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Friday, July 22, 2016

The Honourable Catherine McKenna
Minister of Environment and Climate Change
Environment and Climate Change Canada
200 Sacré-Coeur Boulevard, Gatineau QC K1A 0H3

RE: Terms of Reference for Expert Panel Reviewing Environmental Assessment Processes

Dear Minister McKenna,

Curve Lake First Nation is a member of the Michi Saagiig Anishinabek from the Great Lakes area of what is currently referred to as Ontario. This has been our territory since time immemorial. First Nation peoples are caretakers of Mother Earth and realize and respect Her gifts of water, air, land and food. Everything that is taken is used with the understanding that we take only what we need and we protect Her gifts as to ensure future generations, both native and non-native, will not be put in peril. As First Nations, our responsibility to protect and preserve the land has been bestowed upon us by the Creator and captured in each Nations laws.

This letter is in response to the call for comments on the Terms of Reference for the Expert Panel Reviewing Environmental Assessment Processes in Canada. Please read below for comments regarding the Terms of Reference.

Indigenous Engagement Plan and Timeline

Although the federal government has a general obligation to consult the public on such legislative changes as these, the federal government has a legal obligation of duty to consult and accommodate with Aboriginal peoples under section 35 of the Constitution Act (1982). First Nations are sovereign Nations with a right to self-determination, meaning that we have jurisdiction (the right, power and authority) to administer and operate our own political, legal, economic, social and cultural systems. It is for this reason that Canada must work with First Nations through a government-to-government relationship. With the recent official acceptance of the United Nations Declarations on the Rights of Indigenous Peoples (UNDRIP) by Canada, consultation processes in the legislation that are under review need to be guided by principles of UNDRIP including free, prior and informed consent (FPIC). The process of free, prior and informed consent requires that First Nations have adequate time and resources to educate themselves on the impacts the

legislation has for their communities. Although funding for First Nations participants will be provided, the usefulness of this is limited due to the tight timeline which does not allow for adequate time of the review. This is not in line with Trudeau's promise of a renewed relationship or the commitment to UNDRIP. First Nations are the most vulnerable to the impacts of climate change in Canada. We are also the most impacted by resource projects, such as pipelines, which the legislation under review is responsible for. It is for these reasons that we are requesting the timeline of consultation be extended by four months in order to adequately engage Indigenous communities in the consultation process.

Review Panel Composition

In order for the review to be adequately conducted, and to answer Question five - How to ensure that environmental assessment legislation is amended to enhance the consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects; appropriate First Nations representation is required.

Scope of Review

Environment assessments aim to identify project development that has the least environmental impact. Environmental assessments serve as a decision instrument for respective authorities and are not deployed to outright reject projects. We have seen mainstream dominant governments approve contentious projects despite concerns from environmental groups and Indigenous communities. Furthermore, environmental review tribunals and judicial review panels have not served our First Nations well. Expanding the scope of the environmental review to go beyond science-based (especially in light of the uncertainty around validation) impacts to include traditional knowledge would allow for integration of naturalized laws and worldviews that have sustained First Nations and respectful relationships to the natural world from time immemorial.

Confidentiality

The Terms of Reference are lacking provisions for the protection of intellectual property and avoidance of the exploitation of traditional knowledge. As a result, First Nations will be reluctant to share information that would fall purview of the Access to Information Act.

We thank you in advance for your consideration of these comments.

Sincerely,



Chief Phyllis Williams
Curve Lake First Nation

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Cc: Curve Lake First Nation Council; National Chief Perry Bellegarde; Grand Council Chief Patrick Madahbee; Ontario Regional Chief Isadore Day; Minister of Indigenous and Northern Affairs Carolyn Bennet; Maryam Monsef, MP