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Re: **Strengthening the *Reviewable Projects Regulation* ("RPR")**

Thank you for the opportunity to comment on BC's *Reviewable Projects Regulation Intentions Paper* (the "RPR Intentions Paper") as part of the new BC Environmental Assessment Act (EA).

While the new *Act* made a number of improvements, we believe that the regulations need to meaningfully change in order to further increase its ability to avoid environmental harm, increase transparency and restore public confidence in the process. Given our focus on mining reform issues, we are commenting on the RPR Intentions Paper primarily through that lens.

1. Production Capacity Thresholds:

In terms of metal mines, the project threshold is being proposed to remain at 75,000 tonnes/year of production capacity. However, in the *What We Heard So Far* Appendix, it is being suggested that production capacity would not include the waste material generated while mining (B.C. Court of Appeal Decision - *Fort Nelson First Nation (FNFN) v. BC (EAO)* - December 2016)¹. One of the biggest environmental issues and risks with mining is waste material, which often contains toxic substances that are a threat to the environment and waters, and which command to be safely contained, managed and monitored in perpetuity. The risks to the public and the environment relate as much to the volume of this waste material, as to its content, location, and disposal methods.

Until 2002, the production threshold for mineral mines was 25,000 tones per year of ore. We propose going back to that threshold. Since 2002, this would have captured an additional four mines for review². Importantly, it would have triggered a review of the

¹ What We Heard So Far. BC Government. September 2019. Page 2.

https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/environmental-assessment-revitalization/documents/rpr-engagement/appendix_ii_what_we_heard.pdf

² **When Should Projects Get an Environmental Assessment?** Gavin Smith, West Coast Environmental Law. September 2019. Page 17. https://www.wcel.org/sites/default/files/publications/backgroundunderreviewable_projects_regulation-9_17_2019.pdf

Banks Gold Yellow Giant Mine that fell short of the 75,000 tonnes/year threshold by only 2,000 tonnes. This mine released tailings and effluent into the water, forest and wetlands, and was shut down in 2015 due to non-compliance with the *Mines Act*³. The company went bankrupt shortly after, and the BC Government stepped in to remediate (without having collected an adequate mine reclamation bond to cover the costs). This project potentially never would have started operating if it had had to go through an EA, which would have been better for the environment, tax payers, and Gitxaala who relied on this area for fishing.

Proposed change: Lower threshold for placer mining

As recognized in the RPR Intentions Paper, no placer mines have ever entered the EA process. Given that, the EAO is proposing to lower the threshold for placer mines from 500,000 to 250,000 tonnes of pay dirt per year. However, it is still unclear whether this new threshold will trigger any EAs for placer mines. The Ministry for Energy and Mines and Petroleum Resources (MEMPR) was unable to provide data on pay dirt or identify the five largest placer mines according to either pay dirt or land disturbance. To our knowledge, data on pay dirt is currently not systematically recorded or easily accessible. If there is no data, how will the BC government evaluate if a proposed placer mine meets the production threshold to be a reviewable project under the RPR?

At the same time, the amount of placer mining activity in BC has increased dramatically in recent years, with approved machine-excavation operations almost tripling since 2005⁴. It is important to get placer mines into the EA process in order to assess cumulative effects, in particular on waterways given riparian operations. While it is acknowledged by the EAO that other work is being done on the regulatory framework for placer mining, it is important to find agreement between MOE and MEMPR on the best metric and ensure it is actually being measured. Without it, placer mines will continue to be permitted without ever going through an EA, despite their potential impacts and size. The Yukon conducts numerous EAs on placer mines, so it clearly can be done.

Proposed change: Clarity of definitions

As stated above, waste materials are a major issue with mining and more of a reason to conduct an EA than just mineral ore under the proposed definition. If the 75,000 tonnes/year threshold remains, then we would prefer to see the definition clarified to include waste material generated, including tailings, waste rocks and other waste materials to be disposed of, and managed in the province. As stated above, risks and impacts of mining are closely tied to what is extracted and left behind as waste materials, more so than what the proponent sells to external markets.

³ Ibid

⁴ Placer mines that use machinery to excavate and require a provincial Notice of Work to operate almost tripled in a decade, from 187 mines with an active permit in 2005 to 542 in 2016. Smaller-scale placer hand mining has also increased, from 1888 claims reporting work in 2005 to 2917 claims reporting work in 2015. The prevalence of hand panning, which requires no mineral claim or permit, is unclear. See Fair Mining Collaborative, "BC Placer Mining: High Environmental Impacts vs Low Economic Return" (March 2017), online: <www.fairmining.ca/wp-content/uploads/2018/03/BCPlacer_Environment_Economic.pdf>

Production Capacity Threshold Recommendations:

- Restore the 1995 thresholds for mineral mines and coal mines, namely 25,000 tonnes/year of mineral ore for mineral mines and 100,000 tonnes/year production of coal.
- Include waste material in the definition of mineral ore mined.
- Ensure that the placer mining threshold is based on metrics actually collected by MEMPR and provide data to evaluate what threshold might trigger placer mines.

2. Impact-based thresholds:

There was an opportunity to comment on the EA Discussion Paper in July 2018 and a “What We Heard” document captured those comments including: “We heard from many commenters that more projects should require an EA (both in type, and size).”⁵ There was also recognition that many wanted to shift from production-based triggers to ones based more on impact. It was acknowledged that these would be addressed in the Reviewable Projects Regulation.

We welcome in principle the introduction of impact-based triggers, however are concerned about the high and quite permissive thresholds currently being contemplated, which would allow too many projects to proceed without an EA. The RPR Intentions Paper outlines four impact-based thresholds that would require assessment of a project in a listed category: (i) clearing more than 600 hectares of land; (ii) clearing corridors of land more than 60 kilometres in length; (iii) directly emitting more than 382,000 tonnes of greenhouse gases per year (i.e. more than 1% of BC’s 2030 climate target); or (iv) overlap with a prescribed protected area. To our knowledge, none of the current or past operating mines in B.C., or proposed expansion projects, meet any of these thresholds. Yet, the impacts they have on, and the risks they bring to the environment and affected communities are very real and should be fully assessed.

As such, we support the recommendations by West Coast Environmental Law (WCEL) to reduce these impact-based triggers to: a threshold of 50,000 tonnes of GHGs per year, or at absolute minimum, the threshold should require assessment of any project that exceeds 1% of BC’s 2050 climate target – and apply it to any project that crosses the GHG threshold, not just those projects that are already listed in the RPR; and lower the land disturbance threshold for prescribed projects to 75 hectares⁶.

British Columbians value water, and yet there is no impact-based threshold for watershed or groundwater impacts. In the *What We Heard So Far* appendix, the EAO’s response was that “inflow stream flow requirements and mean annual or seasonal flow vary therefore are not being considered as reviewability thresholds; however, these may be assessed as

⁵ Environmental Assessment Revitalization: What We Heard. BC Government. September 2018. Page 13.

⁶ Gavin Smith. WCEL. September 2019.

https://www.wcel.org/sites/default/files/publications/backgroundreviewable_projects_regulation-9_17_2019.pdf

part of an EA, and are assessed during the licence application process under the WSA”⁷. It then goes on to say: “The EAO acknowledges that there is greater potential for environmental impacts if a project is located over or next to a water body deemed to be protected, recorded or sensitive; however, the protected, recorded or sensitive status of water bodies is not always permanent, leading to uncertainty when trying to determine whether a proposal is reviewable.”⁸ However, EAO states that these can be mitigated in the EA process or through authorizations when EAs are not required. Regardless of whether a water body is permanently or only temporarily protected, or whether annual and seasonal flows vary, impact-based threshold for water bodies need to be included to minimize cumulative effects.

A potential solution for addressing cumulative effects or relatively pristine areas, is noted in the EAO RPR Intentions Paper: “One of the ways in which reviewable projects may be categorized is on the basis of geographic location. We have heard from some interested parties that they would like to see this authority used more frequently to modify project design thresholds on a regional basis. This would provide a tool to account for specific context of the human or physical environment in a particular location.”⁹ This could also ensure compliance with land-use plans. The EAO proposes to explore this idea of regional thresholds at a later date. We support the proposal of WCEL to establish a request-and-response provision in the RPR that would provide an opportunity for Indigenous nations and the public to call for lower thresholds in a watershed or region¹⁰.

Lastly, while not part of the RPR and set to have its own regulations, we do also recommend that regional assessments evaluate cumulative effects and identify management objectives and ecological limits, and that these are applied to project-level assessments and operational decision-making.

Impact-based threshold recommendations:

- Lower the GHG emissions threshold to 50,000 tonnes GHGs per year, or at least 1% of 2050 climate target, and lower the land disturbance threshold for prescribed projects to 75 hectares;
- Add an impact-based threshold for water bodies, and remove the provision exempting water uses approved under section 10 of the *Water Sustainability Act* from the assessment requirement for water withdrawals.
- Establish an enabling provision for regional thresholds. WCEL suggests: “Provide an ability for another jurisdiction (including Indigenous nations and local governments) to request that the Minister recommend to Cabinet that one or

⁷ BC Government. What We Heard So Far. September 2019.

⁸ Ibid. Page 21

⁹ BC Government. Reviewable Projects Regulation Intentions Paper. Page 27. September 2019.
https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/environmental-assessment-revitalization/documents/rpr-engagement/reviewable_projects_regulation_intentions_paper_final.pdf

¹⁰ Gavin Smith. WCEL. September 2019. Page 20.

https://www.wcel.org/sites/default/files/publications/backgroundunderreviewable_projects_regulation-9_17_2019.pdf

more thresholds in the RPR (for project design, impacts or notification) be lowered in a region impacting that jurisdiction, in order to account for cumulative impacts, a particularly sensitive area or important habitat, with a requirement for the Minister to issue a public response to that request.”¹¹

3. Proposed notification thresholds:

These are welcome additions, in particular when projects are within 15% of the production threshold. However, they do only lead to notifications to the Minister and do not necessarily trigger an EA for potentially risky projects. One reasonable solution for managing this risk would be to set *expansion* project thresholds (typically 35 or 50% expansion in surface area for the initial permit in other jurisdictions or federally for mining)¹², including any expansion project surpassing the regulated threshold. There should also be a notification threshold for multiple, but interconnected proposals from the same proponent to avoid project splitting.

Notification thresholds recommendations:

- Set expansion project thresholds, including 35 percent expansion in surface area for mines, and for any expansion of a project that would cause it to exceed the regulated threshold.
- Set a notification requirement for proponents who have more than one interconnected proposal that together exceeds a production or impact-based threshold.

We hope that the above inputs help to strengthen the *Reviewable Projects Regulation* for BC's new *Environmental Assessment Act*.

Sincerely,

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¹¹ Ibid. Page 20

¹² Schedule 1, sections 22(5), 22(6), 23(2), 23(3), to 24(3), Quebec's Regulation respecting the environmental impact assessment and review of certain projects, *Environment Quality Act*, July 2019, <http://legisquebec.gouv.qc.ca/en/showdoc/cr/Q-2,%20r.%2023.1>
Sections 19 to 25 of the federal Physical Activities Regulations, *Impact Assessment Act*, August 2019, <http://www.gazette.gc.ca/rp-pr/p2/2019/2019-08-21/html/sor-dors285-eng.html>

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