

Northeast Cumulative Effects Legal Order

Spring 2024

NE Roundtable



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Background

- **June 2021** – BC Supreme Court determined the Province has infringed Blueberry River First Nations' Treaty 8 rights. Litigation initiated in 2015.
- **Court declarations** re: Blueberry River's case:
 1. "...The Province's mechanisms for **assessing and taking into account cumulative effects are lacking** and have contributed to the breach of its obligations under Treaty 8,"
 2. "...there are **not sufficient and appropriate lands** in the Blueberry Claim Area to allow for Blueberry's **meaningful exercise of their treaty rights,**"
 3. "The **Province may not continue to authorize activities** that breach the promises included in the Treaty, ...or that **unjustifiably infringe** Blueberry's exercise of its treaty rights,"
 4. "...**establish timely enforceable mechanisms to assess and manage the cumulative impact of industrial development...**ensure these constitutional rights are respected."
- Good summary background on history created by Blueberry River - [Where Happiness Dwells - Blueberry River First Nations \(blueberryfn.com\)](https://www.blueberryfn.com)

Towards Agreement

- Agreements since court decision:
 - **BRFN Interim Agreement** (Oct 2021), which provided initial funding to support new path forward, and provided confirmation that 195 previous authorizations could proceed in Claim Area.
 - **BRFN Implementation Agreement** (Jan 2023).
 - **Consensus Document** (Jan – March 2023) enabled through letters of agreement with other Treaty 8 Nations
- Priority areas for action:
 1. Address the cumulative impacts of industrial development,
 2. Develop ways to manage for cumulative effects going forward, to protect treaty rights,
 3. Create predictability for proponents and our governments on future resource development, and
 4. Support responsible resource development paired with a significant investment in restoration to heal the land.



Legally Effective CE Direction

The Province issued legally effective direction to statutory decision makers requiring:

- Consideration of the extent and duration of cumulative impacts, and
- Measures to avoid or minimize cumulative impacts and potential infringement of treaty rights.

Why this commitment

Court's Declarations

- The Province's mechanisms for assessing and taking into account cumulative effects are lacking and have contributed to the breach of its obligations under Treaty 8

Existing Legal Requirements

- The Constitution Act, 1982 requires this as part of common law consultation obligations, as does s. 8.1 of the Interpretation Act as part of all government decisions under provincial statutes.

Strengthening Existing Policy

- There is no clear, consistent direction to statutory decision makers working in the natural resource sector specific to how to address possible cumulative effects despite past efforts.

An Interim Approach for Legally Effective CE Direction

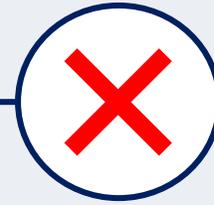
Require decision makers to prepare a record (report) that sets out the impacts of the activity on treaty rights (geographic extent, duration and cumulative impact in the context of other industrial and commercial activities) and the measures taken to avoid or mitigate the impacts.

- Interim - effective September 1st to December 31st, 2026
- Specific to the Northeast District
- Applies to statutory powers to issue, or exempt or amend an authorization to carry out an industrial or commercial activity
- Applies to 12 Acts
 - FOR (Forest Act, Forest and Range Practices Act, Forest Practices Code, Range Act)
 - WLRS (Land Act, Water Sustainability Act)
 - EMLI (Coal Act, Mines Act, Mineral Tenure Act, Geothermal Resource Act, Energy Resource Activities Act, Petroleum and Natural Gas Act)



WHAT IT IS

NE CE INTERIM APPROACH

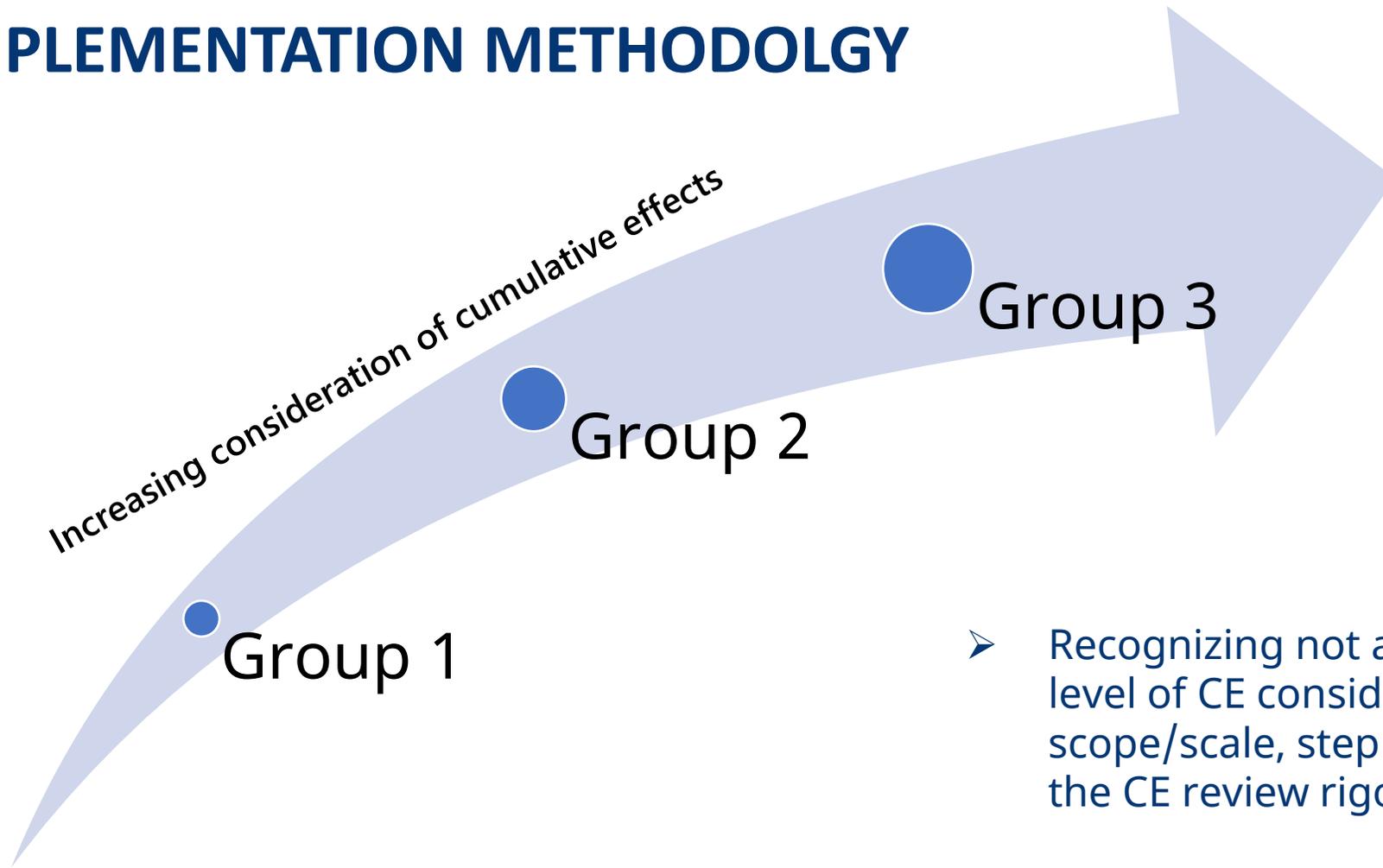


WHAT IT IS NOT

- ✓ Reinforcement of existing requirements for decision makers.
- ✓ Documentation of how cumulative effects have been considered.
- ✓ Legal direction for existing policy.

- ✗ A substitution for any existing requirements held by decision makers. The Order does not change, alter, or affect any existing consultation requirements.
- ✗ New requirements for Industry.
- ✗ Changes to existing statutes.

IMPLEMENTATION METHODOLOGY



- Recognizing not all decisions require the same level of CE consideration based on the scope/scale, step one will involve determining the CE review rigor that must be applied.

CE Order and Land Use Planning

- Planning continues to be one of the best strategic tools for the management of cumulative effects in the NE which is why this Order is timebound and considered interim.
- Numerous planning initiatives that are ongoing and active
- As the planning processes conclude and direction for land management is set, the simplicity of the CE report will increase (i.e., document that decision is consistent with the direction set out in the plan).

Questions and Comments



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