



WILDLANDS LEAGUE

A chapter of the Canadian Parks and Wilderness Society

July 19, 2016

Via email to CEAA.EARReview-ExamenEE.ACEE@ceaa-acee.gc.ca

Review of Environmental Assessment Processes
Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor
Ottawa ON
K1A 0H3

Re: Environmental assessment processes: Draft Terms of Reference for Expert Panel

Thank you for the opportunity to comment on the draft terms of reference for the proposed independent expert panel tasked with reviewing federal environmental assessment legislation.

Background

CPAWS Wildlands League is a not-for-profit charity that has been working in the public interest to protect public lands and resources in Ontario since 1968. We have extensive knowledge of land use in Ontario and a history of working with governments (provincial, federal, Aboriginal and municipal), communities, scientists, the public and resource industries on progressive conservation initiatives. We have specific experience with impacts of industrial development on boreal forests and wildlife that depend on them, as well as dedicated protected areas establishment and management expertise. We have been engaged in numerous federal environmental processes and look forward to engaging with the expert panel tasked with environmental assessment reform recommendations.

We commend to you the submissions of Canadian Environmental Law Association, Ecojustice Canada, and West Coast Environmental Law, all of which contain details that support our recommendations below.

As well, we commend to you the recent paper "Fulfilling the Promise: Basic Components of Next Generation Environmental Assessment" by Robert B. Gibson, Meinhard Doelle, and A. John Sinclair, July 20, 2015, *Journal of Environmental Law & Practice, Forthcoming*. This paper outlines key components that ought to be considered when shaping the review of federal environmental assessment legislation going forward.

Our specific comments on the draft terms of reference are focussed on: the purpose of environmental assessment legislation, the scope of the review, and compliance mechanisms.

Purpose of Environmental Assessment Legislation

The draft terms of reference provide the following under Context:



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Environmental assessment informs government decision-making and supports sustainable development by identifying opportunities to avoid, eliminate or reduce a project's potential adverse impact on the environment before the project is undertaken, and by ensuring that mitigation measures are applied when a project is constructed, operated and decommissioned.

This understanding of purpose is in stark contrast with modern approaches to environmental assessment, and in particular with Ontario's environmental assessment legislation. The purpose of in Ontario's *Environmental Assessment Act* (R.S.O. 1990, c. E.18, s. 2) is:

The purpose of this Act is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment.

We recommend that the terms of reference ensure that the panel considers the goal or purpose of federal environmental assessments.

Scope of the Review

In addition to considering how current environmental assessment practice is conducted by the three named responsible authorities (Canadian Environmental Assessment Agency, the Canadian Nuclear Safety Commission or the National Energy Board), including "practices and procedures associated with the conduct of environmental assessment, such as Indigenous consultation, public participation, the role of science and harmonization with other orders of government", the panel needs to be tasked with consideration of opportunities to adopting new environmental assessment practices.

We recommend that the terms of reference ensure that the panel considers the application of strategic assessments, regional approaches, and cumulative effects assessment.

Compliance Mechanisms

Further, there is nothing in the draft terms of reference to suggest that the panel will consider whether the mechanisms for enforcement and compliance are sufficient to ensure the conditions of an environmental assessment are met. The current prohibitions are only against carrying out activities related to the project before environmental assessment authorization (s6, CEAA, 2012) or against federal authorities permitting any activities related to the project before environmental assessment authorization (s7, CEAA, 2012). It our understanding that enforcement of the environmental assessment conditions is generally left to be realized in subsequent approvals or authorizations. These will necessarily be piecemeal (e.g., perhaps requiring an authorization under the *Fisheries Act* plus authorizations under various provincial statutes).



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We recommend that the terms of reference ensure that the panel contemplate effective enforcement of EA conditions directly, particularly when the piecemeal authorizations are anticipated to be ineffective.

Finally, in the interests of transparency, we hope that the federal government will reveal their plans for what happens after the report of the expert panel has been received. We are happy to see that the report will be made public after it has been received by the Minister of Environment and Climate Change. However, there is currently no sense of what will happen after that. Will there be further consultations on proposed legislation that is in keeping with the recommendations of panel's report?

Conclusion

We are excited to see the federal government's commitment to (Minister of Environment and Climate Change's mandate letter): "... immediately review Canada's environmental assessment processes to regain public trust and help get resources to market and introduce new, fair processes". We trust that this mandate and the opportunity to develop progressive environmental assessment legislation, that is forward looking and comprehensive, will be embraced. And, we look forward to participating in the dialogue going forward. If you wish to discuss our submissions, please let me know.

Regards,

Janet Sumner
Executive Director