

June 9, 2015

Sent via fax and mail

Honourable Leona Aglukkaq, Minister of Environment
458 Confederation Building
Ottawa, Ontario
K1A 0A6

Karen Campbell
Suite #214, 131 Water Street
Vancouver, BC, V6B 4M3
Tel: 604-685-5618 x287
Fax: 604-685-7813
kcampbell@ecojustice.ca

Dear Minister Aglukkaq:

Re: WesPac Tilbury Marine Jetty Project

We write on behalf of Voters Taking Action on Climate Change, Raincoast Conservation Foundation, and Watershed Watch Salmon Society (the "Organizations") to request that you exercise your authority under the *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 52 ("*CEAA 2012*") to subject the WesPac Tilbury Marine Jetty Project (the "Project") to a federal environmental assessment, refer the Project to a federal review panel, and refuse BC's request for substitution.

The Organizations are each non-profit groups based in British Columbia who conduct research and undertake outreach on environmental and conservation issues. All have experience in environmental assessment and review processes and consider them an important environmental protection and planning tool. The Organizations are concerned about proposals for new industrial development that could impact the health of the Fraser River, threaten species in the region, impact local communities in the region, and contribute to climate change.

The WesPac Tilbury Marine Jetty Project is a proposal to construct and operate a marine jetty for loading Liquefied Natural Gas (LNG) onto LNG carriers and LNG barges on Tilbury Island along the South Arm of the Fraser River in Delta, BC. If approved, the Project would result in up to 90 LNG barge calls and up to 122 LNG carrier calls each year, with a subset of these vessels traveling through the Straits of Juan de Fuca and Georgia each year.¹ The Project would source LNG from the nearby FortisBC property.

Environmental Effects that Require a Robust Federal Environmental Assessment

The potential environmental effects on areas under federal responsibility outlined in the Project Description² highlight the critical need for a robust federal environmental assessment.

¹ <http://www.ceaa-acee.gc.ca/050/documents/p80105/101699E.pdf> at p 13

² *Ibid*

The Project Description details a number of potential adverse effects on fish—especially salmon—and their habitat. These effects require thorough review by the federal government not only because they fall under the purview of the *Fisheries Act*, RSC, 1985, c F-14, but also because of the Fraser River Delta’s critical importance to British Columbia and Canada, especially given its recognition as a Canadian Heritage River.³ Viewed in light of the recommendations of 2012’s *Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River*, it is crucial that the direct and cumulative impacts of the Project on the sensitive Fraser River Delta be assessed by a federal environmental assessment review panel.

The Project Description also highlights a number of vulnerable marine mammals found in the Strait of Georgia that may be negatively affected by the increased marine traffic proposed by the Project. Many of these species are protected under the *Species at Risk Act*, SC 2012, c 29 (“SARA”). In particular, the grey whale (special concern), humpback whale (special concern), southern resident killer whale (endangered), and steller sea lion (special concern) are all found within the Strait of Georgia, the Salish Sea and may be affected by underwater noise caused by carriers, collisions with vessels, changes in marine water quality, and reduction in prey availability. Moreover, additional effects on the marine environment due to increased marine shipping are an inevitable consequence of any proposal of this sort and should be considered more thoroughly by a federal review panel, particularly given other increases to marine shipping that are proposed in the region, such as the Roberts Bank Terminal 2 Expansion at Roberts Bank, the Kinder Morgan Trans Mountain expansion proposal and the Fraser Surrey Docks coal port proposal – all of which would also result in increases in marine shipping.

Further, the critical significance of the wetlands of the Fraser River Delta has been recognized by the federal government for decades. Indeed, 1971’s *Convention on Wetlands of International Importance* (the “Ramsar Convention”), which Canada became a party to in 1981, highlights on its website that the Fraser River Delta is “part of the most important river delta/estuary for fish and birds on the west coast of Canada.”⁴

All of these factors indicate that not only should there be a federal environmental assessment, but a federal review panel is appropriate to ensure the Project does not cause significant harm to migratory birds, specifically given the proximity of the Alaksen National Wildlife Area and the George C. Reifel Bird Sanctuary along the Pacific Flyway. Indeed, given that the Project Description acknowledges that construction, operation, and decommissioning of the Project could damage this important habitat, a federal review panel is necessary to ensure a comprehensive environmental assessment.

Significance of Environmental Effects

Given that the review process is currently in a preliminary stage, there is not yet enough information to determine whether the environmental effects of the Project would be significant. Nevertheless, unlike BC’s *Environmental Assessment Act*, SBC 2002, c 43, *CEAA 2012* explicitly incorporates the precautionary principle and should be interpreted with it in mind. As such, given that the federal government is to protect areas of federal responsibility from significant adverse environmental effects (pursuant to s

³ http://www.chrs.ca/Rivers/Fraser/Fraser_e.php

⁴ <http://www.ramsar.org/fraser-river-delta>

4(1)(a) of *CEAA 2012*) and that the Project Description does not rule out the possibility of significant effects, a federal environmental assessment is necessary to uphold the federal government's legal obligations.

Recommendation for Review Panel Assessment

Given the potential for the Project to cause significant environmental impacts, the public interest would be best served by conducting a federal environmental assessment through a review panel process pursuant to s 38 of *CEAA 2012*. Such a review would provide stakeholders, groups, and residents of the region with more time to fully review and consider the impacts this Project could have on the Fraser River Delta, wildlife, communities, and climate change.

Substitution Request

The Organizations ask you to decline BC's request for substitution as per your authority under sections 32 and 33 of *CEAA 2012*. The Organizations are concerned that a substituted process whereby the environmental assessment is led by British Columbia is simply inadequate to the task of fully assessing the scope and scale of impacts of such potential significance, and on areas of federal responsibility. The survival and health of wildlife and their habitat—from whales to salmon to migratory birds—require diligent review using the expertise held by the federal government. Crucial differences between the provincial and federal processes in terms of public participation, the consideration of cumulative effects, and decision-making timelines indicate that a federal review panel is a more robust tool for reviewing this Project.

Opportunities for Public Participation

Although the *Memorandum of Understanding between the Canadian Environmental Assessment Agency and the British Columbia Environmental Assessment Office ("BCEAO") on Substitution of Environmental Assessments* mandates the BCEAO to provide opportunities for the public to participate meaningfully where substitution is granted, the Organizations are concerned that BC's environmental assessment process does not provide the same level of public involvement as that found in the *CEAA 2012*. Indeed, no project in British Columbia in the past 20 years has been subjected to a panel review under the *BC Environmental Assessment Act*. Further, and in particular, s 59(1) of *CEAA 2012* obliges a responsible authority to provide participant funding for members of the public to participate. BC's *Environmental Assessment Act* includes no equivalent provision and in fact, s 59(2) of *CEAA 2012*, which releases the federal government from its funding obligation to non-Aboriginal people where substitution is granted, leaves a void that undermines the public's capacity to participate meaningfully.

BC's environmental assessment legislation is also unclear regarding the extent to which members of the public will have an opportunity to provide feedback on the assessment report generated by environmental assessment process. In contrast, s 25 of *CEAA 2012* obliges the federal government to give the public an opportunity to comment on draft federal environmental assessment reports. It is currently unclear whether s 25 continues to apply in cases of substitution, and so in the spirit of providing meaningful public participation opportunities and because of the possible significance of the

environmental effects of the Project, substitution should be refused to ensure a higher public consultation standard is upheld.

Cumulative Effects

Although the above mentioned Memorandum obliges the BCEAO to take into account the requirements s 19 of *CEAA 2012* articulates regarding cumulative environmental effects, it is unclear whether the BCEAO has the same capacity as the Canadian Environmental Assessment Agency to assess the Project's effects on areas of federal jurisdiction. As outlined above and found in the Project Description, construction, operation, and decommissioning of the Project may cause significant effects to fish and fish habitat, migratory birds, Aboriginal land and rights, and species protected by *SARA*. Viewed in light of the fact this Project is being proposed at the same time as a number of other liquefied natural gas, oil, and coal projects that would increase marine traffic through the Straits of Juan de Fuca and Georgia, it is imperative that effects be assessed within this wider context—something BC's process may not do.

Reduced Timeline

The Organizations are of the view that the environmental effects on areas of federal jurisdiction could be significant—both when the Project is considered on its own and when the wider context is taken into account. In this vein, the 180-day review stage (plus 45 days for the minister to make a decision) of BC's environmental assessment process—compared to the maximum 365-day review mandated by *CEAA 2012*—is not long enough to ensure all of the possible adverse effects of the Project are found, assessed, and mitigated.

Conclusion

In this context, the Organizations believe that the public interest is best served by asking that you refuse the substitution request by BC, and refer this Project to a federal review panel as soon as possible.

Yours truly,



Karen Campbell
Staff Lawyer

cc. Kevin Washbrook, Voters Taking Action on Climate Change
Misty MacDuffee, Raincoast Conservation Foundation
Aaron Hill, Watershed Watch Salmon Society