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Expert Panel
Review of Environmental Assessment Process
c/o Secretariat
160 Elgin Street, 8th Floor
Ottawa, ON K1A 0H3

Via email: EAreview_Participation@Canada.ca

Attention: Ms. Johanne Gelinas, Chair

Kwikwetlem First Nation (Kwikwetlem) was pleased to learn the Minister of Environment and Climate Change Canada was committed to reviewing the federal environmental assessment processes with the aim of amending legislation to enhance the consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects. Kwikwetlem agrees that by effectively applying the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to the environmental assessment process, potential impacts to potential or established Aboriginal or treaty rights can be more meaningfully addressed than the current legislation allows.

This letter provides a brief introduction to Kwikwetlem First Nation, its' recent experiences participating in federally-led environmental assessment, and suggestions for improving the federal government's environmental assessment legislation and framework.

Introduction to Kwikwetlem First Nation

The Kwikwetlem First Nation (Kwikwetlem) is part of the Downriver Halkomelem dialect subdivision of the Central Coast Salish community, centred in the municipalities of Coquitlam and Port Coquitlam, British Columbia (BC) on the north shore of the Fraser River. There are two Kwikwetlem reserves, with the principle being Coquitlam Indian Reserve #2. As of January 2016, Kwikwetlem has a registered population of 96 people, of which 36 individuals live on reserve. Kwikwetlem members historically spoke həńq̓əmiń̓əm̓əń̓q̓ownriver dialect of the Halkomelem Salishan language. Kwikwetlem is a small First Nation community that must protect its rights and interests but has limited capacity to do so and environmental assessments can be impose a significant administrative burden on the limited staff and resources.

Kwikwetlem signed a 2015 Forest and Range Consultation and Revenue Sharing Agreement, identifying a defined area as its Traditional Territory. The reserves lie within Kwikwetlem Core Territory, which is defined by Kwikwetlem as "those lands, waters, and resources centred on

the Coquitlam watershed and within which the Nation asserts title and rights. An adjoining Area of Use and Interest marks the region of regular ancient and ongoing travel, resource use and social interaction surrounding the core territory and in which the Nation asserts resource and heritage management interests".

Kwikwetlem filed a Notice of Civil Claim for Aboriginal title on February 9, 2016 to various portions of its Traditional Territory. Kwikwetlem has a longstanding and deep connection to the Coquitlam watershed. Ancient creation stories of Khaals the transformer place Kwikwetlem in the Coquitlam watershed at the time when everything was created, including the first sockeye. Kwikwetlem's Territory and its resources embody Kwikwetlem's ancestors as created by Khaals - Xwelto'meye, a leader of the Coquitlam people who forever lies at the bottom of the Coquitlam River and Xwelto'meye's sister who will forever remain in Coquitlam Lake, are just two examples. Kwikwetlem's relationship to these lands and waters is intimate and based on countless generations of exclusive occupation and use. As such, Kwikwetlem has both the right and the responsibility to use and maintain these lands for future generations.

Over the years Kwikwetlem has become increasingly concerned that infringements to their Aboriginal rights and title have not being taken seriously or fairly accommodated. The lands within Kwikwetlem's Territory, including the lands surrounding Kwikwetlem's reserves, have become developed to a point where the Nation is left with virtually nowhere in its Territory to exercise and benefit from its Aboriginal rights and title. Kwikwetlem's reserves make up less than 85 hectares, however, much of their reserve land is inaccessible and difficult to develop, leaving the Nation with less than four hectares of a usable land base. The Aboriginal title claim area represents less than 1 percent of Kwikwetlem's core Territory and some of the last remaining accessible undeveloped land in Kwikwetlem's Traditional Territory.

Kwikwetlem hopes that in filing the claim governments will take the Nation's title interests and rights seriously.

Kwikwetlem is not currently involved in negotiations with the BC Treaty Commission, but did file a Statement of Intent (SOI) map in 1999. The Crown however refused to enter into negotiations with Kwikwetlem, which has left the Nation with little to no process for meaningfully recognizing and protecting Kwikwetlem's Aboriginal rights and title. Kwikwetlem's submissions regarding the CEAA review should be read bearing that in mind.

Recent Experience in Federal Environmental Assessment Processes

Most recently, Kwikwetlem First Nation participated in the National Energy Board's (NEB) environmental review of the Kinder Morgan Trans Mountain Pipeline Expansion Project ("Project"). The lessons learned in the NEB Review are applicable to improving the CEAA Process.

The proposed Project will go through an area within the heart of Kwikwetlem's Traditional Territory, parts of which are subject to an active claim for Aboriginal title. The Project proposes

to put a pipeline through one of Kwikwetlem's last remaining fishing areas, an area intimately tied to Kwikwetlem's identity as Kwikwetlem (small red sockeye salmon) peoples. Kwikwetlem already faces significant challenges as a result of (over)development within the Traditional Territory and this Project represents a possible tipping point for Kwikwetlem's ability to exercise and benefit from their Aboriginal rights, title and culture within the Traditional Territories. The Project poses severe risks to Kwikwetlem's rights, title and way of life.

For the NEB Review, Kwikwetlem's experience was that no assessment of how the Project could potentially adversely impact Kwikwetlem's Aboriginal rights, title and culture ("Adverse Impacts") was conducted. The NEB panel did not have the mandate to assess Adverse Impacts, and the proponent took the position that it was not responsible for identifying or assessing Adverse Impacts, nor was it willing to fund studies for Kwikwetlem to identify or assess Adverse Impacts. The provincial and federal Crowns conceded to not having commissioned any studies to identify or assess Adverse Impacts, nor could they point to any studies that identified or assessed potential Adverse Impacts.

Kwikwetlem's concerns with the NEB process echo some of the concerns regarding the outstanding gaps outlined in the November 1, 2016 Ministerial Panel Report[1], namely concerns that Aboriginal rights and title were not properly been dealt with, concerns with a lack of meaningful consultation with First Nations and concerns regarding the flawed NEB review process. Kwikwetlem called on the Ministers to consider this question, "*How do they intend to reconcile approval of the Project with its commitment to reconciliation with First Nations people, and to the United Nations Declaration of the Rights of Indigenous Peoples principles of "free, prior, and informed consent"?*". Moreover, how will Canada uphold its commitment to reconciliation and its promise to engage with Nations on a Nation-to-Nation basis?

Recommendations to improve Federal Environmental Assessment Processes

Kwikwetlem respectfully submits the following recommendations for enhancing the federal environmental assessment process by improving efficiencies, transparency, and inclusiveness of Indigenous People's interests into the process. Kwikwetlem's recommendations for improving the federal environmental assessment process are described in the following sections:

1. Indigenous Engagement & Decision Making
    a. Pre-Application Engagement
    b. Pre-Screening/ Environmental Assessment Triggers
    c. Scoping the Assessment
    d. Integrating Indigenous Knowledge into the Environmental Assessment
    e. Decision-Making
    f. Timelines
    g. Environmental Assessment Follow-Up and Enforcement

[1] Report from the Ministerial Panel for the Trans Mountain Expansion Project, November 1, 2016 is available here: https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/files/pdf/16-011_TMX%20Full%20Report-en_nov2-11-30am.pdf

2. Enhancing Capacity & Knowledge Sharing
3. Cumulative Effects & Regional Studies

1. Indigenous Engagement & Decision Making

Meaningful, collaborative and fully resourced engagement between the federal government, the proponent, and potentially affected Indigenous groups is required throughout the entire life cycle of a proposed project – from the period prior to the submission of the Project Description through to decommissioning.

a) Pre-Application Engagement: Indigenous Groups are not engaged early enough in the process to have their interests included in decision-making on a project. The government and the proponent should engage with potentially affected Indigenous groups prior to the submission of a Project Description. This early engagement would promote trust and strengthen relationships through early knowledge sharing opportunities that could identify areas of Indigenous interests (including aboriginal rights, traditional and cultural knowledge), and presents an opportunity to define the best means in which the parties can engage going forward.

b) Pre-Screening/ Environmental Assessment Triggers: One of the significant changes to federal environmental assessments brought about by CEAA, 2012 was the narrowing in scope of the application of the Act – from applying to all Projects for which there was a federal trigger to only a limited list of 'designated projects' of particular project types and sizes. This limitation can result in Projects that infringe Aboriginal and treaty rights escaping federal environmental assessments, and is particularly concerning with respect to new kinds of Projects not anticipated by the *Regulations Designating Physical Activities.*[2]

   To address these issues, we recommend the following changes. First, the federal triggers for environmental assessment under section 5(1) of *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 should be reinstated. Additional triggers should be developed in consultation with Indigenous communities, to ensure projects that may infringe on Aboriginal or treaty rights are federally assessed. These additional triggers should include but not be limited to:

   i. Any project that may have an Adverse Impact on Federal Lands and lands of international significance including National Parks, Indian reserve lands, waters designated under the *Navigation Protection Act*, and World Heritage Sites.

[2] SOR/2012-147.

ii. Any project that may impede the federal government's carbon emission target, other climate change commitments or other national environmental objectives. This could be a general trigger or be broken down into more precise triggers such as "any project that has the potential to contribute X amount of Greenhouse Gases".
iii. Any project that would impact more than 2% of the known range of a species designated under the *Species at Risk Act*[3] as a species at risk (endangered, threatened or of special concern).
iv. Any project that may discharge a substance listed under the *Canadian Environmental Protection Act, 1999*[4] or the *Canada Water Act*.[5]
v. Any project that may affect migratory birds protected under the *Migratory Birds Convention Act, 1994*.[6]
vi. Any projects prescribed by regulation.

In addition to federal triggers, the Regulations Designating Physical Activities should remain in place to provide greater certainty about specific kinds of projects that require assessment. Where regional or strategic assessments suggest other triggers or other kinds of projects that should be subject to assessment, these should be added to the regulations.

If a project is subject to one or more of the triggers the Proponent should submit a Project Description to the Agency. The Agency should then, with potentially affected Indigenous groups, examine the Project Description and solicit public comment. An exclusion list should also be reinstated with triggers for exclusion of minor projects from assessment after the submission of a Project Description and initial consultation with Indigenous groups, if it is determined to have minimal environmental effects, according to appropriate exclusion triggers.

The exclusion triggers should be developed in consultation with Indigenous communities, exclusions should be limited, and they should not allow any project to be excluded if there is a reasonable possibility that the project or activity may adversely impact Aboriginal or treaty rights. The previous exclusion list under the *Exclusion List Regulations*[7] could be used as a starting point for discussion of appropriate exclusions, but we are not suggesting it simply be reenacted. Instead, a consultation process with Indigenous groups on appropriate exclusions should be conducted.

[3] S.C. 2002, c. 29.
[4] S.C. 1999, c. 33.
[5] R.S.C. 1985, c. C-11.
[6] S.C. 1994, c. 22.
[7] SOR/2007-108.

c) Scoping the Assessment: The means of defining the terms-of-reference for the environmental assessment through CEAA's vague "EIS-Guidelines" is inadequate. It does not allow meaningful participation by Indigenous communities, and lacks the clarity that all participants (including proponents) require early in the process. It is recommended CEAA adopt the model used by the BC Environmental Assessment Office to develop their "Application Information Requirements" through provincially led "Working Groups". The provincial environmental assessment process allows for regulators, Indigenous groups, local governments and the proponent to engage early through a number of in-depth discussions on the proposed scope of the assessment (i.e. selection of valued components, cause-effects pathways, temporal / spatial study scopes, projects considered in cumulative effects, etc.). The short comment period for providing input to the EIS-Guidelines does not allow sufficient knowledge-sharing between Indigenous groups, the proponent and the regulator and often fails to adequately integrate traditional, cultural and scientific knowledge (including spirituality, language, cultural transmission and identity) into a comprehensive assessment. A collaborative approach that develops a more refined scope of assessment also allows for more regional/ site-specific issues to be considered and provides greater clarity for the proponent, Indigenous groups, and stakeholders to agree on what is an acceptable study scope.

d) Integrating Indigenous Knowledge into the Environmental Assessment: Indigenous knowledge (also known as "Traditional Knowledge (TK)" or "Aboriginal Traditional Knowledge (ATK)"), Indigenous perspectives and Indigenous laws are not adequately incorporated into the current environmental assessment process. "Indigenous knowledge" includes ecological knowledge, social rules, spirituality and Indigenous philosophy. "Indigenous perspectives" include the views, opinions, perceptions and interpretations of circumstances or events shaped by the world view of an Indigenous people. "Indigenous laws" means the laws of an Indigenous community, including traditional teachings, protocols, rules of conduct and laws of more recent origin.

   The lack of respect for Indigenous knowledge, perspectives and laws which is often shown in the environmental assessment process undermines the ability of Indigenous peoples to fully participate and is inconsistent with the principles of the United Nations Declaration on the Rights of Indigenous Peoples and the concept of reconciliation. In panel reviews, elders and other knowledge holders are commonly subject to irrelevant cross-examination. It is neither appropriate nor relevant, for example, for elders or Indigenous knowledge holders to be subject to cross-examination focusing on their lack of "formal" (non-Indigenous academic, scientific or technical) education or training. Formal education in non-Indigenous institutions is not the source of the value, legitimacy or reliability of Indigenous knowledge, rather it is based in culture, experience and oral tradition. To encourage more respectful engagement with

Indigenous knowledge, perspectives and laws the "Purposes" of CEAA, 2012 should be amended to include:

> 4(1)(j) to respectfully engage with and consider Aboriginal knowledge, Aboriginal perspectives and the laws of Aboriginal people in environmental assessments;

This purpose should inform and be reflected in Agency and Panel procedures at all stages of the process.

First, the Act currently states that environmental assessment "*may* take into account community knowledge and Aboriginal traditional knowledge" (emphasis added).[8] This should be made mandatory and the Act should be amended to instead read:

…must take into account community knowledge and <u>Aboriginal knowledge, Aboriginal perspectives and laws of Aboriginal people, where this information is provided to the review panel or responsible authority</u>.[9]

Indigenous knowledge and Indigenous perspectives must inform every stage of environmental assessment. It is important that Indigenous peoples' views are incorporated in the early stages of review, such as the Terms of Reference in a Panel EA or the EIS Guidelines and EIS in an Agency EA. If Indigenous perspectives are not incorporated at this stage, the assessment can be framed in a way that devalues Indigenous knowledge. Terms of Reference and EIS Guidelines should explicitly require that the Indigenous perspective inform the development of Valued Components, rather than being left up to the discretion of the proponent.

This is important if Impacts to Aboriginal and treaty rights are to be properly characterized and assessed. For example, in considering the Impact to a hunting right, the Indigenous perspective requires consideration of much more than the number of animals available to hunt, such as:

- what conditions are required for the exercise of rights;
- what cultural connections do the Indigenous people have to the area and resources in that area;
- what is the timing of harvest;
- what is the availability of the resource;
- what is the quality of the resource;
- is there potential for avoidance reactions (e.g. might the exercise of the right be impacted by safety concerns or concerns over contamination of wildlife);

[8] Section 19(3).

[9] We have used the word "Aboriginal" rather than "Indigenous" in our suggested changes to the Act because of its recognized meaning in Canadian law and use in section 35 of the *Constitution Act, 1982.*

- what cultural transmission activities occur in the area;
- what is the habitat availability and quality in other accessible areas; and
- where and when do members of the Indigenous community prefer to exercise their rights.

The development of Valued Components and the assessment of Impacts should also consider whether the Project may directly or indirectly violate or disrupt any Indigenous laws. For example, there may be a law that harvest of a particular resource should occur only at certain sites which the Project will render unusable, forcing community members to hunt elsewhere in violation of their own Indigenous laws.

Second, more flexibility should be accorded in agency environmental assessments and panel reviews to accommodate culturally appropriate ways to receive and consider Indigenous knowledge. In addition to changes to the panel process such as restrictions on irrelevant cross-examination, this might also include mechanisms to protect Indigenous knowledge information that is considered confidential by the community from release to the public.

Third, for panel reviews where infringement on Aboriginal and treaty rights by the project is reasonably likely, the panel should include Indigenous member(s). Section 42(1) of CEAA, 2012 should be amended to include the language underlined below:

> 42(1) Subject to subsection ~~(2)~~ (3), if the environmental assessment of a designated project is referred to a review panel, the Minister must establish the panel's terms of reference and appoint as a member one or more persons who are unbiased and free from any conflict of interest relative to the designated project and who have knowledge or experience relevant to its anticipated environmental effects.
>
> <u>(2) Where the project has the potential, prior to consideration of any effect of mitigation measures, to have adverse impacts on Aboriginal or treaty rights, at least one of the panel members appointed under subsection 1 must be an Aboriginal person or have knowledge or experience relevant to the consideration of Aboriginal knowledge, perspectives, and laws.</u>

Finally, Environmental Assessment Reports should include an explanation of how Indigenous knowledge, Indigenous perspectives and Indigenous laws were considered and incorporated into the environmental assessment. In this regard, the Reference Guide Considering Aboriginal Traditional Knowledge in Environmental Assessments Conducted under the Canadian Environmental Assessment Act, 2012[10] provides good guidance that is not consistently put into practice. It recognizes that western and

[10]Canada, Minister of Environment. Ottawa: Public Works and Government Services Canada, 2014, p. 6

traditional knowledge will often provide complementary insights in the environmental assessment, however, where they cannot be reconciled, the environmental assessment should demonstrate how each type of knowledge was considered in the assessment. To ensure consistency, this should be a legislated requirement for Environmental Assessments Reports. This could be done by revising sections 22 and 43 of the Act as follows:

Responsible authority's obligations

22 The responsible authority with respect to a designated project must ensure that

(a) an environmental assessment of the designated project is conducted; ~~and~~

(b) a report is prepared with respect to that environmental assessment; and

(c) the report demonstrates how any information provided to the Agency regarding Aboriginal knowledge, Aboriginal perspectives and laws of Aboriginal people were considered in the environmental assessment.

Review panel's duties

43 (1) A review panel must, in accordance with its terms of reference,

(d) prepare a report with respect to the environmental assessment that sets out

(i) the review panel's rationale, conclusions and recommendations, including any mitigation measures and follow-up program, ~~and~~

(ii) a summary of any comments received from the public, including interested parties, and

(iii) how any information provided to the Agency regarding Aboriginal knowledge, Aboriginal perspectives and laws of Aboriginal people were considered in the environmental assessment.

e) Decision-Making: Indigenous groups are not recognized as a decision maker. Indigenous groups require a greater decision-making role for if, and how, a project may proceed. Both domestic and international law are pointing toward Indigenous consent for projects that have the potential to impact on their interests. For decisions on recommendations to be made to the Minister of Environment or Cabinet, or whether adverse effects are justifiable, these decisions should be based on consensus between the government and potentially affected Indigenous groups and should ensure that principals of the United Nations Declaration on the Rights of Indigenous Peoples

(UNDRIP) are not violated. If consensus is not achievable, a mutually agreed up dispute resolution process should be in place to resolve outstanding issues. In the absence of consensus, the federal government should provide a post-decision explanation of how the Indigenous interests were considered and included or excluded from the assessment.

For projects undertaken by provincial or federal governments or crown agencies, the project's justification and alternative means assessments should be conducted by an independent third party with Indigenous input to ensure quality assurance in the assessment, transparency and unbiased decision-making in approving these Projects. The Netherlands applies a system that includes a mandatory review of the quality of an environmental assessment report by an independent advisory commission. Such a quality assurance measure should be considered for all large infrastructure projects, but at a minimum for those undertaken by the government.

f) Timelines: Improving opportunities for Indigenous participation in the environmental assessment process requires the timelines set out in sections 27(2) [365 days for an assessment by a responsible authority and the Minister's decision] and 38(3) [24 months for an assessment by a review panel and the Minister's decision] be applied more flexibly and be more responsive to the needs of Indigenous groups. There are no specific timelines for comment periods or consultation, with the exception of a 20 day limit for public comments on the project description.[11]

Studies to collect Indigenous Knowledge to inform the environmental assessment process or community surveys to assist with assessment of Impacts on Aboriginal and treaty rights require significant time and resources to complete. The timelines under CEAA 2012 do not provide Indigenous groups enough time to meaningfully participate in environmental assessments.

This can be addressed in part by the following recommendations:

1. Adopt a collaborative scoping process to develop the EIS-Guidelines and panel terms-of-reference through a Working Group format like the BC Provincial Environmental Assessment Process. This allows a timely, yet comprehensive, development of the scope of the assessment. For reviews of the Environmental Impact Statement, revisions to the EIS, or comments on the Draft Environmental Assessment Report, set minimum time periods in the legislation for comment.
2. These minimum time periods should "stop the clock" like requests to Proponents for further information, and not be counted towards the overall time.

[11] Section 9(c).

3. Provide triggers for extending these minimum timelines and the overall timelines for the environmental assessment process including those relevant to engagement with Indigenous peoples such as:
   a. An automatic extension of timelines if participant funding is delayed; and
   b. Request by an Indigenous community participant, provided they give reasonable justification for their request.

4. Provide timely financial resources to Indigenous groups so they can participate and conduct necessary studies to inform the environmental assessment.

g) Environmental Assessment Follow-Up and Enforcement: There are two aspects of post-environmental assessment follow-up that are not working: verification of proponent predictions in the Environmental Assessment process and government responses.

Verification of environmental assessment predictions: The environmental assessment regime is based on predictions and, absent a robust system to verify the accuracy of the predictions over time, it will continue to incentivize the underestimation of project effects during the assessment process.

To address this problem, CEAA should be revised in three ways: (1) require a proponent whose project is approved under the Act to report on all assessed valued components within a period prescribed in a condition or in the Act; (2) require that this information be posted publicly and (3) establish new offences under the Act relating to failures to report and others pertaining to failing to meet predictions.

Recommendations to governments: Often environmental assessments result in recommendations for governments to take a variety of actions (ie, undertake cumulative effects studies, develop new environmental benchmarks, develop land use frameworks and develop new monitoring plans). Unfortunately, although the Crown points to these recommendations to rationalize project approvals, they routinely go un-implemented, to the detriment of future environmental assessments.

To address this problem, the Act should, similar to the *Species at Risk Act*, set timelines in which the government must develop an action plan for implementing environmental assessment recommendations that are made to the federal government.

The recent announcement for an "Indigenous Advisory and Monitoring Committee" for the Trans Mountain Expansion Project's regulatory phase is a promising first step towards enabling Indigenous groups to play a more appropriate role in overseeing the safe construction and operation of Projects within their traditional territories. While the specifics of this initiative are undefined at this time, the intent should be adopted for all federally-led environmental assessment processes. Indigenous traditional knowledge and expertise must play a meaningful role in compliance monitoring, adaptive

management and enforcement throughout all construction and operation phases. In addition, Indigenous groups must have the power to halt activities that could potentially impact their potential or established Aboriginal or treaty rights. Follow-up and monitoring data must be available publicly for all to understand what the outcomes of the project were. These post-approval engagement measures will build trust in the federal environmental assessment process and ensure proponents are meeting their commitments and obligations.

2. Enhancing Capacity and Knowledge Sharing

The current process cannot ensure environmentally sound and sustainable development without improving the enabling environment and enhancing capacity of Indigenous groups and individuals to effectively collaborate in decision-making in the federal environmental assessment processes.

To enable meaningful, collaborative Indigenous engagement throughout a Project's life cycle, communities need to be fully resourced. Currently, federal funding for participation is insufficient to cover costs and reliance shouldn't be placed on a negotiated agreement with the proponent to offset outstanding costs of engagement (On the recent Trans Mountain Pipeline Project Kwikwetlem spent over four times the capacity funding provided by the government and proponent to understand potential adverse impacts to Kwikwetlem's Aboriginal rights, title and culture).

While costs should be funded by the proponent, they should be distributed through a transparent and predictable schedule of fees. The federal government could establish a pool of funds that is contributed to by proponents and distributed accordingly to participating Indigenous groups.

"Mutual Benefit Agreements" between a proponent and an Indigenous community should not be used as a mechanism to define a community's support for a Project. Rather, these agreements should be above-and-beyond the regulatory requirements of the assessment process and reflect the proponent's willingness to provide suitable compensation to acknowledge the encumbrance of their Project's anticipated impacts on a community's Traditional Territory.

Funds are also required to enhance structural / institutional capacities that go beyond Project-specific requirements and improve a community's overall ability to manage referrals, share Indigenous knowledge, provide environmental oversight services and be sufficiently trained to benefit from potential construction opportunities that may arise. These funds needn't be on a project-by-project basis, but rather through a long-term funding commitment and support mechanism that enhances an Indigenous group's human resources / infrastructure to adequately protect their rights and interests.

The need for capacity-building and training is not restricted to Indigenous groups alone. Regulators, proponents, and other stakeholders also need to be better trained in the regulatory framework and environmental assessment methods, including the appropriate interpretation and integration of local traditional knowledge with western science, the appropriate methods for assessing cumulative effects and sharing best techniques for meaningful engagement.

In terms of digital knowledge sharing, the CEAA website is woefully deficient in enabling easy access to information pertaining to a Project's environmental assessment. Documents should be categorized by relevance and topic, not simply by chronological order of submissions. A Project's website should be designed such that it is intuitive for any viewer, regardless of their computer literacy, to fully access and understand key documents, stakeholder views and data for a Project's environmental assessment in a timely manner.

3. Cumulative Effects / Regional Studies

CEAA2012 allows for regional studies and strategic studies to be conducted, yet none have been conducted. This is unacceptable. New federal environmental assessment legislation should provide for regional studies and provide criteria for when a regional assessment can occur. The federal government should not be initiating pro-growth policies such as the Asia-Pacific Gateway and Corridor Initiative without first understanding what the potential consequences are to the environmental and Indigenous rights. Similarly, the government shouldn't be enabling projects that contravene international agreements such as the Paris Agreement and Canada's commitments to the United Nations Framework Convention on Climate Change (UNFCCC).

In addition to strengthening guidance for project-specific cumulative effects assessments, the government should develop a repository of data that has been collected by proponents and allow these to be shared publicly (while respectfully handling sensitive information). This data could be administered by an independent third party or organizations similar to the former Fraser River Estuary Management Program (FREMP) that provided a regional framework to protect and improve environmental quality, identify economic development opportunities and sustain the quality of life in and around our region. Through the development of a cumulative effects framework, proponents will be able to collect data in a standardized way to eliminate competing data-sets / methodologies and build an improved understanding on the integrity of valued components within a region and the carrying capacity of the environment and the people to absorb new developments. The British Columbian and Northwest Territory governments have initiated programs associated with cumulative effects frameworks and the federal government should follow suit.

The CEAA 2012 model of determining significant impacts and potential mitigations for project by project approvals misses the long term adverse impacts of development. This is the case

where significant development has already occurred and a further project approval can be a tipping point with respect to the ability of Indigenous peoples to continue to practice their Aboriginal and Treaty rights.

An approach to cumulative effects assessment that can provide meaningful insight into the real impact of a proposed development on Aboriginal and Treaty rights could be secured by amendments to CEAA 2012 that require proponents to provide information, and assessors to consider, information as follows:

1) a description of existing and potential cumulative impacts or changes to the environment caused by all past, present and reasonably foreseeable future projects and human activities, including the potential social, cultural, health, economic and environmental impacts on Aboriginal rights and title, and which shall include:
    i. amount (quantity and percentage) of potential industrial development within the Traditional Territory of each Indigenous group;
    ii. amount (quantity and percentage) of lands within the Traditional Territory of each Indigenous group that is currently leased for exploration and industrial development;
    iii. amount of land within each Indigenous group's Traditional Territory taken up for other developments (i.e., converted from natural vegetation);
    iv. amount of each Indigenous group's Traditional Territory no longer available for exercise of Aboriginal rights because of direct, indirect and cumulative impacts of existing, planned and reasonably foreseeable development;
    v. identification of all linear corridors (pipelines, transmission lines, roads, seismic lines) within each Indigenous group's Traditional Territory and in the vicinity of project; and
    vi. estimated size of area of direct and indirect disturbance to wildlife within each Indigenous group's Traditional Territory and in the vicinity of the project, and description of methodology for gathering such information.
2) a description of the pre-disturbance baseline from which to assess the project's cumulative impacts, in order to fully understand the potential Adverse Impacts of existing and planned development in the project area upon section 35 rights, including changes in the patterns of resource use and the exercise of rights by the Indigenous groups and the reasons for such changes;
3) all relevant and previous baseline information and studies, submissions, reports and applications related to the project;
4) quality baseline data, benchmarks and modeling that identifies the pre-development situation with respect to vegetation, fish and wildlife populations and habitat, access and pre-development uses, and the exercise of Aboriginal rights and title; and

5) the assessment of the current situation of vegetation, fish and wildlife populations and habitat, access, permanent structures and the exercise of Aboriginal rights and title.

A related methodology concern of assessing cumulative effects under the CEAA 2012 regime is the practice of only assessing cumulative effects with other anticipated projects for the valued components for which a significance effect has been determined. This should be prohibited by the legislation, as it misses many cumulative effects that will occur when multiple minor effects can combine to have serious implications for ecological and socio-economic well being.

In addition, cumulative effects assessment ("CEA") under CEAA 2012 has tended to focus on ecological components. Human well-being and regional sustainability must be included in CEA by mandating it in the legislation.

Finally, the ideal framework for project assessment should not be "mitigation of significant adverse effects" but a more positive and comprehensive objective of "contribution to sustainability", which include a comparative evaluation of best options for making positive contributions to lasting well-being.

Kwikwetlem First Nation looks forward to continued engagement towards improving the environmental assessment legislation and processes to improve understanding of potential impacts to potential or established Aboriginal or treaty rights from Projects and activities within our traditional territories.

Kind regards,
Via email

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