

Responding to Project Appeals and Challenges (Newsletter)*

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There are organizations and individuals whose business is objecting to natural resource projects, particularly those of the extractive industries. Administrative appeals and legal challenges have the goal of delaying or stopping projects. Effectively refuting their claims saves proponents, consultants, and attorneys time and money.

A common tactic used by project opponents is to claim that "we think | believe | feel..." the proposed project will have significant negative impacts. Supporting data or objective substantial of this claim are not required for acceptance by the regulator or court. However, the proponent is required to respond to the allegation using data and objective methods. While a level playing field would be great, there are effective ways to support rejection of the appeal or legal challenge.

Another common tactic uses a published article, mathematical model, or measuring instrument with some relation to the alleged impact to support their claim of project harm. Differences in locale, affected organisms, or model/instrument purpose are overlooked or ignored.

Both tactics are effective because the claims seem reasonable to non-technical decision-makers. Clearly and effectively explaining why the concerns are not reasonable is accomplished by critical evaluation of the claimed supporting documentation and by applying robust statistical/spatial analyses to all applicable data. When this explanation is prepared by an experienced subject expert external to the proponent's operation unbiased objectivity is more readily accepted by decision-makers. Most of the time the applicable data exist and there is no need for additional collection efforts or expenses. Rarely have previous analyses extracted all the value contained in those data upon which the appeal or challenge is based.

Submitted water discharge permit compliance reports are in the public domain. Reported chemical concentrations above the permit MCL are cited by objectors as reason for the regulator to not renew the permit. This argument is raised most often with toxic metals or organics, without regard for the overall

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distribution of concentrations in the sampling history. When permit compliance reports include proper summary statistics, including correct inclusion of non-detectable concentrations, and quartile (25%, 50%, and 75%) concentrations, it is common to see that these high values are outliers occurring in fewer than 1% of all analyzed samples. That puts the data in the proper perspective and justifies permit renewal.

Numeric models are created in two broad categories: qualitative approximation appropriate for landscape-level planning and quantitative location-specific description of a limited area or river reach. The first type may be misapplied as a quantitative, location-specific description or predictor because it supports a challenge to a project. It is not enough to read the objector's document submitted to the regulator; careful reading of the documentation written by the model's developers is needed to determine whether that model and included data are appropriate for the specific project area.

A qualitative river basin model was used as a quantitative, site-specific model to argue against in-water sediment dredging at a specific location. However, model data used by the objectors had been collected a decade earlier and 40 km upstream from the project location. The permit was issued.

Cherry picking of data and numeric models to support anti-project agendas is common when natural resource industries require environmental permits. Refuting objections with critical technical review of submitted documentation and quantitative analyses using robust, correct statistical models are not only effective but demonstrate to the regulator that the proponent has taken a hard look at the project's relationship to the natural environment in which it is located.

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