



**Protect Every Lake and Every River
Submission by the Council of Canadians
December 16, 2016**

Dear Members of the Expert Panel on Review of Environmental Processes:

The Council of Canadians thanks the members of the panel for traveling to various communities over the last couple of months to listen and learn about people's concerns and opinions about this important topic.

The Council of Canadians is a social justice organization and we advocate for clean water, fair trade, green energy, public health care, and a vibrant democracy. We have 60 chapters and 100,000 supporters across Canada. Many of them have lakes and rivers in their communities that are at risk from projects and are currently unprotected because of the changes to the *Canadian Environmental Assessment Act (CEAA)*, *Navigable Waters Protection Act (NWPA)* and *the Fisheries Act*.

The Council of Canadians has focused on the changes to the *Navigable Waters Protection Act*, currently the *Navigation Protection Act (NPA)*. It was the trigger for some of the projects being reviewed under the *Canadian Environmental Assessment Act*. Our October report [*Every Lake, Every River: Restoring the Navigable Waters Protection Act*](#) examines case studies including the Ajax Mine (B.C.), the Energy East pipeline (AB to NB), the Keeyask Dam and the Bipole Transmission Line in (MB) that are moving forward with little or no assessment under the CEAA and NPA.

Since the changes that the former Harper government have made to water and environmental legislation, industrial projects such as pipelines, dams, mines and fish farms are moving forward with little or no scrutiny on their impacts on water. Many of these projects are also happening on the traditional territories of Indigenous peoples and will have impacts on their cultures, ways of life and economies.

Justin Trudeau had campaigned on restoring and strengthening many of the freshwater and environmental protections that the former Harper government had weakened. But the Trudeau government's recent approvals of the Trans Mountain and Line 3 pipelines as well as the Site C dam raises serious concerns about his government's commitment to protect waterways in Canada.

The Trans Mountain pipeline crosses and threatens roughly 1,300 waterways. We know that oil spills can impact people's drinking water (like we saw with the Husky Oil spill this summer). We also saw how costly oil spills can be with the spill in the Kalamazoo River and how they impact

fishing, recreation and navigation. Parts of the river and a nearby lake were closed for two to three years because of the spill.

The same week that the Trudeau government approved the Trans Mountain and Line 3 pipelines, Prime Minister Trudeau told Toronto elementary school teachers that we need to move towards renewables and engage in a robust transition off fossil fuels. Approving tar sands pipelines is contrary to transitioning off of fossil fuels and the risks associated with fossil fuel projects can actually threaten sustainable jobs.

In 2012, Mountain Equipment Co-op presented a list of 40 recreationally important waterways that are no longer protected under the *Navigation Protection Act*. They pointed out that the outdoor recreation industry creates at least 6 million jobs in Canada. In comparison, there are roughly 250,000 jobs in mining, oil and gas and logging combined, which makes up roughly 1.6% of the jobs in Canada. There's a big push for jobs in the extractive industry but according to Statistics Canada most of the jobs are actually in non-extractive industries: 12% are in retail trade, 12% are in health care and social assistance, another 12% are in manufacturing, and 8% are in educational services, for example.

So freshwater and environmental protections must be restored and enhanced in a way that reflects Canada's goal of transitioning off of fossil fuels. It's crucial that the federal government protect and expand jobs that are in sustainable, non-extractive industries.

Council of Canadians representatives have presented to the panel and participated in the public workshops including Prairies Regional Organizers Diane Connors and Brigette DePape and I. We urge the panel to make these recommendations to the federal government:

1. Reinstate the CEAA and other water legislation to their pre-2012 standards and hold consultations to strengthen legislation based on the pre-2012 standards. Protections must be put back on all lakes, rivers and waterways, particularly by eliminating the schedule of lakes under the NWPA, so that every lake and every river is truly protected.

Cumulative impacts (especially in relation to climate change factors) and impacts on navigable waterways should be scoped into environmental assessments.

Resource extraction projects are often assessed and approved piece-meal which hinders governments and community members from understanding the cumulative and regional effects as well as the impacts downstream and on the entire watershed.

2. Federal scrutiny of pipelines and powerlines under the NWPA and requirement of detailed information on waterways under CEAA must be reinstated and strengthened. The Harper government drastically narrowed the scope of environmental assessments in 2012. Ecojustice notes that under the CEAA 2012, projects that go through comprehensive environmental studies

– the second most rigorous of the three processes – no longer need to include a range of information in their project descriptions including:

- A description on the impact on navigable waters or any unique or special resources not already identified.
- A description of the components of the environment that are likely to be affected by the project and a summary of potential environmental effects and information relating to the terrain, water bodies, air, and vegetation that would give federal authorities a more accurate picture of the environment that may be impacted by the activity.
- A description of the name, width and depth of any waterway affected by the project and a description of how the waterway is likely to be affected

This information must be put back into CEAA in order to protect water and the surrounding environment.

The Kinder Morgan decision outlined 192 conditions that need to be satisfied four to six months before construction begins. However, much of the information required such as Wildlife Species at Risk Mitigation and Habitat Restoration Plans, Contamination Identification and Assessment Plan, Navigation and navigation safety plan and Hydrogeological study at Coldwater Indian Reserve is information that should be obtained prior to the decision and should determine whether the project is safe to proceed and therefore approved. Much of the information required in the conditions should be part of the environmental process.

3. Strict safeguards for waterways within the framework of the United Nations-recognized human right to water must be implemented. A new clause must be developed so that potential spills or discharge of harmful substances are assessed for their impact on all navigable waters. The NPA also doesn't take into consideration how pollution (whether operating pollution, or from a spill or other accident) from industrial projects can impact navigable waterways which people rely on for local economies such as transportation, fishing, local tourism, recreation nor does it consider the impacts to people's drinking water.

Applications for projects that abuse or pollute water must be phased out or denied and a freeze must be put on fossil fuel expansion and related infrastructure. Inverness County, Nova Scotia passed a municipal by-law recognizing the human right to water and banning fracking to protect local water sources. Language from [this by-law](#) can inform the drafting of similar language for the recognition of the human right to water and a freeze on fossil fuel expansion. The federal government must begin holding public consultations to develop a clear plan towards a 100% renewable energy economy by 2050 and obtain consent from communities on this plan.

4. The [Terms of Reference](#) for this panel state that the federal government fully supports the principles of the United Nations Declaration on the Rights of Indigenous Peoples, with the goal of renewing its relationship with Indigenous people in Canada and moving forward toward reconciliation.

Free, prior and informed consent must be obtained from Indigenous communities so that Indigenous treaty and water rights are respected and a nation-to-nation relationship is truly established. Government decision makers often have not visited the sites of projects and are making decisions without consideration of Indigenous peoples who live off the land, know the land and will be directly impacted by the projects. It is important to remember that traditional knowledge is not a commodity to be used to further the goals of development. It has value far beyond informing development projects. Best practice might include support for developing traditional knowledge outside the environmental assessment framework.

There could be an assessment that documents traditional knowledge. This information should be woven into other parts of the assessment, including cumulative impacts for topics such as climate change (e.g. observing movement of animals north, water levels, drought, zones for finding berries, weather patterns, social structures and health, history).

Clauses reflecting this obligation to obtain consent - not just consultation - must be incorporated into the CEAA, NWPA and other water legislation.

We must define a legitimate process and measures for obtaining consent, and also define what “free,” “prior” and “informed” mean in concrete terms. Consent must be given from people who are affected by a project - if they live or hunt on the land, drink the water, practice ceremony - they must give consent for that land or water. Someone who is not directly connected to that land or water cannot give consent for them (even if it is a chief).

“Free” must refer to the fact that there would be no direct repercussions or punishments for not consenting (as well as no “bribes” for consenting). This includes federal funding.

“Prior” must refer to a timeframe before approval, and before development of the project has even begun.

“Informed” must refer to a comprehensive process that seeks to educate and answer questions.

Text for these clauses can be drawn from the UN Declaration on the Rights of Indigenous Peoples particularly Articles 29 and 32 and regulations on the process for obtaining free, prior and informed consent should be co-developed with Indigenous nations.

5. A consultation process that fosters true collaboration between communities and government is needed. Regulatory agencies must implement community recommendations on an ongoing basis. Related to this and drawing from West Coast Environmental Law’s Twelve pillars of a “next generation” of Canadian environmental assessment, the CEAA must include a clause requiring the consideration of the best option from among a range of alternatives, including the “no” alternative. We urge the federal government to develop clauses that establish a community’s right to say “no” to projects that threaten waterways and empowers communities to

create low-carbon, sustainable alternatives and jobs that safeguard water. The government should also be mandated to study alternatives, such as renewable energy projects. The government could provide funding to local groups to study alternative projects in their community, such as renewable energy projects, including solar and geothermal.

The Innu and Inuit have opposed the Muskrat Falls dam in Labrador. The Muskrat Falls hydroelectric dam project is part of the Lower Churchill Project and would see construction of an 824 megawatt dam. Council of Canadians Political Director Brent Patterson has also warned that, “The dams are being built on Innu lands and would severely impact Inuit peoples. In 2012, the federal government provided a loan guarantee of \$6.4 billion to enable the project to proceed. It also removed federal oversight of the Churchill River in their Navigation Protection Act. If not stopped, the dam will flood 41 square kilometres and establish a 100 square kilometre reservoir.”

These projects are being vehemently opposed by communities and are clear examples of why the Act must be amended to empower local communities to be able to say “no” to projects that threaten waterways.

The Site C dam was recently approved despite it being built on the Peace River, which is a protected river under the NPA. Patterson has described Site C as “a proposed 60-metre high, 1,050-metre-long earth-filled dam and hydroelectric generation station on the Peace River between the communities of Hudson’s Hope and Taylor on Treaty 8 territory in northeastern British Columbia. It would create an 83-kilometre-long reservoir and flood about 5,550 hectares of agricultural land southwest of Fort St. John. It would also submerge 78 First Nations heritage sites, including burial grounds and places of cultural and spiritual significance. Logging and land clearing for the dam began last summer.” Site C has been vehemently opposed by First Nations and northern communities. UNESCO was recently on a monitoring mission to assess the impact Site C would have on the Peace and Athabasca Rivers which converge in Wood Buffalo National Park, a designated World Heritage Site.

The promotion of these projects and recent approvals of the Trans Mountain and Line 3 pipelines call into question the Trudeau government’s commitments to protect water and the environment and also calls into question the credibility the environmental assessment process and water legislation in Canada. A very important factor for the future and credibility of environmental assessments is building in the expectation and structure for an assessment to come back with the potential for a “no” scenario.

The residents of Mount Shasta, California drafted a [local ordinance](#) that recognizes communities rights and would empower local residents to make decisions affecting their water

sources. This text could inform the drafting of a clause to enable communities to say no to projects that threaten water and local ecosystems.

The members of the expert panel have a critical role in restoring trust and credibility to this process. This role is intimately linked to establishing a nation-to-nation relationship with Indigenous peoples, fulfilling Canada's goal of transitioning away from fossil fuels and protecting water for communities, local economies and ecosystems. Many people are looking to members of the expert panel to urge the Trudeau government to take the leadership needed to protect water, curb climate change and bring about social, economic and environmental justice.

We thank you for your time and urge you to make recommendations that will protect every lake and every river - now and in the future.

Sincerely,



Emma Lui
Water Campaigner
Council of Canadians