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Submission to the House of Commons Standing Committee on Finance (FINA) Regarding Bill C-9, An Act to implement certain provisions of the budget tabled in Parliament on March 4, 2010 and other measures

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Thank you for the opportunity to speak today to what we believe is a matter of urgent national importance, specifically the amendments to the Canadian Environmental Assessment Act contained in the Budget implementation bill, C-9.

I am here representing MiningWatch Canada. MiningWatch is a pan-Canadian coalition of twenty environmental, Aboriginal, social justice, development, and labour organizations that advocates for responsible mining practices and policies in Canada and by Canadian companies operating internationally. Environmental assessment is one of the areas that MiningWatch has worked closely on for the eleven years that it has been in existence, in terms of policy development as well as working directly on a number of project-specific environmental assessments.

One of the most surprising aspects of this work has been the level of interest from the public. Communities potentially affected by mining projects are very interested in the assessments of those projects, but so is the broader public, and we receive a constant stream of enquiries and requests for information and assistance. Environmental assessment (EA) is sometimes seen as a somewhat technocratic and esoteric process. It can certainly be complex and inaccessible. Yet people are adamant that we need strong and consistent EA processes, and they willing to invest considerable time and energy in trying to understand the process and participate effectively in project assessments. They tell us what an important part of working together for sustainable development it is.

On January 21 of this year, not four months ago, the Supreme Court of Canada unanimously decided a case brought by MiningWatch Canada over the federal government's handling of the proposed Red Chris copper-gold mine in British Columbia. The Court ruled that the federal government cannot assess only part of a project, or split projects into artificially small parts to avoid rigorous environmental assessments. The ruling guaranteed that the public would be consulted about major industrial projects, including large metal mines and tar sands developments. The bill before you today includes amendments to the Canadian Environmental Assessment Act (CEAA) that would effectively reverse the Supreme Court ruling.

Before I focus on this aspect of the proposed changes I'd like to comment on the underhanded and cowardly use of the Budget to introduce such measures, which by any measure have precious little to do with the budgetary process, and thus avoid public and Parliamentary scrutiny. If the government had the courage of its convictions it would submit its proposals to extensive public consultation and due process in Parliament. Instead, it has hidden them in the middle of a huge and complex budget package. As you are no doubt aware, the statutory seven-year review of CEAA is due to begin next month, and we were – and are – looking to that process to discuss and develop much-needed improvements to the Act. To bring in major changes to the Act, unannounced, at this time and using this mechanism is nothing short of an expression of outright contempt for the Canadian public and Parliament itself.

Let's look at the substance of the proposed measures contained in Section 20. The inclusion of last year's regulatory amendments, including the "Adaptation Regulation" as legislative changes simply compounds the serious errors those amendments represented from the outset. It reflects an outmoded and obsolete mode of thinking about environmental assessment, as if it were somehow antagonistic to development. This is a pre-Bruntland and perhaps even pre-Rachel Carson notion that environmental protection, including environmental assessment, is simply a brake on development. In fact EA is a complementary element of a comprehensive approach to sustainable and lasting development. EA should impede and either correct or stop badly-planned and unsustainable development projects, but it should also facilitate, encourage, and promote sustainable development and sound planning and decision making processes. Other witnesses have addressed or will address these changes in detail, so I will not go into the specifics.

I would like to focus specifically on the proposed changes to Section 15 of the Act. As I mentioned earlier, the proposed changes to Section 15 of CEAA would render irrelevant much of the Supreme Court's ruling in the MiningWatch case, regarding the proposed Red Chris mine. With support from Ecojustice and the broader environmental community we fought through the courts for three and a half years, all the way to the Supreme Court, to try to correct profound deficiencies in the application of CEAA. It is with great dismay that we now see those same deficiencies being deliberately recreated, only now in the text of the Act itself.

The core of the court case involved two closely-related problems: the splitting of the project into components that on their own would not trigger a Comprehensive Study; and the subsequent denial of public participation in the reduced environmental assessment. The Supreme Court judgement is very clear that this 'project-splitting' was an erroneous interpretation of the discretion provided to so-called Responsible Authorities under the Act. The Supreme Court judgment is equally clear that this is not a matter of semantics or legal hair-splitting, but has to do with the logic and integrity of the Act and the environmental assessment process itself. Doing an environmental assessment of only part of a major industrial project may improve environmental protection or mitigation for that part of the project, but it does nothing to address the contribution to sustainable development of the project as a whole, nor does it allow for any investigation into the cumulative or transboundary effects that the project may occasion.

And yet the proposed amendments would specifically allow the Minister to make the kind of illogical and counterproductive determinations that got us into this problem in the first place. What's most unfortunate about this is that it won't address the actual issues with the Act that it is supposed to resolve. There is in fact a structural problem with the way CEAA is framed that creates delays through late triggering of an environmental assessment. By the time a permit or licence application is filed, triggering CEAA, a project can be well along in its planning stages. The Major Projects Management Office was created just over two years ago to help resolve this contradiction by identifying projects earlier on. It's hard to determine at this relatively early point how effective it is.

More recently, the Supreme Court decision on Red Chris should also help eliminate delays by clarifying the decisions that Responsible Authorities are required to make under the Act. The Department of Fisheries and Oceans, for example, does not have to spend months and months trying to figure out how to avoid triggering an EA, or how to reconfigure a project proposal to avoid a comprehensive study, if it simply accepts the project as proposed and assumes its responsibility. By the same token, if there is a clear mandate behind the federal involvement in joint processes with other jurisdictions, then there is no need for protracted negotiations around the EA process itself. By putting arbitrary Ministerial discretion on scoping into the Act, the proposed changes will essentially recreate the situation that we fought to clarify through the courts.

MiningWatch Canada has always pressed for a strong federal role in environmental assessment, partly because of the consistency and accessibility it brings, but primarily because of the federal jurisdiction on a number of critical areas. Let me provide a concrete example. The proposed Prosperity copper-gold mine in British Columbia is undergoing both a provincial assessment and a panel review under CEAA. If the project were to proceed as presented it would:

- Drain the beautiful, culturally important and rainbow trout-filled Teztan Biny (Fish Lake);
- Elimate cultural sites dating to at least 5,500 years ago;
- Create an open pit 500 m deep and 1600 m in diameter;
- Generate 480 million tonnes of tailings and 328 million tons of waste rock;

- Deposit waste in the Upper Fish Creek watershed eliminating the creek, Little Fish Lake, and terrestrial habitat for grizzly bears;
- Create a reservoir adjacent to the tailings impoundment in order to compensate for the permanent loss of fish habitat; and
- Create a permanent environmental liability in the headwaters of the Fish Creek, a tributary of the Taseko and Fraser Rivers;

MiningWatch has a number of concerns regarding the project including:

- The fact that the unanimous opposition to the project, and in particular to the destruction of Teztan Biny, from local First Nations and the BC Council of Indian Chiefs is not being respected;
- The permanent destruction of productive aquatic ecosystems;
- The lack of consideration of social impacts on the most vulnerable people;
- The proposed habitat compensation plan is poorly conceived;
- There are worrying gaps in the data used to develop the water balance;
- Long term risks to the environment and especially to important aquatic habitats downstream.

The federal review panel has been hearing evidence from the affected communities, independent fisheries experts, and social scientists. Serious shortcomings in the proponent's proposals have been identified and are being reviewed. Meanwhile, the provincial review has been completed and the project has been approved by the BC government. The only major additional requirement imposed by the province was the creation of a new lake as a replacement for the destruction of Fish Lake and Little Fish Lake – a plan that has been roundly criticised by fisheries experts, including the Department of Fisheries and Oceans.

If it weren't for the federal review, there would be no meaningful consideration of significant issues around the project's impacts on water and fisheries, and the interests of the Xeni Gwet'in First Nation and the Tsilhqot'in National Government.

The pictures attached here are of Teztan Biny (Fish Lake) which would be drained to make way for the Prosperity mine, and for comparison, the existing Kemess copper-gold mine in north-central BC.

The Canadian Environmental Assessment Act is a critical element in Canada's legal framework for sustainable development and environmental protection. It has its strengths and shortcomings, but there are also processes established to build on those strengths and address those deficiencies, and they should be used to their fullest. Substantially weakening the Act will deprive Canadians of one of the best – and in some cases one of the only – tools to ensure that vested interests and poorly-considered projects do not compromise environmental, social, and economic sustainability.