December 14, 2016

Expert Panel
Review of Environmental Assessment Processes

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Re: Review of the federal environmental assessment processes

We are writing in response to the request for input into the review of federal environmental assessment processes.[1] We welcome the opportunity to provide comments to the Expert Panel and commend the Federal Government for undertaking this review. We believe improving current environmental assessment processes is fundamental to creating the conditions for growing long-term investment in Canada.

As a Canadian investment management company with approximately $6 billion in assets under management (AUM), NEI Investments' approach to investing incorporates the thesis that companies integrating best environmental, social and governance (ESG) practices into their strategy and operations will build long-term sustainable value for all stakeholders and provide higher risk-adjusted returns to shareholders. The company evaluations, corporate engagement and research activities that we conduct to fulfill our responsible investment commitments give us insight into Canadian companies' progress in responding to sustainability risks, the obstacles they face, and how appropriate policy could support their efforts.

NEI's holdings include Canadian Federal fixed income instruments, so we also offer our perspective as a financial stakeholder in Canada's own investment offerings. The responsible investment community globally is exploring the integration of ESG factors into bond investment, as well as the potential to enhance engagement on ESG questions with bond issuers, both corporate and non-corporate. Over 1500 investment institutions representing more than US$60 trillion in assets under management are signatories to the Principles for Responsible Investment (PRI), a global collaboration to advance the practice of responsible investment. So far, PRI signatories representing US$15 trillion in AUM and six credit ratings agencies have expressed support for the *Statement on ESG in Credit Ratings*,[2] which recognizes that ESG risks can create volatility for government bonds; while investors representing US$2.2 trillion in AUM have signed the *Green Bonds Statement*[3] calling on governments to support issuance of bonds that address climate change based on clear standards.

The importance of effective environmental regulation

We welcome the decision to undertake a review of federal environmental assessment processes. NEI is a Sustaining Member of the Canadian Responsible Investment Association (RIA). In June 2012 RIA's predecessor organization wrote to the Government of Canada to express concerns about changes to the Federal environmental regulatory system that were introduced within Bill C-38. These included

[1] http://eareview-examenee.ca/participate/
[2] Principles for Responsible Investment (2016). Statement on ESG in Credit Ratings. https://www.unpri.org/press-releases/credit-ratings-agencies-embrace-more-systematic-consideration-of-esg
[3] The Paris Green Bonds Statement (2015). http://www.climatebonds.net/files/files/Paris_Investor_Statement_9Dec15.pdf

changes to the Canadian Environmental Assessment Act (CEAA). We also raised concerns earlier this year in our submission to the consultation on the Federal Sustainable Development Strategy.[4] In the context of this review, we would like to reiterate several points made in these earlier letters.

We believe demonstrating Canada's commitment to environmental protection and sustainable development is important to the economy, on several levels: ensuring market access for Canadian products; securing social license for Canadian companies operating internationally; and attracting responsible long-term investment in Canadian companies by international investors. We believe this is especially important for our natural resource companies, which make up an important part of the Canadian investment universe. Like most institutions in the responsible investment space in Canada, we have holdings in selected oil and gas, forestry and mining companies, and therefore have a strong interest in their long-term value. We also recognize that the projects they undertake can have significant environmental and social impacts and risks.

We believe that strong, effective and efficient environmental regulation supports the efforts of responsible companies to create long-term sustainable value for shareholders and other corporate stakeholders. Natural resource projects in particular often have long investment horizons, with planning, construction, operation, decommissioning and reclamation taking place over several decades. If the environmental and social impacts of development are not understood, acknowledged and mitigated in a timely fashion, over the long term the companies involved may be exposed to risks and a resulting increase in their cost of capital. Potential risks can include operating restrictions, reputational damage, erosion of the social license to operate, and litigation on health impacts or breach of Aboriginal rights.

It is not in the interest of responsible long-term investors – the type of investors that we believe the Government of Canada would prefer to invest in this country - that the regulatory system should allow or encourage companies to take risks with environmental management. It is, however, in the interest of those investors that the regulatory system should reduce uncertainty about the environmental impacts of projects, and reward companies that demonstrate leadership in reducing impacts and incorporating best practices.

Efforts to eliminate duplication and unnecessary delay in the assessment of projects are welcome, but streamlining efforts that are perceived (rightly or wrongly) to weaken environmental protection, may damage Canada's reputation in the investment community, and have the opposite effect to that intended. Institutional investors may have holdings in hundreds of companies from dozens of home jurisdictions involved in thousands of resource projects in countries worldwide. Country risk is a key consideration for many responsible investors, with part of that analysis relating to whether a country's regulatory system reduces uncertainty and contributes to the mitigation of long-term risks. Canadian and international investors have expressed concern about the quality of environmental regulation, for example in the context of the oil sands.[5] International oil companies are being pushed by some

[4] NEI Investments (2016), Federal Sustainable Development Strategy 2016-2019.
https://www.neiinvestments.com/documents/PublicPolicyAndStandards/2016/Environment%20and%20Climate%20Change%20Canada%20-%20Federal%20Sustainable%20Development%20Strategy%202016-19.pdf

[5] NEI Investments (2011). Implementation of a World-Class Monitoring System for the Oil Sands Region.
https://www.neiinvestments.com/documents/PublicPolicyAndStandards/2011/Oil%20Sands%20Monitoring%20Implementation_Investor%20Letter.pdf; NEI Investments (2012). Joint Canada-Alberta Implementation Plan for Oil Sands Monitoring.
https://www.neiinvestments.com/documents/PublicPolicyAndStandards/2012/Oil%20Sands%20Monitoring%20Plan%20-%20Investor%20Letter.pdf

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investors to divest of oil sands assets that are seen as more environmentally risky than conventional oil and gas projects.[6]

We see merit in efforts to streamline decision-making timeframes and regulatory effort on lower risk projects, but the best outcome for some high-risk projects is that they should not happen at all. In those cases, it is desirable that the decision to reject the project should be made in a relatively short timeframe so that capital can be freed up for investment in alternatives that create value and jobs with less risk. We recommend that the Expert Panel consider ways to ensure that decisions to reject project proposals are made efficiently and transparently.

Integrating the Strategic Assessment of Climate Change Impacts/Benefits

There is a growing understanding that climate change poses significant risk to long-term investors.[7] At the same time, an international campaign has emerged urging investors to divest fossil fuel companies.[8] The investors following this call have responded in a variety of ways: some are divesting all companies engaged in the production of fossil fuels; others are developing "low-carbon" portfolios that dramatically reduce direct exposure to these companies.[9] This trend in investment decision-making is likely to become more pronounced as an increasing number of institutions adopt responsible investment mandates. Of concern to Canadian companies is that oil sands have been identified by campaigners as a high-carbon, high-cost source of production that should be targeted for early divestment. A robust regulatory system (including climate-specific regulations) is important to counter this perception of Canadian oil and to provide certainty on the future viability of oil sands projects, and we support the Federal Government's efforts to implement a pan-Canadian climate strategy.

We believe that a key obstacle to effectively implementing a pan-Canadian climate strategy is the lack of integration between Canada's climate goals and the environmental assessment process. The Federal Government's commitment, as laid out in its January 2016 set of interim principles on environmental assessment, to assess the direct *and* upstream GHG emissions of proposed projects is a positive development.[10] At a minimum this interim commitment should be made a permanent aspect of the environmental assessment process. It is only logical that if the upstream economic benefits of projects are part of the assessment process then the upstream environmental impacts would also be included. The interim principles rectify a previous gap in the legislation that we believe served to undermine the trust Canadians place in the assessment process. We recommend that if this requirement is made mandatory, assessing the GHG emissions impact should be undertaken at the earliest stage of the assessment process. If the potential climate change impacts of a project are so significant that they are bound to lead to the ultimate rejection of the project, to the degree possible the decision should be made early enough in the process to avoid the costs associated with a fully-fledged environmental assessment.

However, even with the added requirement to assess upstream emissions, the current integration of climate change considerations into the environmental assessment process will still be incomplete and absent further changes will continue to produce what we view as unsatisfactory results. We highlight

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[6] In recent years Statoil, BP and Royal Dutch Shell have all faced calls to divest of oil sands assets, including shareholder proposals at their AGMs.

[7] The Global Investor Statement on Climate Change has over 400 signatories representing over US$24 trillion in assets under management: http://www.iigcc.org/files/publication-files/11DecemberGISCC.pdf

[8] Fossil Free: Divest from Fossil Fuels. http://gofossilfree.org/

[9] The Portfolio Decarbonization Project is an initiative of institutional investors committed to "decarbonizing" their portfolios. http://unepfi.org/pdc/

[10] http://news.gc.ca/web/article-en.do?nid=1029999

the recent decision to approve the Kinder Morgan Trans Mountain Expansion Project.[11] While opposition to the project stems from more than just the GHG impacts of the proposed expansion, it is fair to say that climate change concerns have been prominent in stated objections to the decision. Despite the extensive review process, the input of the Ministerial Panel for the Trans Mountain Expansion Project, and the additional assessment of upstream GHG emissions to meet the commitments under the interim principles, there is still significant mistrust of the assessment process and its results insofar as they pertain to Canada's climate commitments. It seems highly likely that the project will face ongoing delays and uncertainty as a result of legal challenges and on-the-ground protests. We would characterize this as an unsatisfactory result considering the substantial outlay of resources from the proponent, the regulator, government and other stakeholders.

It is our understanding from the Prime Minister's announcement of the decision to approve the Trans Mountain Expansion Project that the Federal Government sees this approval as aligning with its climate change goals, and perhaps even aiding the achievement of those goals. We believe this is a fundamentally important aspect of the decision. However, it is not clear from the review of related upstream greenhouse gas emissions associated with the Trans Mountain project (produced by Environment and Climate Change Canada[12]) or from subsequent government announcements exactly how the project will be compatible with Canada's commitments under the Paris Agreement. This lack of clarity is a critical driver of the opposition to the project (and likely will be for other potential industrial projects) and is creating unnecessary conflict and investment uncertainty. We note the Ministerial Panel for the Trans Mountain Expansion Project came to a similar conclusion, stating that "absent a transparent calculation of how a new pipeline development might fit within an orderly reduction of greenhouse gas emissions, a certain proportion of the community will stand against every pipeline proposal."[13]

What is currently missing from the environmental assessment process is a strategic framework that lays out the government's strategy for meeting its climate change goals. Individual projects should be assessed within this framework in order to determine if they are compatible. It is currently beyond the ability of the project proponent to provide this information. However, the proponent can be expected to provide relevant information on expected GHG emissions and management strategies that can be assessed within an overarching framework. This would streamline the current process and provide certainty for the project proponent while also ensuring that major infrastructure decisions are compatible with Canada's climate goals. Future project assessments will likely face uncertainty and opposition without this needed clarity.

Integration of federal climate goals into the environmental assessment process could be modelled after current expectations in regard to the Species At Risk Act (SARA). There are several expectations for project proponents in the circumstance that the proposed project will impact on listed species, but most importantly there is a clear hierarchy in regard to the federal strategy for a SARA-listed species. Project proponents are required to create a management plan that is "consistent with any applicable recovery strategy or action plan."[14] Similarly, projects going through the environmental assessment process should be required to be consistent with federal climate change strategies.

[11] http://news.gc.ca/web/article-en.do?mthd=index&crtr.page=5&nid=1162449
[12] http://ceaa-acee.gc.ca/050/documents/p80061/116524E.pdf
[13] https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/files/pdf/16-011_TMX%20Full%20Report-en_nov2-11-30am.pdf
[14] https://www.registrelep-sararegistry.gc.ca/default.asp?lang=En&n=28557671-1#_Toc264290296

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There are specific aspects in the guidance for addressing SARA-listed species that are worth noting for their potential relevance to implementing a similar expectation for climate change impacts. Namely, page 14 of the guidance outlines the mitigation sequence that should be followed to lessen any adverse effects on listed species:[15]

1. Avoidance of the adverse effect.
2. Minimization of the adverse effect.
3. Restitution for the adverse effect (e.g., replacement, restoration or compensation)

We believe that the above mitigation sequence is equally relevant to the issue of GHG emissions and other climate-related impacts, with restitution of the adverse effect referencing reductions in GHG emissions elsewhere (e.g. through various forms of offsets). Thus project proposals that have a significant carbon footprint would be expected to show the extent to which the proposal minimizes the operational footprint itself and if the remaining emissions are still significant (and not aligned with the federal climate targets) it would be expected to show how those emissions could be offset (e.g. through the early decommissioning of another project, through sequestration projects, etc.).

Under the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals* there is an expectation that strategic environmental assessment will inform major decisions to ensure they are compatible with the federal government's sustainable development objectives.[16] One of the intended outcomes of the directive is to better inform, and thus streamline, project-level environmental assessment processes. Moreover, the directive's stated intentions to "promote accountability and credibility among the general public and stakeholders" and "contribute to broader governmental policy commitments and obligations" are both germane to the review of environmental assessment processes.[17] Perhaps this existing tool could be utilized to ensure that major emission-intensive infrastructure projects are considered within a strategic assessment of Canada's climate change plan.

Scenario Analysis and Stress-Testing

There are recent developments in the world of corporate reporting that we believe the Expert Panel should be aware of. There is a growing trend for major extractives-based companies to provide shareholders with reporting on how the company will remain resilient in a low-carbon future.[18] These reports are intended to provide shareholders with confidence that the company has stress-tested its portfolio of projects against a scenario in which the international community implements the policies and technological breakthroughs that allow us to meet the objectives of the Paris Agreement. The genesis for these disclosures has been investor demand. Note that Suncor Energy is one of the companies that has embraced the concept of low-carbon resiliency reporting and supported a shareholder resolution filed by NEI Investments at the 2016 AGM that asked for this reporting.[19] The resolution received over 98% support from shareholders, indicating the material relevance of the issue to investors.

Investors are genuinely concerned about the risk of stranded assets should the companies they invest in sink capital into projects that will not be viable in a low-carbon future. As such, they will already be asking these questions of the companies they own (who might be submitting projects through Canadian environmental assessment processes) and raising concerns if proposed capital expenditures

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[15] https://www.registrelep-sararegistry.gc.ca/default.asp?lang=En&n=28557671-1#_Toc264290296
[16] http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=B3186435-1
[17] Ibid
[18] Low-carbon most often defined as fitting into the 2 degrees of warming or less scenario that is the basis of the Paris Agreement
[19] https://www.neiinvestments.com/documents/ShareholderResolutions/2015/Suncor%20Energy.pdf

on new projects are exposed to potential stranding as a result of foreseeable policy and market changes. Regardless of whether federal environmental assessment processes consider the implications of a 2 degree scenario there will be heightened uncertainty about projects that might be exposed to the risk of stranding, which will make raising capital for high-carbon projects difficult.

If the environmental assessment process integrated a strategic assessment of how the project will fit into a future that meets the 2 degree target, this would provide needed assurance to investors and alleviate some of this uncertainty. Currently, the conversations in Canada have been about meeting our commitments under the Paris Agreement (i.e. a 30% cut of GHG emissions from 2005 levels by 2030). It has been widely acknowledged that the commitments under the Paris Agreement, though significant, will have to be renewed and significantly strengthened in the future if we are to meet the 2 degree target. However, we agree that Canada's current climate change goals are appropriate for mid-term planning purposes. For the approval of projects that have a lifespan that will run beyond 2030 (in some cases far beyond 2030) it seems prudent to consider their viability in a far more carbon-constrained environment. Integrating a low-carbon scenario analysis into the assessment might also provide useful approval conditions for project proponents that will ultimately strengthen the economic viability of the project in a low-carbon future.

Regional Strategic Environmental Assessment

We believe the environmental assessment process would be greatly strengthened and streamlined by the incorporation of tools such as regional strategic environmental assessment (RSEA). It is difficult to see how the cumulative impacts of development on a region can be addressed effectively through project-by-project environmental impact assessment (EIA) relating to the individual projects proposed by individual companies, and then only targeting projects for which EIA is required. In regions where many development projects are operating and planned, sustainability requires that they be considered in context so that efforts can be made to optimize environmental, social and economic outcomes. RSEA provides this strategic assessment of development options. Note that this is different from the strategic assessment we referenced earlier in the submission, which is a high-level assessment of national strategic objectives. RSEA is focused on a smaller geographical region (e.g. the boundaries of a watershed) and would be very specific to the region in question. Both are required for effective and efficient environmental assessment to occur.

The Canadian Council of Ministers of the Environment (CCME) defines RSEA as *"a process designed to systematically assess the potential environmental effects, including cumulative effects, of alternative strategic initiatives, policies, plans, or programs for a particular region."*[20] RSEA differs from EIA in that it considers a range of future development scenarios in order to ensure that current and future planning leads to the most desired outcomes, rather than the most likely ones. A defining feature of RSEA is that it places the assessment of cumulative effects at the centre of the process, with key decisions resting on the analysis of cumulative effects. The results of RSEA are then used to inform subsequent project-specific EIAs, leading to a more effective and efficient process for project proponents and other stakeholders. Ultimately, RSEA can lead to increased certainty for companies developing projects, and for their investors.

[20] Canadian Council of Ministers of the Environment (2012). *Regional Strategic Environmental Assessment in Canada: Principles and Guidance.* http://www.ccme.ca/assets/pdf/rsea_in_canada_principles_and_guidance_1428.pdf

We note that several provinces are working to implement cumulative impact frameworks, most notably in areas with significant cumulative impacts from energy development.[21] We believe there is a role for the Federal Government in supporting these initiatives and encouraging broad sharing of learning, so that provinces can benefit from the experience of their peers. Further, we suggest incorporating RSEA to the Canadian Environmental Assessment Act as well as encouraging its integration to provincial EIA processes.

Contact

In conclusion, we would like to commend the Government of Canada for seeking input into the review of federal environmental assessment processes. We would be glad to engage further on any of the issues covered in this submission. For follow-up, please do not hesitate to contact me at jbonham@neiinvestments.com, 604-742-8328.

Sincerely,
NEI Investments

Jamie Bonham
Manager, Corporate Engagement

cc:
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[21] For example the Alberta has signalled its intention to move to a cumulative effects management system: http://aep.alberta.ca/lands-forests/cumulative-effects/cems-transformation-in-alberta.aspx, and BC is likewise working towards the implementation of a Cumulative Effects Framework: http://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/cumulative-effects-framework