

***Disclaimer**

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Requested changes documented in these notes do not mean that the Board will make these changes. Some requests are beyond the Board's mandate or jurisdiction to address. The Board must consider all comments and requests and balance the interests of multiple parties. The Board will revise the Plan as it deems appropriate to achieve the right balance.

Calgary Oil and Gas Consultation

Summary Notes

CAPP Office

September 14, 2010

1 pm – 5 pm

Participants:

Bob Overvold, SLUPB member

Heidi Wiebe, SLUPB

Ida Mak, SLUPB

Joel Ashworth, SLUPB

Sherry Sian, CAPP

Shirley Maaskant, MGM Energy

Angela Norris, INAC – NT Region

Rick Pawluk, IOL

Ken Hansen, Husky

John Donihee, SSI Counsel

Patrick Duxbury, Consultant for SSI

Trevor Johnson, Husky Energy

Heather Hynes, IOL

Start time: 1:05 pm

Bob Overvold: Opening address

Heidi went through the introduction slides.

Ken: What happened to the areas that were identified for protection in the land claim? Where are they and how are they recognized (eg: Red Dog Mountain and Bear Rock)?

Heidi: S.17 of the land claim identifies two areas for protection only, Kelly Lake and the Canol Trail. The other areas were recognized as culturally significant and the land claim requested studies be done to document them and make recommendations for their protection but it does not provide them with any protection directly. These include Red Dog Mountain, Mahoney Lake, Yamoga Rock, Bear Rock, the Smokes, etc.

Trevor: So what is protected under the land claim and what happens on the ground is different? We've been told that we can't go into certain areas. Can the plan be superseded by a national park?

Heidi: Although the land claim only offers two areas with protection, there are other sites that are culturally or ecologically relevant and you will find that whether they are officially given protection now or not, communities will not allow you to develop in those areas. Bear Rock and Red Dog Mountain are two such examples.

Sherry: How does the plan address parks management plans that extend beyond its boundaries?

Heidi: There are 2 national parks – Saoyu & Ehdacho and Tuktut Nogait. Naats'ihch'oh is in the process and will likely become a park within the next year at which point it will no longer be subject to the plan. The boundaries have not been set for it yet but they need to make sense from an ecological perspective.

Shirley: I think Trevor's question was, if a national park develops a management plan with expectations for management outside of its boundaries, will those expectations supersede the plan?

Heidi: No. As a planning partner, we would work with parks to try to appropriately manage the buffer areas but the plan applies to all areas outside of the boundaries of national parks and we decide how those areas should be zoned, then it would be up to the approving parties to approve that zoning. So far, Parks Canada has not requested any specific zoning for outside the park boundaries.

There was discussion about the 5 year review, amendments and how long it will take for the plan to get approved, considering that it has taken 12 years to get to this point. Heidi went through the process for reviews and amendments.

Trevor: If every 5 years the plan can be reviewed then there is no certainty for industry. We look at the next 10, 20, 30 years for projects. Hypothetically, reviews can go either way, increase conservation or decrease it?

Sherry: Can you speak to the 5-year reviews?

Heidi: Yes. Hypothetically speaking the reviews can increase or decrease conservation. However, the zoning has been fairly consistent over the years. The changes that have occurred have not been significant in terms of identifying new areas. The communities have been consistent in protecting the same areas in each draft. It's the special management and general use areas that have had significant changes.

Ken: That's not true because the zones have changed significantly. In the first draft the zones were much larger.

Heidi: Yes. The zones have shrunk as a result of the Board's analysis and work with communities but the sites that are important have not changed.

Trevor: Although the specific sites for protection have stayed consistent throughout the course of plan development their size has changed and grown or shrunk so that is still problematic for us because there is little certainty.

John: So Heidi, do I understand you correctly when you say that the Board has decided that zoning will not be changed in exceptions and will only be dealt with in amendments? This is a policy decision taken by the Board?

Heidi: Yes. That is correct. The Board has taken this decision but it is not written out in the MVRMA that this must be so.

Shirley suggested that we continue with the meeting but she did point out that the Board can hear that important concerns are being voiced. She suggested that the concerns be dealt with later in the exceptions and in the grandfathering clause.

Existing Rights

Trevor: For quarrying rights, does the plan specify where the gravel has to come from?

Heidi: No. You would be able to access quarrying materials anywhere.

Re: The expiration of grandfathered activities if an authorization is not renewed within one year after its end.

Shirley: Could you specify if the renewal includes whether or not we are in the process of renewing, or if it only applies to permits and licences that have already renewed? The process in the north may get stalled in the process of granting an authorization.

Heidi: That's a good point. Please point that out in your comments. We would want to allow applications in the process of being renewed to proceed.

Patrick: Let's say there was a grandfathered right and the development was to occur close to an archaeological site, would development be allowed to occur through an exception?

Heidi: Exceptions would allow for some terms to be excluded from the authorization, yes.

Shirley: Does grandfathering include sale from one company to another?

Heidi: That is included under transfer of rights, which the Plan clearly provides for. From my understanding, grandfathering follows the right and not the owner so the right would be transferred to the new owner.

Trevor: Going back to your percentages for each type of zone, how do they compare to international norms?

Heidi: I don't know about international norms, I think that there would be differences across countries. I can tell you that we are much lower than the Dehcho and I can't recall what the Gwich'in percentages are like at the moment.

Bob: In the Dehcho, the conservation zones (not including the PAS areas) are at about 47% and they are decreasing.

Trevor: So you're saying that the Conservation Zones in the Sahtu are not excessive.

Bob: I think it's important to point out that PAS areas are not part of our process. We have inherited them from another process. We are not part of the working groups but you are. Industry and INAC sit on the working groups. The final boundaries and decisions are not ours to make.

Trevor: Does the bulk water removal impact our ability to withdraw water for local use?

Heidi: It does not. Industrial use is allowed even in Conservation Zones if it is necessary for the development of your right.

Ken: With respect to the 40 L limit on bulk water removal, it is not very large. Bottled water could still be shipped out.

Heidi: Pointed to the definition of bulk water removal in the Plan.

Heidi went through the zoning slides.

Trevor: The Special Management Zone terms CR# 14 is already being done in the GUZs right now. We already minimize our impacts to the values on the land.

Rick: The current regulatory system tells us not to cause adverse impacts but there is no definition for adverse impacts. It's too ambiguous.

Sherry: Have the values in the zones been prioritized? Realistically, we have to choose between values because we cannot protect all of the values equally. If we know which values have highest priority in a given area then we can work to protect the most important values first.

Heidi: We try to identify the main reasons for conservation or special management in the zone descriptions but some of the zones have less specific prioritization of values. That is a good point.

Ken: If you're not allowed to explore in Conservation Zones then how would you ever reassess the zoning? There is no data in the Ramparts right now so the economic potential of the area is unknown.

Heidi: Conservation Zones are 4.4% of the Sahtu Settlement Area. They are not very large. You can develop in the SMZs and the GUZs. And PAS areas all undergo economic assessments. The Ramparts will be assessed for economic opportunities too.

Trevor: The issue is that we don't know where to explore. We have no idea where the pools may be. They may do an assessment now but that doesn't mean that 20 years from now there will not be better technology that will find more pools.

Bob: I disagree. In the 1980s Chevron, BHP and others were in the Ramparts and they have explored in the area. Also, the Ramparts boundaries will change because the area will be assessed under the PAS process. It will shrink depending on assessments.

Shirley: We had a discussion about directional drilling at last year's consultation. What was the decision there?

Heidi: INAC also asked the Board if it would agree to allow directional drilling. We asked them whether or not we could grant subsurface access without granting surface access. INAC was not able to guarantee surface protection if we were to allow for subsurface access in the Plan so

the Board decided that it was too risky. As a result we are not allowing subsurface access in the Plan for directional drilling or other uses in CZs.

Shirley: I read some notes by INAC that you can't directional drill without doing seismic. The last time I checked, INAC was not in the business of oil and gas. I think that the agreement should be between the company that is given subsurface access and the land owners. If a company agrees that they will not touch the surface then they should be allowed access to the subsurface. Does the SLUPB have the authority to sterilize the subsurface?

Heidi: The Canada Mining Regulations have been revised to recognize the paramountcy of land use plans over the mining regulations. Land use plans have the right to direct the use of the subsurface because the understanding is that both would be necessary for protection.

Angie: The bottom line is that Conservation Zones can be amended at the 5 year review and they are small. The most significant issue seems to be with the PAS areas.

John: The CMR affects rights issuance. If a land use plan that says that there will not be rights issued for the subsurface then such activities will not be allowed. I'm not sure how the CPRA or COGOA affects this.

Ken: Reality is that without community support you can't go anywhere. If the plan takes away the vetoing right of communities then I would be all for it but it doesn't and it just adds another layer of complexity to the regulatory system.

Shirley: The issue is that we don't have any certainty because we don't know where the pools of oil or gas are. I would assume that companies would put a buffer around Conservation Zones (CZs) and not develop in the vicinity. When a pool is found, we don't know in which directions it extends. To be safe we would stay far from CZs. It is bad business sense to look in an area that you might not be able to extract from. I fail to understand the need to exclude subsurface rights from CZs. We work based on economic risk. We spend about \$1 million to drill a well in Alberta. In the Sahtu we spend about \$8 million. The risk is much higher in the north.

Ken: Where is INAC on this issue? Why would industry work in the north?

Bob pointed out the Colville Hills area and the Mackenzie Valley area where oil and gas potential is high and where SMZs and GUZs predominate. He then pointed out the PAS areas and mentioned that economic assessments would be done in those areas and that the boundaries would be reassessed.

Angie: If you were to take the PAS process out, the map would look very different.

Shirley: We are letting you know that we have concerns.

Sherry: I think I am hearing that INAC's answer to the Board on directional drilling has determined how the Board has chosen to deal with subsurface access.

Trevor: So any activity that requires an authorization would be prohibited from CZs? Can we fly over the areas? Can we walk through and pick up rocks?

Heidi: Any activity that would require an authorization is subject to the Plan. You need to read the definitions in the CR. Aerial surveys would be allowed because the definition is limited to land-based activities. If a geologist was to walk through and take pictures, this would be allowed because there is no authorization required. If they were to pick up rocks (sampling) which requires a permit, it would not be allowed.

John: You can't enforce flight guidelines. The SLWB includes terms in its permits and licences that are not enforceable. They don't have the mandate to enforce a number of CRs and current terms.

Rick: It is fairly clear how GUZs will be used but will the use of SMZs be a public process? Will there be a hearing in the SMZs to determine how they will be used and the rules that will apply to each application? Will the Board consult with communities before determining if the requirements have been met? My concern would be with SMZs and not CZs because I think SMZs will result in inconsistency, public hearings and a public process. SMZs make up over 30% of the Sahtu.

[There seemed to be a misunderstanding here that every application for an authorization in SMZs would require a public hearing and a comments and response period from communities. This is not the case as the conformity determination would be carried out within the current 42 day review period for all applications.]

Heidi: The Board has a different process than that used by the SLWB. If an application is sent to us to determine conformity, we review the application and make our decision. We do not go out and consult communities to get their input. The time for input is during Plan development. Once the rules are set in the Plan, the Board's job is to determine if the application is following the rules. There is no time to consult others and there is no need to do so. Are you looking for more clarity on how the CRs will be interpreted or how the granting of permits and decision-making will be made in SMZs?

Ken: It costs 5 times as much and 10 times as long to do work in the Sahtu. It is already very difficult to work in the region. The plan just adds another level of complexity.

Bob: Ten years ago we heard that the biggest problem was the Inuvialuit area but today it is spoken of as a success. So in a few years the perception regarding the plan might change.

Shirley: That's because it's the best of the worst. It doesn't mean that the system actually works. It is so difficult and slow to work in the north.

Break: 2:30 pm

Return from break: 2:45 pm

Heidi continued to go through the zoning slides.

Trevor: Would the SLUPB consider using GUZs as a default designation for all lands that are excluded from PAS zones? Then anyone who wants the area zoned otherwise can put in an application for an amendment.

Heidi responded that the board has considered the option of having a default zoning but that it is best to zone areas based on their values. Excised areas may become SMZ, CZ or GUZ and it is most cautious to not use one blanket default zone.

Trevor: So we are to avoid CZs but we can cross them if we need to. Would access through CZs be granted based on physical limitations or economic limitations?

Heidi: The plan states that you would be allowed to cross into a CZ if not crossing into it would be a significant barrier to continuing the development of your rights, so it includes both.

Trevor: So I am allowed to access water and gravel in CZs but I am not allowed to go in to extract resources?

Heidi: You can develop your resource in a CZ if you have an existing right within there. If your rights lie outside a CZ, you would not be allowed to expand your rights into a CZ.

Shirley: This is an issue of semantics. You should not speak of adjacent access. Re-word it so that it says that you are able to access your rights and get them to market. We will comment on that in our submission.

Heidi moved on to changes in zoning since Draft 2. Heidi clarified that industrial water use is allowed in CZs. Bob pointed out that the communities had asked for 10 km buffers on water bodies in some areas and that the Board considered it but created smaller buffers.

Trevor: Let's say you have a well that was drilled many years ago. Today it is in a CZ and there is an old seismic line. I would like to use that well to shoot more low impact seismic to see if there is potential outside of the Conservation Zone. Would I be allowed to do that? The irony is that you would not know that we had been there because with an existing well and existing seismic lines, our impact would be minimal.

Heidi: No. You would be denied because your activities are not tied to previous rights. A lot of people would also argue that there are impacts from seismic. If however, you were shooting seismic to exercise your rights with relation to the first well that was dug then you would be allowed.

Heidi moved on to the GBLWMP and then CRs.

Economic Benefits

John: Re: CR#3 – How will the SLWB see to it that applications ensure community benefits if economic considerations are not part of their mandate? You are trying to download the responsibility for ensuring economic benefits to a body that does not have the authority to carry it through.

Trevor: Economic benefits do not belong in the land use plan.

Sherry: The SLUPB provides the opportunity for economic benefit by ensuring that there is adequate space to allow for economic development in the region. The Board's mandate does not extend to including such terms in the plan.

John: I'm not challenging your mandate. My issue is that this CR includes terms and conditions that require a body that does not have the mandate to consider economic benefits, namely the SLWB.

Ken: ABAs are already in place.

Shirley: It is not the SLWB's business to ensure that there is an ABA in place. Their only responsibility is to ensure that companies have been granted access by the land owner.

Ken: We already have to negotiate access agreements and then we have to negotiate separate benefit agreements on top of the INAC Benefits agreements. Adding this CR would just add another SLUP agreement that the communities would expect us to negotiate.

Consultation

Shirley: These terms for consultation might exhaust a small project. It is important to keep in mind the scope and size of the project when you require consultation.

Cultural Sites

Patrick: The MVLURs applies to known sites but I don't think that they apply to suspected sites. Archaeological and burial sites also vary in degree of significance. Perhaps this should be limited to burial sites.

Heidi: I think I took the “suspected” wording from the NWT Archaeological Site regulations.

Water Withdrawal

Ken and Trevor: The rationale for some of these designations seems very emotive. They are not science based. The lake is very long, about 15-20 km. There hasn't been any withdrawal from the lake in the last 10 years. We take from the outflow. For those communities that are noticing draw-downs, they need to understand that it is not due to industry.

Heidi: DFO has been asked to research solutions with the communities. Until a solution is found there will be a moratorium on water withdrawal from those three lakes (Belot, Tate and Stewart). Regardless of the cause, the communities have concerns and are observing changes. It is our responsibility to consider that information and to Plan based on that information. Remember that we're trying to balance the interests. We're trying to be reasonable.

Wildlife

Sherry: Re: incidental harvest. There are a number of issues with the incidental harvest term. What if the recipient changes their mind and no longer wants the resource? It can also create a social expectation. Communities may perceive timber as a benefit until they don't need it anymore and then it may become a nuisance.

From a project economics standpoint it might be problematic. If a company is asked to move the timber to an area and then the recipient does not want it anymore, you will have a resource lying there. It is difficult to know when the company's responsibility ends. There are associated costs with making this accessible and then potential clean up costs if the community no longer wants the resource.

Heidi: The recommendation came from SSI. We included it because they requested that the term be added.

Ken: We would make resources available to the community as a matter of course but it becomes problematic when it becomes a requirement. We may be responsible for future costs if INAC inspectors chose to enforce clean-up in a case where the recipient decides that they no longer want the resource.

Patrick: I don't see a threshold for activities and this might be an issue for below threshold activities. You may not want to frustrate below threshold activities with the burden of all these CRs. Perhaps you can make the zoning apply to below threshold activities and then exempt them from the conditions.

Heidi: We will perhaps need to give below threshold activities more thought.

Project Specific Recommendations, Collaboration

Sherry: The inclusion of Cumulative Effects under the Sahtu Working Group is a good idea. CIMP has a number of indicators – how do these relate to the values identified in your zones?

Heidi: There is a lot of overlap but we would likely need to determine priorities.

Sherry: We are undertaking planning in Alberta and we are also trying to include cumulative impacts monitoring but we are facing serious funding issues. The key question is, how do you set your priorities to ensure that your indicators are properly selected?

Heidi replied that each of the different ecosystems could have different indicators based on the values of importance in different zones. Examples given were the caribou, sheep and goats in the mountains and fish in fish lakes and Great Bear Lake, barren-ground caribou in the northern part of the Sahtu, etc.

Filling the Gaps, Building Community Capacity and Involvement

Sherry: Under A #8 I think you need to make sure that the community monitors are well trained and that they have a strong understanding of the regulatory process otherwise it may cause more strain between the proponent and the monitors. If monitors are not well trained then the monitors with pseudo-enforcement power may create more conflict.

Ken: How will you pay for the implementation? It sounds like your role will not decrease once the plan becomes approved. You might need to look at becoming self-funded so that the Board can properly do its job.

Heidi: We are federally funded.

Heidi then explained the Board's funding process and explained how the Gwich'in has undertaken conformity determinations.

John: The SLUPB's funding comes from the implementation budget which is revised every 10 years. The SLWB is not funded to carry out the implementation.

Patrick: So are conformity determinations carried out by the SLUPB or by another regulator? Will you ask for public engagement during the conformity determination process?

Heidi: Everything goes on the public record but there will not be a public process to determine whether or not the application conforms. The assessment for conformity will take place within the 42 days that are currently set out in the regulatory process.

John: Under the MVLURs the SLWB needs to provide proponents with an answer within 42 days. Under 22.2(b) the SLWB can be allotted more time to review applications when they are in the consultation process.

Heidi explained that the SLUPB has final say in conformity determinations. The Implementation Workshop is supposed to work out potential kinks in the process.

Trevor: Would a developer be encouraged to speak with the SLUPB before submitting their application to see if it conforms to the plan ahead of time?

Heidi: Absolutely. There should be free and open exchange and then modifications can be suggested for applications that do not conform.

John: Why would you just cover the top 3 issues during the hearing? If the 3 issues that are of interest to SSI are not of interest to anybody else then they will not have a chance to discuss their concerns. You run the risk that your top 3 issues will not be worthwhile to the 3 approving parties.

Heidi replied that depending on written comments and the variety of the concerns, the format for the public hearing does not necessarily have to follow this rough agenda but these are the current plans.

Trevor: I would suggest that you address the issues that are most salient to the approving parties.

There was a discussion about the public hearing.

Ken asked about the timeline for approval on the PAS areas. Heidi did a quick run-through of all the PAS areas and when they will be completed. Angela noted that OICs (order in councils - land withdrawals) in the PAS areas can be repealed.

Ken: The Canada Benefits Plans set significantly lower expectations than what the communities want so if the plan requires benefit agreements then industry will face some added challenges.

Meeting ended: 5:00 pm