

The Stk'emlu'psemc te Secwepemc Nation Assessment Process

JEFF NISHIMA-MILLER | 2022

Case Studies and Experiences in Indigenous-led Impact Assessment



The Stk'emlu'psemc te Secwepemc Nation Assessment Process

The case studies in this series look at some of the ways that Indigenous Nations and organizations in Canada have implemented their own environmental impact assessment processes. The series provides examples, experiences, and information that can help Nations interested in developing their own assessment process. The cases illustrate how Indigenous-led impact assessment has been designed to reflect the distinct location, histories, natural resource issues, and governance approaches of a Nation.

The Nation

The **Stk'emlu'psemc te Secwepemc Nation (SSN)** is an Indigenous governance group including the Tk'emlu'ps te Secwepemc Indian Band and Skeetchestn Indian Band, which is part of the Secwepemc Nation. Their traditional territories are across the region commonly referred to as Interior British Columbia. The Secwepemc people currently live in territories that extend from the Columbia River valley along the Rocky Mountains, west to the Fraser River, and south to the Arrow Lakes.

The Ajax Mine Proposal

In 2011, Kombinat Górniczo-Hutniczy Miedzi Ajax Mining Inc. (KGHM) applied for **Environmental Impact Assessment (EIA)** approval to develop, operate, and decommission an open-pit copper and gold mine and ore processing facility located in the territories of the SSN, near the city of Kamloops, British Columbia (BC). The proposed mine included a project footprint of 1,700 hectares in size and production capacity of 65,000 tonnes of ore per day, with a 23-year operating life.

Due to the type, size, and scope of the project the proposed mine required both a provincial and federal EIA. It was determined that a coordinated EIA would be completed by the **Canadian Environmental Assessment Agency (CEAA)** and the **BC Environmental Assessment Office (EAO)**. CEAA and the EAO were responsible for preparing a joint federal Comprehensive Study/provincial Assessment Report which would meet the requirements set out by both the *Canadian Environmental Assessment Act 2012*, and the *2002 BC Environmental Assessment Act*.

Once the assessment was completed, the project would require separate EIA decisions by federal and provincial decision-makers.

The proposed mine site would encompass an area known by SSN as **Pipsell** - an area of cultural, spiritual, and physical importance to the SSN peoples. The importance of Pipsell is defined through SSN oral history and includes trout fisheries, and biodiverse grasslands that act as important ungulate habitat (including moose and mule deer).

Developing the Stk'emlu'psemc te Secwepemc Nation Assessment Process

SSN had previously critiqued provincial/federal EIA for inadequately incorporating Indigenous perspectives into the assessments and promoted alternative approaches to completing the EIA.

In response to the Ajax mine proposal SSN designed the **Stk'emlu'psemc te Secwepemc Nation Assessment Process (SSNAP)** to *"Facilitate informed decision-making by the SSN Communities in a manner which is consistent with our laws, traditions, and customs and assesses project impacts in a way that respects our knowledge and perspectives"*.

In 2011, following the submission of the Ajax proposal the BC EAO began consultations with SSN. The EAO concluded that SSN had a strong claim to Aboriginal² rights in the proposed project area³.

With this, SSN had the option to participate in the Crown (provincial/federal)⁴ assessment through the EIA Working Group, to review and comment on draft EIA documents, and engage in government-to-government consultation regarding Ajax Mine. In 2015, BC initiated an **Ajax Government-to-Government Discussion Table**, which included SSN, the BC EAO, and several other provincial government agencies who would be involved in either the assessment or permitting process for the proposed mine.

1 Stk'emlu'psemc te Secwepemc Nation (SSN). (2017). Decision of the SSN Joint Council on the Proposed KGHM Ajax. Retrieved from <https://stkemlups.ca/process/>

2 Aboriginal is a term sometimes used to describe First Nations, Inuit, and Metis people, Nations, and groups when referring to the constitutionally protected Aboriginal and Treaty rights or policies, regulations, or laws used by provincial or federal governments.

3 Based on the consultation criteria set out by Haida Nation v. British Columbia (Minister of Forests), 2004.

4 The term 'Crown' refers to the Canadian state, and its provincial and federal governments that exercise the executive powers that to govern the country.

Through the Government-to-Government Discussion Table, a **Government-to-Government Framework Agreement** was created to establish a collaborative relationship between SSN and the BC government as it related to the Ajax Mine assessment.

The objective of the Government-to-Government Framework Agreement was to advance the relationship between SSN and the province of BC through the assessment of Ajax through several structures and processes. These included:

- Ajax Government-to-Government Committee (which consists of representatives from SSN, EAO, Responsible Ministers, and other government ministries (as appropriate) who were responsible for overseeing the implementation of the Agreement).
- Negotiations Table (which consists of representatives from SSN and the relevant responsible ministries. The Table was responsible for engaging on any potential Negotiated Accommodation Packages).
- Chief to Chief Table (consisting of SSN leadership and assistant Deputy Ministers of the relevant responsible ministries). The Table could meet as required for issue resolution.
- Ajax EIA Collaboration Plan (discussed in more detail below).
- Ajax Permitting Collaboration Plan (outlining collaboration for permitting if the project was approved).
- Linkages to the SSN Assessment Process (included how to address and incorporate the SSNAP into the EIA Decision Package).
- Linkages to broader reconciliation discussions.

The **EIA Collaboration Plan** was created to support informed decision-making, to ensure that SSN had direct input into the provincial EIA decision-making process, and to ensure that SSN's input would be effectively considered. With this in place, SSN began undertaking their review of the Ajax Mine proposal through the SSN Assessment Process (SSNAP), a unique community-based impact assessment framework created for the assessment of the Ajax Mine

proposal. As the EIA Collaboration Plan was created to support informed decision-making and to ensure that SSN had direct input into the provincial EIA decision-making process, several key features were implemented to maintain that SSN's input would be adequately considered, including:

- Specific collaboration points (which led to over 50 meetings between SSN and the EAO).
- Timeline changes to meet the needs of SSN.
- Additional rounds of comments and response resulting directly from the SSNAP.
- Provincial participation in SSNAP events.
- Commitments by the EAO to include and consider the results of the SSNAP in the assessment report prepared by the EAO and CEAA joint review.

The SSNAP was designed to align with SSN laws, governance, traditions, and customs and to take into consideration both Indigenous knowledge and western science. This was communicated through the "Principle of Walking on Two Legs", which emphasizes Secwepemc knowledge and worldviews while also incorporating European derived "western" knowledge.

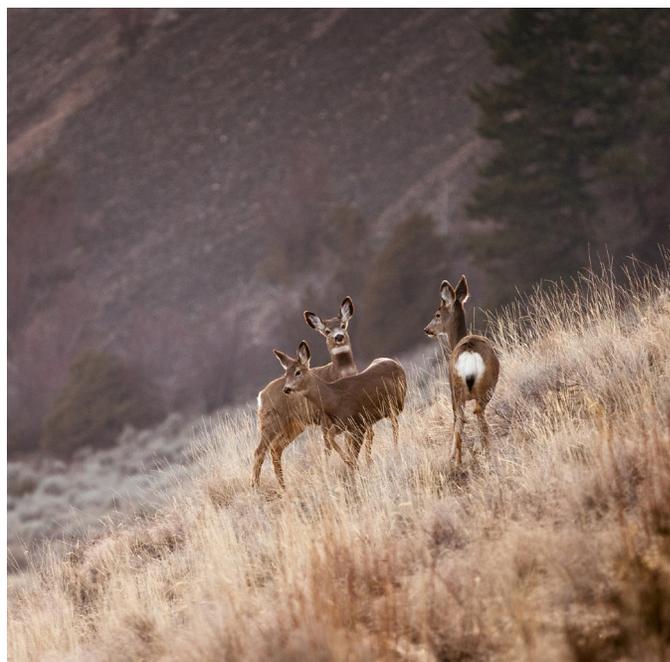


Photo credit: ZargonDesign

A family of mule deer stop for a moment in a grassy field.

For the SSNAP, SSN independently considered the **Valued Components (VCs)**⁵ that were part of the coordinated federal and provincial assessment (see Figure 1). Additionally, SSN requested that two more VCs be included within the federal and provincial EIA to address issues of specific importance to SSN that were outside the scope of provincial and federal EIA legislation, including Aboriginal economies and current use of lands and resources for traditional purposes. As seen in Figure 1, for the Ajax Mine assessment, VCs were categorized according to components of the environment, health, social and economic, and heritage.

To reflect SSN's connection to the land, the SSNAP for Ajax Mine was developed to be consistent with SSN's own governance and knowledge and incorporate the role of Pipsell as a cultural keystone area. To do this, the Ajax Mine proposal was assessed using the valued components outlined in Figure 1. A six-step community-based assessment methodology was applied (shown in Figure 2) and the process was reviewed by the SSN Review Panel (Box 2).

FIGURE 1: Valued Components for the Assessment of Ajax Mine

ENVIRONMENT
Surface water quality and quantity, ground water quality and quantity, fish and fish habitat, vegetation, wildlife, greenhouse gases, air quality, noise and vibration, and current use of the land and resources for traditional purposes.
HEALTH
Human health (including air quality, domestic water quality, country foods, noise, and vibration).
SOCIAL AND ECONOMIC
Community well-being, recreation, local and regional economy, accommodation, infrastructure, public facilities, and services, land and resource use, property values, and Aboriginal economies.
HERITAGE
Heritage

FIGURE 2: The six steps of the SSN Assessment Process

Step 1: Select Representatives for an SSN Review Panel	Selection of community member representatives to participate in the SSN Review Panel- the group responsible for participating throughout the entire SSN assessment (see Box 1).
Step 2: Conduct Oral Proceedings	The SSN Review Panel conducts oral proceedings with SSN Knowledge Keepers, community members, technical experts, and other stakeholder groups as necessary. Information gathered is then used to consider the project and its impacts.
Step 3: Defining Interests & Scoping Assessment	The SSN Review Panel prepares a Decision Package for the SSN Joint Council (Chiefs and Council from the two SSN communities).
Step 4: Assessment	The SSN Review Panel Decision Package is provided to the SSN Joint Council, which is used to determine whether or not SSN gives their free, prior, and informed consent to develop lands and resources through the proposed project.
Step 5: Present Results to Community & Chiefs & Council	The SSN Review Panel members report back to the 13 families (see Box 1) within the SSN communities. In addition, mail-outs and door-to-door information initiatives are utilized to deliver information to community members.
Step 6: Final Decision-Making & Conditions	The SSN Joint Council makes a final decision on the significance of the impacts of the project, based on the SSN Review Panel Decision Package. Once the decision is made, SSN's determination is delivered to the BC EAO, which is then provided to provincial decision-makers to inform their decision on the issuing of the EIA Certificate.

⁵ Valued components can include aspects of the environment, society, culture, rights, economy, etc., that are of significance. In EIA, valued components are commonly used to assess the effects of a proposed activity, including anticipated impacts.

BOX 1: The SSN Review Panel

For the assessment of Ajax mine, the **SSN Review Panel** included Chiefs and Council from the two communities which make up SSN, two kinship representatives from each of the family groups in the SSN communities, key knowledge holders, and elder and youth representatives. The SSN Review Panel was 42 members' total. Family, youth, and elder representatives were involved throughout the entire assessment, and would report back to their respective families and communities.

The SSN Review Panel conducted oral proceedings and prepared a Decision Package that summarized the assessment findings, which was later used to support the SSN Joint Council's decision-making on whether to consent to the project proceeding.

Outcomes of the SSN Assessment Process

After assessing the Ajax Mine proposal, the SSN Review Panel recommended that the Ajax Mine Project should not proceed, because the anticipated impacts would negatively affect the practice and intergenerational knowledge transfer of SSN's traditional, cultural, and spiritual practices.

The SSNAP was now completed. The SSN Joint Council⁶ considered the best use of Pipsell as a cultural keystone area and developed a specific land use objective for the site. By formalizing the land use objective for Pipsell, SSN *"asserts the right to maintain and ensure the continuity of [their] traditional cultural and other practices, exercise [their] traditional and cultural heritage and practices and carry on [their] traditional customs and spiritual activities in the historical location where those activities were and are traditionally carried on"*⁷.

Following the completion of the SSNAP, the SSN Joint Council accepted the recommendations made by the SSN Review Panel. They concluded that development of the mine would conflict with the SSN land use objective for Pipsell. SSN rejected the Ajax Mine Project, stating that they do not give their free, prior, and informed consent for the construction of the mine.

⁶ The SSN Joint Council is comprised of the Chiefs and Council from the Tk'emlups Indian Band and the Skeetchestn Indian Band (i.e., the "SSN").

⁷ SSN. (2017). SSN Panel Recommendations Report for the KGHM Ajax Project at Pipsell. Retrieved from <https://drive.google.com/file/d/0B92rPs-T5VkgZVNIbzhuz0VhMk0/view?resourcekey=0-hqi8P6oHBBzhRYTe6EJlJw>

Following the SSN decision, the EAO and SSN continued to work together on the completion of the EIA. SSN provided a formal decision package to the EAO and CEAA, which was considered in the Joint Assessment Report and included in the referral (decision-making support) package for the responsible Ministers. Both British Columbia and Canada rejected the project on the likelihood of significant adverse environmental effects.

Lessons Learned from the SSN Assessment Process

This case study illustrates an innovative way of ensuring that the team involved in the assessment work understands and upholds the Nation's values and requirements. For example, SSN used a customized Review Panel to assess the project- comprised of community members with relevant knowledge of SSN land use and culture (key knowledge holders), social networks and community dynamics (e.g., family representatives), and multi-generational perspectives (elder and youth representatives). Through the SSN Review Panel, SSN gained community-based EA capacity, which extended to building a land use objective for Pipsell and associated decision-making criteria.

Where to Learn More About the Stk'emlu'psemc te Secwepemc Nation Assessment Process

Stk'emlu'psemc te Secwepemc Nation Website:
<https://stkemlups.ca>

EAO and SSN. (2015). Environmental Assessment Collaboration Plan (BC EAO-SSN) KGHM Ajax Project. Retrieved from https://projects.eao.gov.bc.ca/api/document/598e1557fb266600198f217e/fetch/3_-_Ajax_Summary_Assessment_Report_August_2017_DRAFT.pdf

Stk'emlu'psemc te Secwepemc Nation (SSN). (2017). Decision of the SSN Joint Council on the Proposed KGHM Ajax. Retrieved from <https://stkemlups.ca/process/>

SSN. (2017). SSN Panel Recommendations Report for the KGHM Ajax Project at Pipsell. Retrieved from <https://drive.google.com/file/d/0B92rPs-T5VkgZVNIbzhuz0VhMk0/view?resourcekey=0-hqi8P6oHBBzhRYTe6EJlJw>



Case Study Development

This case study was constructed using a review of published (print and online) primary and secondary documents that are publicly available.

This includes sources such as independently produced assessment reports by the SSN and associates, EIA reports, Crown consultation and accommodations reports, decision statements, and proponent project applications.

A special thanks is owed to Dr. Debra Stokes, who provided feedback, expertise, and guidance on the accuracy of this case study.

Other case studies and resources in the series

Indigenous Led Impact Assessment, An Introduction

The Squamish Nation Process for the Woodfibre Liquified Natural Gas Plant and Export Terminal Proposal

The Tsleil-Waututh Nation Assessment for the Trans Mountain Pipeline and Tanker Expansion Proposal

The Mikisew Cree First Nation Culture and Rights Assessment for the Frontier Oil Sands Mine Project

The Ktunaxa Nation Rights and Interests Assessment and the Fording River Operations Swift Coal Mine Expansion

FOR MORE INFORMATION:

THE CENTRE FOR ENVIRONMENTAL
ASSESSMENT RESEARCH (CEAR)

The University of British Columbia,

Okanagan Campus

Room 246, Fipke Centre,

3247 University Way

Kelowna, BC, Canada V1V 1V7

ok-cear.sites.olt.ubc.ca