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COMMENTS ON BUILDING A COMMON GROUND, A NEW VISION FOR IMPACT ASSESSMENT IN CANADA:

Ontario Rivers Alliance (ORA) is a Not-for-Profit grassroots organization acting as a voice for several stewardships, organizations, and private and First Nation citizens who have come together to protect, conserve and restore healthy river ecosystems.

Upon being sworn in, the Minister of Environment and Climate Change (the Minister) received a mandate letter from the Prime Minister to review the environmental assessment (EA) processes with objectives to restore public trust in EA; introduce new and fair processes; and get resources to market. In August of 2016, an Expert Panel (the Panel) was chosen to conduct this review, and ORA [presented to the Panel on the 3rd of November 2016](#), in Sudbury, and [submitted written comments, dated, 23 December 2016](#).

In general ORA is very pleased with the substantial recommendations put forward in the Panel's report, "*Building Common Ground, A New Vision for Impact Assessment in Canada*", with a focus on meeting the objectives set out by the Prime Minister's mandate letter. It is apparent that the Panel was listening carefully to those who took the time to attend the public consultation sessions and make comments; however, there are a few areas where we feel the recommendations didn't go far enough. The true test will be whether the government is willing to do meaningful justice to those recommendations set out by the Panel.

Developing the Vision:

2.1 Impact Assessment

The idea of real sustainable development that goes beyond the bio-physical environment to identify future consequences and cumulative impacts, in a process that is transparent, inclusive, informed and meaningful is badly needed. Currently only a very small fraction of projects are subject to an Individual EA; however, ORA recommends that all projects that could have negative impacts on water, air or a community should trigger an EA under the CEEA.

Having a process that uses an Impact Assessment (IA) approach, rather than the environmental assessment sounds promising; however, the devil is in the details. The real test will come when the government writes the legislation and policy – will it reflect the Panel's well-informed recommendations, or will we end up with a watered down and weakened version that continues to undermine trust and confidence?

ORA recommends that in addition to decision-making criteria, there should be clear rules concerning what trade-offs are, and are not, acceptable. These rules should ensure that environmental and human health are not traded off for economic benefits. Additionally, the ecosystem benefits of an undisturbed natural environment should be assessed and weighed against the potential benefits of the project if completed.



2.2 Cooperation among Jurisdictions

There is no doubt that cooperation is a necessity, when many times in the past proponents have worked to keep project details hidden from stakeholders for as long as possible. This has resulted in a lack of trust and confidence in the project, and especially in the proponent. However, cooperation doesn't mean surrender, there must be a bottom line for both the federal and provincial governments that cannot be crossed, and the possibility of a “no” outcome, especially when communities are placed at risk.

It is essential for all jurisdictions and levels of government to work together to achieve the five pillars of sustainability. Similarly, all levels of government have valuable expertise and resources to contribute to an IA; therefore, it is essential that they work together as a review panel, and that political meddling is kept out of the decision making process.

ORA recommends Co-operation Agreements between all levels of government, both on an overarching co-operative framework for an IA regime, as well as early-on in a project-specific and sustainability focused collaboration.

2.3 Indigenous Considerations

It is imperative that Indigenous peoples are directly involved in decision-making, are able to select their own representatives to participate in the IA process, and apply their own institutions and customs in the process.

ORA recommends that collaboration and co-management of the IA process and natural resources with Indigenous peoples are a necessity.

The Panel also recommended establishing an independent tribunal in the Commission, but also designating it as an agent of the Crown, which interferes with this independence. The Commission would be responsible for both conducting consultation and accommodation, and determining if it's adequate – this is not acceptable.

ORA recommends creating an independent tribunal to resolve disputes, including challenges to the adequacy of consultation.

2.4 Public Participation in Impact Assessment

The Panel's report is correct when it states that *“It is through public engagement and participation that social license to operate – obtaining broad public support for proposed undertakings – can be built and optimal results of IA can be reached.”* All Canadians should have a say in environmental decisions that concern them. ORA is in full agreement with the best practices recommended by the Panel.

However, ORA does not support a “substitution”, which would allow other levels of government to carry out the IA. When other agendas come into play, so do other agendas, and requirements can be watered down or lost, but it is absolutely necessary that there be consistency in how well projects are managed and mitigated.

ORA recommends that because air and water cross regional, provincial, and federal boundaries, that projects impacting on air and water should be fully managed from start to completion by federal regulators. Additionally, any regulator conducting the IA must have a culture that recognizes the value of engagement and truly respects public participants.



There is a real need for ensuring transparency, openness and credibility with the body conducting the IA.

ORA recommends that external audits, rights of appeal, and an independent tribunal to hear those appeals, must accompany participant funding, and capacity building to ensure participation is meaningful and fair.

2.5 Evidence Based Impact Assessment

It is essential that science, facts and evidence are the cornerstones of any new IA process. Too often science is ignored or pushed aside to advance a project that should never have been considered in the first place. A new approach to federal IA should rely on the precautionary principle and approach to address issues of scientific uncertainty; and the cumulative impacts of a project must be a key consideration of any potential project.

ORA supports the Panel's recommendation that IA legislation require that all phases of IA use and integrate the best available scientific information and methods.

It is also important that baseline and monitoring data is standardized and made publicly available. Accessibility and transparency will aid in building trust and confidence in future IAs. Any new federal IA legislation must also provide easy access to existing data from ongoing and past projects.

ORA supports the Panel's recommendation that IA legislation require the development of a central, consolidated and publicly available federal government database to house all baseline and monitoring data collected for IA purposes.

Implementing the Vision:

3.1 Governance Model

ORA supports the recommendations of the Panel that the NEB and Canadian Nuclear Safety Commission no longer be responsible authorities for those types of projects. Instead, that all federal assessment power and responsibility should be vested in a new quasi-judicial tribunal - an IA Commission. This model is very close to what ORA recommended in our submission, that there be a single independent assessment authority.

ORA recommends an IA Commission should handle all projects subject to an IA, and be responsible for every aspect of an assessment.

However, the Panel also recommends that the Commission have overarching self-oversight, by being responsible for ensuring the integrity of IA processes, as well as itself, through self-directed quality assurance audits. This is a problem - elected officials can be held to account through the ballot-box, whereas a Cabinet-appointed commission or board members are further removed from democratic accountability.

ORA recommends there be independent oversight of any new Commission, as well as an independent arbitration agency to handle appeals and disputes.



3.2 Project Impact Assessment

ORA is in full support of the Panel's recommendations for Project IAs, as well as the need to ensure all projects and activities are good for Canada's environment and communities.

ORA recommends that all projects and activities that could impact on air or water quality, drinking water, communities, fisheries, endangered species, or habitat should trigger an IA before any permit or approval is issued.

To facilitate meaningful public participation, Indigenous engagement and co-governance, and cooperation with provinces, the Panel has recommended an early planning stage for all assessments. This stage would involve appointing teams to conduct the assessment studies, and identifying the criteria that should guide the process and decision – and it would allow the public and Indigenous peoples to participate in planning assessments and engagement processes. **ORA supports the Panel's recommendation for an early planning stage for all assessments.**

ORA agrees that the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) must be implemented and strictly adhered to. Canada must uphold its obligations and commitments towards Indigenous peoples.

ORA recommends that the federal government adhere to its commitment to comply with UNDRIP which includes the requirement for consent from Indigenous peoples affected by a Project within their traditional territory.

3.3 Monitoring, Compliance, and Enforcement

Establishing an effective and transparent post-IA phase ensures that project implementation meets the outcomes established through the IA process. When a project is completed, the monitoring, compliance and enforcement phase is essential to minimizing impacts and achieving desired outcomes established under the five pillars of sustainability. This is where trust and confidence can be quickly destroyed if the project doesn't live up to its commitments, and would likely result in resistance to any future projects.

ORA supports Panel recommendations that decision statements use outcome-based conditions that set clear and specific standards of performance; and that IA legislation contain a formal process to amend conditions.

ORA supports Panel recommendations that IA legislation ensure sustainability outcomes are met through mandatory monitoring and follow-up programs with minimum standard requirements common to all project IAs.

ORA recommends strict and severe consequences for willful disregard of conditions of approval.

3.4 Discipline in Impact Assessment, Time and Costs

A major factor in timelines for EA processes to date has been the lack of trust, and the resulting build-up of public and Indigenous resistance to proponents and projects. This can only be turned around with a well-functioning, inclusive, thorough, open and transparent IA process. Streamlining



cannot leave out essential IA components or meaningful consultation, and each project should be considered unique.

Proponent-led project planning and consultation does not work because it encourages arrogance, secrecy, and short-cuts, which in turn breeds mistrust.

ORA recommends that a single independent authority direct the IA, and be responsible for facilitating consultation, planning and timing of projects.

3.5 & 3.6 Regional and Strategic Impact Assessment

ORA supports the Panel's recommendations that regional and strategic IAs be required on federal policies, plans, programs that would have consequential implications for a project or regional IA, as well as an IA for lands or marine areas where there is a potential for cumulative impacts, and outside of federal lands and marine areas where there is potential for or existing cumulative impacts on "federal interests", such as fisheries, navigation and Indigenous peoples.

ORA recommends going beyond the Panel's report to require strategic assessments of broad public policy issues (such as whether to pursue new oil pipelines to tidewater, or the pace and scale of development in a region. Legislation will need to set out clear criteria for when these broader assessments are required and provide incentives for both the federal and provincial governments to conduct them.

3.7 Climate Change and Impact Assessment

Climate change is one of the biggest challenges of our time, and this is all the more reason why we need a strong science-based planning framework. The Pan-Canadian Framework is a façade that is politically and job oriented, and is not authentic science and evidence-based planning.

For example, Canada's Mid-Century Long-Term Low-Greenhouse Gas Development Strategy, includes hydroelectric in all scenarios of its Pan-Canadian framework as a clean energy technology utilized to help reduce GHG emissions. As a matter of fact, the document goes so far as to state, "*Canada already has one of the **cleanest electricity systems in the world, with more than 80% of electricity generated from sources that do not produce greenhouse gas emissions such as hydro, wind, solar, and nuclear power. Canadian rivers provide immense hydroelectric generating capability, and Canada is second largest producer of hydroelectricity globally.***" This is blatantly untrue! Trust and confidence are undermined with such a misleading and disappointing claim.

The truth is that hydroelectric facilities harm the environment and, when headponds or reservoirs are flooded, can produce significant amounts of carbon dioxide and methane for decades, and possibly centuries. This important and well-studied fact has not even been acknowledged, let alone accounted for, in your Pan-Canadian Framework, even though a 2004 Environment Canada document reports, "*In contrast to the widespread assumption (e.g., in Intergovernmental Panel on Climate Change scenarios) that GHGs emitted from reservoirs are negligible, measurements made in boreal and tropical regions indicate they can be substantial*".

It is not in Canada's best interests to acknowledge that approximately 1.3% of world greenhouse gas emissions are coming from reservoirs, because it is the 2nd largest producer in the World. Therefore, science is conveniently ignored, and the Pan-Canadian Framework refers to hydroelectric as a clean and renewable source of power generation.

This is the type of approach that undermines trust and confidence in an entire government, not to mention the process, or the projects it has been assigned to assess and approve.



ORA recommends that Canada lead a federal strategic IA or similar co-operative and collaborative mechanism that considers the present and future effects of a rapidly changing climate, and that climate change must carry a heavy weight in consideration of whether a project should move forward.

ORA requests that you take our recommendations into consideration. Thank you for this opportunity to comment.

Respectfully,

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