

Wind farms + aboriginal rights

First Nations in Canada are exercising aboriginal and treaty rights more and more. A number of communities have launched territorial lawsuits to claim jurisdiction over traditional lands and the government's duty to consult communities about any developmental activities on traditional lands in their respective territories. There are examples of communities exercising rights throughout Canada, while keeping future generations in mind.

There have been a number of Supreme Court cases, such as the Haida, Taku River and Mikisew cases that have affirmed their rights, setting precedent for other First Nation communities – including the right to be consulted and accommodated prior to any decisions, conduct or activities that may affect the rights and interests of aboriginal people.

The chief, five council members and one citizen of Kitchenuhmaykoosib Inninuwug northwestern Ontario were jailed for several months for contempt of court just over a year ago. They were protecting ancestral lands from mining development. A few months later, the province's highest court ruled the jail sentences were too harsh.

First Nations are making positive steps in asserting aboriginal and treaty rights, paving the road to self-determination; and realizing the potential of their lands and resources.

They're also making strides in economic development. On the west coast, Osoyoos First Nation, an Okanagan community, has Nk'Mip, an award winning winery. On the east coast, a Mi'kmaq community has been growing faster than any community in Canada, including townships. Membertou First Nation has initiated partnerships in the private industry with oil and gas companies, engineering, mining, business management and consulting.

Throughout the rest of the country, there are First Nations participating in ecotourism, including most recently, the energy sector.

Wind farm developments are fairly new to the scene. Since green energy is close to First Nation cultural philosophies about being good to Mother Earth, communities have been opening their doors and partnering with developers. First Nations hope developments of these kinds will build the foundation of self-determination through economic development.

The tables are starting to turn with First Nations more in control of traditional lands, having a say over what happens on the lands. Several First Nations cite this industry as assisting them in those endeavors. However, one of the obstacles include the NIMBY (not in my backyard) syndrome. Cottage associations, near First Nation communities are maintaining wind turbines are not aesthetic and would ruin the landscape.

“Unfortunately, their backyard is our community and we need to be sustainable,” said Wasauksing First Nation Chief Shane Tabobondung. The community is in negotiations with SkyPower for about 15 wind turbines. “Globally, wind turbines are an environmentally friendly symbol. They’re a symbol of a sustainable, green community.”

SkyPower, a Lehman Brothers company, recently filed for restructuring under the term’s of the companies’ Creditors Arrangement Act. The company had to change its strategic direction after the bankruptcy of its principal shareholder. Tabobondung said the restructuring will not affect the development in his community.

Several provinces away, in Saskatchewan, All Nations Energy Developments Corporation signed a memorandum of understanding last year with TransAtlantic Corporation to develop a 100-megawatt wind farm in the province. ANEDC is owned by Cowessess and George Gordon First Nations. Grady Lerat, a Cowessess board member, said both communities belong to a large treaty area in the province which stretches from the Alberta to Manitoba border. He said Cowessess is the second largest treaty entitlement band, with the potential to buy more land.

Lerat said the turbines would not necessarily go up within First Nation boundaries, and could be erected in shared traditional lands outside the communities. According to him, the government has put out a paper on consultation and the Federation of Saskatchewan Indian Nations is developing a response to it. Meanwhile, oil pipelines are being run through First Nation territories. “There has to be more inclusion for First Nations to participate in the economy.”

The business of farming wind is one of those options. Lerat said wind developments will have a better outcome for future generations.

In Ontario, Chief Wayne McQuabbie of Henvey Inlet First Nation feels wind developments are a step toward exercising aboriginal rights. HIFN is getting ready to sign an MOU with Wind Dancer Power.

McQuabbie said the project is, “opening the door for our First Nations. It’s bringing recognition of who we are and what we can be. We’re setting the standard for future generations with this venture.”

The community is preparing to launch a territorial claim to exercise jurisdiction over traditional lands. HIFN may eventually consider practicing jurisdiction over their traditional territory to put up wind turbines outside of reserve boundaries.

Brookfield Renewable Power has several wind projects with First Nation communities. The company maintains they consult with First Nations on all projects as advised by law and has a senior advisor of aboriginal affairs.

While aboriginal rights and interests are protected by law through the Canadian Constitution, Ontario has taken its legislation a couple steps further. First, the province

made revisions to its archaic mining act, to accommodate First Nations, and enacted a new piece of legislation – The Green Energy Act.

The new act cites Section 35 of the constitution: To ensure and uphold aboriginal rights and interests. The act also includes sections and sub-clauses to ensure aboriginal participation and consultation with respect to the energy sector.

But aboriginal rights and title continue to be a grey area. Joseph Linkevic, First Nations wind energy consultant and attorney based in British Columbia, said there are two arguments. “Aboriginal Rights and Title is an empty box that needs to be filled, and Aboriginal Rights and Title is empty and does not exist because the federal and provincial government’s belief of their sole jurisdiction.”

He said if that were the case, then reserves and treaties would not exist, so the argument falls flat. So, if the “empty box” theory is based on the fact that First Nations believe their rights are like an empty box that needs to be filled, to fill that box, Linkevic said, “First Nations need to simply exercise their rights. Developing wind farms on traditional lands would be a full scope argument on this basis.”

McQuabbie said exercising rights are important because, “it defines who we are as First Nations peoples. We understand from the Royal Proclamation and the treaties, we’re supposed to be equal to the federal government. By asserting those rights, it brings us much closer to that reality.”

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