

Catch 22: How Impact Assessment Informs Benefit Agreements



Callie Davies Flett | Charlene Williams

*Athabasca Chipewyan First Nation
Canada*



OUTLINE

INTRODUCTION
CONSULTATION AND ASSESSMENT
IMPACT BENEFIT AGREEMENTS
CATCH 22
SUPPORTING DATA
TIPS FOR IMPACT ASSESSORS
ACFN IMPACT ASSESSMENT TOOLS

WHO WE ARE AT HEART

We have occupied our region for thousands of years. We continue to hunt, trap, fish, and gather just as our ancestors before us.

We are the K'ai Taile Denesuline, stewards of the region. We carry a deep understanding of the land and are committed to creating a better world for the generations to come.



WHO WE HAVE TO BE

Recently notable for winning the legal challenge
of Alberta separation referendum

Current Active Litigation:

ACFN vs. Alberta Energy Regulator:
failing regulatory regime for Tailings
Mismanagement.

Action on a

ACFN vs. Alberta: Action to address a consultation
regime that excludes cumulative effects.

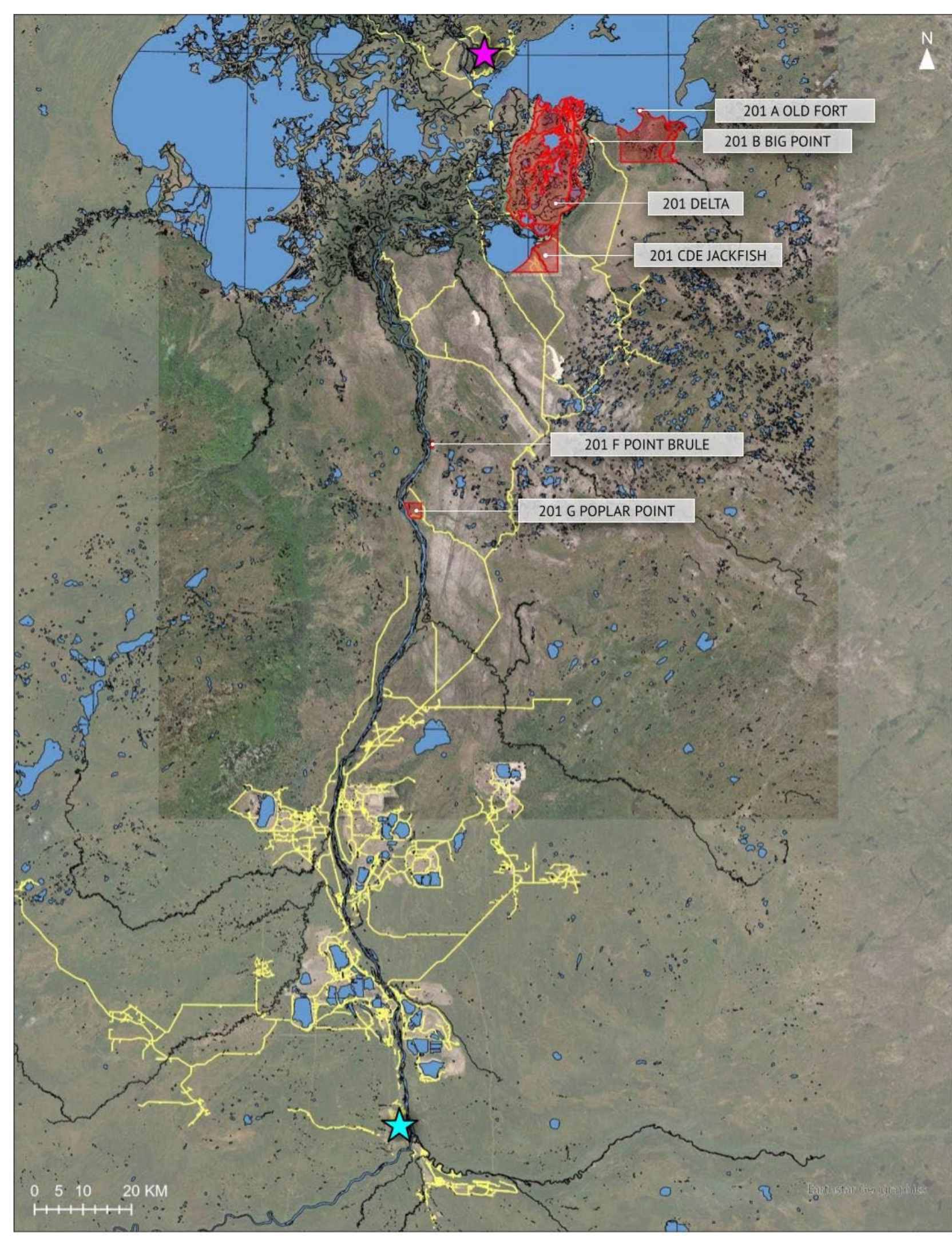
ACFN vs. Alberta: Action for breaching contractual
obligations to our First Nation.

ACFN vs. Alberta: Action to ensure the province
upholds their obligations to effectively manage
reclamation securities from proponents



ACFN STRESSORS

- OILSANDS
- URANIUM
- HYDROELECTRIC DAMS
- RARE EARTH MINERALS



ADDRESSING INDIGENOUS CONCERNS ON IMPACTS FROM DEVELOPMENT: CURRENT AVENUES



**Environmental Impact
Assessment Indigenous
Consultation**
Government Regulatory Regime

Impact Benefit Agreements
Non-Government, outside of the
Regulatory Process

IMPACT ASSESSMENT'S ROLE IN COMMUNITY

Consultation and Impact Benefit

Agreements are only two ways
Impact Assessors and Community
interact

Other instances interactions take place:

- Policy and Regulatory influence
- Land sovereignty and protection
- Information and data collection
- Performance Monitoring



CONSULTATION FOR ACFN



ACFN CONSULTATION POLICY OUTLINES:

1. PROPONENT OBLIGATIONS

- a. Early Engagement
- b. Information Sharing
- c. Compensation for cost

2. PROCESS ISSUES SCOPING

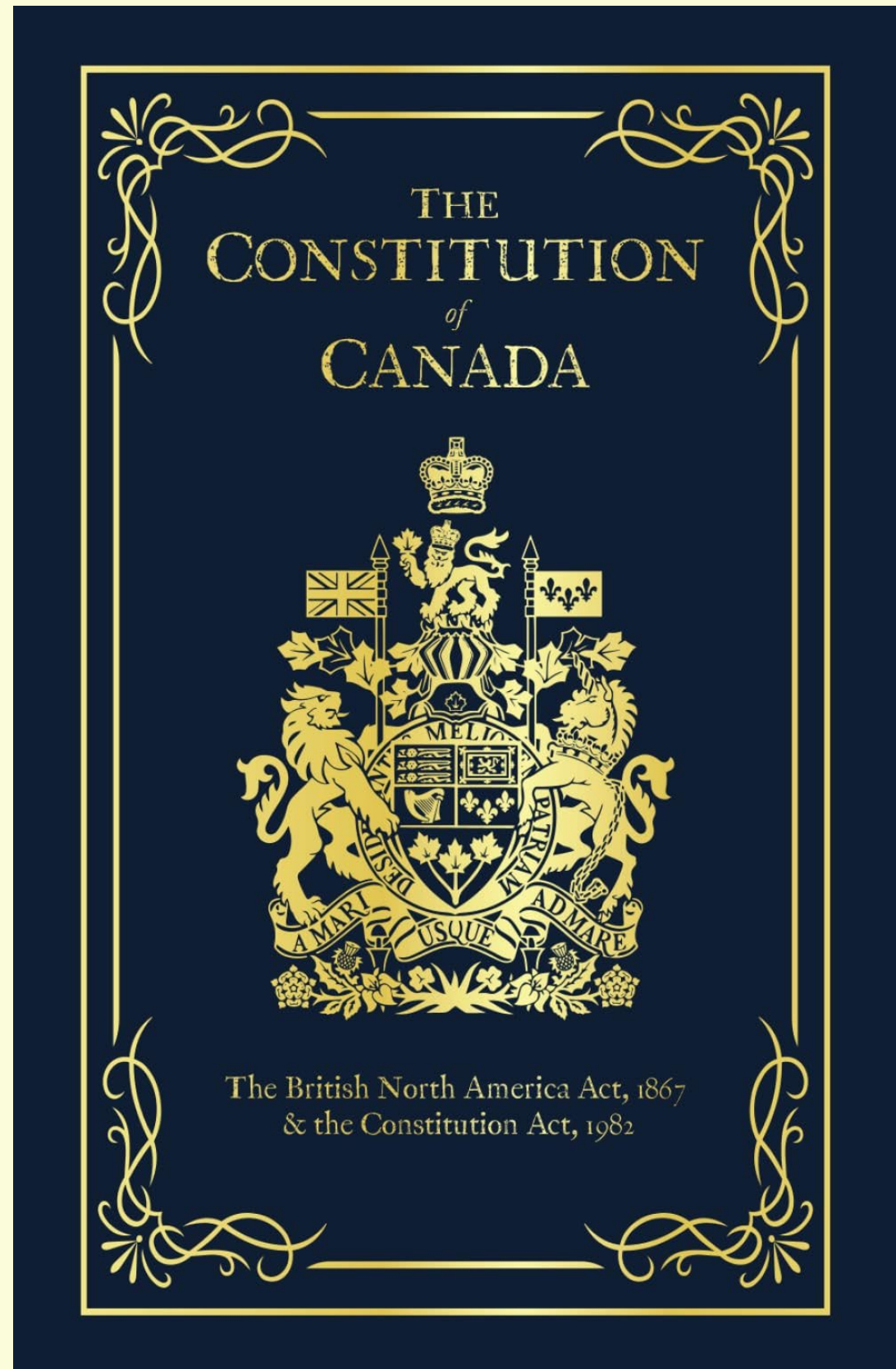
- a. by which they will communicate, share and evaluate information, and negotiate the potential participation of ACFN in the Proposed Activity.

3. COMMUNITY ENGAGEMENT

4. NEGOTIATED ACCOMODATION AGREEMENTS

5. LONG -TERM RELATIONSHIP

CONSULTATION IN CANADA



Indigenous Consultation in Canada is a **legally binding** requirement within the Environmental Impact Assessment (EIA) process

- May reveal a Crown duty to **accommodate First Nations**. The primary goal of accommodation will be to **avoid, minimize, or mitigate adverse impacts** of a Crown decision on Treaty rights or traditional uses.

Source: (Government of Alberta consultation policy , 2020)

REGULATORY CERTAINTY

In the Canadian natural resources and infrastructure sectors, **regulatory certainty** provided by Indigenous communities to companies means a **stable, predictable, and de-risked environment for project approval** and development. It signifies that, through early, meaningful engagement and partnership, the likelihood of legal challenges, **project delays**, or cancellations due to unresolved Indigenous rights issues is **significantly reduced**.

Source: <https://cassels.com/insights/understanding-regulatory-context>

-indigenous -engagement -key -terms -in-the -canadian -

HOW IMPACT ASSESSMENTS INFORM IBAS



Information is power:

- Success to maximize benefits lie within the negotiation and the information provided to both parties during this time
- A community could better assess and determine their position and impact with a substantive assessment
- Without anticipation of impacts or understanding the cumulative impact of a project, community may be further disempowered

IMPACT BENEFIT AGREEMENTS IN THEORY

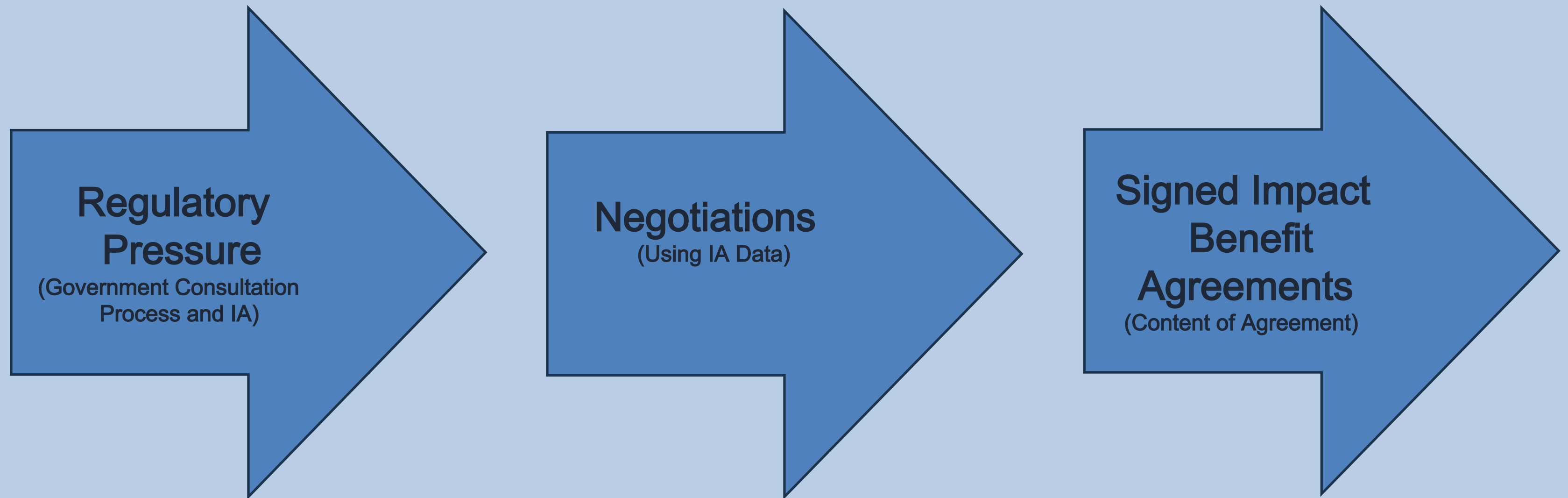
- legally binding commitments in which the industrial entity **seeks to address and accommodate** the concerns raised by Indigenous groups regarding potential adverse impacts of resource development on their lands (Joly & Westman, 2018)
- aim to **mitigate the potential adverse impacts** of development activities on Aboriginal communities by providing a mechanism for compensation for these impacts
- endeavor to ensure that Indigenous communities **receive tangible benefits** from resource development activities occurring within their traditional territories (Kielland, 2015).
- includes employment quotas, skills training and educational opportunities, contracting and joint venture arrangements, financial compensation, and environmental mitigation strategies. (Cameron and Levitan, 2016)

ACFN CONSIDERATIONS

- Would signing an IBA improve the following?:
 - Employment of members
 - ACFN owned business opportunities
- Can we maximize the positive impacts and minimize negative outcomes?
- Can an IBA be used to create a better mechanism for reducing environmental and social impacts?



IN SUMMARY



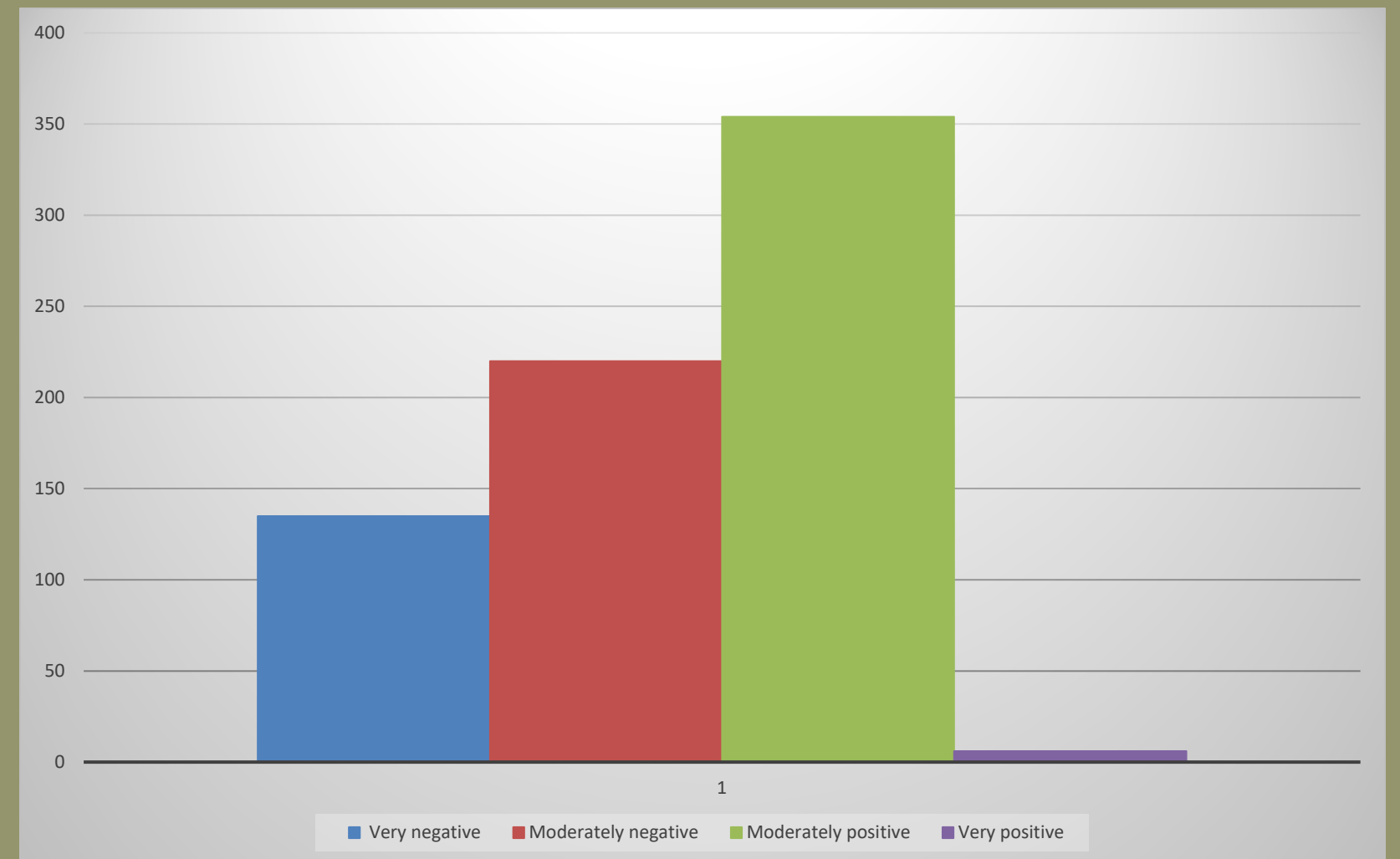
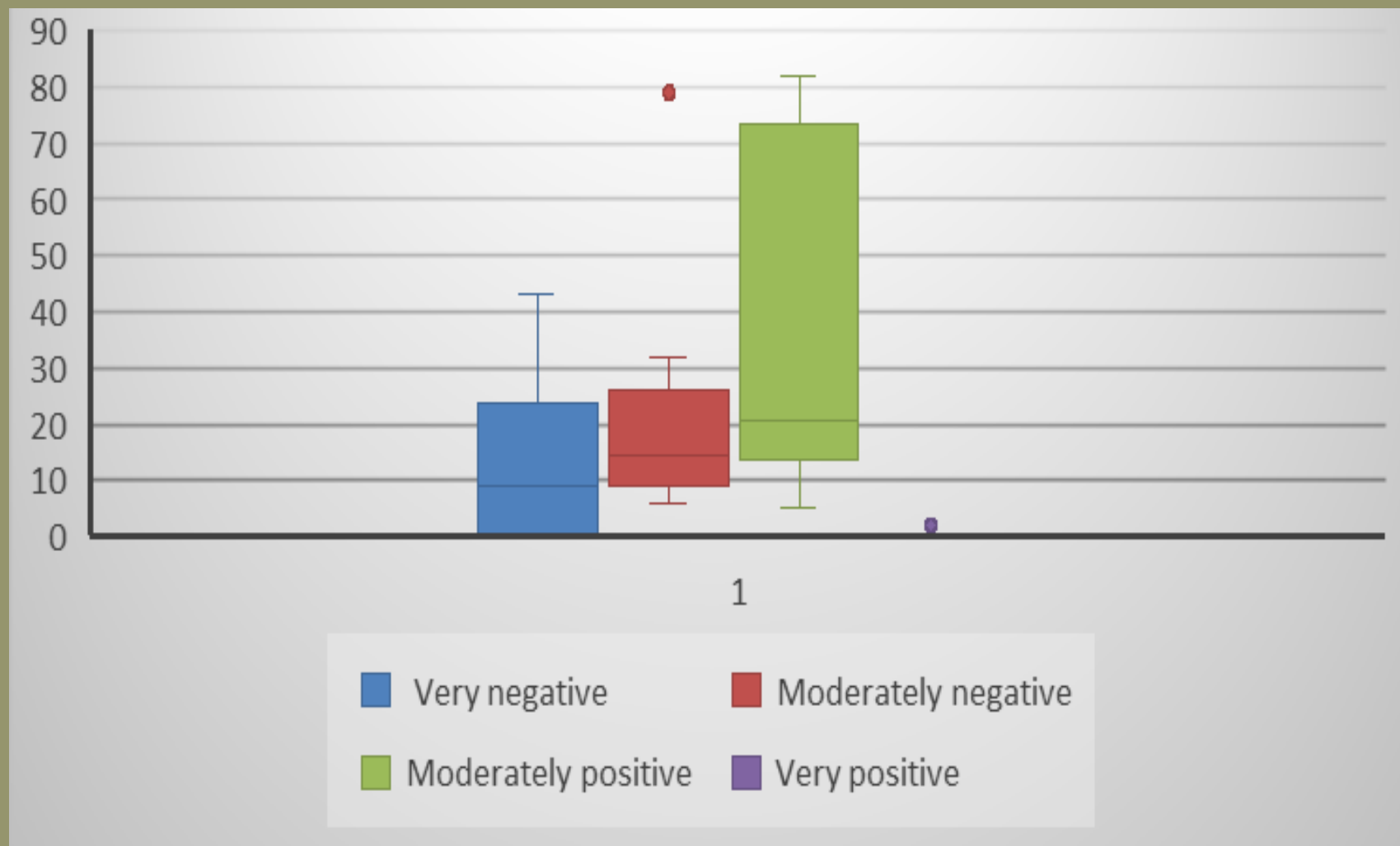
THE CATCH 22

IMPACT BENEFIT AGREEMENTS IN SOME PRACTICES

Studies also argue IBAs favour Industry and Government and not Indigenous communities

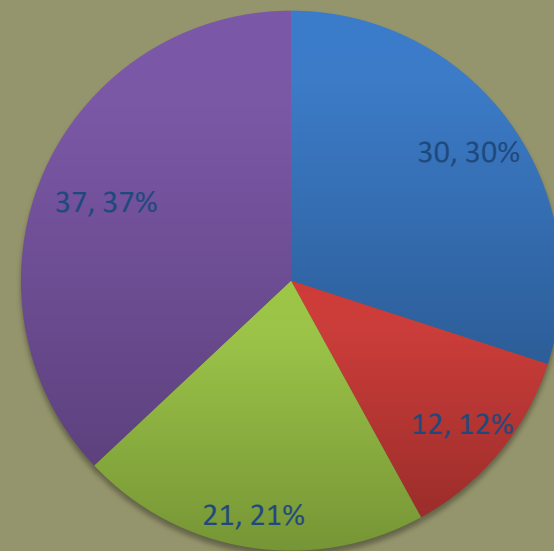
- strengthen a proponent's 'social licence' to operate
- Neoliberal tools that reshape relations among Indigenous peoples, mining corporations, and the state (Cameron and Levitan, 2015)
- **privatize the federal duty** to consult, naturalize market-based solutions to social issues, and **restrict access to political and legal channels**, emphasizing the power dynamics involved". Scobie and Rodgers (2019)
- industry proponents **exploit the EIA Indigenous consultation process** to reinforce their roles as problem solvers, diverting attention away from social and biophysical impacts while highlighting individual economic benefits, thus paving the pathway for the company to establish what is known as social license, providing them with regulatory certainty (Scobie and Rodgers, 2019)

Qualitative Sentiment Analysis: How well do IBAs Address Community concerns about impact?

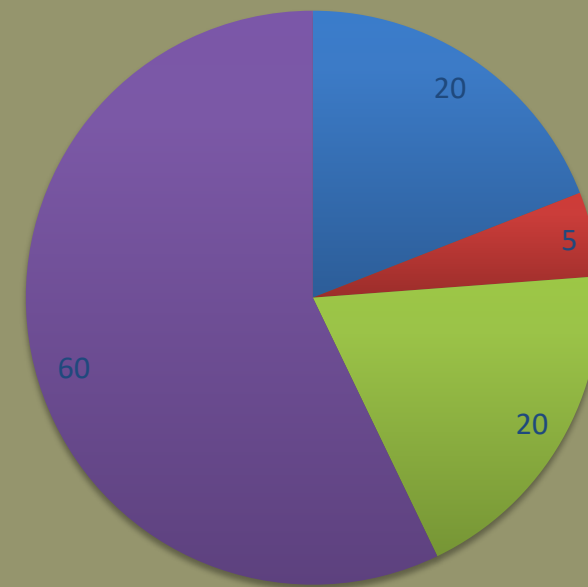


Complexity: Performance indicator for selected category of expected social outcomes

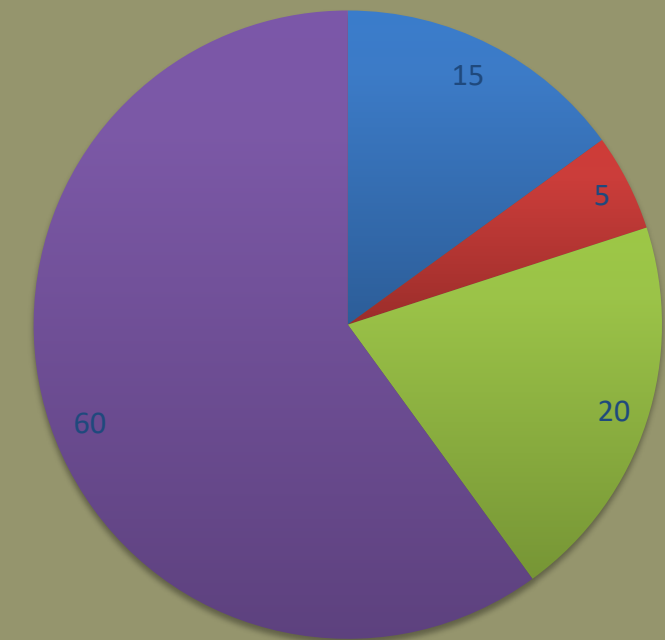
Year 1



Year 2



Year 3



EXPERIENCES OF MODERN DAY COLONIALISM

Inequality in capacity, and wealth

- Enhanced ability to lobby governments, push regulatory timelines, rush reports
- Posturing wealth with gifts or experiences

Divide and Rule

- Pitting community against community, “only so much pie to go around”
- Sharing disinformation about other communities

Misrepresentation and Tokenism

- Using community engagement as proof of successful and complete reconciliation

Denying the Ability to Critically Think

- Over producing reports, scientific data, or an onslaught of administration activities to minimize the ability to strategize, or organize

Gaslighting to reframe ongoing Indigenous dispossession

- “development” and “progress” rhetoric used to minimize ongoing environmental degradation
- Rewriting meeting minutes, or summaries to prove adequacy and minimize community concerns

**WHAT CAN THE IMPACT
ASSESSOR DO?**

DECOLONIZE YOUR BRAIN



- Practice challenging your lens: view what you're tasked to do with a critical eye
- Does the media represent an accurate balanced view?
- Look at your own privileges or biases.
- Ask, what is the power imbalance at play?
- Understand that some government data is usually either stale or doesn't take our indicators into account.

ENHANCE YOUR REGULATORY LITERACY

The **responsibility** for implementing mandatory mitigation and accommodation measures, as stipulated by the government, **falls to the industry proponent**

- These measures emerge from the Indigenous consultation process designed to address Indigenous concerns.

Industry proponents can foster meaningful mutually beneficial relationships in **executing effective mitigation strategies** to address Indigenous concerns and satisfy the requirements specified in regulatory approval

- Recommendations oftentimes come from Impact Assessment

The acquisition of new knowledge results in innovative ways of interpreting past experiences

- individuals are transformed through new learning experiences; **change cannot occur without learning**, and the process of learning inherently leads to transformation.

MAKE A CHOICE ON YOUR INTERACTIONS

- Is the client pushing for a completed assessment within unreasonable timelines?
- Is the client working within a “grey area” of the law?
- Is there an imbalance within the organizational structure?
- Is the community united in messaging?



IMPROVE YOUR UNDERSTANDING AND BUILD TRUST

Transformation requires a movement from a state of ignorance to one of informed

Implementation of community -based guidelines, procedures, and research methodologies is essential for not only effective mitigations but also for and fostering a more **profound comprehension of Indigenous communities**

Social interaction during the Environmental Impact Assessment (EIA) process presents critical opportunities for stakeholders and impact assessors to deepen their knowledge

Improved -understanding significantly

- influences how stakeholders adapt policies and practices, which in turn has a direct impact on governance structures and outcomes in relation to Indigenous concerns.
- Fosters collaboration

Collaborative learning facilitates a **nuanced exchange of values and knowledge** among a diverse array of participants and stakeholders, leading to outcomes characterized by **equity and inclusivity**

(Rodela, 2013; Mellwain et al., 2024).

STOP THE SPREAD OF MISINFORMATION

Improving participants' understanding and rejecting stereotypes of Indigenous communities during consultation will not only improve how decision-makers interpret and implement EIA policies and practices but will also **enhance mitigation** measures beyond project approval, extending them through project operation to closure.

Social learning (improving understanding of Indigenous communities) is necessary for **collaborative learning**, which in turn leads to collaboration.

The IA process can contribute significantly to fostering an environment **conducive to mutual learning** and understanding, thereby reinforcing the interconnectedness of social and ecological well-being to better protect the rights of Indigenous peoples.

2024; Reed et al. 2010 Ansell & Gash, 2007; (Johannessen et al., 2019; McIlwain et. al.,

RESEARCH THE COMMUNITY

Fundamental Research

- What is the communities' history?
- Who are the decision makers?

Use the community organization structure

- Do they have a lands department?
- Do they have a consultation policy or framework?
- Are there methods for community -led impact assessments?

What studies can you build on?

- Do they have impact assessments already completed?
- Have they established their own value components?
- Have they assessed their own baselines?
- What is the most current map of their defined traditional areas?
- Check their website



SOURCES OF TRUTH!

Tools built by community for
Impact Assessment

PAST ACFN STUDIES...

FOCUSED ON TITLE & RIGHTS



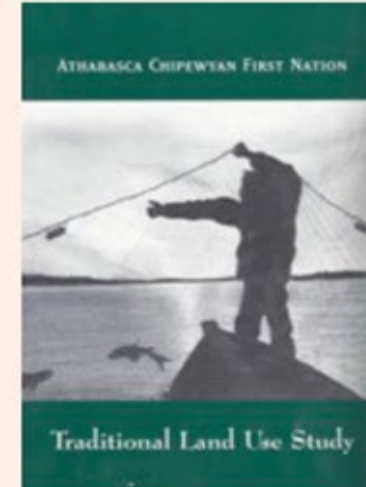
As Long as the Rivers Flow

Athabasca River Knowledge, Use and Change

by Craig Candier, Rachel Olson, Steven Hoffman,
and the Firelight Group Research Cooperative
with the Athabasca Chipewyan First Nation (ACFN)
and the Métis Nation of Alberta (MNA)

November 20, 2010

2004



ATHABASCA CHIPEWYAN FIRST NATION

Traditional Land Use Study

2010



Nih boghodi: We are the stewards of our land

An ACFN stewardship strategy for thunesa, et'heen
and dechen yilghe ejere (woodland caribou,
barren-ground caribou and wood bison)

April 26, 2012



Athabasca Chipewyan First Nation

2011

2012

2013

Athabasca Chipewyan First Nation Knowledge and Use Report and Assessment

for

Teck Resources Limited
Proposed Frontier Oil Sands
Mine Project

November 20, 2013

Craig Candier, Ph.D. and the Firelight Group Research Cooperative with
the Athabasca Chipewyan First Nation (ACFN)

2016

Athabasca Chipewyan First Nation
Integrated Knowledge
and Land Use Report
and Assessment
for
Shell Canada's
Proposed Jackpine
Mine Expansion and
Pierre River Mine
April 20, 2011
Craig Candier (Ph.D.) and the Firelight Group Research Cooperative with
the Athabasca Chipewyan First Nation (ACFN)



Athabasca Chipewyan First Nation
Report on Peace River Knowledge and Use
for BC Hydro's Proposed Site C Project

September 20, 2013

Craig Candier, Ph.D. and the Firelight Group Research Cooperative with
the Athabasca Chipewyan First Nation (ACFN)

“THIS IS THE SAME PATTERN I WAS DOING IN 1998, IT’S THE SAME PATTERN WITH NO RESULTS, HAVE WE WON A CASE YET? WHEN WE CHALLENGE INDUSTRY – NOT ONE [CASE] HAVE WE WON, AND ALL OF THIS INFORMATION THAT HAS BEEN GATHERED DID NOT IMPACT THE OUTCOME OF THESE PROJECTS, OUR APPROACH IS WRONG AND HAS TO BE LOOKED AT FROM ANOTHER LENS...”

METHODS AND STANDARDS FOR ASSESSING IMPACT TO RIGHTS (MAIR):

Document outlining ACFN-led methods and standards

Utilizes community-based information to communicate ACFN's priorities & protect Dene way of life

Documents Value Components specific to community & how to assess them per project or assessment

DENESŪLINÉ KESÉ

METHODS AND STANDARDS FOR ASSESSING IMPACT AND PROTECTING ACFN WAYS OF LIFE INCLUDING RIGHTS AND TITLE

FEBRUARY 2024



ATHABASCA CHIPEWYAN FIRST NATION

WATER QUALITY CRITERIA FOR INDIGENOUS USE & ACFN WATER POLICY

- Western Science: Toxicology, hydrology, risk modeling.
- Indigenous Knowledge: Land use, food, medicines, traditions.

Integration Outcome: ACFN
Water Policy — 'tu bet'a ts'ena'
(With Water We Live)

1 Lower Athabasca Surface Water and Sediment Quality

2 Criteria for Protection of Indigenous Use

3 Mandy L. Olsgard MSc, P. Biol. (Integrated Toxicology Solutions)¹

4 Megan S. Thompson PhD, P. Biol. (Thompson Aquatic Consulting)²

5 Thomas Dyck PhD (Integral Ecology Group)³

¹Mandy Olsgard, mandy@toxolutions.ca

²Megan Thompson, megan@thompsonaquatic.ca

³Thomas Dyck, tdyck@tegconsulting.com



POLICY DOCUMENT

tu bet'a ts'ena

With Water We Live

**Athabasca Chipewyan First Nation (ACFN)
Water Policy 2023**

Bush Standards: Our journey to healing ancestral lands for future generations

Honouring the Traditional Knowledge Holders

This is the big picture!

"WE ARE THE TRAPPERS AND LAND USERS."

"THE LAND USERS ARE OUR SCIENTISTS."

"THE FOREST IS HOME."

"A HEALTHY FOREST IS SAFE."

"TRANQUILITY."

"IT'S WHERE YOU NEED TO BE."

"THE FOREST IS MY CHURCH."

"ANIMALS NEED A HOME RANGE AND ABUNDANT SPACE TO ROAM."

"THE MEMBER IS THE INDICATOR!"

AWARENESS
ACCEPTANCE
ACTION

THERE IS STRENGTH IN NUMBERS

"OUR COLLECTIVE VOICE GIVES OUR PEOPLE HOPE"

"WE ARE BETTER TOGETHER!"

"EVERYTHING IS INTERCONNECTED"

"A HEALTHY FOREST HAS NO SCIENCE - JUST SPIRIT"

"THIS IS A..."

"WE USE PLANTS IN THE FOREST FOR HEALING."

"WE KNOW THE SOUND OF NATURE WHEN YOU HEAR IT."

"FALLING AND RUSTLING OF LEAVES, BIRDS, INSECTS, WIND."

"WE ARE ALL IN THIS TOGETHER."

"WE CAN DO ANYTHING TOGETHER. WE ARE STRONGER THAT WAY!"

"HOLD HANDS. WE CAN DO ANYTHING TOGETHER. WE ARE STRONGER THAT WAY!"

"WORK TOGETHER. BE OPEN AND HONEST. TRUST."

"NATURE KNEW HOW TO DO IT."

MAHSI CHO





Let's continue the conversation!

Message me your questions or comments in the IAIA26 app.

#iaia26



**ACFN
WEBSITE**