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Headwaters Initiative



Healthy Oceans. Healthy Communities.



August 17, 2009

VIA FAX TO: 613-941-6900

**Rt. Hon. Stephen Harper, P.C., M.P.
Prime Minister of Canada
House of Commons
Ottawa ON K1A 0A2**

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Ottawa ON K1A 0E4**

Attention: Hon. Lisa Raitt

VIA FAX TO: 819-953-0279

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Minister's Office (TLC)
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Gatineau QC K1A 0H3**

Attention: Hon. Jim Prentice

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**Fisheries and Oceans Canada
Minister's Office, Centennial Tower
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Attention: Hon. Gail Shea

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**Transport Canada
Minister's Office
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Attention: Hon. John Baird

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**Indian and Northern Affairs Canada
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Gatineau QC K1A 0H4**

Attention: Hon. Chuck Strahl

Dear Prime Minister, Ministers,

We are a coalition of community and conservation groups in British Columbia, committed to protecting the environment, economy and communities of northern BC and Canada's Pacific North Coast. We are also committed to ensuring that decisions on projects that have the potential to harm the environment are taken only after a process that considers all of the relevant information about the project's potential impacts and effects. The Enbridge Northern Gateway Pipelines proposal to move crude oil and natural gas condensate 1200 km through twin pipelines between Alberta's tar sands to the coast, and by tanker through extremely dangerous inside coastal waters, raises significant environmental, sociocultural, legal and economic issues. In our view, a project of such sweeping magnitude calls for a decision-making process that is similarly broad in scope – one that honours the

laws and responsibilities of First Nations, addresses the perspective of all affected communities, and considers the project in the context of the much larger policy questions that are raised by the prospect of an oil pipeline and oil tankers on the coast.

We have heard this concern with increasing urgency from many citizens in all parts of BC. We know Enbridge has heard this concern as well. We also know that, as of today's date, the federal government has received over 2,000 comments from the public and from First Nations, expressing concerns about the JRP's mandate – a record number of comments more than seven times the usual maximum number, according to the Canadian Environmental Assessment Agency ("CEAA"). Most of these people are calling for a comprehensive public inquiry into this project. Our organizations agree. The government should not proceed with its joint review panel ("JRP") environmental assessment process, which is inadequate for a project of this magnitude and which will not permit the federal and provincial governments, First Nations governments, and communities to make an informed decision on this massive project that will forever alter the face northern BC and Alberta, and Canada's Pacific North Coast. An informed decision on this project can only be taken after a full public inquiry that considers the critical, strategic-level policy questions raised by this proposal. Some of these broader policy questions are:

- the development of the tar sands and their role in Canada's energy future;
- the impact of this pipeline project and the tar sands on Canada's greenhouse gas emissions, water, and land;
- the significant risks posed by lifting the moratorium on oil tanker traffic in Canada's dangerous Pacific North Coast waters; and,
- the cumulative impact of pipeline and tanker traffic through the future further development that they will potentially enable.

In this letter, we will elaborate on the shortcomings of the JRP and the features that a genuine and full public inquiry should have, guided by Canada's historical experience with public inquiries on pipeline projects.

Historical background – major pipelines, oil tankers, and public inquiries

A public inquiry for major federally-regulated pipeline projects is a concept with some history in Canada. When an oil pipeline to Kitimat and oil tanker traffic along Canada's Pacific North Coast were previously being considered, the federal government established a process to inquire broadly into the policy questions raised by the project. In 1976, the West Coast Oil Ports Inquiry, under Commissioner Dr. Andrew Thompson, was appointed. The inquiry was not only charged with a comprehensive regional assessment of the Kitimat oil port project, and the potential adverse environmental, social, and navigational safety impacts. Its terms of reference also required it to explore the broader concerns of Canadians about oil

tanker traffic on the west coast. At the same time, an “energy policy assessment” was planned to ask whether an oil port was needed as part of Canada’s long term energy policy, to look at alternative means by which Canada’s energy needs could be met, and to consider whether Canada needed an oil port on the west coast.¹ As Dr. Thompson himself stated, the risk of a major oil spill was so great that: “this Inquiry is not merely about the mitigation of adverse environmental, social, and navigational safety impacts – it is about whether an oil port should be built at all!”²

Before the Inquiry could complete its work, the proponent withdrew the Kitimat proposal. The federal government anticipated that there could be another northern BC pipeline and oil port proposal in the future. When the Inquiry was adjourned, the government made it clear that the Oil Ports Inquiry would be reactivated.³ Dr. Thompson, in his report, stated that if a future pipeline and port were built without a full inquiry, “the concerns of British Columbians about the risks of oil spills would have been given short shrift. Such an outcome is not the kind that binds the country together.... The people of British Columbia are entitled to better treatment.” Earlier in the 1970s, the federal government was also considering a proposed natural gas pipeline in the Northwest Territories and Yukon – through the Mackenzie River Valley from the Beaufort Sea to Alberta. That project, like the Enbridge project, ran 1200 kilometres through the traditional territories of many First Nations.

Because of the massive scope of the project, in 1974, Ottawa established a public inquiry headed by Mr. Justice Thomas Berger to examine its potential environmental impact, and the social, cultural and economic effects on northern communities. It looked at the cumulative impact of the project in the broadest possible terms, understanding that the construction of a pipeline and energy corridor would intensify oil and gas exploration all the way along its length, and would mean immense and irreversible changes to the Western Arctic.⁴ As Mr. Justice Berger said in one of his rulings: “this inquiry is not just about a gas pipeline; it relates to the whole future of the North.”⁵

For three years, Mr. Justice Berger held hearings in every affected community, to listen to the voices of citizens speaking in their own communities and in their own ways. Communities were empowered to participate, and were provided with resources so that they could participate effectively and gather community evidence. The Inquiry’s hearings were open and inviting to everyone who wanted to participate, not just lawyers and experts.⁶ Of course, the oil and gas industry participated too. No topic relevant to the effects of the project on the people, ways of life, economy or environment of the North was out of bounds. It was a truly

¹ Andrew Thompson, *West Coast Oil Ports Inquiry: Statement of Proceedings*, February 23, 1978, at pp. 1 and 98, and in the Commissioner’s “Letter of transmittal”.

² Thompson Inquiry at p. 1.

³ Thompson Inquiry, “Letter of Transmittal”.

⁴ *Ibid.*

⁵ Berger, Vol. 2, App. 2, Preliminary Ruling 1 at 242.

⁶ Doelle, *The Federal Environmental Assessment Process: A Guide and Critique* (Markham, ON: LexisNexis Canada, 2008) at 8.

comprehensive inquiry with not only the power, but the imperative, to examine all of the impacts of the project.

The inadequacy of the Joint Review Panel process for environmental assessment

Today's federal environmental assessment process has been influenced by these inquiries. The *Canadian Environmental Assessment Act* is a law that requires social, economic and cultural factors to be considered along with both the direct and cumulative environmental effects of projects and activities. The JRP being used to assess the Enbridge pipelines also includes opportunities for public participation, assisted in some cases by participant funding. Environmental assessment legislation today is an essential tool intended to ensure that projects receive precautionary scientific scrutiny before they may proceed with regulatory approvals.

However, in significant ways, Canada's current environmental assessment regime for projects like the Enbridge Northern Gateway pipeline lags far behind the example that was set by the Berger and Thompson Inquiries more than thirty years ago. Canada's environmental assessment legislation, and the JRP process in particular, does not consider the "big picture" implications that Mr. Justice Berger and Dr. Thompson identified. Citizens often find that the issues of greatest concern to them are beyond the scope of the assessment.⁷ These larger issues must be considered in order for Canadians, their governments, and First Nations to make informed decisions about whether this pipeline fits into our future.

While a review panel is the strongest form that the regulatory process provides, its numerous critical limitations make it, in our view, inadequate for a project with such dramatic potential environmental consequences as this one.

Consultation with Aboriginal Peoples

The project proposal engages the jurisdiction and lawful authority of about seventy Aboriginal Peoples along or in the vicinity of the pipeline and tanker route, from the Dene, Cree and Métis peoples of the Athabasca River basin in the east to the Haida in the west, as well as the many more who rely on the health of the Kitimat, Fraser, Skeena, and Mackenzie Rivers and their tributaries.

We share the significant concerns of many Aboriginal Peoples along the pipeline and tanker route, and upstream and downstream of the pipeline route, as to whether the decision-making process proposed by Ottawa is consistent with its constitutional duties to Aboriginal Peoples. We note, for example, that the federal government decided on its approach to Crown consultation on the Enbridge Northern Gateway Pipeline, including the decision to proceed by way of JRP and to rely principally on the JRP to fulfill its duties of consultation and accommodation without any consultation with or agreement from Aboriginal Peoples. This does not appear to us to be a course of action consistent with the honour of the Crown, or the spirit of

⁷ Doelle at 29.

recognition and reconciliation. It also appears, from CEEA's and the NEB's documents outlining the consultation process, that the Crown intends to rely unduly on Enbridge to fulfill its duty to consult.⁸

Opportunity for a model process on the Enbridge pipelines – features of a public inquiry

The draft JRP agreement and terms of reference have not yet been finalized. The federal government has an opportunity to create a model process to assess this project, working in partnership with First Nations. The environmental assessment process for this pipeline must be changed in order to address the flaws outlined above.

We are proposing that a public inquiry be established, with the terms of reference to be developed in collaboration with First Nations, which will comprehensively address all of the policy questions that a project of this massive scope raises as set out below. This public inquiry should occur alongside a government-to-government process designed collaboratively with First Nations to fully address all potential impacts on their constitutionally protected rights. The relationship between the two processes should be discussed and agreed upon with First Nations along the tanker and pipeline routes.

We have referred to the Thompson and Berger Inquiries as case studies. While any public inquiry today should be no less comprehensive than those ones were, today's terms of reference would need to reflect our current understanding of the risks and issues associated with tar sands oil production, and pipeline and tanker infrastructure, such as the connection to climate change.

At a minimum, a public inquiry should have a number of features. Clearly, it must be conducted independently of both the government and Enbridge. Given the scope of the inquiry, a multi-member commission would be sensible. Ideal candidates for commissioner positions could include First Nations representatives, and esteemed current or former justices of the courts of British Columbia, with well-known reputations for intelligence, perception and balance.

The inquiry should have more than ample financial resources in order to conduct thorough research, to hold wide-ranging hearings accessible to affected communities, and to provide funding for intervenors, such as citizens groups, conservation groups, and First Nations, to fully participate. This is what was done in the 1970s, the last time a supertanker port was under consideration for Kitimat.

No pre-determined outcome. A public inquiry needs to be able to fully consider whether or not oil pipelines and oil supertankers are a good fit for BC's future. It should not be based on an assumption that the project is going ahead, and limit the discussion to

⁸ Canada, National Energy Board, "Consideration of Aboriginal Concerns in National Energy Board Decisions", July 2008; Canada, Canadian Environmental Assessment Agency, "Approach to Crown Consultation for the Northern Gateway Project", February 2009.

how the pipeline should be built, and *how* to make tanker traffic less risky. After thoroughly examining all of the implications of the project, and listening to communities, industry, and First Nations, a public inquiry needs to have the freedom to conclude ‘yes’ or ‘no’ about whether or not the project should proceed at all.

Comprehensive scope. We are of the view that this public inquiry should serve as the review for the Enbridge project. In addition, however, it must be structured as a more broad inquiry to consider the “big picture” policy issues that have to be resolved to ensure that an informed decision can be made about the pipeline. The policy questions and the project-specific questions should not be treated as separate phases. The Enbridge project can only be properly analyzed and understood in the context of these broader questions, rather than in isolation. For example:

1. The inquiry should consider BC’s and Canada’s energy future, and whether it is sensible to build a crude oil pipeline to ship tar sands oil through BC, particularly at a time when we must begin the transition away from fossil fuels.”.
2. The inquiry should consider the impact of tar sands expansion, and related pipeline infrastructure, on climate change and Canada’s international commitments to reduce greenhouse gas emissions. The tar sands are Canada’s fastest growing source of greenhouse gas emissions. The dramatic growth of the tar sands is driving the perceived need for additional pipelines, and is accelerating impacts on water, air, and land. For these reasons, climate change and the impacts of tar sands development should be a critical factor in making a decision on the Enbridge pipeline proposal. The inquiry must also account for our emerging, though incomplete, understanding of the dramatic health and environmental impacts of the tar sands.
3. The inquiry should consider the significant risks associated with lifting the existing oil tanker moratorium, and whether oil tanker traffic should be allowed at all in BC’s sensitive inside waters. Even a minor oil spill on the coast could dramatically affect coastal communities, the fishing and tourism economies, human health, and cause severe and lasting damage to wildlife and the environment. Despite advances in shipping technology, serious oil spills continue to occur at an alarming rate worldwide.
4. The inquiry should consider the cumulative impacts of other energy and resource development projects, and additional coastal shipping that might result if this project goes ahead. This consideration must include, for example, one of the most obvious cumulative impacts: the current provincial plans to transform northern BC into an “energy corridor” comprised of multiple oil, gas and hydroelectric exploration, development and transmission projects. The Enbridge project is a keystone element of the plan for an energy corridor, for which each component project is likely to require a host of federal approvals.

If consideration of the “big picture” questions is left out of the environmental assessment process, then the federal government will be in the dark when it makes its decision about the pipeline – and First Nations governments and the public will be in the dark too. That is an irresponsible way to make such a major decision about Canada's energy future, and about this project.

Canadians deserve a decision-making process for the Enbridge Northern Gateway Pipeline that is independent, comprehensive, and has the freedom to decide if the proposed oil pipelines and supertankers are right for BC and Canada's Pacific North Coast. That's why a record number of Canadians have written to the federal government to express their concerns about the environmental assessment of the Enbridge project. We are asking the federal government to discontinue the JRP environmental assessment, and to establish a new model: a comprehensive public inquiry alongside a true government-to-government decision-making process between the Crown and First Nations. With such a process in place, it would be possible for Canadians, First Nations, and their governments to make the right decision on this project, and Canada's energy future, together.

Sincerely,

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