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To: EA Review / Examen EE (CEAA)
Subject: Input to draft TOR Canadian Environmental Assessment

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Environmental assessment processes: Draft Terms of Reference for Expert Panel

Thank you for moving on revisions to the *Canadian Environmental Assessment Act*.

There has not been enough time to offer input to this process.

It is unfortunate that while this review is underway, the Government of Canada has failed to place a moratorium on controversial government projects.

The Canadian Government has the authority to terminate, or postpone, the following unnecessary four Projects in BC and probably more in other places:

- **Roberts Bank Terminal 2** – a new container terminal with 3 shipping berths in the Fraser Estuary threatening internationally-significant migratory birds, salmon and endangered orcas.
- **WesPac Tilbury Marine Jetty Project** – A Terminal to export LNG from Tilbury Island, 21 kilometres up the Fraser. This will bring LNG carriers in the Fraser River for the first time in history threatening public health and safety and the survival of the Fraser River Ecosystem.
- **Direct Transfer Coal Facility at Fraser Surrey Docks** – plans to ship up to 9 million metric tonnes of American thermal coal through B.C. Why would Canada want to waste this prime industrial site by shipping dirty US thermal coal through B.C.?
- **Vancouver Airport Fuel Delivery Project** – plans to bring supertankers up the Fraser River in order to import offshore jet fuel for the airport.

The Terms of Reference

Complementary Mandates – This section is not strong enough in terms of commitment as there is vital connectivity with the *Fisheries Act*, *Navigable Waters Protection Act*, *Migratory Birds Convention Act* and the *Species at Risk Act*. Identification of the flaws in these acts, and interrelated reforms, should be included in the Scope of the review of the *Canadian Environmental Assessment Act*.

This process will not be successful unless the Scope is more specific.

Scope of Review

This Scope is too general. Specific weaknesses in recent processes should be identified and scoping solutions should be spelled out.

In order to address the goals of thorough environmental assessments and ensuring fact-based science, the following should be included:

1. How to introduce effective Scoping into environmental assessments?
2. How to restore environmental protection to avoid fragmentation of ecosystems?
3. How to ensure credible and effective cumulative effects assessments?
4. How to adopt policies that ensure effective, credible mitigation measures?
5. How to identify meaningful mitigation versus lip-service?
6. How to terminate compensation policies that allow money to pay for environmental damage?
7. How to make mitigation and compensation plans truly accountable to the public?
8. How to replace meaningless Adaptive Management Strategies?
9. How to ensure the public input is effectively addressed?
10. How to provide meaningful dialogue to the public?
11. How to restore the ability of CEAA to reject a project due to environmental impacts?
12. How to enforce CEAA requirements?
13. How to make the Canadian Environmental Assessment Agency accountable to the public?
14. How to make the Canadian Environmental Assessment Agency respect the public?
15. How to stop the Canadian Environmental Assessment Agency from collaborating and working with Proponents whilst paying lip-service to the public?
16. How to ensure Projects have a viable business case with feasibility studies and cost/benefit analyses?
17. How to prevent project-splitting and piecemeal environmental assessments?
18. How to prevent government/business collaboration in environmental assessments?
19. How to ensure non-indigenous people, as well as indigenous people, have participatory opportunities.

It is interesting to note the emphasis on public consultation in these Terms of Reference. While this is commendable, the **Scope needs to be more specific in terms of environment**. Scoping is probably the most important section of the Environmental Assessment Act as it identifies key components such as geographic scope, legal scope and cumulative effects. Over the past 20 years, proponents and the Canadian Environmental Assessment Agency have weaseled out of proper and due scoping.

Legal requirements should include comprehensive scoping of project footprint and inclusion of assessing impacts beyond the project footprint. Upstream and downstream impacts need to be included in order to comply with the legal requirement of cumulative effects

assessment of past, current and future projects under Section 19.1(a) of the *Canadian Environmental Assessment Act*. Also they need to be included due to impacts on transportation corridors and air quality along with impacted migrating wildlife species.

Examples of failed scoping are current environmental assessments in the south arm of the Fraser River in B.C. Four are listed above. In all of these cases, the Canadian Environmental Assessment Agency (CEAA) has not insisted on complete, inclusive scoping with credible science at the early stages. As a result, the Environmental Impact Statements are turning into a complex, hodgepodge of information without appropriate guidance and legal process. CEAA keeps changing the goal posts with new information as the legal flaws in the processes become evident.

CEAA is allowing Port Metro Vancouver (the Proponent) to claim the port is not accountable beyond project footprint. Despite legal submissions advising that this contravenes the *Canadian Environmental Assessment Act* (2012), CEAA supports a disclaimer in the Terms of Reference stating the effects of these projects on marine shipping are not environmental effects of the Project and will not be included in the Minister of Transport's decision on the Projects.

This is an unacceptable and illegal process that is the consequence of faulty Scoping and will likely end up in court:

“We are putting you on notice now that should you exclude relevant shipping effects from the assessment of cumulative effects of the designated project or the s. 52 and 54 determinations we may be forced to take the issue to court.”

Letter from Ecojustice to the federal government, June 24, 2015 Re: CEAA assessment Roberts Bank Terminal 2 Project

Scoping should also include specifics of the Precautionary Principle as required under the Act. It is not being adequately addressed in environmental assessments.

The Terms mention avoiding duplication with provinces and territories. This should not be a concern of the federal government because to date all measures for cooperation, harmonization and substitution have failed. They are particularly confusing to the public. The BC Environmental Assessment Act is ineffective so there is no concern of duplication. I suggest this be revised to once again separate the processes.

To ensure decisions are based on credible science, Project Proponents should not be permitted to choose their consultants and scientists. Proponents should fund the science, but have no part in the work or the conclusions. Projects of the Asia Pacific Gateway have been approved without credible science. Even when the science and research have some credibility, the stated conclusions do not correlate with the research. Junk science and rhetoric are being used to permit implausible, adaptive management strategies, mitigation and compensation plans. The Port of Vancouver is being permitted to bank environmental

compensation with unscientific, unproven projects to prepare for future damage to the Fraser River estuary. This is preposterous.

Meaningful participation is difficult because many caring people lead very busy lives. Proponents and the Canadian Environmental Assessment Agency have endless meetings and opportunities for input but most of it is too confusing. People do not have time to differentiate between Scoping, Terms of Reference, Addendums and final comments to Environmental Impact Statements. Even diagrams of the processes are confusing for people who have little time but would like to participate.

How to require project advocates to choose the best technologies available to reduce environmental impacts?

A more specific statement is needed to for the goal of using the best technologies available. For example, the use of modeling has some benefits but it can lead to misinformation due to the failure of proper input. Air quality modeling has often proved to be erroneous. Due to the complexity of such a process, the public is not given adequate information and cannot make informed comments.

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?

This statement is too general.

The Panel

This is worrisome. Three members are not enough. Panel appointments have become politicized in recent years so it is difficult to ensure a credible panel. Also, Canada is such a large and diverse country. A larger panel representing all parts of Canada would lend some credibility. Additionally, some areas of the country have globally significant ecosystems that require protection. This may not be recognized by appointees who have not worked in the area of protecting vital ecosystems.

The Panel Secretariat

This is also worrisome as some long-term staff members and bureaucrats in Ottawa appear to have been compromised under the Harper Conservative Government. They have also been successfully lobbied by business interests and may not appreciate the need to protect the environment.

These comments are a result of years of frustration at Canadian laws, policies and processes that have failed to provide due diligence to vital ecosystems which are being unnecessarily degraded.

May this process prove successful in introducing credible environmental assessments.

Yours sincerely,

Susan Jones