

CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

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Expert Panel to Review Federal Environmental Assessment Processes; Indigenous Presentations: CCTHITA Testimony

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SUBMISSION

Strengthen the Weak Cumulative Effects Analysis for Multiple Projects.

The *Canadian Environmental Assessment Act 2012* (CEAA2012) and its regulations establish the legislative basis for the federal practice of environmental assessment in most regions of Canada. The CEAA2012 describes the Environmental Assessment (EA) process as “one project, one assessment.” This is not protective of the overall values in a watershed or region. The assessment of the impacts of any one project needs to be coupled with all other development in the watershed or region. Infrastructure associated with these developments including power lines, road access and water use and withdrawals needs to be discussed holistically.

This cumulative impacts assessment needs to be conducted by the Federal agencies and not the Province or proponent. Sections allowing Provincial equivalence and substitution for federal analysis must be removed. Allowing the provinces or territories to conduct cumulative effects analysis through their own EA processes has failed.

All EA’s should take a watershed approach to the impact analysis as the smallest scale of review.

Currently under CEAA2012, any designated project on non-federal territory with no aboriginal or trans-boundary implications, any effects on local or regional air, water or soil; climate; biotic interactions (e.g. competition, predation, herbivory, etc.); ecosystem functions (e.g. nutrient cycling, energy flow, productivity, etc.) or wildlife other than fish and migratory birds, are excluded from consideration. *See* CEAA2012 s (s. 5(1)(b), 5(1)(c)). An impacts analysis for all of these values need to be reinstated for all projects and the effects considered cumulatively.

Indigenous Consultation

The procedural aspects of Indigenous consultation are not adequately addressed and often left to the proponent. CEAA needs to require a minimum prescribed level of consultation and include measureable benchmarks to evaluate the success of that consultation.

Indigenous groups should be invited to participate on environmental assessment working groups, which are tasked with leading a technical review of the environmental assessment information provided by a proponent. It should be a requirement both for direct engagement with Indigenous groups to determine how they want to be involved, and for negotiations of Impact Benefit

Agreements. Early engagement allows for an early understanding, before the assessment begins, of what traditional or community knowledge exists, sensitive areas to be avoided, and considerations for the scope of the environmental assessment.

The CEAA must embrace as standards the UN Declaration on Rights of Indigenous Peoples and include specific language concerning free prior and informed consent to assure accessible, transparent and meaningful consultation including the right to appeal and the right to a “no” outcome.

Specific Requirement for Transboundary Watersheds

Federal environmental assessment process should apply to all projects that are transboundary in nature. In addition, an independent oversight body (Panel) review must be required for all projects in a transboundary watershed to bring credibility to the environmental assessment process and give downstream users transparent access and ability to effect the decisions. The Panel must have the authority to amend decision statements issued to proponents to allow for implementation of the Panel’s findings.

Requirement to Conduct a Robust the Alternatives Analysis

In CEAA2012, explicit mention of need and alternatives has been eliminated. *See* section 19(1)(e). A robust alternatives analysis needs to be reinstated.

The Operational Policy Statements under CEAA must include the rationale for the selection of the project design among all viable alternatives that fulfill the project objectives. This must include a consideration of alternatives including the “no action” alternative, as well as the rationale for selection of the final project design and mitigation. Rejection of an alternative cannot be based solely on the cost to the proponent. Any consideration of cost must be accompanied by transparent financial information from the proponent. The proponent may not hide behind business confidentiality when considering design and mitigation alternatives. If any of these requirements are waived, the rationale for the waiving of these requirements must be published in the CEAA registry. *See* CEAA2012 § 19(1) (j) and § 19(2).

Alternatives analysis must begin with an Ecosystems Services assessment and be based on a set of general principles that include the inherent right to a healthy environment. Including, (i) long term impacts on communities from risky developments; (ii) a human right to clean water; (iii) protection of environmental, economic and cultural rights. Food, air and water security should never be trade-offs; and (iv) human life and cultural practices above jobs & profits.

Must include an Evidence-based Approach based on Peer Reviewed Science

The Operational Policy Statements in CEAA2012 must be strengthened to specify that all predictions about environmental effects and their significance be accompanied by: (i) an explicit statement about the underlying causal hypotheses; (ii) an explicit account of the project-specific evidence that, in the view of the reviewer, justifies the predictions; (iii) an explicit assessment of the extent to which the predictions are consistent with the weight of current scientific evidence; and (iv) if they are not, an explanation for the discrepancy.

All parts of the EA must be based on credible and accountable peer-reviewed science. Every EA is concerned with (a) predicted effects; and/or (b) predictions about the effect of mitigation measures on these effects (i.e. predicted residual effects). A residual adverse environmental effect is an adverse environmental effect of a project that remains, or is predicted to remain, after mitigation measures have been implemented. All too often the scientific evidence for these predictions is lacking and there is little consideration of error or synergistic effects between multiple predicted impacts arising from a single project or cumulatively with other projects in the watershed. The rationale and/or evidentiary basis for these predictions is often weak, verging on non-existent. Without clear scientific evidence these predictions are mere guesses and not even justified guesses.

The hypothesis on which the impact prediction is based must be specified. All pertinent related science must be reviewed and referenced including evidence that does not support the hypothesis. The EA must establish a clear cause and effect case based on evidence and data. Conclusions not based on actual evidence should not be allowed.

Mitigation plans also must be based on science and experience. Follow-up studies must be required to measure if the predicted outcomes of the mitigation (hypotheses) are true. Mitigation measures should be implemented regardless of whether the residual environmental effects are predicted to be significant or not to help account for unexpected cumulative and synergetic effects.

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