



Seeking Common Ground:

A Compendium of Recommendations
for Early Community
Engagement in Mining

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INTRODUCTION

Action Canada Fellows in the 2005/2006 fellowship year, along with their partners, the Centre for Native Policy & Research, Unisféra, and the Centre for Public Policy Research at Simon Fraser University, hosted a dialogue forum called Seeking Common Ground on May 8-9, 2006. The forum brought together representatives from the communities of interest involved when a mining project is initiated.

The aim of the Seeking Common Ground dialogue session was to bring together diverse actors implicated by mining activities to consider the challenges and opportunities for early community engagement in mining projects. By bringing actors together in a neutral forum, this dialogue session intended to advance mutual understanding among actors and to improve the capacities to engage constructively in the context of mining projects.

The purpose of this document is to provide a compendium of recommendations from the dialogue sessions.

Background

The nature of operations in the mining industry is such that mining activities have far-reaching economic, environmental and social impacts. These can be positive, including support for regional communities, creation of employment, and provision of facilities and services including health, education and welfare through their contribution to local, regional and national economies. Alternatively, industry activity can have adverse social and community consequences, result in environmental degradation, or engender health and safety issues, among the most important.

As the mining industry has grown in size and sophistication, so have its impacts and, not surprisingly, public attention to mining-related problems. Faced with external scrutiny by community groups, non-governmental organizations (NGOs), academics and media, and internal pressure from stockholders and company employees, the mining industry has had to reassess how it conducts its activities in an increasingly globalized world. Mining companies are confronted with the difficult challenge of trying to meet the expanding mineral demands of a growing global economy while avoiding detrimental impacts on local populations. In trying to achieve this balance, the mining sector increasingly recognizes the need to constructively engage with communities and stakeholders affected by industry activity.

A number of valuable initiatives in the area of sustainable mining have been undertaken in recent years, including the Mining, Minerals and Sustainable Development Initiative (MMSD) and industry-led initiatives. The current project aims to complement these initiatives by addressing a very specific set of issues related to early community and stakeholder engagement.

There have been a growing number of instances in which the work of mining companies has been affected by conflict with local communities over cultural, social, economic or environmental issues. It has become increasingly apparent that failure to engage constructively with local stakeholders, including indigenous peoples, can lead to costly delays or even termination of otherwise profitable mining exploration or development projects.

Junior mining companies are at the forefront of this challenge: they are responsible for establishing initial contacts with local stakeholders, yet they may lack the capacities, tools and resources to engage with local communities early in the exploration process, thereby setting the stage for constructive dialogue and a positive ongoing relationship. Consequently, they often leave behind a trail of latent or open conflict with local communities that affect both the profitability and feasibility of mining projects and the wellbeing of local communities.

Such outcomes increase the costs and risks associated with exploiting mining sites, thereby decreasing their net value for major mining companies and financial institutions. Therefore, in addition to social benefits, there is a clear bottom line and risk mitigation benefit in constructively engaging with local communities in the very early stages of a mining project.

Over one and a half days, more than 25 participants gathered to explore the inhibitors to and enablers of early community engagement in mining. There was broad representation from NGOs, community members, academics, government, consultants, and the mining industry.

The first day was initiated with an introduction of all participants and their association with the mining industry. Participants were divided into break out groups to explore the question: What are the inhibitors to and enablers of early community engagement in mining? The day was concluded with a report back and summary of the dialogue discussions from that day.

The second day began with an open dialogue with all participants reflecting upon the recommendations of the previous day and a discussion on how to move forward and next steps.

EARLY DIALOGUE IN MINING

Dialogue is a powerful tool that should be applied to early activities in community engagement surrounding mining projects. Dialogue occurs because two or more parties have common objectives and seek common ground. While it is never too early to begin the dialogue, it should be remembered that the way you start a dialogue may determine in large part where you end up. It is crucial that all participants understand the process early on, and realize that they have the right to shape it. This is an important step in building trust that will facilitate meaningful interaction down the road.

How to start the conversation

A delicate conversation takes place in the dialogue process. It is paramount to discern potential enablers from potential roadblocks.

Enablers

There are many factors that contribute to the way in which a conversation unfolds. The physical context of meetings plays a role in the tone. Where possible, conversations should take place in a welcoming, safe and comfortable environment. Companies must be sensitive to cultural differences in ways of doing business, whether in another country or when working with Indigenous populations. It is important to understand that different cultures view time differently so companies should be prepared to take the time that is needed to develop positive working relationships.

Also, companies must recognize that they may need to provide a community with resources that will enable participation, given that they are asking community leaders to take time/resources away from their other duties and often involving them in very technical issues and debates. As good relations are vital to establishing good dialogue, participants should seek to establish some common ground at a personal level since sharing information builds trust.

Above all, a one-size-fits-all approach should not be taken when engaging a community. It is critical that the process for engaging a community be designed in large part by the community itself.

Inhibitors

It is important to recognize that there may also be roadblocks to dialogue. For instance, it is difficult to start a conversation if a mining company has already made decisions about how to proceed, or if it is already taking action on a community's land. Similarly, relations can be damaged when the staking of mineral sites is undertaken without a community's consent and knowledge, with the community only being informed after mineral deposits are found and sold to a mining company. Such actions undermine meaningful dialogue by eroding trust and can severely damage relations from the start,

often unbeknownst to the mining companies. In the best-case scenario, companies concerned with genuine engagement should establish contact with communities before buying property or mineral rights on their territory.

Too often, the first point of communication with a community is an information session that is not an equal exchange of information and does not convey the right tone for proper community engagement. The message should move from “this is what we’re doing” to “what are we going to do together?” Preconceived notions or the impression that decisions have already been taken can put people in a defensive mode and contribute to an atmosphere of distrust. Community leaders and the company have to be forthcoming with all the information required to make informed and mutually supported decisions.

This implies that the worst way to start a conversation might well be to talk about issues. It might be better advised to initiate the conversation with the objective to know the “others” and develop an understanding of their concerns. Mining companies should be prepared to spend time in communities and develop relationships to build trust instead of racing to make a deal. Along the same lines, who delivers the initial message is important. If there is a history of negative information about the company or the government, then there may not be acceptance of the message.

Likewise, parties must build internal coherence before they enter into dialogue, otherwise they risk sending mixed signals, which will confuse the process: a regional manager’s agreement with a community may be overruled by a CEO; similarly, elders in a community may disagree with their Council’s decision. As a matter of course, there must be some method to balance the parties’ level of involvement with their relative stake in the project. Companies should be prepared to send their decision-makers to the communities to make initial contact, to build the relationship, to ensure consistency, and to protect the integrity of the relations and the agreements that are made.

A community’s power dynamics can block the exchange of information and will have an outcome on attitude and acceptance. If you do not have support from the community, then the company has less certainty.

Community leaders and the company may not be forthcoming with all the information required to make informed decisions, creating an atmosphere of distrust.

If there is community opposition to a project, then a company has a real problem with potential financial, operational and reputation implications. The best way to avoid this situation is to engage the community from the start.

Dialogue as an outcome

Better outcomes can be achieved through practical and concrete steps. Better outcomes spring from better planning. As part of this planning effort, special caution needs to be exercised so that dialogue works towards a balance of interests.

Continuing the dialogue implies carrying forward discussions that have already occurred or work that is done. The proper conditions need to be set so that a dialogue about dialogue may be created. One key is to bring all the key players together and discuss “prior informed consent”¹ regarding a given project and clearly define what this means to all parties. Further awareness and linkages may be built among potential allies through established organizations.

¹ See Definition of free, prior, and informed consent on page 12.

COMPENDIUM OF RECOMMENDATIONS

On starting the dialogue:

It is important to remember that talks between communities and industry are similar to a courting ritual. An acute cultural awareness is required as well as the recognition that not every community will want to be engaged in the same manner nor will they operate under the same timetables. Power dynamics do affect information exchanges and the empowerment of all parties, whether perceived or actual. A legal right to exploit resources does not necessarily yield to community support. Inclusiveness is key.

Make contact early in a community before buying land or mineral rights.

Proper engagement must start early to ensure a foundation of respect.

Ask the community how they would like to be engaged.

Each community is different and cannot be viewed with a one-size-fits-all approach. Providing the community with this opportunity will save time and will be empowering.

Create safe space.

The physical context of meetings plays a role in the tone. To ensure that conversations occur in a welcoming, safe and comfortable context, attention should be paid to the location where it takes place. Avoid assuming that the meetings will automatically be held in corporate offices. Go to the community.

Develop relationships.

Developing relationships promotes understanding of the community and their concerns, which can build trust. Take the time needed to get to know each other. If possible, spend time in the community in an informal environment. Avoid talking about issues first.

Understand the differences in culture and time:

a) Build cross-cultural understanding.

Aboriginal communities and the mining industry need to gain some sense of the others' culture so that both have a clear idea of who they are talking to. Otherwise, preconceived notions can put people in a defensive mode and create distrust. Education and outreach should lead to clear expectations on the part of the community and of the company. Because cultural awareness is crucial, companies should engage anthropologists or community engagement specialists, preferably local, to advise them how best to work with Aboriginal communities.

b) Find a common time frame.

Perhaps the greatest inhibitor to successful dialogue is time. It is usually perceived differently by communities and mining companies. There is an

inherent tension between the company's commitment to community engagement, which requires time, and financial imperatives that require short-term results.

The culture of the mining industry, due to financial imperatives, is such that there is great pressure to move quickly or risk losing the opportunity to develop a mine. On the other hand, communities need time since they do not have the resources to deal with a new project. The project is an additional burden on them. Therefore they need resources, expertise and time.

Despite the apparent financial disincentive to allotting time to building relationships, it is important that industry recognize the potential costs of *not* taking the time to do so (e.g., failed projects, lack of social licence to operate). Companies and communities need to work in a common time frame.

Principles to guide engagement:

Given the complexity of engaging in dialogue, a rapport needs to be built between all parties. This means that a proper amount of time needs to be invested in order for trust to emerge between the community, corporate interests and other stakeholders. All parties have to be sensitive to the context as well as to what the role of everyone may be in the process (i.e., who is who). There needs to be coherence and a commitment to deliver from all parties.

Ensure an equal exchange of information.

Ensure the community is involved in the process early and that they have a meaningful role in decision-making. Avoid the one-sided "info session" approach that is too often the first point of communication and not an equal exchange of information. They do not set the right tone for proper community engagement. An information session says: "this is what we are doing" rather than asking: "what are we going to do together?"

Story: A participant shared a story about speaking with an industry representative. He said that consultation was underway in the community and that he was going into the community to present, but mostly doing it for the Public Relations value. The community listens to the presentation, but they don't really understand the project. This has been going on for 13 years, but it is not an example of a dialogue.

Dialogue is a choice.

The dialogue has to work towards a balance of interests. Sometimes the dialogue is about a party saying "no means no." Dialogue should not mean that everyone has to conform to the offer on the table and is only effective if people believe they have a right to say no. Choice and the knowledge that participants can have some effect on the outcome gives the dialogue integrity.

Build internal coherence before engaging externally.

Both parties must build internal coherence before they enter into dialogue, otherwise they will likely send mixed signals, which will confuse the process.

Companies must recognize that creating dialogue to obtain informed consent is a new and complex process and must therefore allocate sufficient time and resources to achieve the desired outcome. This is a transition period where a culture (including the culture of a company) must change in a way that it has not had to do in the past.

Ensure representation by all communities of interest.

Identify all communities of interest, and engage them in the process. Industry and community should send their decision-makers to show commitment rather than a consultant or a person who does not have the authority to make decisions. The core group of management and official community leaders should begin the process and then let the process ripple throughout the community. All groups should work to ensure consistency among representatives in the project.

The company needs to validate the local leadership and also nurture the consultation at the grassroots level. In order to do this, companies need to undertake a stakeholder analysis. Genuine engagement involves consultation with the community at large including elders, youth, women, NGO's, and interest groups.

Provide resources for engagement.

Communities usually have a limited capacity to participate fully. Therefore, companies should provide services and resources that allow communities to participate in the consultation process. This will also allow meetings to occur regularly.

Share power in decision-making.

There must be recognition of the power imbalance inherent in the system. Provide communities with an equal role in the decision making. Agree on deal-breakers for both parties. Avoid the mouse vs. elephant dynamic.

Develop agreements.

In order to get from trust to accountability, agreements must be made and approved by all communities of interest. While these do not necessarily have to be legal documents, they should include conditions on how both groups will engage, a timeframe, and be self-designed.

POLICY CONSIDERATIONS:

Participants in the dialogue forum expressed the view that some current policy implications act as inhibitors for early dialogue in mining. The following are examples of such policies.

The Environmental Assessment Act

There is a need to engage with the environmental assessment process in British Columbia. The *Environmental Assessment Act* prior to 2002 was not perfect, but many would say that it had been built collaboratively with many people. The government decision to change the system may have set-up a level of distrust amongst all groups.

World Bank Policies

On a global scale, the World Bank has moved towards shortening delays for approving projects, thereby cutting down the time period required for environmental assessments, which is exacerbating conflict and undermining meaningful community engagement.

Prospector Staking

A prospector can legally prospect without consulting with communities of interest; the law and best practices are not the same. Consideration must be given to what changes are necessary in the legal structures, particularly in light of an obligation for free, prior and informed consent of Indigenous populations.

Participants also recognized that current policy implications related to free, prior and informed consent were enablers to early dialogue in mining.

Free, Prior and Informed Consent

The principle of free, prior and informed consent is central to indigenous peoples' exercise of their right of self-determination with respect to developments affecting their lands, territories and natural resources. The substantive and procedural norms underlying free, prior and informed consent empower indigenous peoples to meaningfully exercise choices about their economic, social and cultural development, particularly in relation to development proposals by States and other external bodies in their ancestral lands and territories².

² United Nations Economic and Social Council. Working Group on Indigenous Populations, 22nd Session. Standard-Setting (E/CN.4/Sub.2/AC.4/2004/4 page 4). 8 July 2004.

LINKS:

Mining, Minerals and Sustainable Development
<http://www.iied.org/mmsd/>

Mineral Exploration, Mining and Aboriginal Community Engagement by Dan Jepsen, Bob Joseph, Bill McIntosh, Bruce McKnight Published August 2005; reissued March 2006
<http://www.amebc.ca/SiteCM/U/D/6E830BA41323EB5F.pdf>

Stepping Stone - Inaugural Spring 2006 Issue
Sharing Knowledge, Sharing Respect: First Nations in Mining
<http://www.amebc.ca/SiteCM/U/D/76242173F8ADD93B.pdf>

The Equator Principles
www.equator-principles.com

A Checklist to Assist Mineral Companies Active in Areas Near Aboriginal Communities
http://www.ainc-inac.gc.ca/ps/nap/brocmin/index_e.html

Mining Information Kit for Aboriginal Communities
http://www.nrcan.gc.ca/mms/pdf/mining_toolkit_toc.pdf

Mining's Seven Questions to Sustainability: From Mitigating Impacts to Encouraging Contribution by Tony Hodge
http://anthonyhodge.ca/publications/Episodes_Article_Submission_Draft_Hodge_May2004.pdf

In Search of Middle Ground: Indigenous Peoples, Collective Representation and the Right to Free, Prior and Informed Consent by Marcus Colchester and Fergus MacKay
http://www.forestpeoples.org/documents/law_hr/fpic_ips_text_only_aug04_eng.pdf

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To Action Canada for making the event possible and for providing such an excellent fellowship program to build Canada's future leaders.

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Centre for Native Policy and Research for donating the website and staff time to assist with the forum.

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THANK YOU!

APPENDICES

ACTION CANADA

Action Canada is a national organization based in Vancouver BC, committed to building leadership for Canada's future through an innovative fellowship program. Each year, up to twenty of Canada's best and brightest emerging leaders are chosen as Fellows from a nation-wide call for nominations.

Action Canada is a powerful initiative from the West, connected to all of Canada, to bolster a common commitment to a strong future. The Action Canada Fellows form an ongoing network of outstanding new leaders who bring thoughtful new policy ideas to the challenges of the 21st century.

Fellows are divided into project teams and throughout the Fellowship year work on a public policy project of significance to Canada. Project work undertaken in the Fellowship year may be outside Fellows' areas of expertise or particular interest. Thus, the capacity to bring an open-minded approach to the development of public policy projects, and the ability to collaborate effectively with a diverse group of individuals, are important factors in the final selection of candidates.

FACILITATORS

Barry Stuart

For the past 35 years, Barry's work has focused on resolving conflicts and improving the decision-making processes in both the public and private sector. He has worked in a wide range of many challenging settings to develop skills and processes to engage conflict in ways that generate innovative solutions and build effective relationships. He is internationally known through his training, teaching, writings and involvement as a mediator, negotiator and facilitator.

Barry's principal interest lies in creating safe places for people to engage in the difficult dialogues needed to move through seemingly intractable differences. He has worked in several communities in Canada, the United States and in third world countries to develop community and restorative justice processes as an integral part of enhancing community well-being and sustainability.

Luke Danielson

Luke is a leading authority on the legal structure and functioning of environmental impact assessment systems and environmental issues in the natural resource and energy industries. Prior to joining IIED in April, he was Director of the Mining Policy Research Initiative, a project of the International Development Research Centre (IDRC) in Montevideo, which promotes research into the role of mining in the sustainable development of Latin America and the Caribbean. He had been with IDRC since 1998, and before that he was Visiting Professor at the University of Chile, teaching environmental law in the Faculty of Law. He has also taught courses on environmental and natural resource management, environmental issues in the mining industry, and international mineral development at university faculties in the US and South America.

Luke has been a partner in several US law firms, specialising in environmental litigation. He has undertaken consulting projects for the Cuban Ministry of Science, Technology and the Environment, the Chilean Ministry of Mining, the Chilean national environmental agency, amongst others, and has advised a number of energy and natural resource corporations, NGOs and government agencies in South America on issues relating to the environment and to indigenous peoples. Luke has recently completed a major study of state mine reclamation programmes in the United States and has a forthcoming comparative study of the legal aspects of mine reclamation programmes in eight world mining countries. He has also written comparative studies of environmental impact assessment systems in several South American countries. He has served on numerous boards, committees and panels related to conservation, natural resources, mining and energy.

Glenn Sigurdson

Glenn's professional focus is on the interactions within, between, and among organizations and groups with diverse interests, values, and power-building relationships, achieving consensus, developing partnerships, and resolving conflict. He is a founding principal of the CSE Group in Vancouver (1990) - a group of independent practitioners dedicated to achieving sustainable outcomes and organizations by building sustainable relationships.

Within organizations, Glenn has given facilitative leadership to strategic planning exercises and the development of dispute management systems. He has assisted parties in mediating complex litigation and resolving issues in the workplace. He has worked with diverse groups and interests in the management of fisheries and environmental assessments, in developing regulatory frameworks to managing change within organizations. He has an international reputation in dealing with complex multi-party challenges relating to resources and the environment, often involving First Nations.

Glenn is a Fellow at the Morris J. Wosk Centre for Dialogue, Simon Fraser University and a former President (1996) of the Society of Professionals in Dispute Resolution (SPIDR), now known as the Association for Conflict Resolution, the pre-eminent international organization in the field, headquartered in Washington, DC. He has written and spoken extensively, including the co-authorship of *Building Consensus for a Sustainable Future: Putting Principles into Practice*. He is one of the practitioners profiled in the publication of the Program on Negotiation at Harvard Law School (2000): *Public Dispute Mediators: Profiles of 15 Distinguished Careers*.