



December 20, 2016

Submitted via: eareview_participation@canada.ca

**Re: Teck submission on review of environmental assessment processes associated with the
*Canadian Environmental Assessment Act, 2012***

Dear Chair and Members of the Expert Panel:

As you advance your review of Canada's environmental assessment (EA) processes associated with the *Canadian Environmental Assessment Act, 2012* (CEAA 2012, or the Act), Teck is pleased to submit the enclosed comments and recommendations for your consideration.

Proudly Canadian, Teck is a global leader in sustainable resource development and is Canada's largest diversified resource company with business units focused on steelmaking coal, copper, zinc and energy. In Canada, we own six steelmaking coal operations, the country's largest open pit copper mine, metallurgical, technology and innovation complexes, copper development projects, a wind power facility, a hydroelectric dam, and interests in a port and several oil sands projects. We directly employ over 7,000 people across the nation. In 2015, our domestic capital expenditures totaled over \$2.2 billion. We are also a major Canadian supply-chain partner, as the country's single largest rail user and a significant port-user. Our exports total close to \$5 billion annually.

The outcome of your review is critical to our current and future prospects for investment, revenue generation and job creation in Canada. With long-life assets in Canada and continued worldwide demand for the products we produce – our long-term outlook is positive. However, as nearly all of our activities are impacted by CEAA 2012 and associated regulations – our outlook depends on having certainty as to how decisions about projects are made and under what conditions. Meanwhile, our experience as an industry has been that the inconsistent application of CEAA 2012 and the lack of coordination between federal and provincial EA processes are impacting project economics and diminishing public confidence.

To that end, we support the Government of Canada's review of processes related to the Act. We agree that environmental protection and economic development must go hand in hand. We also know that public confidence and respect for the rights of Indigenous Peoples is critical to advancing any current or future resource development project as demonstrated by our positive working relationships with Indigenous Peoples and communities surrounding our sites.

In this submission, we have outlined our experience with CEAA 2012 and made several priority recommendations that are in alignment with the government's intention to ensure processes are robust,

incorporate science, protect the environment, respect the rights of Indigenous Peoples and support economic growth. These include:

- general recommendations on direction setting;
- addressing and clarifying CEAA 2012's purpose and scope;
- enhancing federal-provincial coordination;
- strengthening Indigenous Peoples' participation and decision-making in EA processes associated with CEAA 2012;
- enhancing the Act's compliance mechanisms; and
- enhancing post EA-engagement and transparency.

For the purpose of this submission, we have not sought to answer all of the specific questions outlined in the Panel Terms of Reference. Teck contributed to and supports the Mining Association of Canada's (MAC) submission, which provides detailed answers to all these questions.¹ While this submission reflects many of the same or similar recommendations offered by MAC, we have provided additional insights based on our experience, including on the matter of strengthening Indigenous Peoples' participation in decision-making and enhancing post-EA engagement. We are also providing input into the Canadian Association of Petroleum Producers' (CAPP) submission.

Context

Teck's experience with CEAA 2012

Having operated in Canada for over 100 years, Teck has extensive experience with the evolution of the Canadian regulatory and EA landscape, including some interaction with CEAA 2012 as well as greater engagement with its previous iterations. For detail on the broader mining sector's experience with CEAA 2012, we encourage the Panel to refer to the MAC submission.

Teck's Frontier Oil Sands Mine Project is currently the only major regulatory application for an open pit mine in the oil sands region of Alberta undergoing CEAA review. Pending the outcome of the review process and a sanction decision by Teck, first oil for Frontier would be produced in 2026. Frontier would employ 4,000 people during the construction phase and 2,500 when operational over a mine life of 41 years.

Submitted to the governments of Alberta and Canada in 2011, the Project has been subject to the original CEAA legislation and transitional elements of CEAA 2012. The application is currently in a Joint Review Panel phase and a hearing is expected in mid-2017.

Now, in its fifth year of review and entering its ninth year of Indigenous Peoples consultation, there is no doubt this Project has undergone a robust and rigorous joint federal-provincial review and consultation process. The initial federal involvement that resulted in Frontier's early call to Panel has resulted in a thorough review by both levels of government, as exemplified by five rounds of supplemental information requests. Through the Joint Review Panel phase, Frontier is undergoing a review by an independent panel where additional input and evidence from interested parties is being collected and considered.

Throughout the regulatory process, Teck has provided capacity funding for Indigenous technical reviews of our regulatory submissions as well as funding for Indigenous communities to undertake cultural impact

¹ Mining Association of Canada. November 8, 2016. MAC Submission to the Expert Panel Review of Environmental Assessment Processes.

assessments, traditional land use studies and additional studies of interest. Teck is also in the process of developing long-term Impact Benefit Agreements with affected Indigenous communities. In December 2016, Teck and the Fort Chipewyan Métis announced the signing of a participation agreement. The agreement identifies a number of economic benefits for the Fort Chipewyan Métis as well as creating opportunities for meaningful engagement and communication. It also sets out a framework for items such as traditional land use and environmental stewardship related to the project.

Following the introduction of CEAA 2012, we have directly applied the Act in support of a mine life extension at one of our BC steelmaking coal mines, which triggered a federal EA under the Act in November 2014. We have since suspended that project – Coal Mountain Phase 2 – due to market conditions. We do not have immediate plans that would necessarily entail a federal EA process in the very near term but it is likely that we will have projects undergoing EAs within the next few years.

Further, Teck has extensive experience with provincial EAs, particularly in BC, and we believe that there are aspects of the BC framework that serve to enhance CEAA 2012. Some examples are embedded in this submission.

The outcome of this review is critical to our future outlook in Canada. Having the right policy and regulatory conditions in place to support both potential future permitting and certainty for projects already well-advanced in EA will enable Teck's ability to maintain sustainable resource development in Canada and continue to contribute to the country's social and economic prosperity.

Detailed recommendations

1. General

We acknowledge the broad scope of this review and appreciate the challenge before the Panel to find improvements to the EA process that can be distilled from hypothetical concepts to effective application. While we support the intent underlying the review, it is essential that any new iteration of the Act and any transition to it does not impact investor and proponent confidence that projects will be subject to clear and consistent EA processes. Below are some general recommendations:

- i. **Recommendation:** That the Government of Canada undertake further consultation with Indigenous Peoples, industry and other stakeholders following the Panel's report and directionsetting. This will enable Teck and other companies to comment on the implications of the proposed direction and contribute further solutions. We welcome signals that this is the approach that will be taken.
- ii. **Recommendation:** Maintain acknowledgement that projects that have already undergone robust EA and consultation processes are grandfathered to help ensure a smooth transition to any new framework.

2. Addressing and clarifying CEAA 2012's purpose and scope

CEAA 2012's lack of a clearly articulated purpose and rationale for scope of application has led to significant challenges for process efficiency and certainty and public and Indigenous Peoples' confidence, including:

- duplicative federal-provincial processes;

- disproportionate application to the mining sector while generating false perceptions of reduced oversight across all sectors; and
- cumulative effects not being appropriately assessed.

CEAA 2012's purpose

As background, the federal and provincial courts in Canada have generally agreed upon the purpose of EAs as a planning tool that has both information-gathering and decision-making components.² However, CEAA 2012 (section 4) currently identifies nine purposes for the Act. These purposes emphasize an array of secondary issues such as enforcement and compliance instruments related to implementation and processes – resulting in a blurring of the primary intent of EA processes. This is causing confusion and does not provide the intended direction upon which the Responsible Authorities, Indigenous Peoples, the public, and project proponents can prioritize their actions and participation. Consequently, the Act's implementation has been fragmented and unfocused.

Clearly identifying the purpose and objectives of the Act and refocusing it as a planning tool would not only help provide increased clarity and direction for all parties involved, it would also allow the government to more clearly communicate the Act's intent to the Canadian public. Clarity of purpose would also improve objectivity when assessing the Act's effectiveness. Furthermore, the purpose of the Act should address the jurisdictional overlap that exists with the provinces which has led to inefficient and costly impacts to project economics and disregards Canada's multi-jurisdictional reality. This is discussed further in the next section.

CEAA 2012's scope

Despite perceptions of reduced oversight across industries, in reality, mining projects remained comprehensively and robustly regulated under CEAA 2012. While CEAA 2012 may have narrowed the type of non-mining projects the Act applies to, the Act did not change the robustness or scope of assessments applicable to mining projects. CEAA 2012's *Regulations Designating Physical Activities* covers nearly all types of mining projects and outlines thresholds for metal, diamond and coal mines that capture all economical-scale projects. Due to a lack of rationale for what should be designated and with no purpose for the application of the Act to guide that decision, it is challenging to assess the effectiveness of the Act.

Furthermore, the current Act does not enable cumulative effects to be addressed in a meaningful way. The assessment of a mining project requires an assessment of the cumulative effects of other activities. However, CEAA 2012 is only able to decide whether that mining project can proceed, even where the mining project's contribution to adverse effects is very small compared to the cumulative effects of other activities not subject to the Act. CEAA 2012 thus imposes a disproportionate burden on the mining sector without effectively addressing the cumulative effects it has assessed.

In short, the current scope of CEAA 2012 does not acknowledge the impacts other non-mining projects can have on the landscape. A future iteration of the Act would benefit from the scrutiny provided by a more inclusive application of the Act – particularly as it relates to understanding and addressing cumulative effects.

² [1992] 1 S.C.R. 3, 1992 CanLII 110 (S.C.C.)

- i. **Recommendation:** Examine how the Act's purpose can be refocused to position EA processes as a planning tool aimed at achieving sustainable environmental outcomes.
- ii. **Recommendation:** Include a clearly and concisely articulated purpose for CEAA 2012 to:
 - o provide clarity on the intent of the Act to the public, Indigenous Peoples and project proponents;
 - o guide the implementation of the Act by the Canadian Environmental Assessment Agency, Responsible Authorities and others – including recognizing the need for adequate capacity and resources; and
 - o achieve sustainable environmental, economic and social outcomes that are in the public interest.
- iii. **Recommendation:** Articulate a clear rationale for the application of federal EA processes. Potential options include: assessing projects or activities that are regulated by the federal government to inform federal decisions as was the case under previous CEAs, to assess and manage impacts on federal jurisdictions. This rationale should guide the design of the triggering mechanism for federal EA processes.
- iv. **Recommendation:** Address cumulative effects by:
 - o exploring the development of processes for federal and provincial governments to work together on cumulative effects to ensure that the issues are dealt with in a more equitable fashion. This could include working through provincial regional planning frameworks where they exist and exploring alternative approaches such as regional and strategic assessments. If this is not possible, consideration should be given to including non-mining activities that cause impacts to the environment in any revisions to CEAA 2012 so that the sectors responsible for those activities may benefit from the increased scrutiny of the federal EA process, including the mitigation of effects they may cause. This would need to be carefully managed to ensure coordinated actions between the federal and provincial governments.

Role of the regulator

It is important that there is no return to the multiple federal agency approach that characterized the pre-2012 regime and resulted in bureaucratic overlap and unnecessary burden for all parties involved. It is also critical that a distinction is made between the role and responsibilities belonging to regulatory bodies and those that belong to legislators and elected officials. Today, CEAA 2012 mandates the regulator to assess a project on a set of environmental criteria based on research and information gathered pertinent to the project. The role of the regulator must remain one that is limited only to the project evaluation function. EA's and permitting processes should not become the vehicle by which broader policy questions are debated.

- v. **Recommendation:** Ensure the distinction between the role of the regulator as a project evaluator and that of the legislator and elected official as policy-makers is maintained.

3. Enhancing federal-provincial coordination

Teck welcomes the progress made on the issue of timeline certainty since the inception of CEAA 2012's legislated timelines. Business investment is dependent on a clear, predictable and timely regulatory framework. Timeliness is the total of all decision-making processes that a project must undergo including

EA and permitting processes. In the mining context, this means an EA regime that acknowledges the commodity cycle by enabling conceived projects to advance through approval and permitting processes to implementation in a timely manner that supports the business investment process. Despite some progress, our biggest challenge to timeline certainty remains federal-provincial coordination.

Our experience with our Frontier Project – initiated before CEAA 2012 but subject to the new Act's timeline provisions – has been that the federal government has effectively met legislated timelines but that challenges in coordinating these timelines with the Province of Alberta as part of the joint federal-provincial review persisted.

Meanwhile, on the matter of substitution, Teck appreciates the option of substitution with provincial EAs currently contained within the Act and being used in BC. Substitution:

- streamlines information collection processes;
- results in strengthened continuity between EA processes, while respecting jurisdictional boundaries;
- encourages the advancement of provincial EA processes;
- encourages federal and provincial cooperation leading to stronger EA decisions; and
- is consistent with the scope of the review set out by the Minister to “restore robust oversight and thorough environmental assessments of areas under federal jurisdiction, while working with provinces and territories to avoid duplication”.

The following are recommendations on how federal-provincial coordination can be enhanced:

- i. **Recommendation:** Ensure that proposed revisions to CEAA 2012 continue to have reasonable timelines, that proposed revisions to the legislation be analyzed for their impacts on timelines, that timeline coordination with the provinces are enhanced and that any federal permits required by the proponent following the EA decision also be subject to timelines.
- ii. **Recommendation:** Give priority to continuously enhancing coordination, substitution and equivalency provisions as well as ensuring there is adequate capacity, resources and skills to manage the interplay between federal and provincial processes and associated federal regulation such as the *Fisheries Act*.
- iii. **Recommendation:** Ensure that any proposed revisions to CEAA 2012 retain the existing provisions of substitution (and equivalency) and that the federal government look for ways to broaden adoption of the substitution process in other Canadian jurisdictions.

4. Strengthen Indigenous Peoples' participation and decision-making in EA processes associated with CEAA 2012

Teck views this review as an important opportunity to contribute to the Government of Canada's reconciliation agenda by strengthening Indigenous Peoples' participation and decision-making in the CEAA process.

As background, the majority of Teck's operations are located within or adjacent to Indigenous Peoples' territories. We respect the rights, cultures, interests, and aspirations of Indigenous Peoples and are committed to building strong and lasting relationships that help us understand each other's perspectives and priorities. This is why we actively work to achieve the free, prior and informed consent (FPIC) of

Indigenous Peoples when proposing new or substantially modified projects, and we involve Indigenous Peoples at every stage of mineral development, from exploration through project development to closure and reclamation. Teck provides capacity funding for consultation and engagement, including technical reviews, community participation, traditional land use studies and cultural effects assessments, among other activities.

More broadly, Teck is committed to implementing best practices in the area of engagement and we are guided by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples, and the International Council on Mining and Metals (ICMM) Position Statement on Indigenous Peoples and Mining. We currently have 29 formal agreements with Indigenous Peoples in place in Canada alone while another three are in various phases of negotiation.

To that end, we believe there are several ways in which the CEAA process can be improved to strengthen Indigenous Peoples' participation and decision-making.

Ensure consistency with UNDRIP/Truth and Reconciliation Commission recommendations and federal commitment to review consultation legislation and policy

Teck supports Canada's commitment to full adoption and implementation of UNDRIP, as well as the decision to implement all of the recommendations of the Truth and Reconciliation Commission. We see these decisions as key steps in renewing the relationship between the Crown and Indigenous Peoples, based on recognition of rights, respect, co-operation and partnership.

It is important that any adjustments to Canada's EA processes related to CEAA 2012 are aligned with the government's larger goal of reconciliation with Indigenous Peoples in Canada. In particular, it is vital that consideration of the concept of FPIC in the context of EA processes is consistent with Canada's overall approach to implementation of UNDRIP. Canada needs to broadly define how UNDRIP will be applied and then everything should flow from that definition. Ultimately, the clarity and predictability required in the CEAA process will rely on an understanding of FPIC shared by government, industry, and Indigenous Peoples in Canada.

Further, while the review of CEAA 2012 is an important and meaningful undertaking in recognizing the relationship between Indigenous Peoples and the land, this initiative must be coordinated with Canada's higher-level commitment respecting Indigenous consultation as set out in the mandate letter to the Minister of Indigenous and Northern Affairs to:

Undertake a review of laws, policies, and operational practices to ensure that the Crown is fully executing its consultation and accommodation obligations, in accordance with its constitutional and international human rights obligations, including Aboriginal and Treaty rights.³

CEAA 2012 represents only one component of this larger body of laws, policies and practices cited for review. Consideration of that context is important in mapping expected outcomes of this process, and ensuring that there is shared understanding that the entirety of Canada's consultation deficiencies cannot be resolved only through adjustments to CEAA. Conversely, any changes to consultation processes

³ Prime Minister's Office. Minister of Indigenous and Northern Affairs Mandate Letter. Retrieved from: <http://pm.gc.ca/eng/minister-indigenous-and-northern-affairs-mandate-letter> on December 8, 2016.

related to CEAA and EA processes identified through this review will need to fit within the results of the larger consultation analysis. As a general observation, greater attention and activity needs to occur earlier in the planning phases of a project to discharge the Crown's obligations more effectively and in a manner more conducive to effective and efficient resource development.

- i. **Recommendation:** Ensure the implementation of UNDRIP is sequenced and consistent across the spectrum of legislative and policy approaches with CEAA appropriately scoped to not constitute or be designed to fulfill the entire spectrum of consultation and accommodation requirements.
- ii. **Recommendation:** Ensure that any adjustments contemplated to CEAA must ultimately be consistent with the outcome of the review of consultation and accommodation laws, policies and practices.

Align EA processes within the post-Tsilhqot'in context

Increasingly in Canada, court decisions have added clarity to the scope and content of Aboriginal rights, including Aboriginal title. Of particular significance is the 2014 Tsilhqot'in decision, in which the Supreme Court of Canada not only declared for the first time that Aboriginal title exists and can be established on a well-defined (territorial) basis, but also considered how other Aboriginal rights are associated with that title, including decision-making powers over lands and resources.

Any revisions to EA processes related to CEAA 2012 need to reflect a modern understanding of Aboriginal rights, including title, and include attributes which correspond to Indigenous Peoples' decision-making authorities as we understand them. A key question for this review process related to Indigenous Peoples is the extent to which Canada envisions EA processes as being a tool through which the federal government discharges its consultation obligations, or whether it is an appropriate process to incorporate Indigenous Peoples' input into federal processes. While Teck recognizes the complexity of this issue, we encourage Canada to consider all opportunities to establish greater clarity and demonstrate its commitment to a renewed, nation-to-nation relationship with Indigenous Peoples.

- iii. **Recommendation:** Ensure that Indigenous Peoples' participation in EA processes is done in a well-defined manner, consistent with the current legal framework for actioning Section 35 of the *Constitution Act*.

Enhance the Participant Funding Program

The participation of Indigenous Peoples in EA processes could be enhanced through improved funding for participation and capacity-building for impacted communities. While proponents do provide capacity funding to assist participants – including Indigenous groups and non-governmental organizations – Government of Canada participant funding has been inconsistent and poorly rationalized.

- iv. **Recommendation:** Enhance the Participant Funding Program by providing a framework for participant funding that improves the transparency around which funds are granted; and improve funding where applicable.

Negotiating government-to-government agreements with Indigenous groups

In many cases, meaningful Indigenous Peoples' participation in EA processes can be achieved through implementation of government-to-government agreements which set out processes and commitments for joint decision-making over defined areas. In BC, the provincial government has entered into a number of agreements with Indigenous groups which establish mutually agreed upon procedures for consultation and accommodation. These agreements provide an opportunity for Indigenous Peoples to take a more active role in the decision-making process and develop stronger relationships with government. Such agreements include commitments for the parties to jointly oversee all major approvals for major projects and to use collaborative decision-making processes for major projects.

- v. **Recommendation:** Consider negotiating government-to-government agreements which set out processes and commitments for joint decision-making over defined areas (similar to BC model) with Indigenous groups, or explore opportunities to join existing agreements between provinces and Indigenous groups. In addition, adjustments to CEAA 2012 could be considered that provide for integration of these agreements into the Act's processes.

Creating EA Boards or Working Groups

As part of the EA process, consideration should be given to the potential creation of project or issue-specific boards or working groups. These would include government and Indigenous representatives to discuss and potentially resolve issues being addressed or raised through the EA process within defined areas. Boards could be established to effectively and specifically address challenging issues pertinent to the process. The boards would make recommendations as to how a proposed project should proceed to the regulatory or permitting stage, and under what conditions. Given that each project and EA process is different, with different pressure points, EA boards or working groups would have to be struck and developed on a case-by-case basis.

- vi. **Recommendation:** Explore the creation of project-specific EA boards including government and Indigenous representatives to work through specific EA processes issues within defined areas. In establishing a framework for this board model, the following considerations would have to be taken into account:
 - o establishing criteria for triggering of board creation;
 - o procedures to ensure the process is efficient and remains focused within the mandate of the board; and
 - o harmonization with provincial processes.
- vii. **Recommendation:** Enhance the efficacy of the Major Projects Management Office by aligning its mandate with the project-board framework

5. Enhancing the Act's compliance mechanisms

Decision statements and conditions

This review poses an opportunity to enhance CEAA 2012's compliance mechanisms. CEAA 2012 provides a decision statement and conditions in cases where projects have been approved. While provinces with mining sectors have comprehensive regulatory regimes in place that address the full life-cycle of a mine and adapt an operation's regulatory requirements as required, the Canadian Environmental Assessment Agency lacks the legal authority, the regulatory framework and the expertise to assess and adjust its conditions through the life of a mine or to reconcile its requirements with those of

the provinces. There is opportunity to reflect the reality of changes that occur through the life of a project in federal processes by allowing some flexibility to amend conditions.

The reasons why condition amendments are important include their:

- usefulness if a condition was weakly written and there is an acknowledged need to revise it;
- acknowledgment that project life-cycles can vary so conditions written at the time of approval may cease to be relevant;
- allowance for adaptive management using science-based decision-making processes and the use of best available technology later in the mine life-cycle;
- allowance flexibility for governments including the primary regulator; and
- allowance for evolving regulatory requirements.

Enhanced harmonization would greatly improve this aspect of compliance.

Additionally, opportunities exist for joint compliance reporting. Joint reporting would:

- streamline and simplify data collection and reporting functions for industry; and
- simplify report processing for the federal and provincial governments and for other interested parties such as Indigenous Peoples and other stakeholders.

Moving to joint compliance reporting would be consistent with the scope of this review set out by the Minister to “restore robust oversight and thorough environmental assessments of areas under federal jurisdiction, while working with provinces and territories to avoid duplication”.

- i. **Recommendation:** Examine the compliance problems inherent with CEEA 2012’s approach to decision statements and conditions and seek resolution including providing direction to the Canadian Environmental Assessment Agency to work with the provinces to develop harmonized compliance reporting. Which solutions are the most appropriate will depend on what other changes to the Act the Panel recommends.
- ii. **Recommendation:** Include a provision for condition amendments reflecting the long life-cycle of mining projects, the need for adaptive management and the incorporation of new technologies during that life-cycle. There are several ways in which condition amendments could be proposed:
 - the primary regulator (the province) could be responsible for recommending amendments; and
 - criteria could be developed that would determine whether federal conditions could be changed.

6. Enhancing life-cycle engagement and transparency

There is an opportunity to enhance post-EA engagement and transparency.

- i. **Recommendation:** Explore opportunities to embed greater transparency in how information related to project enforcement and compliance activities are communicated to the public.
- ii. **Recommendation:** Ensure there are mechanisms in place for meaningful public and Indigenous engagement pre- and post-EA for a project that are developed with applicable provinces to avoid duplication.

Conclusion

Thank you for your consideration. We are encouraged by the opportunity this review represents to not only enhance EA processes so that there is greater certainty for all parties involved, but to enhance public confidence in these processes and contribute to Canada's reconciliation objectives.

If you have any questions regarding this submission or otherwise, please contact me at 604.699.4616.

Sincerely,



Marcia Smith
Senior Vice President, Sustainability and External Affairs