May 5, 2017

The Honorable Catherine McKenna
Minister of Environment and Climate Change
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Canadian Environmental Assessment Agency
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Re: Building Common Ground. A New Vision for Impact Assessment in Canada. The Final Report of the Expert Panel for the Review of Environmental Assessment Processes

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The Canadian Association of Petroleum Landmen represents over 1800 negotiating landmen directly involved in the oil and gas and utility industry. The release of the above captioned report has caught many of our members by surprise. We welcome the opportunity to comment on the Expert Panel review of environmental assessment processes, the report "Building Common Ground: A New Vision for Impact Assessment in Canada".

The report, in its final stage, reflects an entirely new approach to environmental assessments on a project by project basis. It is novel based on the direction it accepted in the Terms of Reference. Namely to improve federal Environmental Assessment processes. CAPL is not certain moving from the accepted Canadian Environmental Assessment Act (CEAA) and the National Energy Board (NEB) processes to a new Impact Assessment (IA) authority is what is needed to reassure the Canadian public that assessments are 'trustworthy'.

While the principle of "one project, one assessment" sounds ideal at first glance relating to each specific project, at a closer look, this creates more uncertainty relating to requirements for NEB projects. If "time limits and cost controls reflect the specific circumstances of each project, rather than the current "one size fits all" approach, at what point will this be determined in the planning process? In its response to the report the Canadian Energy Pipeline Association takes a strong stand against several recommendations. CAPL is supportive of CEPA's position. It seems counterproductive to develop a new system for environmental assessments merely because the public, some of the public, has indicated a lack of confidence in the current systems. Might it not make more sense to address the inadequacies of CEAA and or the NEB? After all these organizations, while not without flaws, have been tested in the public and have some time-tested qualities.

The report speaks to a number of improvements better administered by a new authority and one that suggests indigenous peoples be included in all stages of an Impact Assessment in accordance with their laws and customs, which we would agree with certainly within reason, but not exclusively. Also this, as previous consultation has shown, could provide ground for court challenges if the assessment was not seen to give reasonable 'inclusion'. This of course could result in endless delays of approvals and further erode competiveness.

It seems, with the weight the report places on aboriginal consultation and accommodation, that resource industries will become the vehicle for reconciliation. That wherever a 'specific project' of federal concern is

proposed there will be seen an opportunity to progress dialogue on reconciliation and likewise it will be an overwhelming invitation to Indigenous populations to push further agendas. The IA authority would be placed in an awkward position of finding accommodation, as is currently part of the NEB process.

The Panel should be reminded that a large percentage of investment in this country comes from abroad and those interests should carry weight in any assessment be it through CEAA or in some new extraordinary authority. Which incidentally is proposed to operate independently from the proponent with whose money they will decide the projects fate. This in itself seems extraordinary for who is willing to gamble millions or billions without being party to the process? This point is aptly made in the CEPA submission.

The proposed IA authority, under new legislations yet to be defined, would be both the arbitrator and the assessor; both judge and jury. This ignores the principles, in the report, of transparency, and meaningful. The recommendation also extends to the IA authority the ability to decide if consultation with First Nations is adequate. Through experience we have learned that you cannot 'do due diligence' relating to First Nations consultation. The aftermath will determine adequacy with some decisions challenged in the courts. This provides other potential delays affecting competiveness.

CEPA addresses the proposal that federal funding will be provided to groups actively engaged in the process. Without going beyond the CEPA estimate is the public purse prepared to accept this?

We do not wish to beleaguer the consultative process with First Nations but some of the recommendations seemingly ignore the objective to introduce transparency. The summary on page 4, second bullet, comments that "IA legislation confirm Indigenous ownership of Indigenous knowledge and include provisions to protect Indigenous knowledge from/against its unauthorized use, disclosure or release." As stated at the outset, for the assessment process to be effective it "… must be governed by four fundamental principles. IA processes must be *transparent, inclusive, informed and meaningful.*" From page 5, point #4 "Ensuring that IA delivers transparent, evidence-based decisions" this clearly contradicts the comment that legislation protect that knowledge. Is it an open, informed and transparent process? Predetermining, through legislation, that Indigenous knowledge remain undisclosed leaves many questioning whether traditional knowledge has been interpreted correctly. It is completely at odds with the principle of transparency we are striving to achieve including the wishes of many of the people the panel spoke to in its seven month review. It will also belittle the trust the government is trying to engender with the public.

CAPL members have extensive experience working with First Nations and we are concerned with the bullet on page 6, "a Decision Phase be established wherein the IA authority would seek Indigenous consent …". It is difficult to envision such a possibility as 'consent' given the very nature of linear projects encompassing dozens, if not hundreds, of indigenous communities. Obtaining consent has not been a practical reality to date on projects which involve many communities, indigenous or otherwise. We feel that establishing a new authority to achieve these goals is unrealistic and will leave it facing failure and derision in the public eye.

CAPL is in full support of the principles of transparent, inclusive, informed and meaningful processes. However, regarding the inclusiveness principle stated in the report, CAPL would like to ensure that only the appropriate affected parties are to be included in this process. What is meant by this, is that outside influences, for example paid American environmental activists, should all be vetted and not be included in this process.

CAPL is concerned with the recommendation that the IA authority would lead the development of the Impact Statement. Typically the politicization of approvals leads to poor decision making. Any environmental assessment, taking into account the right factors, will naturally render a decision that is not to everyone's liking. The federal government must be seen as the approver accepting recommendations from its administrative arms. Collecting all those existing bodies into one massive authority will lead the public into greater skepticism. CEPA speaks to the roles of CEAA and the NEB. This proposal would wrap arms around the federal fisheries and oceans, habitat, agriculture and several other departments. While grouping all of these resource portfolios may look good on paper, the intricacies of each and the importance of these standalone authorities may not be best served by a singular lead authority.

CAPL has written the Minister in the past addressing the findings of other 'experts'. This submission would not be complete without at least a cursory examination of the jurisdictional issues such a massive undertaking would encounter. Division of power, as the Minister knows, places resource development in the hands of the provinces. Given that certain resource development impacts federal lands and therefore its interest, there currently exists cooperation between the two government bodies. This process, while not perfect, has been in place for several decades and has been modified at times to maintain further cooperation. To try and struggle into a new cooperation protocol, proposed to be under legislation, seems like throwing the baby out with the bath water. It is a system that has been sufficiently tried and tested and is fairly impregnable to legal interpretation and challenge. A new system would naturally and opportunistically solicit new challenges in both provincial and federal courts, again leading to delays and inhibiting competitiveness.

Canada, a land of opportunity, now lies perilously close to isolating itself from international investments with a burden of regulations and taxes. CAPL strongly recommends the Minister take the report under consideration but also advises the report be balanced with the recognition that economic development of our national resources benefits the national interest and while opposition to development might be fierce it should not be the opportunity to strangle our prospective futures.

Thank you very much for your time. If you wish to discuss this further with CAPL please contact the signees below.

Regards,

Yours very truly,

CANADIAN ASSOCIATION OF PETROLEUM LANDMEN

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