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Feds, Frogs & Fish Environmental Issues: Case Studies

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Sarah Hansen

*Miller Thomson Seminar
Understanding Aboriginal and Environmental Issues in Project Development
November 13, 2008*

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Agenda

- Environmental permits/ processes
- Environmental due diligence
- DFO authorization
- Species at risk
- Working with regulators
- Environmental assessment

A case study – Feds & frogs

Commercial
development on a
Reserve

Previous use – log
storage, sawmill,
wood treatment
(removed and
remediated)

Location – river estuary
(with wetlands)





Environmental Permits/ Processes

DFO Authorisation (HADD)

Navigable Waters approval

CEAA environmental assessment
(screening)

INAC timber cutting permit

Water Act (BC) approval for instream
work



Environmental due diligence

Phase 1 ESA (contamination)

CEAA EA (screening) report

- birds (eagles, migratory)
- fish & fish habitat
- species at risk
- trees/ timber
- construction & operation



Environmental Assessment

- CEAA triggers
 - DFO authorisation, granting of a lease
 - INAC will require for own due diligence (independent of triggers)
- Responsible authority (RA)
- RA scopes the project (based on the triggers)
- Which EA track – screening, comprehensive study...
- Decision: proceed or not (with or without conditions)
- If yes, federal agencies can now issue approvals

DFO/ Fisheries Act Authorisation

HADD

Compensation

Letters of credit

CEAA screening

Authorisation issued to
allow work to
proceed



Species At Risk

Species At Risk Act (federal)

COSEWIC

Federal v provincial
categories

Red legged frogs

blue listed in BC

of special concern (federal)





Working with regulators

- Establish which regulators are involved: DFO, Transport Canada, Environment Canada, INAC
- Establish who needs to be consulted in the federal family
- Start communications early & set regular meetings
- Establish expectations
- Set tasks & timetables & follow up
- Ensure the local Band has its environmental & decision makers plugged into this process

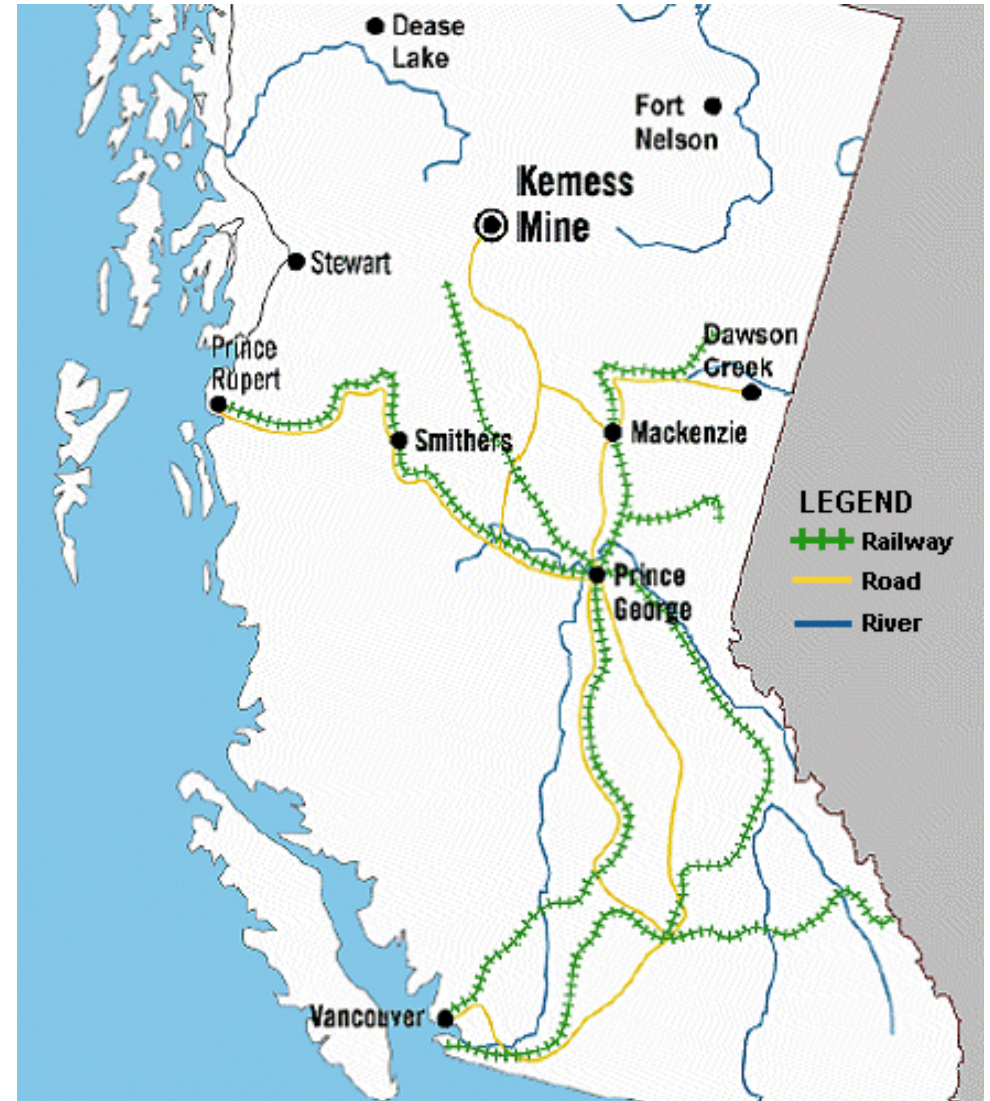
Kemess North Panel Review - History



Expansion of the
Kemess South mine
New open pit
Waste rock & tailings
in Duncan (Amazay)
Lake

History

- 2005: joint review panel established
- Sep 07: review panel report
- Mar 08: BC and Canada accept review panel recommendations





Review Panel decision

“...has concluded that development...in its present form would not be in the public interest. In the Panel’s view, the economic and social benefits provided by the Project, on balance, are outweighed by the risks of significant adverse environmental, social and cultural effects, some of which may not emerge until many years after mining operations cease. The Panel recommends to the federal and provincial Ministers of the Environment that the Project not be approved as proposed.”



Panel Report

- Panel considered the project from a *sustainability assessment framework*
 - Environmental stewardship
 - Economic benefits & costs
 - Social & cultural benefits & costs
 - Fairness in the distribution of benefits & costs
 - Present v. future generations



Panel report

- Benefits would be short term
 - 2 yrs construction/ 11 yrs of mining
- Adverse effects long term
 - Loss of a natural lake with important spiritual values for Aboriginal people
 - Creation of a long term legacy (several thousand yrs) of environmental management to protect downstream water quality & public safety



Implications

- Regulators more comfortable to say “no” to projects that do not represent a “net benefit” to society
- Proponents will have to be more sophisticated in their due diligence & and be realistic about the risks of projects