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Expert Panel Review of Canadian Federal Environmental Assessment Processes
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Submission to the Expert Panel Review of Canadian Federal Environmental Assessment Processes from Rivers Without Borders

INTRODUCTION

Rivers Without Borders (RWB) is a nonprofit conservation organization working in both Canada and the U.S. to raise awareness of the outstanding values of the northwest British Columbia – Southeast Alaska transboundary watersheds and promoting ecosystem based stewardship to sustain those values. We thank you for the opportunity to submit written comments to the Expert Panel reviewing the Canadian federal environmental assessment (EA) process. An improved EA process will restore flagging public confidence on both sides of the border, improve environmental protections, provide more certainty for stakeholders and help improve relations in transboundary regions.

Our comments focus on the Canadian Environmental Assessment Act of 2012 (CEAA 2012) in the context of how it addresses projects with transboundary consequences. One of the biggest problems with CEAA 2012 is the lack of a requirement or trigger to ensure projects with potential transboundary impacts undergo a federal EA process. Projects with potential transboundary impacts should be required to undergo a federal review, which among other things should analyze the project's consistency with Canada's international treaty obligations and bilateral agreements. We also recommend that given the documented inadequacy of B.C.'s EA processes that authorizations required under the Fisheries Act trigger a federal EA. We see a need for strategic or watershed level assessments in northwest B.C., where a number of industrial developments are operating and proposed and have potential for cross-border impacts. We also comment on the need for increased public participation, better use of science and the need to separate agencies that promote development from agencies that regulate those developments.

REASONS FOR CONCERN/RATIONALE FOR RECOMMENDATIONS

B.C processes are inadequate

B.C. has significant plans for mining in the transboundary region upstream of Southeast Alaska. Multiple mines are either operating or in various stages of assessment or development in the transboundary Taku, Stikine and Unuk watersheds, all of which provide vital sources of income, culture, recreation and other benefits on both sides of the border. These values are dependent on clean water, healthy salmon runs and game populations, and maintaining productive habitat.



"Protecting Alaska – British Columbia transboundary watersheds since 1999, with staff and associates in Alaska, British Columbia and Washington."

www.riverswithoutborders.org

These mines, during construction and operation and long after closure, pose threats to water quality, salmon and wildlife, and those who depend on these resources.

The B.C. process has proven to be inadequate to review and regulate mining activity in the province or ensure compliance with international treaties such as the Boundary Waters Treaty of 1909¹, specifically articles IV and IX. There is no way for B.C.'s domestic processes to accommodate or fully address the concerns of a neighboring downstream nation. This is a major reason for our recommendation that projects with transboundary implications undergo an automatic federal review. Examples of B.C.'s failure to responsibly regulate mining are:

- A 2016 B.C. Auditor General report on B.C.'s mine regulatory processes found, “almost every one of our expectations for a robust compliance and enforcement program within the MEM and the MoE were not met.”²
- Recommendations made by the Mount Polley Expert Panel that reported on the failures leading up to the catastrophic tailings dam break at this mine in 2014 have not been implemented by the B.C. government.³
- The abandoned Tulsequah Chief mine in the transboundary Taku watershed has been leaching acid mine drainage since 1957, without any significant efforts by B.C. to stop the pollution, which is in violation of the Fisheries Act, mine permits and an agreement with the Taku River Tlingit First Nation.
- A report by the Union of B.C. Indian Chiefs found significant weaknesses in B.C.'s Environmental Financial Assurances regime relating to the mining industry. This report also highlighted B.C.'s significant failures to enforce compliance and secure mechanisms for the requirement of indemnity for financial liabilities within the mining industry.⁴
- Thousands of Alaskan leaders, fishermen and fishing groups, tribes, and citizens have expressed a strong lack of confidence in the way mining is managed in northwest B.C. and are demanding stronger measures to protect water quality, salmon and jobs.⁵

Lack of triggers for transboundary projects

The original purposes section of CEAA (1992) stated: “The purposes of this Act are...to ensure that projects that are to be carried out within Canada or on Federal lands do not cause significant adverse environmental effects outside of the jurisdictions where they are to be carried out.”

In addition, Canada is signatory to the Stockholm and Rio Declarations that include principles on transboundary impacts; Article 2 of the Espoo Convention; and bilateral agreements including the Boundary Waters Treaty of 1909 and the Canada-US Air Quality Agreement. But CEAA 2012 does not possess an automatic trigger for projects with transboundary impacts that may cause adverse environmental effects or cause concern for public health or safety.

¹ http://www.ijc.org/en/_BWT

² <http://www.bcauditor.com/pubs/2016/audit-compliance-and-enforcement-mining-sector>

³ <https://www.mountpolleyreviewpanel.ca/> and REPORT ON “7” RECOMMENDATIONS TO THE BC GOVERNMENT RESULTING FROM THE MT POLLEY TAILINGS DAM FAILURE David M Chambers, Ph.D., P. Geop, Center for Science in Public Participation, August 15, 2016

⁴ https://d3n8a8pro7vhmx.cloudfront.net/ubcic/pages/1290/attachments/original/1463347826/Toward_Final_Responsible.pdf

⁵ <http://www.salmonbeyondborders.org/resolutions--letters-of-support.html>

We recommend that CEAA reinstate the above quote from the 1992 CEAA into the purposes section, and require federal review of projects with potential transboundary impacts to be consistent with Canada's international treaty obligations and bilateral agreements.

The province of B.C. is unable to adequately assess fisheries and transboundary watershed issues (which do not fall under its jurisdiction). Without robust environmental assessments of the majority of projects and activities that impact fish and fish habitat, we are unable to understand the spectrum and accumulation of effects on, and plan for the protection of the fisheries and shared watersheds of Canada and the United States. It is recommended that CEAA reestablish the automatic trigger for projects with transboundary impacts and include automatic triggers for an EA when authorization is required under the Fisheries Act.

Better analysis of transboundary impacts needed

Under subsection 19(1)(a) of CEAA 2012, an EA must take into account the "environmental effects" of a project. These effects include "...a change that may be caused to the environment that would occur...outside Canada." A federal EA should apply to all projects that are transboundary by definition, overseen by independent experts. This will bring more credibility to the EA process and provide downstream nations transparent access and ability to partake in the decision making process. It is recommended that when a federal EA is triggered, an assessment of potential transboundary impacts must be incorporated within subsequent analysis.

We recommend that cumulative impacts in transboundary watersheds are examined to identify overall values of an entire watershed basin and that this process be overseen by independent scientific experts, not project proponents. Environmental impacts from a project's associated developments, such as roads, power lines, dams, etc. must also be assessed within these studies.

In addition, we recommend that strategic environmental assessments should be carried out in transboundary watersheds with multiple proposed and/or active projects. The Stikine River would be an excellent pilot project for this type of assessment.

Lack of public participation in review of transboundary projects

The participation of U.S. citizens in the review of Canadian projects with potential transboundary impacts is limited to sending written comments and attending "information sessions" with project proponents. We recommend that formal public hearings be required in the potentially impacted transboundary communities for projects with transboundary implications. For example, in Southeast Alaska this would mean hearings in Juneau, Ketchikan, Wrangell and Petersburg, and possibly Haines and Skagway.

Use of Science

All components of an EA must be based on credible and accountable peer-reviewed science. The EA process currently lacks independent science, giving remarkable power to project proponents, and removing public trust in the process. An environmental assessment, whether provincial or federal, is supposed to be an arm's-length process based on impartial science. In order to help regain some trust, we recommend independent science advisory panels for federal EAs. We need

independent science advisory panels that can commission science, evaluate and interpret the data, and ensure it is publicly available.

Separate government agencies that promote projects from those that regulate

The B.C. Auditor General's report released in May 2016 made clear recommendations that the province must separate government agencies from being both the promoter and regulator of an industry (in this case the mining sector).

RIVERS WITHOUT BORDERS' RECOMMENDATIONS TO THE EXPERT PANEL

- 1) The following quote from the 1992 CEAA should be reinstated: "The purposes of this Act are...to ensure that projects that are to be carried out within Canada or on Federal lands do not cause significant adverse environmental effects outside of the jurisdictions where they are to be carried out." Additional language requiring a federal review of projects with potential transboundary impacts, and that this review must be consistent with Canada's treaty obligations and bilateral agreements, should also be added.
- 2) CEAA should require automatic triggers for an EA when authorization is required under the Fisheries Act.
- 3) A federal Review Panel must conduct an extensive EA for all projects with potential transboundary impacts.
- 4) Cumulative impacts in transboundary watersheds must be examined and this process must be overseen by independent scientific experts, not project proponents. A federal EA must include a strategic watershed cumulative impact assessment, incorporating socio-economic and cultural impacts, impacts to habitat and other environmental effects, water quality and quantity monitoring plans, long-term planning, project alternatives, etc.
- 5) Strategic environmental assessments should be carried out in transboundary watersheds with multiple proposed and/or active projects.
- 6) Federal EAs must have independent science advisory panels.
- 7) Separate government agencies that promote projects from those that regulate.
- 8) Formal public hearings should be required in the potentially impacted transboundary communities for projects with transboundary implications.
- 9) Public and Aboriginal participation and consultation, including those representing downstream nations, must begin before a project enters into an EA process.

RWB very much appreciates the opportunity to comment on this review of the Canadian federal EA process. A strengthened EA process will be good for all stakeholders, restore public confidence in this process and help ensure a productive future for our shared watersheds.

Sincerely,

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