

Bowen Island, December 15 2016

Panel – Review of Environmental Assessment Processes
Government of Canada

Submitted by online form:

Re: Submission regarding Review of Environmental Assessment processes.

Preamble

Whereas in the '*Review of environmental assessment processes (the Review): Expert Panel Terms of Reference*' (Panel Terms) ¹ it is defined that that the processes to be reviewed are '*...environmental assessments of areas under federal jurisdiction,...*';

Whereas the Canadian Environmental Assessment Act 2012 (CEAA 2012) provides authority to the Federal Minister of Environment (Federal Minister) to approve substitution of the environmental Assessment process under CEAA 2012 with the environmental Assessment process under the Environmental Assessment Act (EAA) of a province if the Federal Minister is satisfied that the provincial EAA process would be an appropriate substitute;

Whereas the Panel Terms do not specifically exclude substitution agreements;

Whereas 'the Substitution does not give provinces final decision-making power with respect to proposed projects designated under the CEAA 2012. Ultimately, the decision rests with the federal government as to whether a project receives approval under the CEAA 2012'²;

Whereas through substitution agreements provincial Environmental Assessment processes for 'designated projects' are effectively brought under the jurisdiction of the Canadian Environmental Assessment Agency (CEAA) and thus Federal jurisdiction;

Therefore the provincial Environmental Assessment processes for 'designated projects' done under a 'substitution' must be included in The Review.

¹ <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/final-terms-reference-ea.html>

² <http://www.blakes.com/English/Resources/Bulletins/Pages/Details.aspx?BulletinID=1740>

Our submission

Our submission consists of two parts:

- 1) A case study of a project assessed under substitution through a Memorandum of Understanding between the CEAA and British Columbia Environmental Assessment Office(EAO).
- 2) Input in regards to the Scope of the Review , ideas for raising the quality and credibility of assessments

Part 1) Case study:

Seawater Cooling system and Herring spawn in Atl'Kitsem / Howe Sound BC

Context:

The case is unique in Canada, in that this project has gone through an environmental assessment process facilitated by BC Environmental Assessment Office(EAO) under a substitution agreement with the Federal Minister of Environment, and through an Environmental Assessment process the Company entered into with the Squamish Nation.

Woodfibre LNG Export Pte. Ltd, Singapore received an export license from the National Energy Board (NEB) on Dec 16 2013. Subsequently, in January 2015 Woodfibre LNG Limited (the Company) Vancouver, applied for an Environmental Assessment Certificate for a natural gas processing and LNG export facility proposed to be build on the old Woodfibre site in Alt'Kitsem / Howe Sound, BC, 7 km west of Squamish BC in the unceded territory of the Squamish Nation.

Specifics:

Atl'Kitsem - Texwnewets' (Paddling North – Paddling South) was renamed by the Captain Vancouver into Howe Sound in 1792. The first large industrial site opened in Alt'Kitsem /Howe Sound at Shishayu7ay being the Britannia copper mine in 1905. Subsequently other industrial operations followed using the waters of Atl'Kitsem / Howe Sound as effluent dump. By the 1980ties the upper part of Howe Sound was declared biologically dead and fisheries closed. Since clean up and closures of industries, and blocking treatment of the polluted water of the Britannia Creek was installed, Atl'Kitsem / Howe Sound has been in recovery. Most notable is the return of Herring, followed by larger fish and cetaceans.

The location of the facility, the Woodfibre site, is named after a pulp mill that closed in 2006. Its original name is Swiyat, a seasonal village of the Squamish Nation.

The Company's EA application included the proposal for a seawater cooling system to cool critical parts of the project.

The Company made the case in its EA application that the seawater cooling system and location of its intakes were appropriate, based on misrepresenting the actual Herring spawn situation around the Woodfibre site.

The Company willfully ignored a lead³ to up-to-date herring spawn data (Buchanan's data) that was documented by a local from Squamish BC since 2011⁴. Instead the Company chose to use outdated and incorrect Herring spawn data that was available from the Department of Fisheries and Oceans website⁵ and suggested its seawater cooling intake installations to be 3.5 km away from observed Herring spawn areas.

The 2 km distance here is crucial, as it is unambiguously stated in DFO Guidelines for Seawater intakes in BC⁶ to install water intakes 2 km or more away from Herring spawn areas.

Buchanan's data would have instantly shown that Herring spawn had been observed well within 2 km from the proposed intake locations and the Company's choice for a seawater cooling system to be the wrong.

Although Woodfibre LNG's EA submission reports the lead to independent Herring spawn information, it was followed by an reason for not pursuing it⁷. For reasons unknown the DFO nor the EAO picked up on the content of this 4 line paragraph and its implications.

When Herring spawn surveys commissioned by the Company returned positive in May 2015, DFO staff woke up. During the surveys Herring spawn was observed as close as 50 meters from the proposed intake locations⁸.

The Company reacted to 'newly' found evidence with a rational that the location of the intakes of the seawater cooling system would still be appropriate in spite of the presence of Herring spawn. A scientific article it cited didn't support the claim⁹.

After some letters and phone-calls between DFO and the company, the matter was settled and DFO gave the Company a wild-card to do whatever it wanted, to demand the company monitor what its own operations and report the effects of its actions and operations. In case mitigation measures were not to work, the Company could be required to apply for an authorization under the Fisheries Act (for permit to kill fish or destroy fish habitat)¹⁰. The precise content of the phone-calls is unknown to us.

³ Woodfibre LNG - Application for an EA certificate: section 5.18 – page 22, paragraph 2.

⁴ Buchanan Herring spawn map - <http://ccbowen.ca/herring-maps/>

⁵ Woodfibre LNG Herring spawn map - <http://ccbowen.ca/herring-maps/>

⁶ Guidelines for Minimizing Entrainment and Impingement of aquatic organisms at Marine Intakes in British Columbia (DFO-Fedorenko- 1991)

⁷ Woodfibre LNG - Application for an EA certificate: section 5.18 – page 22, paragraph 2

⁸ WFLNG Response to Seawater Cooling Intake Information Request April 2015 (updated May 2015)

⁹ 'Larval distribution, abundance, and stock structure of British Columbia herring', Journal of Fish biology Hay and McCarter, 1997

¹⁰ DFO Letter to EAO June 26 2015, DFO, 2015

The provincial / federal Environmental Assessment outcomes:

In its 'Woodfibre LNG Environmental Assessment report', the EAO declared itself to be '*satisfied that the proposed project would not have significant adverse effects on marine fish....*'

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- October 2015., The BC Minister of Environment approved the project with conditions.

-Pending the decision by the Federal Minister of Environment and Climate Change, we delivered our research findings into the damaging effects of Seawater cooling and Buchanan's Herring spawn data in form of letters, spreadsheets and maps proving the presence of Herring spawn around the Woodfibre site to the Federal Minister and the Minister of Fisheries and Oceans two times. Parties like EAO, CEAA, any many others in the federal, provincial and municipal governments were CCed.

-The first letter dated January 6 2016 included Buchanan's Herring spawn data compilation report¹². This report with the letter was personally delivered to the CEAA office in Vancouver to the attention of Ms. Au February 2016.

-On February 26 2016 a second letter was sent out with a cumulative showing all of Buchanan's Herring spawn data.¹³

- March 2016, the Minister of Environment and Climate Change adopted the recommendations of the Woodfibre LNG Environmental Assessment by the EAO, the decision of the BC Minister of Environment, the recommendations of the CEAA and subsequently approved the project with conditions.

The Squamish Nation Environmental Assessment outcome:

-The Squamish Nation did announce early November 2015 that it would approve the project only after its 25 conditions to the project are met.¹⁴ The first condition is: "*[Woodfibre LNG commits to]: conduct further studies on the proposed seawater cooling method that will prove to the satisfaction of the Squamish Nation that the biological impacts on marine life are acceptable to it and also that the method has lower overall environmental impact than alternative technologies. If WLNG cannot provide conclusive evidence to demonstrate this, then WLNG will pursue an alternate method of cooling the natural gas that is acceptable to the Squamish Nation.*"

-Since then, October 2016, the Squamish Nation has rejected the proposed seawater cooling system based on available data, including the Buchanan's Data and our research into the damaging effects of seawater cooling systems.

¹¹ Woodfibre LNG Environmental Assessment Report – EAO August 19, 2015

¹² Buchanan's Herring spawn data compilation report: <http://ccbowen.ca/herringreport/>

¹³ Map: Locations of Pacific Herring spawn in Upper At'Kitsem / Howe Sound 2010 – 2016
<http://ccbowen.ca/herring-maps/>

¹⁴ PGL's Environmental Report on Woodfibre LNG proposal – November 2015

Consequences of Squamish Nation Assessment decision

The seawater cooling system is described in the Environmental Assessment Certificate that the Company received. Since the Company entered into a legally binding environmental assessment agreement, and since the Company could not provide conclusive evidence to demonstrate that the biological impacts of the seawater cooling method on marine life are acceptable, the Company will pursue an alternate method of cooling. For this it needs to amend its EA Certificate.

While reviewing the BC Environmental Assessment Act and CEAA 2012 for its mechanisms of amending EA Certificates, we noticed that there is no such provision in the CEAA 2012. We have inquired about this with the CEAA in Vancouver to the Attn. of Ms. Au, but we have not received word back since.

Case study conclusions:

1)-The EAO and CEAA are for their work dependent on departments like DFO, however when these departments lack the ability or motivation, don't have time or interest to keep their data up to date, or are willing to go against their research conclusions published in their own reports on their own websites, and when the CEAA, the Federal Minister, the Minister of Fisheries and Oceans choose to ignore independent data that calls DFO opinions into question, the conclusions of EAO and CEAA are not based on science and facts, and lack all credibility.

3) -This case signifies that the idea that an Environmental Assessment done on federal level would automatically 'duplicate' one that is done on a provincial level, to be false and incorrect. Under the current EA system, especially in BC, where *'The onus is on the proponent to evaluate the environmental risks of their own project, and it is the regulators' job to judge the merits of their conclusions (the provincial and federal regulators do disagree on their judgments; just look at New Prosperity Mine's proposals that passed the provincial process only to fail at the federal level, twice).'*¹⁵

4) -It is clearly a must to have the CEAA as a quality guarantor and not merely as a rubber stamping agency for assessments done at a provincial level under substitution agreements. In this case, the CEAA took the role of rubber stamping agency obviously to prevent any legal action from the Government of BC.

5) -It is clear that the DFO made some serious gaffs in the course of this projects, but it does not acquit the EAO from not reading the EA application, leaving conclusions unchallenged, not demanding the proponent to do further research, and to pursue a lead to up-to-date information that concerned the possibility of Serious Harm to fish and fish. Nor does it acquit the CEAA, the Federal Minister or the Minister of Fisheries and Oceans from taking action when letters with maps highlighting Bahanan's data, the Company's misrepresented herring spawn

¹⁵ 'Who is watching B.C.'s environmental watch dogs?' BC Business: Anne Casselman, July 14, 2015

situation, and the research into the damaging effects of seawater cooling systems, were delivered, two times^{16 17}.

6) –It is clear that the Environmental Assessment of the Squamish Nation has been very valuable, in that, that the assessment was done from a profoundly different position, from the position of people who resided on these lands and next to these waters for millennia.

7) –It is clear that the findings of the Squamish Nation Environmental assessment led to the rejection of the seawater cooling system by the Squamish Nation, because its leadership and community members deemed the system to be too damaging to a recovering Atl'Kitsem / Howe Sound. The opportunities created by a recovering Atl'Kitsem are considered more important than the conclusions of the proponent, conclusions which the DFO, EAO, the BC Minister, the CEAA and the Federal Minister adopted.

8) –It is clear that the Environmental Assessment models and processes used by the EAO and CEAA are fundamentally colonial with its preference for resource extraction and industrial development, the movement and export of raw resources is not only an unsustainable model of development leading to exhaustion of resources and ultimately climate change, it also does very little to bring in revenue for First Nations, provinces or Canada.

9) –The mechanism for amending Environmental Assessment Certificates done under substitution is unclear. Since substations make use of provincial EAAs, it is assumed that the mechanisms provided in them are used, it is however unclear what the role of the CEAA or the Federal Minister is in that process.

Part 2) Input in regards to the Scope of the Review, suggestion for improving the quality and credibility of assessments

1 -How to restore robust oversight and thorough environmental assessments of areas under federal jurisdiction, while working with the provinces and territories to avoid duplication?

1.1 -The priority is not to avoid duplications, the priority is to do environmental assessments that are valid, credible, reflect the reality on the ground and support a model of development that will provide for a healthy and livable future for all and not just a few.

1.2 –What we can learn from the case-study is that the underlying assumption that provincial and federal EA processes can simply be substituted just to avoid duplication to be incorrect.

¹⁶ Letter: 'Incomplete scientific data on Pacific Herring Spawn result in a flawed BC EA Report – ultimately putting the Pacific Herring Spawn in upper Howe Sound and Howe Sound's revival at risk' January 6 2016, A. van Walraven & Thomas E. Rafael, CCBowen.

¹⁷ Letter 'Woodfibre LNG Proposal in Howe Sound, British Columbia ("the project") and the Canadian Environmental Assessment Act 2012, February 26 2016, Thomas E. Rafael & A. van Walraven

1.3 -There is great value in environmental assessments done from different points of view, like we see in the case study. Different assessments will lead to different outcomes, especially crucial in terms of reconciliation were there are historically and juristically established indigenous rights and title , and there are, in most cases, unrightfully competing colonial interests.

1.4 – This section addresses the issue of the BC EA Act being used in substitution of federal assessments:

-The current model of *'The onus is on the proponent to evaluate the environmental risks of their own project, and it is the regulators' job to judge the merits of their conclusions'* does not work.

- 1.4.1 There is a clear conflict of interest in the model in which consultants work directly for the proponent, but are also dependent on the same proponents for future work.
- 1.4.2 The regulator depends on other agencies, the public, working group members for input. Therefore, not all projects are at a level playfield when it comes to the quality of input. There is a clear inconsistency in the information the regulator has access to or is brought to the regulator. In areas where public capacity is present, the environmental assessment will be more challenging, but should under normal circumstances, produce more credible results. In regions were this capacity lacks, the result will be less credible.
- 1.4.3 It is unrealistic the presume that what took a project team of engineers 2 to 3 years to research and prepare, can be fully understood by the Working group, by the public within a limited amount of time.
- 1.4.4 Also there is a unfair disadvantage when no or little resource are made available to the Working group members and the public to provide input.
- 1.4.5 The circumstance in BC were not normal, with a provincial Government actively pushing for LNG development.
- 1.4.6 -In the case study, it was up to individual members of the public to do work into the herring spawn and the effects of seawater cooling system: work that DFO, the EAO and CEAA should have done.
- 1.4.7 It is unfair to expect members of the public to spend thousands of hours at no pay, time taken away from family and other pursuits to address the issues concerning EA applications because government agencies are not following through .
- 1.4.8 Our pleads fell on def provincial and federal ears. It was the Squamish Nation that showed true leadership and considered the data and our research and chose to protect this part of their unceded territory, Alt'Kitsem / Howe Sound.

2 -How to ensure decisions are based on science, facts and evidence and serve the public's interest?

-In the case study, the EAO and CEAA decisions and Ministers approvals were not based on science, facts and evidence. Instead science, facts and evidence were excluded in case it did not suit the project. The proponent was able to misrepresent the Herring spawn situation without any legal ramifications or disqualification from the Environmental Assessment process.

-Many years ago the Canadian government supported proper research by the Department of Fisheries and Oceans, although still colonial in nature with an emphasis on resource extraction, there was a better understanding being built up about environmental impacts. The case study proves to what low point a department like DFO has sunk to, research capability is decimated, research libraries were closed, and research collections were destroyed. One cannot expect to get credible results from Environmental Assessment under such circumstances.

What needs to be addressed:

2.1 -The EA model must be changed. Project proponents must be required to pay into a fund used to hire consultants to do the environmental assessment independently from the proponent.

2.2 -Review the present models of data collection. The future is not with centralized agencies that collect when they feel fit to do so. The future is with local ownership and protection of land and water resources.

2.3 -Agencies like DFO must seek a different model and possibly play a role in facilitating the on-the-ground research and data collection.

2.4 -Invest or use the research capability of 'citizens scientists', provide for frameworks, collection and review protocols to ensure that collected data can be used and entered in databases,

2.5 -Enter into a dialogue with First nation, although that must be done on the nation to nation level, respecting historic and established Indigenous rights and title.

2.6 -Research and establish, parallel knowledge collection models next to that of the scientific model, explore how reporting protocols for Indigenous knowledge and observations over long periods of time can be collected and used in environmental assessment processes.

2.7 -Combine insights from different levels and view-points.

2.8 -The role of the government is to invest in this new model of research.

2.9 -The role of the government is to make this model part of the constitution.

3 -How to provide ways for Canadians to express their views and opportunities for experts to meaningfully participate?

3.1 Most importantly, we must provide for proper Land use management plans with clear zoning and clear identification where what can be done and what not. Communities have a need for stability and should not constantly have to jump into action to address another project popping up because adequate land-use-planning is absent or is not being applied properly.

3.2 -The current model is clearly colonial, the idea is to overwhelm people with technical speak and data and then ignore what they bring forward. This has to change drastically. Otherwise its garbage in garbage out.

3.3 -Meaningful participation can only be assumed when people have been provided with adequate time to review a project. It is unrealistic to expect lay people to comprehend thousands of pages of application and draw their conclusions.

3.4 –Public participation must provide for possibilities for plebiscites. Presentations by proponents can only be done after the material is vetted by independent experts.

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

4.1 -Demand it, put this into legislation. Legislation that cannot simply be altered by the a next government that feels it has ‘won a mandate’ with 39% of the vote under the First Past the Post election system.

4.2 -Make the legislative decisions part of elections.

4.3 -If proponents are not willing to use the best technologies available, the project will be automatically cancelled. Provide benefits for s few years. Absolutely no in the form of no long time subsidizing as is currently case with subsidies to the oil and gas sector.

5 -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?

5.1 –Let’s not put the horse behind the cart. Decolonization and reconciliation only have meaning when what is wrong is made right. Colonization is forcing others into a relationship they do not want to be in, that is unbeneficial to them, or that results in great suffering, loss or death.

-It means that the unrightfully taking possession of lands, water and resource through claims must stop.

-It means that the Canadian governments and society as whole, the colonizing parties, will have to listen to the indigenous people if the indigenous people wish to enter into relationship with the Canadian governments and society, and if so, what that relationship should be. All else will follow out of that.

-It means that compensation for past wrongs and dispossession of land, water and resources must be calculated and paid to the indigenous Nations.

5.2 –The EA initiative that Squamish Nation has taken can be used to expand upon and to be used as a model by other indigenous nations if they wish to do so. Of course, the initiative is with the Indigenous nations. Financial and professional support must be offered in such cases.

5.3 –An indigenous EA process between an Indigenous Nation and a company can at not time be considered a substitute for the requirement for provincial or federal government to meaningful consult with Indigenous Nations about development projects.

End of Submission

We would like to acknowledge the Federal Minister and the Panel to give us the opportunity to submit our experiences with the Environmental Assessment processes and suggestions for betterment.

On behalf of Concerned Citizens Bowen,

Sincerely,

J.H. Anton van Walraven

ccb Bowen.ca