

Independent Expert Panel Review Process in Environmental Assessments

Written Submission of John McManus to CEAA process Review. The following are my speaking notes for my presentation to the EA review panel on December 12, 2016 in Vancouver, BC

My name is John McManus. I am a registered Professional Engineer, licensed and in good standing in British Columbia since 1986.

I am currently the Chief Operating Officer of Taseko Mines Limited. I am a board member of the Mining Association of Canada and of the Mining Association of British Columbia. I am also past chairperson of the Mining Association of BC.

Taseko wholly owns 3 mineral development projects in British Columbia and one in Arizona. We are also the operator and 75% owner of the Gibraltar copper-molybdenum mine in central British Columbia, the second largest copper mine in Canada.

One of our development projects is the New Prosperity Copper-Gold deposit in central British Columbia which has the distinction of having gone through three environmental assessments, one through the BC Environmental Assessment Office and two by way of Federal panels. The second Federal assessment is currently before the courts in the form of two Judicial Reviews in Supreme Court of Canada and a civil suit in BC Supreme Court. I will speak to my experience in the Federal panels at New Prosperity but need to be clear that I am avoiding talking about specific matters that are before the court.

*From your website, the stated goal of **this** panel is to “develop new, fair processes that are robust, protect our environment, respect the rights of indigenous people, and support economic growth”.*

Unfortunately the independent expert panel process for conducting Federal Environment Assessments under CEAA 2102 has been a complete failure in reaching the goal of supporting economic growth. My personal view is that I don't think it particularly respects the rights of indigenous people, or anyone else for that matter.

What has the panel process accomplished

As you know, the panel process is considered the highest standard of environmental assessment. Project assessments are referred to panel for review if they are considered to be of great public interest and/or likely to cause significant adverse environmental effects if they proceed.

In preparation for this presentation I reached out to CEAA in an effort to understand the history and results of panel reviews. In response I received the following information from a Communications Adviser in the Agency.

Since the Canadian Environmental Agency was formed in 1995 there have been 58 proposed projects that have been commenced with panels to perform the federal environmental assessment.

52 of the 58 assessments were referred to panel under the original Act of 1992.

32 of those 52 were completed, 10 were terminated or not completed under the original Act, and 10 of the assessments that were referred to panel under the original Act were transitioned to CEAA 2012.

6 new projects have been referred to panel since the coming into force of CEAA 2012.

To save you doing the arithmetic, that means that 16 project assessments have been or are being performed by panels under CEAA 2012.

Of those 16 project assessments conducted or being conducted under CEAA 2012,

- 7 assessments are still underway,*
- 4 are on hold or terminated at the request of the proponent,*
- 2 were completed and deemed not authorized to proceed, and*
- 3 were completed and deemed authorized to proceed.*

Of the three project assessments that were deemed authorized to proceed only one has actually proceeded to construction, BC Hydro's Site C hydroelectric dam project. The other two deemed authorized, the Jackpine Mine expansion project and the Enbridge Northern Gateway pipeline project, have been shelved.

So the score is one success out of 16 and that project is a taxpayer funded government project. A government project is not what I consider successful economic growth.

Private investment has been completely shut out. Zero privately funded projects have proceeded to construction after a Federal environmental assessment which has been referred to panel under CEAA 2012.

What is wrong

The Agency is mandated to deliver Environmental Assessments which serve Canada and Canadians by helping to eliminate or reduce a project's potential environmental effects. The panel process has instead been co-opted and has become a platform for opponents of projects to delay those projects until they no longer have value, or to impose conditions which make them uneconomic, or simply to stop them all together.

The following are my personal observations from having been personally and deeply involved in two federal panel reviews.

1. The panel process is divisive for communities both aboriginal and non-aboriginal. The panel hearings themselves are adversarial and combative. Presenters tend to take very strong or even extreme positions in order to make their point to the panel. In aboriginal communities I observed that First Nation leaders and others had convinced community members that the proposed project is a threat to themselves, to their way of life, and to their very survival, regardless of any actual evidence. I heard many First Nations members remark how upsetting the whole process is to them with sleepless nights, illness, anxiety, tears, family tension, arguments. This is all the result of an unnatural foreign and intimidating process foisted on them by the Federal Government. In the non-aboriginal communities non-local organizations with their own agendas also ran a campaign of fear, untruths, and half-truths to turn people against the project.
2. The process fails as a forum for public participation. The “public” stays home. Advocates for or against the project exploit the process and use it as a platform to state their positions. The general public’s views are lost in the rancor if they are heard at all. People in the communities where the hearings were held commented to me, outside of the hearings, that they actually liked the idea and would like to learn more but they felt extremely uncomfortable expressing those views publicly. This was especially true at the hearings in the First Nations communities where quite often the individuals in attendance at one community would be the very same people at the next community.
3. Independent panels are not independent. Review panels are supported in their work by a secretariat made up primarily of CEEA employees but also from other ministries within government. These civil servants bring previously gathered environmental assessment experience, connections, and relationships all of which introduces the potential of bias and casts doubt on the claim of true independence. The secretariat manages all of the work done by the panel including the drafting of important documents, up to and including the final report itself.
4. The panel members are not really expert. Three panel members, no matter who they are, cannot possibly be expert in all of the aspects of a complex project proposal such as a major open pit mine. They are however thought of and billed as being an “expert panel” including being expert in managing a panel hearing process.

5. The process is unreasonably expensive for the project proponent. All of the burden, and none of the control, is in the hands of the proponent. Project proponents are required to pay all of the government's costs associated with the panel review including government employee salaries, panel members fees for service, travel and accommodation, transcription and translation, public meeting costs including venue and public meals, gifts from the panel to First Nation communities, etc. The panel process costs millions of dollars and the proponent has no say in how that money is spent.
6. The Panel is accountable to no one. As soon as the panel has signed off on their report the panel is dissolved and no longer exists. Elected officials and civil servants serve at the pleasure of the citizens of Canada and can be held accountable for their work whereas panels are not and cannot be held accountable. This makes the panel process essentially an abrogation of political responsibility.
7. Panels do not follow their mandates. In both of the panel reviews I was involved with the panels went far beyond where they needed to go to satisfy the requirements of CEAA and CEAA 2012 in advising the Minister of Environment about the environmental aspects of the project and instead veered Federal decision making into the jurisdiction of Provincial and other authorities.
8. There is no appeal process. The panel report is final and there is no process by which to question or communicate if there is a faulty conclusion and no mechanism with which to correct an error. The only recourse is through expensive, time consuming, and uncertain judicial review. The result is that the error lives on, as does the damage it causes, including the reputational damage to the CEAA process itself.

In closing, I provide the following two recommendations:

1. Scrap the panel review process. It is combative and divisive and totally ineffective in its stated goal. In the case where a project actually does get approved and moves into construction, the social dynamics of the local communities have been permanently altered and a lasting legacy of bitterness between proponents and their neighbours is left in its wake.
2. Replace review panels with an expert committee of government regulators and make them accountable. The required expertise to conduct fulsome environmental assessments already exists within the relevant departments of the Government of Canada. They are fully capable and equipped with all the tools required to deliver the appropriate levels consultation and accommodation for both aboriginal and non-aboriginal citizens of Canada.

Thank you