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NWT Board Forum DRAFT Summary Report

13th NWT Board Forum Meeting
National Energy Board,
Calgary, Alberta

November 30 – December 1, 2010

Prepared by Terriplan Consultants
December 2010

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1.0 Introduction

Purpose and Objectives of the Board Forum Meeting

The 13th Board Forum was held in Calgary, Alberta on November 30 and December 1 2010. There were two particular themes to this Forum: to continue work on action items pertaining to the Board Forum Strategic Plan which was first developed at the 10th Board Forum in Hay River in 2009; and to engage industry representatives in a candid discussion of ways in which the Boards or industry might modify their approach to work together more effectively and efficiently. The Board Forum was also an opportunity for members to receive informative presentations from INAC and member organizations.

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2.0 Opening Remarks

After a welcome by Gaétan Caron, Chairman, an opening prayer was led by Richard Edjericon. Gaétan then continued with his opening remarks, describing the agenda as introspective on Day 1 and listening to others (mostly industry) on Day 2. He suggested that the Board Forum is becoming less and less about listening to PowerPoint presentations and more about collective work and decision making. Gaétan asked Ricki to lead in a review of the meeting goals and objectives and the draft agenda. It was agreed that the agenda would be modified to change the order of first two substantive agenda items - Updates from Previous Board Forum and Strategic Planning.

3.0 Strategic Planning Session

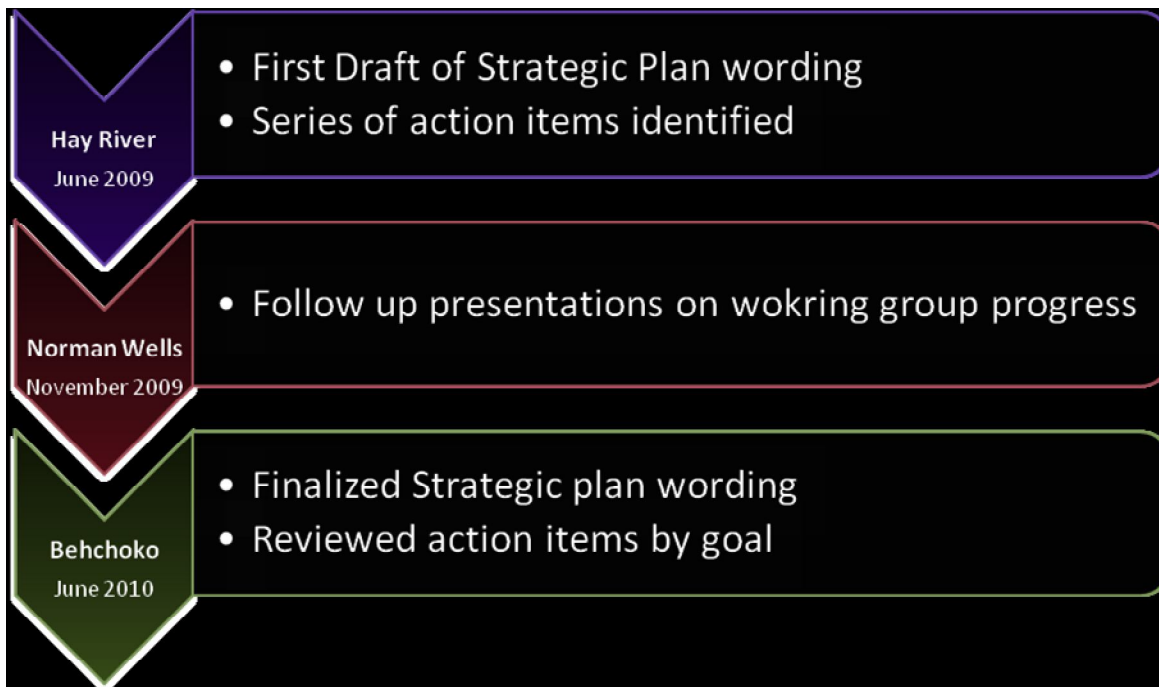
Final Strategic Plan

There was agreement that a revision will be made to the “Final” Strategic Plan Vision/Mission section as included in the Forum binder, changing “consult and inform” to “inform and engage.”

Follow up from Strategic Plan Exercise in Behchoko (June 2010)

As the Board Form Strategic Plan was effectively approved at the Board Forum in Behchoko in June 2010, the next step is to determine how to move forward with respect to implementing the Strategy. It is important to develop a process and a plan of action so that the Strategic Plan does not become a static or dormant document. It was suggested that a discussion of actions linked to the Plan be a standing agenda item at future board meetings so that Board members can maintain continuity between each Forum.

The following timeline of the Strategic Planning process was recounted:



There was a discussion on developing action items under the Strategic Plan. It was agreed that there should be a systematic approach to developing and addressing action items. The Forum needs achievable action items with clearly defined deliverables and a governance structure to ensure that the deliverables are addressed as intended. It was agreed that members need to do work between Board Forum meetings and to identify objectives and associated tasks as required. The members also agreed that they need to set practical timelines and consider the establishment of issue-specific Working Groups.

There was a discussion of a sample Board Forum agenda that would continue to include Working Groups reporting back to main plenary group at subsequent Board Forums. If something does not get done

between meetings, the Working Group would be responsible for identifying why and proposing a solution. Breakout groups should be organized according to the three strategic goals and it may be best to have consistent membership of breakout groups by goal or by issue. Future Board Forum agenda should continue to be action oriented rather than simply reporting of information.

Discussion:

The following captures the main topics of a “brainstorming” discussion by several participants in the Board Forum:

Q: What would be the focus of the Chairmen’s report? Would this be the responsibility of the host Chair or of all Chairs?

A: The Chairmen’s report could include goals of the whole group if the Chairs want to retain a focus on the Strategic Plan. We could also use the Strategic Plan itself as the reporting framework.

Q: How much time should be dedicated to the Chairmen’s report as part of the agenda?

A: First morning of each Board Forum; duration to be determined by host.

Q: Would this approach change the role of the Chairs into more of a governance group?

A: Yes, the Chairs would become more like a governance committee.

Q: What is the rationale for Chairs being champions for certain issues?

A: Individual Chairs would assume responsibility for ensuring that specific action items are addressed. The Champion would Chair the Working Group that is responsible for addressing the issue and ensure that work is being done between Board Forum meetings. Working Groups would have some continuity from one Board Forum to the next. There could be one Board Chair champion and a Working Group for each goal.

A good example of such a successful approach is the Training Committee that has developed a program with its own Strategic Plan. The Committee has a Chair and a coordinator and has successfully received and managed funding for the delivery of training programs.

Willard Hagen suggested that the Forum does not really need a ‘Chair’s report’ *per se*, but should focus on problem solving rather than reporting. Also, he emphasized that the Boards need to network between meetings and work on implementing the priority tasks identified through the Strategic Plan. Additional work during the intermediary periods (i.e. between Board Forums) is crucial to addressing these tasks in a timely manner. It was agreed that there should be more structure and accountability with respect to specific timelines for various tasks. There is a need to breathe life into the Strategic Plan and get things done. Although capacity is always a constraint, a collective commitment is needed as a first step.

It was also suggested that the Forum should focus on issues that affect the majority of the Forum members. To advance implementation of the Strategic Plan, Forum members need to dedicate the appropriate time to addressing the tasks. The actual Forum members are the Board Chairs and we need Chair buy-in to move issues along. Past members have worked hard to undertake identified tasks, but often action items that were raised did not receive Chair’s commitment and would often languish.

It was agreed that there should be a consistent approach to Chairing the Board Forum. The host Chairs would likely benefit from having the previous host Chair assist in the preparations for the subsequent

meeting to facilitate continuity. It was also agreed to maintain a transition team Working Group – including both the past host and current host – to prepare for each meeting. The focus of the transition team is to support the work being done “between forums”.

It was suggested that a Board Forum Chair could be elected for a defined term, or that a Chair (or co-Chairs) could be assigned for each of the three Strategic Plan goals. It was agreed that these points merit further reflection before changes towards a different governance structure are made. (Note that this task of examining the governance option was subsequently assigned to Working Group #1 and that a Chair/co-Chair was assigned to each Working Group.).

Three breakout groups were established to consider each of the three goals of the Strategic Plan. The break-out sessions were facilitated by Ricki Hurst, Kevin McCormick and Brian Chambers and results reported in plenary. The results from each session and the subsequent questions and plenary discussion are summarized below.

Goal One: A coordinated, sustainable, continually improving and publicly supported natural resource management system exists in the NWT

Goal one as stated in the Strategic Plan is very broad and perhaps we need a more strategic approach. The Strategy calls for an improvement in implementation in three ways: between each Board Fora held every six months; between board members; and between boards and stakeholders. Board Relations Secretariat (BRS) and the current and future Chairs of each Forum could continue to be responsible for ensuring improved continuity between sessions (as has occurred over the past year). Alternately, it might be productive to ask for volunteer Chair(s) who could be responsible for this task.

The beak-out group supported having two co-Chairs for the Goal One Governance Committee. It was suggested that the Working Group which handles the agenda and other matters between Forums be led by these two co-Chairs and membership be expanded. There was also discussion of the importance of the ongoing exercise of coordinating and clarifying protocols, roles and responsibilities of regulatory Boards and Panels. Finally, there was discussion of the priority issue of consultation and engagement responsibilities.

Action items were identified:

First, it was agreed that the volunteer Co-Chairs of the Governance Committee will be Willard Hagen of MVLWB and Richard Edjericon of MVEIRB. The first task of this group is to consider on-going changes to the governance structure and composition to the Goal 1 Working Group and its responsibility for planning individual Board Forum agenda. Eric Yaxley would support the Working Group governance and Board Forum planning task.

Second, it was agreed that work should continue on the ongoing review of the MVRMA for presentation to INAC as part of its Regulatory Improvement Initiative. The deliverable would be a discussion paper on potential amendments to the Act. This initiative will be led by Zabey Nevitt of the MVLWB. The initiative will include a workshop to be organized before the next Board Forum.

Third, it was agreed that this Governance Committee would coordinate the development of a paper outlining the Board Forum members' perspective on engagement/consultation and initiatives that the Boards can undertake to improve engagement and consultation. It was agreed the Mark Cliffe-Phillips of the WLWB would lead on this activity.

Discussion in Plenary:

Q: A question was raised whether representatives of Board(s) within the ISR should be part of this group, and specifically the group examining potential changes to the MVRMA under the Regulatory Improvement Initiative. It was agreed that the ISR Boards are of course welcome to be part of this group and it would be strategic that there is 'one voice' on regulatory improvement. One of the rationales is that the INAC regulatory initiative includes consideration of amendments to the NWT Water Act which applies to the ISR as well as the Mackenzie Valley.

It was agreed that for work between Board Forums, the Goal One Working Group is responsible for drafting the agenda for consideration by all Chairs for the subsequent meeting.

It was agreed that for this initiative to be successful, the Boards must "own" each Working Group action item, and that someone (i.e. Chair[s]) must take it on. There was a suggestion that the Working Group refrain from policy change, but rather focus on the pros and cons of proposed changes to the Board Forum governance structure.

It was agreed that the review of the MVRMA, as part of the Regulatory Improvement Initiative, as now being conducted by the Land and Water Boards, should continue. There was a brief discussion of how devolution negotiations might affect the boards, but it was agreed that work should continue regardless of such negotiations.

The Board Forum members support the Action Plan of the Breakout Group for Goal #1.

Goal Two: Members of the Board Forum are knowledgeable and effective contributors to the resource management regime

The Board Orientation course has been developed and the work plan is being implemented. A Strategic Plan for training is also being developed. The current plan is to extend the work of the Training Committee for 5 years and also to continue development of a Strategic Plan specifically for Board Training led by Mike Harlow and Liz Snider as appropriate.

The two key points were made:

1. There were only five volunteer participants in this Breakout group, signalling that the matter is already being effectively addressed.
2. The focus of this goal statement should be on "knowledge" rather than "effective." The Working Group recommended that the word "effective" be removed from the goal statement.

It was emphasized that the training program needs long-term and reliable funding. The Training Strategic Plan can assist members when seeking funding. The Orientation Course is quite broad and general, and the Working Group may consider how to "slim it down" for a community audience if resources become available.

Willard Hagen agreed to stay on as co-Chair of Training Working Group and members expressed their hope that Liz Snider (EIRB) will also agree to continue as co-Chair.

Discussion in Plenary:

Everybody agreed that multi-year funding is required and there is a need to reinforce the value of training in producing effective board members. When seeking funding, the Board Forum should promote the value of the boards in meeting the Ministers' objectives.

The Board Forum supported the recommendations and Action Plan of the Breakout Group for Goal #2.

Goal Three: Communities, constituents and clients are consulted and informed in the pursuit of our goals)

It was suggested that the Boards and the Board Forum could do a better job of conveying "good news stories".

Many Aboriginal organizations do not understand the purpose of the Board Forum, or the role of Boards within the context of land claims settlements. There has been some engagement at a regional level, for example in the Gwich'in and Tlicho areas, but new Boards could draw on some of the work done by other boards in terms of outreach. The new Boards should draw on the experience of mature boards.

Any information on the Board Forum website is public and should be promoted by Forum members. Other options the Working Group could consider include a monthly email with a newsletter; and press releases – good news stories re: Board Forum. It was noted that at CKLB Radio information is communicated in Aboriginal languages.

It would be helpful to have a high level presentation overview that explains northern Boards, land claims, and the Board Forum with a focus on engagement and consultation. There is a need to improve and enforce messages through ongoing communication. The Working Group for Goal 3 suggested emphasis on developing tangible products, and encouraged focus on high-school audience. It was noted that an "Outreach Committee" had already been established which should be strengthened. As there were approximately 12 members in this Working Group, it was suggested that some existing communication specialists in the group could be re-activated into a core group?

John Ondrack volunteered as Chair of the Outreach and Communications Committee

Discussion in Plenary:

There was a discussion of how the Communication Working Group already includes communication persons from some Boards. Most of the reports from previous Board Forum meetings are on the website. Communities would benefit from having more information on the website so people can better understand how the resource management regime works in the NWT. Some speakers cautioned that the group needs to consider the purpose of the information that is put on the website and all of the implications of posting that information. Also, as the Board Relations Secretariat (BRS) is presently limited to \$5K for web site management per year, it would be helpful to collaborate with communication staff from Boards. It was suggested that Board Forum products use all Board logos on its letterhead (i.e. like the final version of Board Forum Strategic Plan contained in the Binder for this Board Forum).

There was a suggestion that the Working Group consider preparing a formal statement to the Privy Council Office (PCO) to inform them of the good work that is being done within the Board Forum. (Note that the lead on this task was subsequently assigned to Zabey Nevitt.)

An Outreach and Communications Committee could effectively be the existing (re-energized) Communications Committee, and outreach could be addressed through a subgroup. This group should come up with key messages. There was a caution that we should be careful about speaking on issues related to unsettled claim areas. Members could pool resources for future improvements to the Board Forum website. Note that Brian Chambers of the NEB volunteered to take the lead role on this Outreach sub-group.

The Board Forum supported these recommendations and Action Plan of the Breakout Group for Goal #3.

Next Steps

There was general support for establishing permanent Chair(s) for each of the three goal-based Working Groups as identified above. The specific membership of each group remains to be confirmed under the leadership of the respective Chairs as identified above.

4.0 Updates from Previous Board Forum

Board Forum Key Messaging – Zabey Nevitt (MVLWB) and Eric Yaxley (BRS)

The discussion on the Power Point presentation was led by Eric Yaxley.

It was noted that final approval from Boards is needed on the generic PowerPoint presentation prepared last summer. As comments have been received only from the WRRB, feedback is required from more Boards before the presentation can be completed. It was agreed that review comments on the existing PowerPoint should be provided to Eric within two weeks and that the presentation should be placed on the Website when deemed appropriate. There was a question as to whether or not the training documents are (or should be) posted on the website. This too was discussed later in the agenda.

The Chairman Gaétan Caron used this example to emphasize the need to develop a culture of action and conclusion of tasks.

Training Update – Eric Yaxley (BRS) for Liz Snider

As Liz Snider was unable to attend this Forum, the training update was provided by Eric Yaxley.

Discussions in May/June 2010 focused on taking stock of training needs and opportunities to develop new courses relevant to Board requirements. The Board Orientation Course was delivered in the fall 2010 and another session will be led by Terriplan Consultants in January 2011. The Orientation Course has been and will continue to be offered to government representatives as well as Board members and staff. A course on Administrative Law was recently delivered in Inuvik by John Donihee. There is considerable technical expertise within our own organisations that could be used with respect to specific technical workshops. It was noted for example that Rebecca Chouinard has developed the technical training course.

For 2010/11 \$320,000 has been identified by the BRS-INAC for the Board Training Program. The Training Committee has finalized the following courses for this fiscal year:

- Board Orientation (Yellowknife) – November 18 & 19, 2010 – Completed
- Board Orientation (Inuvik) – January 24 & 25, 2011
- Administrative Law (Yellowknife) - November 3 & 4, 2010 – Completed
- Administrative Law (Inuvik) - February 1 & 2, 2011
- Technical Workshop (Yellowknife) – December 13 - 15, 2010
- Technical Workshop (Inuvik) – January 11 - 13, 2011
- Public Hearing Skills Pilot Course (Yellowknife) – March 1 & 2, 2011 – Tentative

Tentative Courses for 2010/11	# of Participants
Board Orientation (2 courses)	
Administrative Law / Board Governance (2 courses)	
Technical Session (Oil & Gas and Mining) (2 courses)	
Public Hearing Skills Course Development & Pilot Session	
Total Participants	TBD

Courses Provided in 2009/10	# of Participants
Administrative Law (2 courses)	31
Pilot Board Orientation	14
Technical Session (Oil & Gas and Mining)	15
Total Participants	60

Courses Provided in 2008/09	# of Participants
Written Communications (2 courses)	47
Finance and Administration (2 courses)	34
Administrative Law (2 courses)	43
Public Hearing Skills (2 courses)	28
Northern Oil & Gas and The Environment	17
Total Participants	169

5.0 NPMO – Update on Operations and Opportunities for Collaboration with Boards

Nicole Jauvin, President of CanNor, spoke on behalf of the Northern Projects Management Office (NPMO) and CanNor. The creation of the Agency and the Office was announced in August 2009 as a “path finding service” to take advantage of resource development opportunities in northern Canada. She recalled the earlier Board Forum meeting in Norman Wells where she spoke, and acknowledged the efforts of Kate Hearn in bringing NPMO to where it is today. Stephen Van Dine is now the A/Vice President of CanNor. She also introduced Donald James, the Director General of the NPMO in Yellowknife. She also noted that she is impressed with the quality of work and dedication that she has seen recently from the Boards and within the Forum.

Mr. Steven Van Dine continued with the presentation in part by answering the following questions:

- How are regulatory agencies ‘clients’ of the NPMO?
- How can Boards and NPMO support each other?

Assistance to proponents includes information and understanding of the regulatory process and the roles and responsibilities of the Boards. A single window for Federal departments’ work is in progress and an electronic “Project Tracker” system is being developed. Stephen noted that it is an evolving NPMO approach and the office is beginning to be contacted by proponents.

He reported that in October 2010 the Office held tool development workshops and engaged with federal partners working in the north. A Project Committee was formed. The NPMO plans on collecting work in advance from Federal regulations, members and Boards. The NPMO will also inform the Deputy Minister Committee on Major Projects of key information requirements and of potential project roadblocks, in order to help advance the projects. NPMO will only engage when additional oversight is needed or valuable. Trouble shooting as required, and when requested, “to ensure that accountabilities are met from a federal perspective”.

Next steps are to finalize tools and business practices for the management of projects.



(L) Nicole Jauvin and
(R) Stephen Van Dine,
representing CanNor

Discussion:

In response to a question regarding the requirement of security deposits by regulators, Mr. Van Dine noted that NPMO is a service organization, not a regulatory entity.

With respect to Crown consultation requirements, the NPMO does not have a consultation mandate as other agencies retain that responsibility but NPMO will manage and maintain the consultation record. It was noted that the NEB is not an agent of the Crown, yet NEB can, as an agency, meet the federal obligations to consult. It was agreed that there is a need for further clarity with respect to consultation in the absence of good legal direction.

Mr. Van Dine noted that the new Nunavut legislation has a 90 day window for a ministerial decision. NPMO would like to address this issue with respect to NWT in a meaningful way. How can NPMO expedite ministerial decisions? One approach is to develop a document management system which would ensure that all relevant information is available to decision-makers in an effective manner. As NPMO only engages at a later stage of project development and review, there is a need to ensure that actions predating this phase are consistent.

NEB finds that the proponent's record of consultations with Aboriginal interests is very relevant to evaluating whether the honour of the Crown is being upheld. It was suggested NPMO should speak to regional LWBs as well so that all members can hear the same information. Mr. Van Dine agreed. Manik Duggar and Matt Spence of the NPMO in Yellowknife have already been instructed to meet with all regional organizations.

NPMO has some authority to make things happen. A Project Tracker tool could be used to determine if MVEIRB conditions are respected and implemented. Steven Van Dine noted that monitoring boards reflect the general lack of trust in government in terms of implementing terms and conditions recommended through the environmental assessment process. A Tracking system could help address this need.

The Board Forum encourages more work by NPMO to address some of these practical issues and to make good use of information developed through the MGP process. The Board Forum has a keen interest in what NPMO is doing.

6.0 Administrative Tasks

A review of the Board Forum Terms of Reference is a standing agenda item at the Board Forum.

NWT Board Forum Terms of Reference

An opportunity is provided at each Board Forum to review its Terms of Reference (ToR). An adjustment to the ToR may be required in light of the Strategic Plan and related action items under the three goal-oriented Working Groups. Members were asked to review the ToR and identify possible items for the next agenda. BRS will review the ToR and the "governance machinery" to determine if any changes are needed to the ToR in order to reconcile and facilitate those ToR with the three Goal orientated Working Groups.

7.0 Update on Arctic Offshore Drilling Review

The Chair reported on recent meetings with the GNWT Premier, Chief Blake of the Gwich'in, and the IRC in Inuvik; and plans to meet with WMAC, GTC, the Aurora Research Institute and others in the near future. He suggested that there is general consensus that the scope of review is correct.

The main questions are:

- How will NEB regulate offshore drilling activities in Arctic?
- How to drill safely while protecting the environment?
- How to respond when things go wrong?
- What are the lessons learned from the incident in the Gulf of Mexico?
- What will be required from proponents in the future, re: information requirements for future drilling activities?

The proposed process for the offshore drilling review is as follows:

Phase I: is focused on gathering knowledge from a wide range of interested parties across the three territories through community visits. This is intended to be an inclusive process. Brian Chambers is leading the organization of these visits in the North.

Phase II: will occur in Whitehorse, Inuvik, Iqaluit, and Yellowknife. At a subsequent roundtable session parties will have an opportunity to question each other and offer their opinions on the key issues. The NEB will then write a report on what it has learned and how these learnings will be incorporated into its regulation of offshore drilling. No deadline has been set for completion of the review at this point. Gaétan stated that the NEB will “take the time necessary to do it well”.

NEB will meet with any and all agencies that have an interest in the review.

8.0 Land and Water Board Regulatory Improvement Initiatives

Zabey Nevitt and Mark Cliffe-Phillips updated on an important initiative of the Land and Water Boards of the Mackenzie Valley - an initiative aimed at creating greater clarity, certainty and consistency in land and water Board processes up and down the Valley. Collectively, trying to address concerns through the establishment of 6 Inter-Board Working Groups each tasked with creating clarity and consistency in different areas of the Boards' mandated activities

There are currently four settled land claim agreements in the NWT. Need an integrated and coordinated system. Main Legislation: NWT Waters Act (in both ISR and Mackenzie Valley) and MVRMA. In the settled regions of the MV there are land and water board Panels. In the unsettled regions, First Nations have the opportunity to nominate members to the MVLWB (as well as the MVEIRB).

Strengths are effective consultations and connections. Challenges include unsettled regions, incomplete Land Use planning, incomplete cumulative impacts monitoring, lack of clarity on access to lands, and lack of surface rights tribunals. There is also a need to link cumulative impact monitoring to the regulatory system. Consultation should occur as a rights issue. Consultation does not occur at the appropriate time and place. The free entry system presents a real challenge.

Themes: Consistent, predictable funding. Processes are not always clear, predictable, or understandable. Need clarity and consistency. There is inconsistency between regional interpretations of legislation. Working Groups review all policies and procedures in attempt to standardize procedures. Emphasis is on engagement prior to approaching the boards. Working Groups developing management plan guidelines as required in permits and licences. Land and Water Boards are developing Water/Effluent quality policy and guidelines.

Terms and conditions: reviewing all T&Cs of past permits and licences. Exploring clear and consistent ways to develop a new condition and making conditions enforceable.

Data and Resource sharing: registries, standards.

Application Process: How to apply for a permit. Process for programs under each Working Group. Some inconsistencies – result from Land Claims but others are the result of different interpretations of the MVRMA. The Boards Plan to circulate drafts soon to clients for review and comments.

There are three levels of guidance:

1. Policies – guiding principles
2. Guidelines – how principles will be applied
3. Standards – clear cut requirements

Products:

1. Public Consultation and Guidance
2. Waste Management Guidelines
3. Water and Effluent Quality Policy

The MVRMA and the related Boards are part of a relatively young system. Funding is Inconsistent and unpredictable. Policies/procedures are being developed. Examples: Coordination: Training and Strategic Planning, MGP Coordinator – regulatory authorities, potential MOUs, CanNor-NPMO, regional initiatives. MVLWB: Working Groups, governance reviews regulatory improvement (Action Plan response).

Opportunities for Coordination:

- Terms and Conditions – standardized
- All stakeholders workshop – process for determining new T&Cs
- Shared online registry
- Online review and comment processes
- Standard guidance for permit applications
- Unified and consistent

Closure and reclamation guidelines – have engaged with INAC only to date, but will engage industry in due course. Issues related to financial deposits are also being considered.

Discussion

Some attendees said they were impressed by the amount of work being done by the Land and Water Boards. There was a sentiment expressed that the Boards engage industry sooner rather than later. Willard Hagen suggested that being a “young regime” is not necessary bad; for example, some regulatory agencies (60-70 yrs old) are looking to back track on some requirements. We can learn from these other agencies. There were questions on what is the content/prescription of guidelines? Gaétan noted the general movement to an “outcome-based” approach to guidelines. Industry is also challenged to address this approach. The US is moving to management system regulation.

Presentation is based on MVRMA only; ISR organizations are watching MVRMA activities and will engage and incorporate as required.

There is work underway – have other agencies been engaged? DFO, EC? Working Groups do carefully consider the policies and guidelines of other agencies and various draft documents are reaching the stage where they can be circulated to other agencies for review.

Need clearly defined process for completing each Working Group task. Industry needs lead time to engage. Industry is willing to contribute to advance the process. Need for example a Gantt chart to coordinate the work of the Working Groups. MVLWB is the only land and water board in Canada that doesn't do its own enforcement, need an agreement between Boards and INAC regarding what is enforced. We are only beginning to see opportunities for improvement in that area.

9.0 Facilitated Open Discussion with Industry

The Board Forum met with representatives from Industry to listen to their input and to discuss that input in more detail. The overall theme was “What can Boards (and Industry) do to improve regulation in the North?” Details for each of the industry presentations are found in Appendix D.



(L-R): Rick Meyers, MAC; Gord MacDonald, Diavik; Ken Armstrong, Strong Bow; John Ondrack, EISC

- Incremental expectations added to companies.

Canadian Association of Petroleum Producers (CAPP)

David Pryce and Mike Peters

Key issues outlined by CAPP representatives include:

- Are the added regulatory requirements creating value?
- Timelines are critical.
- Expectations with respect to meeting application requirements.
- Need for clear process/steps/timelines
- Trigger for an environmental review and level of public concern;
- Level of public concern versus level of risk
- Lessons learned for previous project applications

There is a real need for clear roles and responsibilities for each organization within the larger EA and regulatory system. We should strive to deliver a “fit for purpose” environmental assessment where the scale and scope of the review reflects the magnitude of the project. We should resist “regulatory creep” and ensure that added processes create value. There is a need for greater coordination of federal agencies in the process. Changes should be made in a manner that will allow proponents to adjust.

Relevant agencies should have service standards for undertaking a review. The predictability of a process (timelines) has a positive influence on investment decisions. Need legal policy and Aboriginal rights discussion before making other decisions. The North is an expensive place to work. Only global companies are able to operate in the North and they must compete with companies for investment capital.

Mr. David Pryce noted that Working Groups are thinking about moving to a tiered approach to environmental assessment, something that CAPP would support. He also noted that we need to carefully think about ongoing community and First Nation engagement. He suggested that engagement has two main roles: 1. to meet consultation requirements; 2. to acquire land access. He noted that these two roles often become confused or blended together, making it very difficult for industry to proceed.

He said that we need clear objectives from government with respect to the development of resources. We also need to find ways to accommodate the needs of others who are opposed to development. Industry would support consultation with other parties prior to allocating the tenure of land.

Land use planning is critical to providing the context for avoiding critical areas. When LUPs are finalized and approved, issues surrounding land access are clarified. The Gwich'in LUP does consider access issues, and it is unfortunate that this is the only approved Regional Land Use Plan.

As a general concept Mr. Pryce recommended that we somehow consider that the broad subject of resource potential, environmental management and economic development for a region not be considered as part of each specific project based discussion, particularly small exploration or development proposals. Both Mr. Pryce and Mr. Peters emphasized the urgency of securing rights issuance before consultation.

Mining Association of Canada (MAC)

Rick Meyers

MAC is a strong proponent of northern infrastructure development. Challenges include:

- Unsettled land claims
- Informed investment decisions
- Discharge and downloading of the federal duty to consult
- Timelines for regulatory process
- EA referrals – eliminate the precursor stage for major projects
- Consistent direction to proponents within water licences
- Water and effluent policies and standards

Prospectors and Developers Association of Canada (PDAC)

Phillip Bousquet

Members of PDAC are mineral explorers rather than developers. Information: land access and land permitting, land use planning, securities regulations, and exploration permitting and regulations. Mineral claim tenure and the permitting system is a significant planning factor. Mr. Bousquet referred attendees to a document “Impact of competitiveness” E3 Plus – which can be found online at www.pdac.ca/E3plus

NWT/Nunavut Chamber of Mines

Tom Hoefer

Mr. Hoefer explained the Chamber interests as regulatory improvement and land access as well as Aboriginal relations and engagement. He said that we want to build an effective working relationship with northern regulatory boards. The odds of a successful mine are very low and the activities of junior exploration companies have declined significantly in the NWT. He reported that many expeditors who have worked in the NWT are now moving to other jurisdictions. It is important to remove disincentives for investment in NWT exploration and mining.

There is a need to:

- Remove investor uncertainties.
- Address consultation issues.
- Address perceived and real regulatory complexity.
- Define significant public concern.
- Reach the grass roots.

Tom Hoefer introduced the Chamber of Mines Survey results (23 questions sent to 34 companies; 32% response). The responses and results of the survey were distributed and form part of the workshop binder. Refer to *Appendix D Member Survey Results in response to the survey “Working with the Boards – what’s working for industry and what is not?”* The key issues and concerns are as follows:

- Capacity constraints
- Government support
- Consultation requirements
- Lack of timelines
- Lack of community capacity
- Clear mandate and responsibilities of each regulatory agency
- Scalability of the assessment process
- Definition of “public concern”
- Land claims, capacity of First Nations

Suggestions to Improve Resource Management in the NWT (results of the facilitated session)

Following the individual presentations by Industry representatives summarized above, there was a facilitated discussion of ways to improve resource management in the NWT. Ricki Hurst introduced this session by summarizing its intent and posing a number of questions for discussion. The questions were as follows:

- What can we do (practical, focused, grounded action items) to improve the regulatory regime?
- What is the need i.e. is this something that the boards can address?
- What is Industry's role?
- Are there actions or initiatives that the Boards and industry can do collaboratively?

Following a brief exercise in prioritizing the industry concerns were listed (more or less in order of priority) as follows:

1. Consultation and Engagement
2. Timelines (service standards)
3. Scalability and referrals
4. Standards and guidelines
5. How to get involved?
6. Goal oriented regulations and management approach
7. Data sharing/gathering to track progress

8. Definition of Public concern
9. Roles and responsibilities of organisations

The full plenary group then proceeded to discuss the industry concerns, beginning with the issue of highest priority - consultation and engagement. The group felt that the discussion of the two highest priorities matters listed above captured many if not most of the important issues.

Facilitated Open Discussion with Industry

1. Consultation and Engagement

The implications of recent court decisions with respect to consultation are currently not clear. Industry spokespeople suggested that consultation can become an insurmountable roadblock; it can be very intensive in regard to work and time. An ongoing concern is how to engage certain communities particularly when they want to charge industry to undertake consultation. Smaller companies cannot afford to pay the amount of money requested for consultation and such consultation is a major deterrent for junior companies. The review process should be scalable to the resources of the size of the project. Oil and gas companies also face the challenge wherein consultation costs are disproportionate to relatively small size of projects.

It was noted that one of the three Board Forum Working Groups is charged with considering consultation. The concept of consultation or engagement is the biggest challenge because of different expectations with respect to the role/cost of engagement. Paying for consultation will often get the letter of support that is being sought; however, industry must educate communities on the cost and the implications of paying to undertake engagement. The challenge for the Boards (with Industry) is to explain to the communities how the process works. We all need to recognize the realities of the scale of communities involved. There was a reference and support for CanNor's commitment to facilitate discussion with communities.

Miners could use a regularized approach to Aboriginal benefits. Prospectors and juniors cannot meet their consultation/engagement obligations. There was a question: Is industry engaging in informing communities well in advance of when they need support? A few industry representatives noted that regulations are sometimes a stumbling block to good engagement. Communities and Aboriginal Groups will sometimes not engage with industry, because they know that companies are required to engage; and so the community can afford to delay and this becomes a leveraging and negotiating tool.

It was noted that some companies continue to go to communities and discuss matters simply to maintain the relationship but how this can be expensive and not practical for small companies. There is a need to refine/define expectations with regard to consultation. INAC needs to define/refine the obligation. Industry needs greater certainty. One of the unique aspects of northern consultation is that whereas in the provinces government grants are provided to undertake consultation, that option is not available in the NWT.

One industry participant asked if there is any sort of generic information/database program where a community profile is available to industry (none identified). Several industry representatives noted that too often a specific project is held hostage for much larger and fundamental issues of Aboriginal rights and access. They encouraged some type of a three party initiative on non-project consultation. However, in order to be successful, the communities must be willing to participate in such a three party approach. Another industry representative noted that National assemblies are often a key venue for information sharing.

It was agreed to ask Board Forum Goal 3 team to explore the issue and pursue concrete actions to start addressing the issue of community engagement. The Board Forum can be the foundation and vehicle for some real progress.

2. Timelines

The Chair Gaétan Caron noted that the NEB has service standards wherein it strives to complete its reviews with defined timelines. He said that NEB staff compensation is based on NEB success at meeting its service standards. Industry has some certainty and can work with the existing timelines. The Board timelines generally work. Industry noted that raising capital is tied to the existing calendar/fiscal year and so the more certainty in timelines, the better.

Some attendees emphasized that proponents must put adequate effort into submitting an application. They should talk to Boards before submitting. Some of the work currently being done by the LWB Working Groups will address this issue. There is a growing need to define both expectations and process. For example, a company could continue to work on project closure plans and other regulatory instruments while the EA process is ongoing. There was general support on the need to get these LWB Working Group products out for review to industry and others. How, for example, can you address both EA and regulatory requirements concurrently?

Vern Christensen indicated that the MVEIRB will be contracting an external review of its process and timelines as there is some frustration with the existing process. He noted that all parties need to be accountable for the part of the process for which they are responsible. For example, MVEIRB has no control over the federal Ministerial phase of the process. Nunavut legislation refers to a defined timeline for a ministerial response and the Nunavut Water Board (NWB) and Nunavut Impact Review Board (NIRB) are coordinating their efforts to improve timelines. One industry spokesperson offered that a potential time saver would be for the proponent to skip the preliminary screening if the project qualifies for a more extensive review, and go straight to assessment. Vern noted that one would have to look at the legal side of this proposal; perhaps the proponent could have the option to request or pursue a referral to EA. This will require a careful review of the legislation.

10.0 MVRMA Amendment and Update (Alison Lobsinger)

Alison Lobsinger presented on behalf of INAC. She noted that INAC had presented at the last Board Forum and recently at the Geoscience Forum. INAC intends to amend the legislation pursuant to the Action Plan for Regulatory Improvement, but it is still in the very early phases.

INAC's objectives for the amendment of the MVRMA are to:

- ❖ Review and consider the legislation for efficiency of process and to address ambiguities and duplication
- ❖ Consider the addition of modernizing elements to the legislation
- ❖ Implement the amendments recommended through the 2006 Joint Examination Project (i.e., Mitchell Review)
- ❖ Implement the results of the Pollard negotiations regarding the restructuring of the land and water regulatory regime of the NWT

- ❖ Implement any necessary housekeeping amendments that have arisen since the introduction of the legislation

Action Plan for Regulatory Improvement Components:

LEGISLATION / REGULATION	ENVIRONMENTAL MONITORING	STRONG ABORIGINAL VOICE
<ul style="list-style-type: none"> ▪ New Nunavut Planning and Project Assessment Act ▪ New NWT Surface Rights Board Act ▪ Amendments to Mackenzie Valley Resource Management Act, NWT Waters Act, and Yukon Surface Rights Board Act ▪ Regulation changes <ul style="list-style-type: none"> ▪ Territorial Land Use regulations ▪ Territorial Quarrying regulations ▪ NWT Waters regulations ▪ Nunavut Water regulations 	<ul style="list-style-type: none"> ▪ Environmental Monitoring Programs : ▪ NWT Cumulative Impact Monitoring Program ▪ Nunavut General Monitoring Plan 	<ul style="list-style-type: none"> ▪ Building on already established partnerships with Aboriginal groups ▪ Ensuring that land claim agreements are respected ▪ Maintaining meaningful Aboriginal involvement

Consultation on the potential amendments is required and must include adequate notice and information, reasonable time to prepare views, the opportunity to present views, and full and fair consideration of those views.

Draft Consultation Approach:

Process	Issues Identification and Analysis	Draft Legislation
Nov 2010-Mar 2011	March 2011-Sep 2011	Oct 2011-Mar 2012
Share Consultation Plan <ul style="list-style-type: none"> • get feedback • revise if necessary Work Plan for Fiscal Year 2011/12 <ul style="list-style-type: none"> • will be developed starting January 2011 	Share Issues List <ul style="list-style-type: none"> • consider all topics / issues • get feedback Share Issues Analysis Document <ul style="list-style-type: none"> • outline issues analysis and major elements proposed for amending the Act • get feedback 	Draft Legislation <ul style="list-style-type: none"> • DoJ to draft Share Draft Language <ul style="list-style-type: none"> • get feedback • revise as necessary • repeat process as required
Introduction to Parliament in May 2012		

INAC has shared a brief draft consultation plan for review with the Board Forum (see presentation in Appendix D) and would like review comments in due course. Next steps are to review this draft consultation plan and provide feedback to INAC by January 10, 2011 and to provide available scheduling information so that future consultation sessions may be planned. Alison Lobsinger closed by noting INAC's intention to introduce the MVRMA amendments to Parliament in May 2012.

11.0 Closing Remarks and Next Board Forum

The next Forum is tentatively set for the 7-8 June in Yellowknife. It will be jointly hosted by INAC and the GNWT. An expanded Working Group of executive directors, and Chaired by Willard Hagen and Richard Edjericon, will develop the agenda and the host will develop a schedule of events and activities in advance of the meetings. The members agreed to get some of the key points from this meeting out to participants early to start planning for the next meeting.

Additionally on behalf of the Board Forum, Zabey Nevitt will lead the preparation of a letter to be sent to the minister of INAC and CanNor and the Clerk of PCO. The letter will inform them of the recent progress made by the Boards and the Board Forum.

Members agreed that this Forum had provided a number of positive results, including a positive engagement with Industry.



(L) Darryl Bohnet, MVEIRB; (R) Richard Edjericon, MVEIRB

