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Submission to the Senate Committee on National Finance 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 address you and for taking the time to have this important discussion on what we believe is a matter of significant national importance, the amendments to the Canadian Environmental Assessment Act contained in section 20 of the Budget Implementation Bill, C-9. I've had an opportunity to drop in on the discussion throughout the day via the web cast and hope to add a new perspective and clarify a few issues, while emphasising some of the points that were raised by earlier presenters.

This is an important issue. Environmental assessment is one of our most significant tools for pursuing environmentally and socially responsible developments that contribute to sustainable development. Environmental assessment is a key area of work for MiningWatch Canada as the inherent challenges of responsible mining make EA a critical part of getting mining developments right.

MiningWatch is a small organization but has a reputation for effectively engaging in national and international issues regarding the mining industry. We are a pan-Canadian coalition of twenty environmental, Aboriginal, social justice, development, and labour organizations and advocate for responsible mining practices and policies in Canada and for Canadian companies operating internationally.

My brief comments to you today will focus on the following:

- The importance and status of federal environmental assessment
- The appropriate mechanisms for improving federal environmental assessment

- The increased confusion, politicisation, and potential for delays that could come from the proposed amendments to section 15 of CEAA – specifically regarding project scoping.

We have worked on the federal EA process at the policy level as well as at the project specific level as interveners and commentators on a number of mine EAs. We think that EA is so fundamental to responsible mining (and to other major development projects) that we took a considerable risk in taking the Red Chris case all the way to the Supreme Court. I know that throughout the day several references have been made including by Minister Prentice to the case and don't want to be repetitive. I would like to clarify and emphasise a few points about the case.

For us there were three key results that came from the Supreme Court's decision:

- Where projects as proposed are on the comprehensive study list they must receive a comprehensive review, if not a more rigorous panel review.
- A project is a project as proposed and not to be arbitrarily reduced to a portion of the project, and that there must be public consultation around any decisions about drawing the boundary around the project as proposed. This would mean determining which ancillary aspects of the project are to be included, perhaps the appropriate geographic scope for affected wildlife etc. but not the fundamental aspects of the project.
- Finally, the decision pointed to existing opportunities for coordination of EAs that should be used to increase efficiency and timely application of the process.

It is the second finding which I will return to momentarily. Before I do that I would like to provide some of our perspectives on the federal EA process. As we heard from the Mining Association of Canada, mines make up a significant percentage of the federal EA applications so we think our input of particular relevance to the discussion.

Mines, like other major development projects, can have lasting and irreparable negative impacts on the environment and on communities if they are not planned and developed responsibly. Across Canada we have examples of mines with negative legacies that will last many generations into the future. In contrast to the potential for things to go wrong, I have a hard time sympathising with the complaints of the industry over delays of a few or even several months to get approval for their projects. As is apparent by the work of this committee – and even by the very nature of the Senate – good decisions take time and careful consideration to reach.

Canada's economy is suffering right now. Did environmental assessment cause the recession? No, it did not. Will environmental assessment considerably delay our economic recovery? No, it will not. It should, however, help us to transform the recovery into one that is based on more sustainable development alternatives. I am deeply concerned that the current economic situation is being used as a Trojan horse to undo one of Canada's most important pieces of environmental legislation.

When EA reform is raised, duplication is often cited as a critical issue. It is important, however, to recognise that the federal process has several key advantages over most provincial processes. The federal process provides participant funding, so that concerned citizens, Aboriginal

organizations and communities, and stakeholders can access experts to review technical issues, for travel and other expenses related to participating in an EA process. Federal EA is meant to ensure federal authority is used to help implement federal policies including climate change, conservation of fish habitat, or the crown's fiduciary responsibility to Canada's Aboriginal peoples. The federal EA process also includes clearly mandated requirements for public consultation and in the case of panel reviews public hearings that go well beyond the typical information sessions led by proponents of developments.

Several references have been made today to the 2009 Auditor General's report. The main points taken directly from that report are as follows:

- *For the comprehensive studies and review panels we examined, responsible authorities have complied with the Act. However, it is not clear that screenings—the most common type of assessment—are meeting all of the Act's requirements. In half the files we reviewed, the rationale or analysis was too weak to demonstrate how environmental effects of projects had been considered, their significance assessed, and decisions reached. The assessment of cumulative effects remains a challenge for all types of environmental assessment.*
- *For projects where there is more than one responsible authority, disputes about project scope may cause serious delays in the environmental assessment process, with related consequences for project implementation. The Canadian Environmental Assessment Agency has worked with parties in trying to resolve such disputes, with limited results. The Agency does not have the authority to impose a resolution.*
- *The Agency does not know whether responsible authorities are conducting good-quality environmental assessments and whether assessments are contributing to the protection the environment, as intended. It has not fully established and undertaken a quality assurance program as required by amendments to the Act in 2003.*
- *The Agency has established and maintained the Canadian Environmental Assessment Registry Internet site. Related project files are maintained as required for most environmental assessments.*

These hardly read like a system in total collapse, but rather one that needs to be improved and modified in order to improve accountability and respond to the interests of Canadian society. The EA process can certainly be improved. I'm not suggesting it is perfect but as you've heard from others today, and as some of you have stated – the budget bill is hardly the place for such changes to be tabled.

Canada has a long and admirable history of engaging with stakeholders in the development and implementation of legislation. In the past CEAA and the EA process have been examples of this. Several structures already exist through which the government can receive feedback on improving the Act. These include a multi-stakeholder advisory group and the Canadian Environment Network's Environmental Planning and Assessment Caucus. Neither of these groups were consulted on these amendments.

You are aware of the upcoming statutory review of the Act scheduled for this fall – a much more appropriate mechanism through with the current EA framework can be evaluated. This will include both legislative and administrative changes, both of which are needed to improve the system.
I encourage you to send the House of Commons a clear message that proper democratic and fundamentally Canadian approaches should be used to address concerns about the EA process. You can best do this by striking Section 20 from Bill C-9.
I would like to conclude my submission by returning – once more – to the issue of scoping. I realise this has been kicked around a lot today but it is the issue that we have the most concern about.

With the Red Chris decision and the wording of the proposed amendments we are not so much concerned that the amendments would eliminate the application of comprehensive assessment – but that those comprehensive assessments may be done on only "a component or components of the of the project."

Rather than sticking with the clarity provided by the Red Chris decision that a project for an EA is a project as proposed we are now back in the mud of allowing the Minister, or a delegated responsible authority the opportunity to split a project up into little bits. Minister Prentice's main rationale for this amendment was that it should be the Minister responsible for making such a determination – but written into the amendment is the opportunity for delegation to another authority. I am having trouble making his explanation fit with the text I see in the amendments and fear the intent is much more about minimizing the Federal role in EA.

Further opening up the scoping process to division of projects will only increase the delays and potential for manipulation of the system. It will not contribute to a rigorous, effective and efficient EA process that reflects Federal responsibilities and the interests of Canadians. Again I urge you to amend C-9 by removing section 20, and thank you for your dedication to this issue.