Who is watching B.C.'s environmental watch dogs?

Anne Casselman Jul 14, 2015

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As capital investment in B.C.'s natural resource sector grows, the role of environmental assessments has become critical to a project's viability. A negative assessment can mean the death of a development worth billions. But with the feds now promoting a self-regulating, self-reporting model of assessment, many worry that the environment—and the public interest—is being compromised for the sake of the almighty dollar

The Skeena is Canada's second-largest salmon river and harbours all six species of salmon and steelhead.

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What the Bering Sea is to king crab, the Skeena is to salmon. So when Jonathan Moore read in the environmental assessment application of one Fortune 500 oil and gas company just how few fish the firm's environmental consultants reported to find at the mouth of the Skeena—the nursery for the watershed's fish and proposed site for the company's energy project—he was confounded.

At the time, one of Moore's graduate students was researching salmon habitat, alongside Skeena First Nations, in the area of the proposed development in northern B.C. Moore was familiar with the area from time spent sampling fish there. "We would catch more fish in one single net haul than their environmental consultants reported seeing all summer," he says. Moore had recently moved to Vancouver from California to teach and research ecology at SFU. He'd arrived in B.C. excited to live and work in a region that,

wrong about buying gold. But he still thinks he's right

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in contrast to the western states of California, Oregon or Washington, still had thriving wild salmon. Only now he couldn't help but wonder whether B.C. was about to gamble with its healthiest fish stocks, ignorant of the risks.

While Moore loves fish, his true allegiance lies with science, and it was the flimsiness of the assessment's conclusions—that the project would have no residual negative effects on fish habitat—that bothered him most: "I didn't see that conclusion being scientifically defensible." It raised a troubling question: If provincial and federal environmental assessment agencies are relying on such insufficient data to inform their permitting and decision-making, then where does that leave the other 109 major proposed developments in B.C., whose

applications have been submitted to the B.C. Environmental Assessment Office (EAO) and the Canadian Environmental Assessment Agency (CEAA)?

Nearly half of all major resource projects across Canada currently being reviewed by CEAA are situated in B.C. While some of those oil-and-gas projects may be deferred until oil prices (and capital investment in the industry) bounce back, an unprecedented scale of development is already underway. The Chartered Professional Accountants of B.C. reported that capital investment in natural resource industry projects in northeast B.C. alone was $29.2 billion as of the end of 2013. Meanwhile, various proposed LNG projects are expected to create 100,000 new jobs through 2023, according to a recent WorkBC report.

Yet while B.C. may be experiencing a renaissance in resource development, it also comes at a time when our environmental assessment process is,

according to critics, the weakest and most confusing it has been in decades—thanks to abrupt changes in our environmental laws and deep budget cuts to government regulatory agencies.

In 2010, CEAA's annual budget was cut by 40 per cent down to $17 million (meaning that the environmental assessment office for all of Canada has an annual budget less than one-twentieth of Enbridge's regulatory expenditures for Northern Gateway). The CEAA cut was followed by radical changes to the Canadian Environmental Assessment Act, which reduced the scope of public engagement and divvied up responsibility across federal or provincial agencies. The Navigable Waters Protection Act was also replaced by the Navigation Protection Act, which removed federal protection for 98 per cent of all rivers and lakes in Canada. And the Fisheries Act—Canada's oldest and strongest piece of environmental

legislation—was rewritten to remove explicit habitat protection for all fish. The end result of all these changes has been an increasingly self-regulating, self-reporting system that's full of grey areas, where discretionary judgment calls are made without any accountability.

No one seems happy with the outcome. Environmental groups point to deregulation as evidence of an unbalanced process that favours proponents at the expense of public interest and the environment. Meanwhile, industry groups bemoan high levels of uncertainty under the new laws. "With all [the legislation] changing at the same time, it has been a difficult few years," says Justyna Laurie-Lean, VP environment and health at the Mining Association of Canada in Ottawa. "The transition has been painful."

In researching this piece, *BCBusiness* spoke with many environmental consultants—most on condition of anonymity—who painted a worrisome picture of what can take place behind the scenes of environmental assessment work.

Braden Robinson* is a professional biologist and environmental consultant who, until recently, worked at a mid-sized environmental consulting firm in Metro Vancouver that consults for energy and gas project proponents. Project proponents, who often lack in-house scientific expertise themselves, will hire such firms to conduct environmental assessments, which they will submit to the government regulatory agencies as part of their application for project approval. The way he tells it, these are dark days for his work: "I've had my professional opinion heavily, heavily pressured. I've had my wording changed, my results changed. A lot of my

interpretations have been changed."

Another environmental consultant, Jake Trimble*—who has worked extensively in B.C. and internationally for over two decades as a consulting biologist and specializes in environmental impact assessments of development projects in aquatic environments—points to many key problems stemming from the new Fisheries Act: "The onus is on the proponent to say whether their project is going to have an impact or not. How many of them will say, 'My project will have an impact'? Those [consulting] companies tend not to get a lot of repeat business because nobody wants to hear bad news."

Indeed, Robinson recently did work on a proposed multibillion-dollar energy project in northern B.C. where the supervising registered professional biologist—on staff at the environmental consulting firm hired by the project proponent—made the call to do a self-

assessment for a phase of the client's project. In Robinson's opinion, that phase should have been reviewed by Fisheries and Oceans Canada, given its high potential to cause serious harm to fish—biologists who carry the professional designation Registered Professional Biologist (RPBio) can now vouch that a project won't harm fish or fish habitat and bypass government review.

The end result, says Robinson, was that the riskiest part of the project went ahead without government oversight at a cost "to the goals of environmental stewardship and public interest." As for who benefits from the RPBio's decision to do a self-assessment, "the gain would go to the proponent because they were spared offsetting [habitat compensation] —and the biologist who made the

decision, because they still get paid and they build a stronger relationship with the client."

Environmental assessment (EA) got its start in the 1970s after the U.S. enacted the National Environmental Policy Act. The idea was to link the environment with development by informing decision makers of the environmental consequences of proposed actions. Given its rapid adoption worldwide, it's viewed as one of the major policy innovations of the 20th century. Canada was one of the first countries to follow America's suit, but the idea didn't become law until 1995 with the Canadian Environmental Assessment Act. That same year, B.C.'s environmental assessment law came into force.

Today, national and provincial environmental assessment laws apply to everything from mines and tourist

resorts to urban infrastructure. When you boil it all down, environmental assessment is the process by which the damage caused by a proposal can be avoided altogether or failing that, tallied and mitigated. The cost of proceeding without such a process can be catastrophic. The U.S.'s decision to exempt BP's Deepwater Horizon offshore drilling rig from an environmental assessment has been identified as a factor in the devastating Gulf of Mexico oil spill in 2010.

"Environmental assessment is our key opportunity to get it right, especially for big projects whose impacts we will have to live with for many, many decades," says Kevin Hanna, a geographer at UBC Okanagan who researches environmental impact assessment policy. Getting it wrong gets expensive, and fast. According to the Federal Contaminated Sites Inventory, there are 4,529 contaminated sites in B.C.—the

highest number of any province or territory in the country. Since creating the Crown Contaminated Sites Program (CCSP) a decade ago, the provincial government has spent $277 million on cleanups, while in the last fiscal year alone, the feds spent $142 million on contaminated sites in B.C. Many of these sites are the legacy of commercial, industrial, mining and waste disposal practices dating back decades, but of the 84 contaminated sites investigated by CCSP, 70 are mine sites.

There are many ways to go about an environmental assessment process, and the way we go about it in Canada is particularly "proponent-driven," according to environmental lawyer and UVic law instructor Mark Haddock. The onus is on the proponent to evaluate the environmental risks of their own

project, and it is the regulators' job to judge the merits of their conclusions (the provincial and federal regulators do disagree on their judgments; just look at New Prosperity Mine's proposals that passed the provincial process only to fail at the federal level, twice). Haddock notes that, with all the cutbacks, there are limitations on the ability of government staff to review projects and vet proponents' statements: "So the whole system is highly reliant on the quality and professional integrity of the assessment being done by the proponent."

Of course it's not just pressuring clients, enabled by weakened environmental laws, who compromise the integrity of the environmental assessment process. The way in which environmental consulting businesses manage themselves can undermine things too. One of the biggest problems cited by several consultants is that it's often

business or project managers who are put in charge of large environmental consulting contracts—people who might prioritize the bottom line over the professional ethics of the professional biologists on their team. “When they start dabbling in the science, things go south pretty fast—especially if they’re looking for a certain result,” says Trimble.

Another trouble spot is how widely the qualifications and work experience of a firm’s staff can vary. “What is classically a huge problem with those huge companies that do [environmental] survey work is they send out their most junior people,” says Amanda Baker*, an RPBio who works on environmental assessments and has consulted for oil and gas projects, road and bridge building, transmission lines and housing developments across B.C., Saskatchewan and Alberta. Junior staff may be cheaper to send out to do field work, but they’re also prone to errors.

Baker cites an example of her employees joining wildlife surveys of a larger consulting firm and finding their staff were surveying the wrong site. Another consultant shared an instance where she visited a site that wasn't labelled sensitive habitat by more junior scientists—only to find listed ducks and frogs hopping around in plain sight. The inexperienced staff simply didn't know their species identification.

Such anecdotal horror stories can't be extrapolated across the entire profession, of course. Charles Lee* is an aquatic ecologist who has worked as an environmental consultant in B.C. for 18 years on a variety of projects, mostly relating to water use and aquatic environments. In that time, he says, his profession has accepted more responsibility and still fulfils its role of

being accountable to the public and the environment; “I’m surrounded by lots of people who take their job very, very seriously,” he stresses. But like many others, he also acknowledges that accountability these days lies less with the regulators and more with qualified professionals as overseers: “It provides more leverage and power in the hands of proponents, who can push their consultants in ways they couldn’t in the past.”

And there’s the rub. As an environmental assessment practitioner, the proponent hires and pays you, but your ultimate duty is to provide decision-makers with valid and objective information to serve both the public interest and the environment. The consultants *BCBusiness* spoke to see myriad possible fixes to address that potential conflict of interest between a proponent’s needs and their professional ethics. Charles Lee believes

that stronger professional practices—akin to other certified professional bodies like engineers—is the best defence. Jake Trimble, meanwhile, suggests that government should order the environmental impact assessment itself, select the firm to conduct it and send proponents the bill. For Braden Robinson, the solution would be for proponents to select consulting firms' bids blindly.

Several other consultants also cited the need for regulators to come up with clear guidelines and minimum standards governing the scientific research conducted for an environmental assessment; currently, the quality of work is highly variable and ad hoc. The scope of what research goes into a provincial assessment is unclear and can vary project to project, says Angela Waterman, VP environment and technical affairs with the Mining Association of B.C.: "When the scope is

unclear, that results in business uncertainty." Opinions may vary on what reform of the environmental assessment process should look like, but on one point everybody agrees: the time for change is now.

Months after Braden Robinson first divulged his tales of sketchy work practices, he was fired from his job at the environmental consulting firm. He didn't sound too choked about parting ways with his employer. He seemed relieved to leave behind the compromised world of consulting—where advocating for his conclusions and hewing to his professional ethics proved a constant, and losing, battle—and emboldened in his resolve to effect change. "As a consultant, seeing what's happening, I think I need to step up and get into politics myself to get some accountability," Robinson says. "Because of my experience, I can speak

confidently about these injustices and say there's a need for political reform."

Around the same time that Robinson got his pink slip, Moore and his colleagues had concluded their study on the fish of the Skeena and were about to publish their results. While energy developments along the river were getting jostled by plummeting natural gas prices, the prospect of dramatic ecological change in the area still loomed large. The scientific process typically takes many years from fieldwork to publishing, but Moore and his co-authors keenly felt the urgency of their work and released a preprint of their study in April 2014. This past March, it was published in the peer-reviewed scientific journal *PLOS One*.

Moore understands that CEAA was made aware of the study and seems mollified by his belief that "our science has fed into the process." While he has no way of knowing what impact his research will have on the project's final

approval, he does know what he and his colleagues discovered in those sparkling, brackish waters: of all the sites they sampled in the river's estuary, the proposed area for development is exactly where the highest numbers of sockeye, coho and chinook fingerlings were found.

**Not the subject's real name*