



Social license to operate: Not a proxy for accountability in water governance



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ABSTRACT

With the emergence of more collaborative, watershed governance arrangements and the engagement of various actors in decision-making processes, new questions emerge about the potential roles for these organizations and agencies in both upholding accountability, and in being held accountable. Therefore, this study explores the intersection between alternative collaborative watershed governance approaches, and the simultaneous emergence of the concept of social license as an accountability instrument in relation to water governance. Based on an empirical analysis of a case study in southeast British Columbia, where water quality contamination is primarily the result of coal mining, this study seeks to: (1) examine how social license is understood by a range of watershed actors; (2) better understand whether social license may be useful as a watershed-based or community accountability instrument as new collaborative modes of watershed governance emerge; and, (3) explore how social license may be enforced or enabled. Findings show how industry efforts to earn social license have created benefits, such as enabling community-based water monitoring, thereby building capacity for deeper community engagement in governance processes and a greater ability for the community to uphold accountability. However, we confirm that social license is not a proxy or silver bullet for enhancing accountability in collaborative watershed governance. Our findings reveal four specific limitations regarding the use of social license as a principle for accountability in collaborative watershed governance.

1. Introduction

“Social license to operate” or “social license” is becoming widely used in resource extraction contexts such as mining, where interests range from empowering communities to ensuring mining remains viable (Michell and McManus, 2013; Owen and Kemp, 2013; Bice, 2014; Bice and Moffat, 2014). Its definition is contested, in part because it remains an informal form of permission about resource extraction, unlike a regulatory license (Bice, 2014). Some scholars indicate that a social license refers to community acceptance or approval of a project and its social, cultural, and ecological impacts (Gunningham et al., 2004; Thomson and Boutilier, 2011). Others assert that social license may just indicate reluctant acceptance (Owen and Kemp, 2013; Owen, 2016). Dare et al. (2014) suggest that a ‘social license continuum,’ which involves multiple and competing social licenses, may better reflect reality given the diverse number of interests bound up within a social license.

Regardless of the definition employed, the concept points industry towards the need to go beyond regulatory compliance, and to behave in a transparent and responsible manner, in order to meet community expectations and earn trust and legitimacy (Gunningham et al., 2004; Thomson and Boutilier, 2011; Harvey and Bice, 2014). It remains in

question whether this “beyond compliance” behavior actually happens, or whether the concept becomes jargon used by powerful self-regulating industry actors to set their own terms of conduct (Newell, 2005; Coumans, 2011; Owen and Kemp, 2013; Brueckner et al., 2014). Social license implies, at least, that an accountability relationship can exist directly between a private actor and a community. For that reason, it is increasingly used by industry, government, and community actors alike (e.g. Mason, 2012; Gerson, 2014; Hussain, 2014; McCarthy, 2015); and particularly, in discussions about the impacts of resource extraction on water (e.g. Shephard and Martin, 2008; Prno and Slocombe, 2012; Bunnell, 2013; Goss et al., 2015).

Discussions about social license and water have emerged in parallel to ongoing efforts within water governance scholarship to explore the role of different actors, including private industry, in collaborative arrangements at the watershed or river basin scale. Strong trends in watershed governance scholarship suggest ‘good governance’ may be achieved through devolved, collaborative arrangements where decision-making authority, responsibility, transparency, and accountability for water is shared (UNESCO, 2003; UNDP, 2004; Lautze et al., 2011; Holley et al., 2012; de Loë, 2015; Renzetti and Dupont, 2017). Typically, this argues in favour of re-scaling governance to watershed scales so that governance aligns with ecological boundaries, as opposed to

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arbitrary political borders (Norman et al., 2012), and where diverse actors can be included. This idea of a single scalar “fix” has been criticized (Cohen and Davidson, 2011; Davidson and de Loë, 2014). Yet, watersheds remain the primary site in which alternative, collaborative approaches to governing are being organized, and these arrangements – at times – include industry actors (e.g. Brandes et al., 2014; Hunter et al., 2014; Rolston, 2015; Renzetti and Dupont, 2017).

With the growing interest in alternative, collaborative watershed governance approaches, and the simultaneous arrival of the concept of social license in relation to water, questions arise about their intersection in theory and in practice. The roles of private industry actors are highlighted by both discussions. Consideration is needed of whether and how elements of good watershed governance – including responsibility, transparency, and accountability – relate to industry involvement, and the possible role for a social license. Despite the two parallel trends, substantive theoretical analyses of the applied logic of social license and the notion of accountability in water governance have not kept pace. Therefore, the goals of this study are to: (1) examine how social license is used by a range of watershed actors, not just industry; (2) better understand whether social license may be useful as a watershed-based or community accountability instrument as new collaborative modes of watershed governance develop; and, (3) explore how it may be enforced or enabled.

To address the research question, this study investigates a case in British Columbia, Canada, where water quality challenges are a direct result of ongoing coal mining activities. A private multinational company is actively engaging with the community to deliberately maintain a social license, and to collaborate on new approaches to water quality management. Based on our findings, we argue that social license is not simply a “buzzword” that is being used by powerful companies to gloss over conflicts, as some scholars have proposed (e.g. Owen and Kemp, 2013). Rather, the private actor’s efforts to secure social license in this case is more complex. Activities associated with building social license have created benefits, such as enabling community-based water monitoring, thereby building capacity for deeper community engagement in governance processes and a greater ability for the community to uphold accountability. However, we confirm that social license is not a proxy or silver bullet for enhancing accountability in collaborative watershed governance. We claim that it does not ultimately satisfy accountability demands of a number of different actors, including the indigenous nation in whose traditional territory the mining activities occur. Specifically, four limitations emerged in this study regarding the use of social license as a principle for accountability in collaborative watershed governance:

- (1) Despite advances within scholarly circles regarding the measurement of social license that help to create a rigorous instrument, in practice, considerable ambiguity remains about what the concept means or how to determine its presence or absence;
- (2) The use of informal accountability approaches introduces a paradox: although viewed in scholarship as a self-regulatory instrument, participants in this study pointed to the need for a much stronger oversight role for governments if social license was to be meaningful;
- (3) Communities are comprised of a heterogeneous set of actors that do not act as a single entity. In the case study watershed, as is likely true for many watersheds, the various actors are not formally organized with a focus on water governance. Consequently, roles and responsibilities for the enforcement of social license are unclear, raising questions about the viability of using social license as a tool for community-led accountability of industry; and,
- (4) Within the Canadian context of this case study, an informal accountability mechanism adds a layer of complexity when it arises in a legal landscape that has clear requirements for consultation, accommodation, and consent of indigenous nations.

In spite of some derived positive outcomes, we conclude that social license provides little assurance for greater accountability in governance, or improved ecological outcomes. Social license also does not translate to a greater likelihood that private industry actors will be accountable collaborators within alternative, watershed-based governance arrangements. Findings highlight the desire by study participants for greater accountability of both the provincial government and private actors in water decision-making. This indicates that the usage of social license may represent the initial stages of a search for new principles or tools to begin to address accountability gaps, rather than the final solution.

2. Social license and watershed governance accountability

Accountability is the cornerstone companion to decision-making authority and power. It intends to ensure that decision-makers pursue public goals equitably and transparently (Bovens, 2007; Mashaw, 2006; Wallington and Lawrence, 2009). Accountability involves a specific social relationship between actors, where an actor has the obligation to explain and to justify conduct to another actor (Bovens, 2007). Robust accountability relationships involve a “process or mechanism through which actors can pose questions, pass judgement, and impose formal or informal sanctions, which in turn have consequences” (Bovens, 2007, p. 450). Strong enforcing actors (including parliaments, ombudsmen, and auditors, in Western vertical governance systems) are thus a necessity in a functioning system. Transparency – the “public disclosure of key decisions and the information needed to assess those decisions” (McAllister, 2012, p. 13) – is also a basic requisite (Bovens, 2007).

Collaborative watershed governance involve various actors in decision-making processes, leading to questions about their potential roles in both upholding accountability, and in being held accountable (Black, 2008; Gunningham, 2009; Holley, 2010; Holley et al., 2012; Brandes et al., 2014; van der Heijden, 2014; Renzetti and Dupont, 2017). Previous water governance scholarship has highlighted the variation in actors’ resources (social capital, time, financial), capacity, and commitment to administer such formal accountability relationships. Scholarship also reveals active resistance from Western governments for enabling new accountability roles. For example, power asymmetries and structural barriers created through ongoing colonization processes in Canada exclude indigenous nations from meaningful roles in governance processes (e.g. Walkem, 2007; Booth and Skelton, 2011; Simms et al., 2016). In another example, community-based water groups face challenges in accessing decision-makers, sharing their information, and influencing water decisions and outcomes (Conrad and Hilchey, 2011). In essence, upholding accountability implies the need for a certain amount of formal organization and authority. In many watersheds, this organization or authority may not be present: or, it may be present but remain unacknowledged by colonial governments.

Existing options in Canada for holding industry actors to account for water quality impacts mainly lie within environmental assessment processes. Evidence indicates that such processes are not meeting community expectations, and are fraught with contestation and conflict (e.g., Young, 2008; Gibson et al., 2010; Haddock, 2010; Booth and Skelton, 2011; Archibald et al., 2012; Auditor General of BC, 2016; Author et al., 2016). Assessment processes are typically concentrated on one-time events of developing new projects, and predicting the environmental impacts. They are typically less concerned with ongoing operations, cumulative effects of multiple projects on a landscape, or historical environmental degradation (Gunn and Noble, 2011). Thus, impact assessment tools are not sufficient long-term accountability instruments.

Scholars have documented a growing sense of public mistrust in government decision-making processes and oversight on resource extraction (Biber, 2011; Olszynski, 2014). Industries have increasing onus to demonstrate that they are acting in good faith and benefiting public interest, or, earning social license (Author et al., 2016). Yet,

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