations that were primarily related to the exercise of Aboriginal rights and title and policies in respect to the project, its potential impacts and the accommodation of Aboriginal interests throughout the EA process.

Treaty 8 Tribal Association’s 14 recommendations were specific to assessment, mitigation and monitoring of effects, assessment of impacts on heritage and archaeological resources, human health and residual adverse effects.

² Where recommendations were provided in a descriptive versus prescriptive manner, enumerating them was difficult, so a “best guess” approximation was utilized.

ENGOs (MiningWatch)

MiningWatch's comments included approximately seven recommendations, including an affirmation of the rights of the First Nations in the region to have their right to consultation and accommodation be met. Recommendations specific to the Draft EIS Guidelines included an assessment of economic, social, heritage and health benefits and risks related to the project, cumulative effects, sustainable development and the choice of Amazay Lake for tailings impoundment.

3.3. Prosperity Gold-Copper Mine Project (2009)

Comments Reviewed:

Federal Government Department (NRCan)

NRCan's comments included 4 recommendations and one comment indicating that the EIS Guidelines were satisfactory. The 4 recommendations made were very specific and related primarily to water (quantity and quality), including prediction of acid rock drainage/metal leaching. They indicated an issue, provided a summary of the relevant section of the Draft EIS, a conclusion and rationale for their comment(s).

First Nations³ (Esketemc First Nation, G.G. Runka Land Sense, Ltd. (for Stswecem'c/Xgat'tem First Nation)

The *Esketemc First Nation* made 8 recommendations in their submission. These included meaningful consultation, First Nations interests in respect to land use and values and archaeological assessment.

The *Stswecem'c/Xgat'tem First Nation* submission included 8 recommendations which included concerns regarding cumulative effects, traditional knowledge, land use and occupancy studies, species at risk and archaeological inventory.

ENGOs (MiningWatch, Williams Lake Field Naturalists)

MiningWatch's comments included seven recommendations. Some were specific in content but broad in application and primarily related to the inclusion of sustainability criteria, long-term post-closure liabilities and social and ecological resilience throughout the entire EIS Guidelines. Their more specific comments were related to fish habitat, post-closure monitoring and effects prediction.

³ The *Tsilhqot'in National Government* made recommendations, however, in many cases these recommendations seemed to be in respect to the *Final* EIS Guidelines document, though their submission is dated prior to the date of the Final EIS Guidelines document. It is unclear why this is the case, and consequently it was not possible to summarize their recommendations with any certainty. Therefore, their submission and recommendations were not included in this analysis.

Williams Lake Field Naturalists made 22 recommendations in their submission. These recommendations covered a broad range of concerns including cumulative impacts, species at risk (wildlife, vegetation), water quantity and quality, air quality and emissions, inclusion of specific undertakings into the scope of the project, fish compensation plans and a financial security (bond) to ensure proper monitoring and follow-up.

Small Business, Tourism Operator (Adventure West Resorts Ltd.)

The small business owner's comments were very specific. Their four recommendations related to financial security (bond) to ensure proper monitoring and follow-up, reclamation in the event of early closure or lengthy idle phases and road safety.

Local Resident (George Colgate)

The local resident's three recommendations were very specific and related to road access/traffic volume, financial security deposit (bond) to ensure proper monitoring and follow-up, and artificial light pollution.

3.4. Bute Inlet Hydroelectric Project (2009)

Comments Reviewed:

Federal Government

Department of Fisheries and Oceans expressed concern about the limited comment period. The DFO's many comments were specific in nature and included: a list of specific works to be added to the project scope, the requirement for additional studies to boost baseline environmental data, alternate transmission line alignments, the timing of constructions and studies with regard to seasonal species sensitivities, and specific comments on impacts to the aquatic environment including many marine species.

Environment Canada provided very limited comments that reflect only a partial review of the guidelines. These comments included an analysis of the effect of climate change on hydrological regimes, concern over landslides, and effects on species at risk

Natural Resources Canada submitted comments from 3 separate staff scientists. Comments focused on: 1. Glaciology and water resources (sensitivity of river flows under climate change, glacier monitoring) 2. Geology (landslide hazards) and 3. Seismicity (earthquake hazards).

Provincial Government

The *Ministry of Forests and Range* submitted comments on increased fire hazard risk and management, the impact of the project on forest tenure holders and forest health, continued road access for forest resource users, and the visual aesthetics of the landscape.

Aboriginal Groups

The Shishalh First Nation submitted comments asserting aboriginal rights and title and denied provincial jurisdiction over the area citing case law. Specific comments focused on the protection of Aboriginal interests and uses, the protection of archaeological resources, cumulative environmental impacts, and a detailed list of specific wording changes covering ~ 53 individual recommendations

Environmental Groups

Sierra Club Quadra Islands questioned the need for the project and provided examples of alternative ways of generating energy. Further comments expressed concern at the adequacy of available methods for assessing cumulative effects, habitat fragmentation and effects on species, species at risk, recreational values and effective long-term monitoring

The Green Party of Canada's comments were high level regarding assessment process in general and lacked detail. Topics brought forward included the need for cumulative effects assessment, the lack of appropriate data for baseline assessments and the need for an open public process

The Sunshine Coast Conservation Association submitted a mix of high level and specific comments on the project focusing on the planning context for the project and inherent uncertainties regarding the project impacts. Specific comments addressed

4. Summary of Impact of public comments on Final EIS Guidelines

4.1. White's Point Quarry and Marine Terminal (2005)

The Draft Guidelines for the preparation of the EIS for the White's Point Quarry and Marine Terminal Project received 124 public comments, however only 41 of those were incorporated into the Final Guidelines. The comments and recommendations that did assist in the addition of several new components include the following fundamental and guiding principles used to expand on how the project is evaluated; Sustainable Development, taking an Ecosystem Approach, and applying the Precautionary Approach to the project. Components that included the involvement of the public received many comments asking to expand the scope to also directly involve residents, community members, Aboriginal peoples, and local and regional fishermen, when consulting or utilizing traditional knowledge for many components of the project assessment, which was expanded upon in the final guidelines. There were also many public comments on the transparency of the proponent and requests for specific details about the proponent's history, corporate structure and record of environmental performance, which were also addressed in the final guidelines. A few components within the Project Description were also altered due to public commentary. The Alternative Means for Carrying out the Project was expanded on to require the proponent to identify reasons for selecting its proposed project and justification for the rejection of the alternatives. Specific details of the Operation and Maintenance Phase were expanded on to provide contingency plans for extreme weather, and explaining water management practices and precautions. Additional comments were effective in expanding the spatial scope of the project throughout the Physical Environmental Impact Analysis to provide specific information on the impact of the project on: Ground Water; Light Effects on ecology and socio-economics; Birds and Bird Habitat; Vegetation; and Marine Mammals. Community members and organizations expressed their concern on several components within the Human Environmental Impact Analysis; however the two that were expanded on included the impact of the project on the Economy and on Fishing and Harvesting. The Economy component was expanded to include specific information on local, regional, and Aboriginal employment opportunities, the skills required, and whether they match existing local skills. Fishing and Harvesting was expanded to require the proponent to indicate the effects the project may have on fishing and harvesting and potential losses to these traditional industries.

The addition of the guiding principles and expanding on some of the components increased the scope of the assessment to require the proponent to report on components that the project may have an impact on and allowed the panel to assess the project through multiple perspectives and facets. However, there were also many comments that did not have an impact on the final guidelines. There were many additions and changes to the final guidelines that were not influenced by public commentary, and the cause remains uncertain.

Commenter	Total Recommendations Submitted	Total Recommendations Incorporated
Environment Canada	15	5
Sierra Club of Canada	17	5
Partnership for the Sustainable Development of Digby Neck and Islands Society	40	16
Jim Fisher, Chair, North Mountain Preservation Group	1	0
L. Wayne Spinney, West Nova Fisherman's Coalition	5	2
Interested Party (not identified)	12	2
Laurence Outhouse (individual)	1	1
Richard Rowe, B&B Owner	5	3
Andy Moir	2	0
Ashraf Mahtab (individual)	3	0
Andrew D. Cameron	1	0
Carol Mahtab	18	4
Brian Meeson	1	1
Kem L. Stanton	3	2
TOTAL	124	41

Summary of Recommendations Incorporated into White's Point Quarry and Marine Terminal Project Final EIS Guidelines

4.2. Kemess North Gold-Copper Mine Project (2005)

Public comments on the Kemess project increased the scope of the assessment to include other mine development areas such as waste dumps, pits and stockpiles that had not been contemplated in the draft EIS Guidelines.

A significant addition to the Kemess EIS Guidelines was the inclusion of a discussion regarding the use of Duncan lake for underwater tailings disposal. It was noted in the Final Guidelines that federal and provincial EAs do not require proponents to assess impacts of alternative means of carrying out a project. However, in this case, "given the significant level of concern raised by some interested parties...a detailed analysis of alternative which were discarded is required, covering both technical and cost aspects." (Kemess North Final EIS Guidelines, p. 10)

Generally, the public comments resulted in a more rigorous scientific assessment of the various immediate and cumulative impacts the Project would have on fisheries, water quality, water quantity, air quality/emissions and other valued ecosystem components.

Commenter	Total Recommendations Submitted	Total Recommendations Incorporated
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BC Ministry of Environment	18	17
BC Ministry of Energy, Mines and Petroleum Resources	24	22
Environment Canada	35 (approx.)	29
Health Canada	3	3
Fisheries and Oceans Canada	8	5
Gitxsan House of Nii kyap	22 (approx.)	6
Treaty 8 Tribal Association	14	10
MiningWatch	7	5
TOTAL	131	97

Table 2 – Summary of Recommendations Incorporated into Final EIS Guidelines

4.3. Prosperity Gold-Copper Mine Project (2009)

Public comments on the Prosperity project increased the scope of the assessment, both temporal and spatial. The temporal scope was clarified to ensure that post-closure residual effects would be assessed throughout. The spatial scope was expanded to include maintenance access routes for the proposed transmission line and substation and an off-site facility at a nearby mine site also operated by the proponent. The addition of these various components increased the geographical scope of the assessment and required the proponent to report on a wider variety of issues and eventualities associated with these added components.

A second area where public comment had an impact was in the addition of a section in the Reclamation and Decommissioning Plan devoted specifically to outlining the requirement in the BC *Mines Act* wherein “a financial security is required for all, or part of, the outstanding costs associated with mine reclamation and protection of the land, watercourses and cultural resources.” (Prosperity Final EIS Guidelines, p. 28) While the mining industry is likely aware of this provision in the BC *Mines Act*, by making it explicit in the EIS Guidelines, and requiring the proponent to provide some discussion on it in their EIS, it becomes much more transparent and understandable for the public.

Interestingly, the inclusion of an assessment of the potential effects of artificial light pollution was identified in only one public comment, but was incorporated into the final EIS Guidelines.

Commenter	Total Recommendations Submitted	Total Recommendations Incorporated
Natural Resources Canada	5	4
Esketemc First Nation	8	3
Stswecem’/Xgat’tem First Nation	8	2
MiningWatch Canada	7	5
Williams Lake Field Naturalists	22	13

Adventure West Resorts	4	1
George Colgate	3	2
TOTAL	57	30

Table 3 – Summary of Recommendations Incorporated into Prosperity Gold-Copper Mine Project Final EIS Guidelines

4.4. Bute Inlet Hydroelectric Project

In the case of the Bute Inlet Hydroelectric Project, there was a great deal of variability in terms of the degree of impact that individual commenters had on shaping the final EIS guidelines. Although most commenters expressed concern over the effects of climate change on the project (need for, viability of and risks to the project), none of these comments resulted in any change to the final guidelines. Where public comments were effective was in expanding the scope of the project; one notable example being that the spatial scope of the assessment was expanded from the scope of the physical project to include the scope of movement from fish migrating through the project area. Furthermore a greater degree of activities taking place both upstream and downstream from proposed dams and transmission lines, including the construction of temporary facilities were included in the project scope.

A number of commenters suggested additions to the list of VECs, most of which did not make it in to the final guidelines, although aboriginal title, species at risk, a number of other culturally/economically valuable species and visual quality were added. Finally, the quality of the baseline data required to adequately describe site conditions and assess impacts was improved through the additional requirements that the proponent design a number of studies to assess population trends and dynamics of a number of aquatic species.

Commenter	Total Recommendations Submitted	Total Recommendations Incorporated
BC Ministry of Forests and Range	26	12
Environment Canada	14	4
Department of Fisheries and Oceans	52	41
Natural Resources Canada	17	8
Shishalh Nation	53 (approx.)	6
Sierra Club Quadra Islands	35	5
Green Party of Canada	3	1
Sunshine Coast Conservation Association	6	1
TOTAL	206	78

Table 4 – Summary of Recommendations Incorporated into Bute Inlet Hydroelectric Project Final EIS Guidelines

5. Conclusions

The following sections outline a number of conclusions the authors have reached as they completed their review. It is important that the reader be aware that these conclusions are based on observations and analysis of final documents that were publicly available. The authors did not have access to notes made by decision-makers, nor did they interview anyone in the Canadian Environmental Assessment Agency or other government departments to determine what the decision-making process was for the incorporation (or not) of public comments on the Draft EIS Guidelines into the Final EIS Guidelines. That said, we believe that our conclusions below may be of interest and assistance to those making comments on Draft EIS Guidelines and may help to inform future participation in the environmental assessment process.

In general, public comments appeared to be well received if:

- They were specific
- They referred to a specific heading and/or page number where the commenter wished changes to be made
- Where appropriate, they refer to the original wording and then suggest an alternate wording
- A rationale was provided for the recommendation.

In general, public comments **did not** appear to be incorporated into the final guidelines if:

- They relied on general comments, or criticisms of proposed activities or the EA process
- It was unclear to which section the changes would apply.

5.1. Comments Specific to the Marathon PGM-CU Project

Request that an assessment of alternative uses of the area for economic development be included in “alternatives to the project”

Cumulative effects assessment should require a baseline analysis of historical conditions in order to determine cumulative effects to date. “Baseline conditions” should not be synonymous with “current conditions”.

Methodology of baseline data collection should be the same (or comparable) to the methodology that will meet requirements of the permits/legislation further along in the mining operation.

Request that should the proponent determine that there are alternate means of carrying out the project that are technically feasible, but not economically feasible, that they nonetheless describe and assess the least costly of these alternatives.

5.2. General Comments for Submissions

In any parts of the guidelines where the proponent will be required to determine something “in consultation with appropriate stakeholders”, make a note that you wish to be consulted, make a note of for which items of the EIS you want to be consulted and ask for an appendix to be included in the draft

guidelines that lists governments / organizations / groups who are to be consulted (at a minimum) on specific items.

Recommend that the final EIS guidelines are numbered and structured with the same headings/subheadings as the draft guidelines so as to easily identify where changes have been made.