

August 30, 2017

Hon. Catherine McKenna
Minister of Environment and Climate Change
House of Commons
Parliament Buildings
Ottawa ON K1A 0H6

Hon. James Carr
Minister of Natural Resources
House of Commons
Parliament Buildings
Ottawa ON K1A 0H6

Reforming Federal Environmental Assessment Law

Dear Ministers McKenna and Carr,

We are writing to you concerning the anticipated new legislation to provide for assessment of the impacts of proposed natural resource development. The organizations we represent all have been deeply engaged in reform of federal impact assessment law and policy, as well as have participated in numerous environmental assessments across Canada.

Your government has repeatedly promised that the new law will restore public trust in how Canada's natural resources are developed. We are concerned that the new legislation will fall well short of meeting that promise based on our reading of the government's *Environmental and Regulatory Reviews Discussion Paper* ("Discussion Paper") and recent discussions. In particular, we are troubled by the Discussion Paper's lack of any reference to the need for substantive sustainability criteria and rules to be met in assessments, as well as the statement that the *Canadian Environmental Assessment Act 2012* would be changed, but not necessarily repealed and replaced by a next-generation law.

Tinkering with the current law is simply not acceptable to any of us. We are further concerned that the Canadian Environmental Assessment Agency—by far the most knowledgeable federal agency concerning impact assessment process and practice—is not leading the development of the new law.

This letter summarizes the key features we will be looking for in the legislation given that many policy directions taken in the Discussion Paper differ fundamentally from those advanced by the Expert Panel. Our organizations are prepared to fully support a new law only if it includes provisions that address the issues set out in this letter.

1. *Sustainability Approach* – A new law must include a legislated test, criteria and trade-off rules that determine whether proposed undertakings are the best option for achieving environmental, economic and social sustainability (including climate commitments) without demanding tradeoffs that result in significant adverse environmental effects or impede achievement of Canada’s climate obligations. A sustainability approach to assessing impacts will lead to better natural resource development, and not just development that is less bad—which is, in effect, the objective of the current law. Sustainability values must take hold if human prosperity is to be maintained through the global climate and biodiversity crisis; the federal government can make a serious start on advancing these values to Canadians through impact assessment legislation that is keyed to sustainability.
2. *Triggering of Projects* – A new law must require assessment of all proposed undertakings that are significant to the achievement of federal environmental commitments such as those under the Paris Climate Agreement and the Biodiversity Convention. High-carbon projects, projects proposed for National Parks and National Wildlife Areas, and projects requiring federal regulatory approvals under key environmental laws such as the *Fisheries Act* and *Species at Risk Act* must be assessed by law.

Currently, CEAA 2012 applies to an unacceptably narrow and largely arbitrary set of projects, with the effect that only a handful of federal environmental assessments are carried out annually. We urge the government to release a draft regulation setting out its proposals for categories of projects to be listed for mandatory assessment, perhaps at the same time as legislation is introduced into Parliament.

We all support the Discussion Paper’s proposal that a transparent process be established to review the categories of projects to be listed, as further discussed below. Further, provincial and Indigenous governments should have a right to refer projects for federal impact assessment under the law subject to a limited discretion on the part of the federal government to refuse such referrals.

3. *Legal Entrenchment of Strategic and Regional Impact Assessment* – A new law must include a legislative framework for 1) assessing the sustainability implications of proposed federal policies, programs and plans, and policy gaps (strategic impact assessment); 2) evaluation of the cumulative effects associated with alternative development scenarios in regions facing significant pressures (regional impact assessment); and 3) requiring that project assessments and regulatory decision-making be consistent with the outcomes of regional and strategic assessments. The new law should provide for schedules of specific proposed policies that would be subject to strategic impact assessment (e.g., the federal budget) and of specific geographic regions that would be subject to regional impact assessment (e.g., Peace-Athabasca Delta, Ontario Ring of Fire region, Bay of Fundy). A fund to finance federal engagement in regional impact assessments should be entrenched in the

new law, along the lines of the current CEAA 2012 provision establishing a participant funding program.

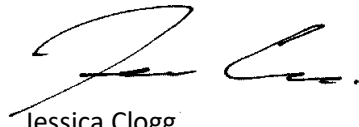
4. *Single Federal Agency* – A new law must establish a single independent agency responsible for the conduct of federal impact assessments. To restore public trust in reviews of natural resource development projects, it is imperative that the National Energy Board, Canadian Nuclear Safety Commission, and offshore oil and gas boards have no authority to conduct impact assessments or appoint representatives to joint panel reviews. Similarly, substituted reviews by these boards or provincial authorities should not be authorized under a new law. Any joint panel review should be governed by procedural rules established by that agency and managed by a secretariat appointed by that agency, with requisite flexibility to engage outside expertise when needed. Regulatory boards could have a legally entrenched advisory role in assessments of projects over which they have regulatory authority to ensure that best advantage is taken of their technical expertise.
5. *Public Participation and Accountability in Assessment* – A new law must eliminate rules restricting public participation in impact assessment processes (e.g., tests to determine standing such as the “directly affected” test) and guarantee participation rights in hearings. Provision of such rights would not mean that all participants would be interveners with rights to ask questions at hearings; few participants in assessment hearings seek to participate as full interveners, and in any event, CEAA review panels have demonstrated over several decades that public participation can be managed in an effective and timely way through application of procedural rules. A new law should also provide for varied types of public participation opportunities, require that they are designed with public input, and require that decisions reflect expressed public views.
6. *Ensure a Robust Evidentiary Basis in Assessments* - A new law should require that impact assessments and related decisions are based on best available evidence, which includes scientific, community and Indigenous knowledge. All evidence gathered must be carefully weighed based on the source, any concerns about bias or credibility, the methods used, whether its conclusions are supported or contradicted by other sources and any other factors set out in regulations. Rigorous evidence-based reviews are essential to ensuring public trust; the federal government must provide necessary leadership for science-driven aspects of the assessment process.
7. *Decision-making Following Assessments* - A new law must ensure the highest standards of transparency with respect to decisions. A new law should require explanation of decisions that include discussion of the application of the sustainability test and criteria to the undertaking and weighing of the scientific and other evidence, as well as provide convenient public access to those reasoned decisions. This requirement is particularly important where decisions are not consistent with recommendations emanating from the impact assessment.
8. *Independent Science Advisory Committee* – A new law should mandate an independent advisory committee to make recommendations to government on criteria for listings on the Project List regulations, proposed additions to and deletions from the Project List, proposed policies and programs for inclusion on a Schedule that would trigger strategic impact assessments, and proposed geographic regions for inclusion on another Schedule that would trigger regional impact assessments. Such an advisory committee should be mandated, and not merely enabled, under a new law; a possible model is the Committee on the Status of Endangered Wildlife in Canada

(COSEWIC) established under the *Species at Risk Act*. This committee would be in addition to the current multi-interest advisory committee.

9. *Engagement of, and Co-Governance with, Indigenous Communities on Assessments* – A new law should incorporate mechanisms that ensure that Indigenous peoples are engaged early and in good faith on impact assessments in order to obtain their free, prior, and informed consent. A new law should recognize Indigenous nations as jurisdictions for the purposes of impact assessment, enable mechanisms to give effect to those jurisdictions, and provide adequate funding for Indigenous national to perform governance functions in regional as well as project assessments. Further, impact assessment should be directed at achieving substantive goals, including compliance with UNDRIP.

We would of course be pleased to respond to any questions you or your officials may have with respect to the issues outlined in this letter.

Sincerely,



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cc. Hon. Dominic LeBlanc, Minister of Fisheries and Oceans
Hon. Marc Garneau, Minister of Transport
Hon. Carolyn Bennett, Minister of Crown-Indigenous Relations and Northern Affairs
Hon. Jody Wilson-Raybould, Minister of Justice and Attorney General
Hon. Kirsty Duncan, Minister of Science
Hon. Ed Fast MP
Elizabeth May MP, Leader of Green Party of Canada
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