

## **Water and Land Management in Alberta**

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### **Stakeholder Management:**

#### **An Interest Based Approach**

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### **Introduction**

As the Alberta economy continues to grow, conflicts regarding the use of our water and our land continue to increase. The closure of the Bow River Basin, with no further water licenses being issued, is just one of the most glaring examples. There is simply no longer enough water to go around. The Bow River Basin is not going to be the last basin closed in Alberta, and similar challenges regarding our land resources are not far behind.

Water and land are both finite resources and people are becoming less and less willing to share these resources. As a result, there is increasing pressure on project proponents to justify the use of these resources, and greater likelihood that the use of these resources will be challenged through a variety of legal means. To address these increasing pressures and deal with the potential for legal challenges, effective stakeholder management is becoming crucial. Failure to effectively address the concerns raised by stakeholders will likely stymie a project within the regulatory process, not only when trying to get the initial approval but each time any of the authorizations comes up for renewal. In my view, the “interest-based” approach offers one of the most effective methods to address stakeholder concerns.

The “interest-based approach,” originally developed as a negotiation strategy in the text Getting to Yes by Roger Fisher and William Ury (“Fisher and Ury”), provides a useful framework for effective stakeholder management. The interest based approach described by Fisher and Ury, identifies four key aspects that are used to reach a consensus: (1) separating people and issues, (2) focusing on interests (the why something is important), (3) generate options, and (4) use objective criteria to evaluate the options. These aspects provide useful tools to effectively address the concerns raised by the stakeholder, but largely a procedural perspective. In different terms, the “interest-based” approach has also been described as: (1) setting the stage or environment for effective communications, (2) defining the issues to be discussed, (3) examining the interests behind these issues, and (4) developing solutions. (This is the four-stage approach advocated by the Alberta Arbitration and Mediation Society among others.) The common underpinning of both of these approaches is that they can provide a fuller understanding of how the “interest-based” approach can be used to manage stakeholders and the values that drive them.

This paper will first examine the benefits of stakeholder consultation and look at who are “stakeholders” from an “interested-based perspective.” It will then look at how the “interest-based approach” can be used to promote effective communications between a project proponent and the project’s stakeholders. Finally, the paper will then look at some conceptual issues that need to be considered in undertaking stakeholder consultation.

## **Stakeholders**

### Who are stakeholders?

There is generally a legal definition of some sort of “stakeholder” in the legislation that a project proponent is working under. For example, before the Environmental Appeals Board, a legal stakeholder is a person who is “directly affected”. Other portions of the regulatory scheme have different legal definitions.

In my view, these definitions are too narrow; a stakeholder is anyone who is interested in your project. Depending on the nature of that interest, the proponent’s goal with that person may be different, but they are still a stakeholder. At the end of the day, you are never really sure who will ultimately be a “legal stakeholder”. Starting with the premise that everyone is a stakeholder can build the proponent’s general relationship with the community, which can be invaluable later. This approach also has the potential to build long term relationships in the community, which can streamline future regulatory applications.

### What are the benefits of stakeholder consultation?

The main benefit of an effective stakeholder consultation is streamlining the regulatory process, saving time and money. By bringing stakeholders on-side and addressing their concerns, hopefully they will not have to engage the various legal stakeholder processes that are available to them. Even if the proponent is not successful in addressing all stakeholder concerns, the proponent will at least be aware of the concerns and, therefore, should be able to address these concerns more effectively in the regulatory process.

## **Interest-Based Communications**

Public consultation is not simply holding an open house or distributing information. Effective public consultation is based on full communications; effectively providing information, assisting the person receiving the information in understanding it, and then to actively listen, respond, and act on the information that is provided back to you.

### Stakeholders need to know what you are planning.

The first step in good stakeholder management is for the stakeholders to understand what you are doing and to engage them. It is an ongoing, iterative process. The project should not be presented as a completed proposal; it should be presented as a concept that is awaiting stakeholder input. As the project changes and

evolves, the proponent needs to help the stakeholders keep up with the process. Part of this process is building a relationship and a working environment where effective communications can be undertaken.

Stakeholders need to be given information and time to understand it.

Once the stakeholders understand what the proponent is doing, they need to be provided with the information to help them develop their questions and to answer their questions, and the time to absorb all of that information. Again, this is an iterative process. The time that stakeholders need to absorb the information is not to be underestimated. To feel heard, the stakeholder needs time to understand how the project will affect him or her. As part of this communication, the stakeholder needs to understand what is important to the project proponent.

Project proponents need to listen and understand what stakeholders are saying.

Once the stakeholder has received the information and has had time to process it, it is then time for the project proponent to listen to what the stakeholder is saying – to understand what is really important to the stakeholder and how it impacts the project. This is the real cornerstone of an effective consultation and the point of the interested based approach: what is the true underlying concern of the stakeholder and why do they want what they want?

Once the proponent has this information, the stakeholder needs to know that they have been understood and then to have the concerns they have raised responded to. This does not mean each and every concern needs to be solved, but each concern has to be addressed. It may be that in some cases it will be enough to acknowledge the concern. On the other end of the spectrum, there may be interests that are deal breakers – they must be substantively addressed for the stakeholder to be satisfied.

### **Conceptual Issues in Interest Based Stakeholder Consultation**

#### Development and Evolution

In order to take full advantage of the opportunities for public consultation it is important to understand the development and evolution of the various decision-making models within the environmental regulatory scheme. The decision-making models in the environmental regulatory scheme have changed over time to reflect the changes in society and an increasing desire of the public to be involved in the decision-making process.

Authoritative Decision-making  
Consultative Decision-making  
Negotiated Decision-making



Increasing  
Public  
Participation

Historically, the main decision-making model that has been used is the “authoritative model”. Under the authoritative model, the decision-maker makes the decision without any formalized public input. Examples of legislation that use this model are the Public Lands Act and the Forests Act. (It should be noted that under both pieces of legislation, steps have been taken in recent years to introduce requirements for public input.)

More modernly, most environmental legislation incorporates some form of formal public input mechanism. Under this approach, the decision-maker still makes the decision, but is required to take into account public input. Examples of legislation that uses this model are the Environmental Protection and Enhancement Act and the Water Act. Under both of these Acts, the proponent (in most cases) is required to publish an advertisement inviting members of the public who are directly affected to submit a statement of concern to the decision-maker. The decision-maker is then required to take relevant statements of concern into account in making his decision.

The decision-making model that is currently emerging is where the public takes an active part in the decision-making. This is known as the negotiated decision-making model. Under this model, the regulator (the traditional decision-maker), the project proponent, and the effected members of the public, negotiate the regulatory decision. One example of this model is the contractual approval system in California. Under this approval system, the traditional regulatory approval document is replaced with a contract that is entered into between the project proponent, the regulator, and usually an environmental group representing the general public.

One of the factors in all of the negotiated decision-making approaches is strong support, usually in the form of money, from the regulatory agency to enable the public participation. Even with this support, one of the key challenges is maintaining this level of public participation over an extended period of time. In Alberta, we see the beginnings of a negotiated decision-making model being considered under the Water for Life Strategy. For example, one of the approaches being used under the Water for Life Strategy is the establishment of “Basin Committees” to assist the government in making water management decisions. The Bow River Water Quality Council, which has already been active for a number of years, is being established as one of these Basin Committees.

#### Opportunities for Public Consultation over Time

Another aspect that needs to be understood to take the best advantage of opportunities for public consultation is where these opportunities occur. In general, opportunities for public consultation occur at three points in the regulatory scheme: the proactive phase, the regulated phase, and the reactive phase.

The proactive phase occurs before the formal regulatory process is engaged. This is the phase of the regulatory process where public consultation is most underused and where there is the most to gain. By

undertaking effective public consultation at this stage in the process, project proponents have the opportunity bring stakeholders onside and to clearly identify and limit opposition to the project. The key benefit of undertaking public consultation at this point in the regulatory process is that there are none of the limitations that exist in the other phases of the regulatory scheme and the proponent is in complete control of the process.

The regulated phase of the regulatory process occurs where the actual regulatory decision is being made. Examples of opportunities for public input in the regulated phase include the statement of concern process under the Environmental Protection and Enhancement Act and the Water Act and the public hearing process under the Energy and Utility Board Act and the Natural Resources Conservation Board Act. While public consultation can still effectively take place at this point in the process, the proponent is no longer in complete control of the consultation and it is frequently not as effective as in the proactive phase. The proponent is frequently under time pressures to obtain its authorization documents, and opposition to the project may have already solidified.

The reactive phase of the regulatory process occurs where the regulatory decision has been made and is under appeal or being challenged in court. Again, while public consultation can take place at this point in the process, as is evidenced by the Environmental Appeals Board's extensive mediation program, the proponent of the project is generally on the defensive and the project, while approved, now faces the potential of being delayed.

#### Purpose of Public Consultation

When undertaking public consultation, it is important to understand the goal of the consultation. In broad term, public consultation falls into two categories. The first category is transactional. Transactional public consultation addresses a specific project at a specific time. It is aimed at moving that particular project through the public consultation process as smoothly and quickly as possible, by building short term transitory relationships with stakeholders.

The second category of public consultation is relational. Relational public consultation is geared towards building long term lasting relationships between the proponent of a project and its stakeholders. While such relationships take longer to build, and may comparatively delay the initial construction of the project, this approach is more farsighted and is aimed at making all regulatory processes, (the initial regulatory process and all subsequent renewals), more efficient.