



The Right Honourable Justin Trudeau, P.C., M.P., Prime Minister of Canada  
House of Commons  
Ottawa, Ontario  
Canada K1A 0A6  
Sent via email: [justin.trudeau@parl.gc.ca](mailto:justin.trudeau@parl.gc.ca)

August 2, 2019

**Re: Fulfilling commitments to restore lost environmental protections and credibility to environmental assessment processes**

Dear Prime Minister,

At the outset, we wish to congratulate you on the passage of Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*. We represent eight of Canada's leading environmental organizations on federal environmental (impact) assessment, collectively holding decades of experience with environmental assessment in Canada.

We were pleased to see your government's commitment to restore lost protections and introduce modern safeguards under the *Fisheries Act*<sup>1</sup> and *Navigation Protection Act*,<sup>2</sup> modernize the National Energy Board, and restore credibility and public trust in federal environmental assessment,<sup>3</sup> and have worked closely on the federal environmental assessment

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<sup>1</sup> RSC 1985, c F-14.

<sup>2</sup> RSC 1985, c N-22.

<sup>3</sup> Mandate Letters: Ministers of Environment and Climate Change, Natural Resources, Crown-Indigenous Relations and Northern Affairs, Science, Fisheries, Oceans and the Canadian Coast Guard, and Transport, at <https://pm.gc.ca/en/mandate-letters>.

review since it commenced in 2016. We believe Bill C-69 improves our current, broken environmental laws and strikes a balance among competing interests.

However, we wish to express our dismay that regulations proposed under the new *Impact Assessment Act* threaten to derail your government's attempts to achieve a number of your electoral promises and mandates. Specifically, the proposed *Regulations Designating Physical Activities* (Project List) would not only fail to restore impact assessment oversight to the vast majority of projects within federal jurisdiction; the regulations would in fact reduce it. This issue must be addressed to make Bill 69 fulfil your commitments.

Designed to ensure decision makers look before they leap, impact assessment is a planning tool that serves a unique function in environmental decision-making. As opposed to regulatory processes, impact assessment (done right) involves early and ongoing meaningful public and Indigenous engagement, consideration of alternatives to the project and alternative means of carrying it out, robustly-designed scientific baseline studies and monitoring frameworks, and iterative project design that responds to environmental and social concerns in order to enhance benefits and avoid or mitigate harms. From 1973 to 2012, it was a crucial step in federal environmental decision-making, and in better ensuring protections of such matters as fisheries and navigation.

In 2012, that changed. Among other things, the replacement of the *Canadian Environmental Assessment Act*<sup>4</sup> (CEAA) with the *Canadian Environmental Assessment Act, 2012*<sup>5</sup> (CEAA 2012) removed the requirement to assess the impacts of the vast majority of projects that involve a federal decision, proponent, funding or lands. Since 2012, multitudes of projects that affect fish, climate, navigation and other areas of federal jurisdiction have been approved – or have bypassed federal oversight entirely – without meaningful public engagement, sufficient scientific understanding, Indigenous consultation, or transparent regard to options for fostering sustainability.

Because impact assessment plays an important role in environmental protection, this dramatic reduction in the number of assessments is as much a loss of protection of fish and waterways as was the 2012 gutting of the *Fisheries Act* and the *Navigable Waters Protection Act*.

It is critical to recognize that the dramatic reduction in the application of CEAA 2012 was central to the public outcry over Bills C-38 and C-45 that resonated from 2012 to 2015, and which led to your commitments to restore lost protections, introduce modern safeguards, and restore credibility and public trust in federal environmental laws and decision-making.

Impact assessment is not a stand-alone process; it interacts with federal decisions to better ensure robust oversight, secure social licence, respect Indigenous authority and uphold the United Nations Declaration on the Rights of Indigenous Peoples. Thus, impact assessment is central to efforts to fix our environmental laws. As the Expert Panel appointed to review federal

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<sup>4</sup> SC 1992, c 37.

<sup>5</sup> SC 2012, c 19, s 52.

assessment processes recommended, the Project List should apply to all projects that are “likely to adversely impact matters of federal interest in a way that is consequential for present and future generations.”<sup>6</sup>

Thus, in order to fulfil your promises to restore lost protections and public trust, the Project List must be dramatically expanded. A Project List that fails to do so means that your commitments will remain unfulfilled. Worse, a Project List that *reduces* the number of projects subject to federal assessment – as the Discussion Paper on the Proposed Project List<sup>7</sup> suggests – will be a major step backwards, rather than forwards.

To reiterate, the *Impact Assessment Act* is only as good as its application to projects that affect areas of federal jurisdiction. As we mention above, regulatory approval processes (such as *Fisheries Act* permits) are not a substitute for impact assessment. While the *Impact Assessment Act* will ensure more meaningful assessments of projects when it applies, if it only applies to a handful of “major” projects (which appear to be randomly selected according to political, rather than evidence-based, criteria) then it will fail to restore the protections and trust lost in 2012.

We have accepted the decision to not restore all the former protections of the *Navigable Waters Protection Act* (as it was then called). We have also accepted the decision to not restore the “triggers” in CEEA that automatically required environmental assessments of projects requiring federal permits, authorizations or funding, and projects on federal lands or with a federal proponent. But we cannot accept a decision to further limit – rather than significantly increase – the number of projects that will benefit from assessment.

For example, limiting pipeline assessments to those that occur on at least 75 km of a new right-of-way incentivizes proponents to game the system by routing them along transmission line, highway and other corridors, meaning that potentially significant pipelines proceed without assessment. By our calculations, increasing thresholds of mining projects will result in a 30% reduction of assessments of those projects, with no regard to how assessments of smaller mining projects result in greater social buy-in and project design. Similarly, a project list that fails to include a GHG trigger for high carbon projects (as the 2018 Discussion Paper had initially proposed) simply cannot stand in an era of climate emergency.

We are keenly aware of the upcoming federal election, and consequent closing of a window of opportunity for dramatic action on the Project List. Therefore, we recommend a two-step process for ensuring that your government fulfils its environmental law commitments:

1. When the Project List is published in the *Canada Gazette*, Part II this summer:
  - a. Maintain the current thresholds for mines, pipelines and other projects that the Discussion Paper proposes to increase; and

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<sup>6</sup> Expert Panel, *Building Common Ground: A New Vision for Impact Assessment in Canada* (2017), online: <https://www.canada.ca/content/dam/themes/environment/conservation/environmental-reviews/building-common-ground/building-common-ground.pdf>.

<sup>7</sup> Government of Canada, *Discussion Paper on the Proposed Project List* (2019), online: <https://www.canada.ca/content/dam/themes/environment/conservation/environmental-reviews/project-list-en.pdf>.

- b. Add a trigger for all projects that require a permit under section 35.1(3) of the *Fisheries Act*, and all works designated as “major works” under the *Canadian Navigable Waters Act* that require a permit under section 7 of that Act;
2. Commit to enhancing the Project List following the October election through a transparent, evidence-based process that seeks to restore the protections lost through the lack of impact assessments and identify new project types, such as high-carbon projects, with implications on sustainability that should be subject to the *Impact Assessment Act*.

We thank you for your environmental commitments, and look forward to working further with your government to ensure they are fulfilled.

Yours sincerely,



Anna Johnston  
Staff Lawyer,  
West Coast Environmental Law



Cédric Gagnon Ducharme  
President, Board of Directors  
Centre québécois du droit de  
l'environnement



Devon Page  
Executive Director,  
Ecojustice



Stephen Hazell  
Director of Policy and General Counsel,  
Nature Canada



Jamie Kneen  
Co-Manager,  
MiningWatch Canada



Tim Gray  
Executive Director,  
Environmental Defence



Lindsay Telfer  
National Director,  
Canadian Freshwater Alliance



Justina Ray  
Executive Director,  
Wildlife Conservation Society Canada

cc:

The Honourable Catherine McKenna, P.C.,  
Minister of Environment and Climate Change  
House of Commons  
Ottawa, Ontario  
Canada K1A 0A6  
*Sent via email:*  
[Catherine.McKenna@parl.gc.ca](mailto:Catherine.McKenna@parl.gc.ca)

The Honourable Amarjeet Sohi, P.C., Minister  
of Natural Resources  
House of Commons  
Ottawa, Ontario  
Canada K1A 0A6  
*Sent via email:* [Amarjeet.Sohi@parl.gc.ca](mailto:Amarjeet.Sohi@parl.gc.ca)

The Honourable Jonathan Wilkinson, P.C.,  
Minister of Fisheries and Oceans Canada  
House of Commons  
Ottawa, Ontario  
Canada K1A 0A6  
*Sent via email:*  
[Jonathan.Wilkinson@parl.gc.ca](mailto:Jonathan.Wilkinson@parl.gc.ca)

The Honourable Marc Garneau, P.C., Minister  
of Transport Canada  
House of Commons  
Ottawa, Ontario  
Canada K1A 0A6  
*Sent via email:* [marc.garneau@parl.gc.ca](mailto:marc.garneau@parl.gc.ca)

The Honourable Carolyn Bennett, P.C.,  
Minister of Crown-Indigenous Relations and  
Northern Affairs  
House of Commons  
Ottawa, Ontario  
Canada K1A 0A6  
*Sent via email:* [carolyn.bennett@parl.gc.ca](mailto:carolyn.bennett@parl.gc.ca)

The Honourable Kirsty Duncan, P.C., Minister  
of Science and Sport  
House of Commons  
Ottawa, Ontario  
Canada K1A 0A6  
*Sent via email:* [kirsty.duncan@parl.gc.ca](mailto:kirsty.duncan@parl.gc.ca)