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Sent: July 20, 2016 3:00 PM
To: EA Review / Examen EE (CEAA)
Subject: Northern Confluence comments on TOR

Review of Environmental Assessment Processes
Canadian Environmental Assessment Agency
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July 19, 2016

Re: CEAA Expert Panel Draft Terms of Reference

Thank-you for the opportunity to comment on the draft terms of reference for the expert panel review of the Canadian Environmental Assessment Act. Northern Confluence is an initiative out of northwest BC that works to improve land-use decisions in salmon watersheds. We look forward to working with the government toward a more robust EA process.

The context set out for the environmental assessment (EA) is one of the core problems of both CEAA and NEB. Instead of assessing whether a project should be developed at all, it looks to *how* a project should go ahead (by reducing and mitigating impacts). In order to regain the public trust, a new purpose or lens is needed in order to effectively evaluate if, not just how, a project should proceed. We recommend that the terms of reference ensure that the panel considers the goal or purpose of federal environmental assessments and that the current drafted Context be removed.

In addition, a broader scope is needed to address First Nations Rights and Title, the commitment to implement UNDRIP, climate change and other international environmental agreements, land-use planning and cumulative effects.

While outside the scope of CEAA, the Ministry of Environment and Climate Change (and other departments in conjunction with provinces and territories) could provide support for First Nations' land-use plans that help clarify no-go zones and Free Prior and Informed Consent (FPIC) processes within their territories. There are variances across the country but a lot of examples where this ensures that resource development decisions are made on the basis of land use planning that addresses Indigenous rights, protects key ecological values and provides greater certainty to industry. It is the groundwork that could be undertaken as a parallel tract. At

the same time, given the adoption of UNDRIP, the redesign of the federal EA needs to comply with its legal duties and responsibilities under both constitutional and international law.

In order to address some of these other issues, a revised CEAA should have within its scope strategic or landscape-level environmental assessments that effectively address cumulative effects. There is a real opportunity for a new EA to operate differently and beyond the project-by-project model.

While not limited to this region, the northwest region of British Columbia has several mining projects operating and being proposed. This has British Columbians and Alaskans extremely concerned about our transboundary watersheds that could be impacted and put our wild salmon economy and livelihoods at risk. Some sort of watershed-level environmental assessment for this region led from a federal level could be an effective way to address concerns on both sides of the border and honour the Boundary Waters Treaty. While extremely important for Canadians to be able to participate meaningfully in a revised EA process (as identified in the scope of review), it is also important for downstream interests to be considered and addressed in a meaningful way.

In terms of complementary mandates and reviews, we worked with organizations, scientists and First Nations across the country in the hopes of seeing an immediate reinstatement of the HADD provision back in the Fisheries Act (Section 35). We will continue to pursue this goal through the Parliamentary Review Committee process. Pertinent to the CEAA review is a need to look at triggers for an EA when authorization is required under sections 32, 35 or 36 of the Fisheries Act. These environmental assessment triggers were eliminated in 2012 and are important to ensuring that the impacts and cumulative effects of works, undertakings and activities are understood, avoided and/or mitigated.

In order to help regain public trust, the expert panel should also address a question around effective compliance and enforcement once the review is complete. How does CEAA effectively enforce EA conditions and ensure transparency?

In terms of question 4 in the scope, we would like to see that expanded in two ways. One would be to add to Best Available Technologies *and Practices*; and the other would be to expand the question to include alternative development scenarios and options (that encourage best alternatives rather than just mitigation).

In reviewing the question on how to “ensure decisions are based on science, facts and evidence”, it would be important for the Expert Panel to have background information on how the system of proponent-led science has created an EA system wrought with conflict of interest and competing science. There are several examples, including Petronas’ LNG proposal in B.C., and solutions to address this issue (including setting up independent science panels).

While an interim amendment was introduced earlier this year, it seems important to include in the Terms of Reference how to effectively address Canada’s climate change commitments within a revised EA process.

In terms of locations for in-person engagement events, we recommend Prince George and Prince Rupert B.C. (or communities in between or along coast) given the strong participation of many First Nations, community groups, local governments and NGOs in the Northern Gateway review process whose approval was recently quashed.

Overall, this is a great opportunity for real change that will help regain the public trust if the terms of reference are expanded to take on a broader scope and revision of EA's purpose and approach.

Sincerely,

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Director, Northern Confluence

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