

July 30, 2018

Nathan Braun
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via e-mail: nathan.braun@gov.bc.ca

Dear Nathan:

Re: B.C. Environmental Assessment Revitalization Discussion Paper

The Canadian Association of Petroleum Producers (CAPP) represents companies, large and small, that explore for, develop and produce natural gas and crude oil throughout Canada. CAPP's member companies produce about 80 per cent of Canada's natural gas and crude oil. CAPP's associate members provide a wide range of services that support the upstream crude oil and natural gas industry. Together CAPP's members and associate members are an important part of a national industry with revenues from oil and natural gas production of about \$110 billion a year.

CAPP and its members, appreciate the opportunity to provide feedback on the Government of British Columbia's *Environmental Assessment (EA) Revitalization Discussion Paper*. CAPP has a significant interest in EA as a means of providing the public and Indigenous Peoples with assurance of responsible and timely development of natural resources in the public interest of British Columbians.

CAPP is supportive of the current EA process as it relates to upstream oil and natural gas development. Our industry is regulated by the Oil and Gas Commission (OGC) and CAPP is supportive of the one regulator approach to development applications. Any changes to the EA process needs to continue to have strong ties with other regulatory processes and continue to support one project, one assessment.

CAPP recognizes several positive benefits of the EA Revitalization process, namely:

- Effective and meaningful consultation with Indigenous Peoples and the public continues to be an ongoing requirement;
- Protection of the environment is fundamental to project proposals and projects in the public interest of British Columbians should be approved given that potential adverse impacts have been sufficiently mitigated; and
- Indigenous peoples, public, Government and proponents will all benefit from a predictable, transparent and timely process to conduct reviews.

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After reviewing the Discussion Paper, CAPP is supportive of the following features explicitly or implicit to the EA process as proposed:

- The capacity of Environmental Assessment Office (EAO) to recognize emergent strains in a multiple use landscape through early engagement in order to determine whether this is best resolved through project EA, regional or strategic environmental assessment, or referred to the Government of B.C. to be addressed through other public policy initiatives. (see p. 17, *Early Engagement*)
- Recognition of the importance of efficient and predictable process that is essential for capital intensive resource development sectors in order to preserve investor confidence. (see p. 19, *Process Planning*)
- Balanced consideration of the five pillars (environment, health, economic, social and heritage) in order to render a public interest decision that a project is broadly beneficial to all people of British Columbia, including Indigenous peoples (see p. 11, *Focus on the Environment and Offering Clear Pathways to Sustainable Project Approvals* and p. 23, *Decision Process*)

Additionally, CAPP offers the following comments on some potential concerns that need to be addressed in order to ensure that changes to the EA process achieve the outcomes specific for the EA Revitalization initiative, namely:

- **Maintaining Economic Competitiveness** (see p. 12, bullets 2, 3, 4 and 5)
CAPP members wish to emphasize the importance of maintaining a regulatory process that provides certainty and predictability for Indigenous communities, the public as well as resource developers and investors. To achieve certainty and predictability, the revised EA process needs to drive clarity and transparency in scoping, costs, timelines and decision making. Without these elements, and in addition to the ongoing incremental regulatory burden in the Province and current challenging investment climate for the energy sector in Canada, investment in the development of British Columbia's resources will diminish.

Certain and predictable EA process is necessary for project proponents to reasonably develop business plans and arrange project financing which often competes for global capital allocations. In order to attract investment and maintain a competitive regulatory framework, the EAO needs to balance process changes with the investment community's expectation for consistent, predictable, efficient EA process to render durable decisions.

Recommendation: If future changes result in an expansion of EA to additional and incremental projects within the oil and natural gas industry, we expect B.C. to undertake a regulatory impact assessment that includes a comparison of EA obligations in other jurisdictions producing comparable commodities for which oil and natural gas companies are competing for investment capital. We expect B.C. to undertake a gap analysis to identify elements that are missing from the current regulatory approach for our industry.

- **Determining Reviewable Projects Based on Residual Potential for Adverse Effect in Consideration of the Existing Regulatory Framework** (see p. 14)
The oil and natural gas industry is regulated by the OGC. We believe the current regulatory framework for oil and natural gas activity in B.C. effectively manages potential adverse effects,

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negating the need for review by the EAO. To illustrate, we believe the following initiatives (Table 1) should be taken into account.

Table 1: Regulatory Cumulative Effects Management Initiatives

Responsible Ministry or Agency	Initiative	Purpose
B.C. Oil and Gas Commission	Area Based Analysis (ABA)	ABA is an OGC decision making analysis tool to evaluate cumulative effects of oil and natural gas application in relation to broader industrial development in a region.
Environmental Protection and Sustainability	Cumulative Effects Management Framework (CEF)	CEF is a set of policies, procedures and decision making tools to proactively provide cumulative effects considerations to Ministry staff/decision makers, resource developers, Indigenous people and British Columbians to avoid unintended consequences to the environmental, economic and social values of British Columbians by guiding resource management activities.
Forest, Lands, Natural Resource Operations and Rural Development	Land Use Planning (LUP)	LUP is a land development tool that provides Government information to best manage the current and future landscape development to meet the environmental, economic, cultural and social needs of British Columbians.
OGC and EAO, First Nations and Industry	Environmental Stewardship Initiative (ESI)	ESI was established to collaboratively share and make information accessible for all involved parties on environmental initiatives including monitoring, restoration, research, knowledge exchange, training and education. This includes the NE Regional Strategic Environmental Assessment Pilot designed to address upstream development to feed B.C.'s LNG projects.

As shown in Table 1, many planning tools and decision making frameworks have been developed to describe regional impacts and to undertake strategic assessments. Additionally, the OGC has mature systems to enable Indigenous involvement in the regulatory process with adequate capacity to effectively participate.

Recommendation: CAPP suggests that a list of accepted regional and strategic assessments relevant to EA should be developed and maintained. As a general principle, project EAs should not duplicate regional and strategic assessments nor be delayed in order to conclude them. Criteria for reviewable projects should take into account regional and strategic assessment and existing regulatory frameworks in order to scope EAs.

- Limiting Unintended Consequences** (see p. 12, bullet 6)
 CAPP agrees with the intent of an EA process to identify, and assess potential significant adverse risks of a project to the environment, health, economic, social and heritage ideals of British Columbians. We strongly support an evidence-based process to review, assess and render decisions on projects subject to EA.

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We appreciate the stated intent of the EA Revitalization and believe that data and metrics to properly delineate critical areas of improvement should inform adaptive management of an EA process. Several concerns may arise, not from the EA process, but perceived deficiencies in other features of British Columbia's policy framework. Consequently, we believe there is a risk that changes arising from EA Revitalization may have unintended consequences by virtue of attempting to resolve broader reconciliation or policy issues (Indigenous rights and interests relative to cumulative impacts and regional planning).

Additionally, legislative drafting as a result of EA Revitalization appears to be proceeding more quickly than the federal Government's Bill C-69. This sequencing may be challenging if the underpinning rationale, level of ambition, or view of enhancement to EA are not aligned. Any misalignment may have implications for substitution and ultimately, achieving one project, one assessment.

Recommendation: EAO should align and calibrate its changes to EA process so as not to jeopardize substitution essential to maintain one project, one assessment. CAPP is highly supportive of the substitution approach, as it is a critical element to an efficient EA process. CAPP understands that there will be instances where a federal EA is required and substitution and/or equivalency may not be possible or has not yet been established in the province. As such, CAPP also recommends the development and implementation of new federal/provincial bi-lateral EA agreements that incorporate current federal EA requirements that are developed in advance of undertaking project specific EAs. The bi-lateral agreements must clearly articulate how a cooperative EA, including that of joint panel, will be conducted to ensure the process is efficient, predictable and timely.

- **Achieving Meaningful Consultation Amid Numerous Changes Enabled Under EA Revitalization** (see p. 16)

CAPP can only offer meaningful comment on EA Revitalization to the extent that it is currently understood and applies to proponents of oil and natural gas projects. CAPP cannot presuppose the full extent and nature of changes that may result from the Discussion Paper, including:

- EA Legislation;
- Regulations;
- Policies; and
- Practices.

For example, upstream oil and natural gas projects are already subject to review through Area Based Analysis. This process includes First Nations consultation by the OGC. The potential rationale for the inclusion of additional oil and natural gas activities under the Reviewable Projects Regulations (RPR) remains unclear in the absence of understanding any deficiency in the current process that would not already satisfy expectations of an EA.

At present, the proposed changes are conceptual. We anticipate that the level of detail necessary to offer meaningful comment will not be available until the release of the Intentions Paper. Without the ability to provide further comment at that time, we cannot assess nor comment on potential impacts to our industry. This circumstance would appear to undermine the premise of fairness.

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Furthermore, several interdependent policy initiatives are in various stages of completion: the review of the professional reliance model, the modernization of land use planning, the enactment of endangered species law, and the advancement of the cumulative effects framework and the implementation of comprehensive climate action. The outcomes of some of these initiatives will have implications for others. Consequently, we are not able to assess nor provide meaningful input that addresses the dynamics between interconnected policy consultations. The risk of misalignment is elevated and the multitude of consultations with partially overlapping outcomes with respect to reconciliation creates confusion about where the authoritative and durable resolution of these issues will occur.

Recommendation: Should any changes enabled have implications for proponents of oil and natural gas projects, we request further engagement to provide more informed and direct feedback at that time. Additionally, we believe that the structural relationships amongst interrelated policy consultations should be clarified for the whole of Government of B.C. and its agencies.

- **Creating Cost Certainty** (see p. 12)

Though the activities in the oil and natural gas sector are regulated by the OGC with capacity funding mechanisms (e.g., over \$10,000 per well application) in place, CAPP would like to offer the following comments about the Discussion Paper.

CAPP supports the need for adequate participant and administrative funding that is fair and timely, with the funds provided in some measure by both the province and industry for an EA process to be successful. The role proponent's play in facilitating administrative and participant funding within the Discussion Paper is unclear. For example, changes to the EA fee structure, capacity funding for Indigenous Nations/key stakeholders involvement and data collection and information storage cost are proposed, but not clearly defined. Additional funding requirements, specifically on upstream oil and gas activities, would be duplicative to existing mechanisms in place.

Recommendations: In order to provide meaningful consultation on funding, the expectation on what and how much funding proponents should provide needs to be clearly understood and consulted upon with Industry.

- **Enabling Timely Consensus-Based Decision Making** (see p. 9, 17, 18, 19, 21 and 23)

Although consensus based decision making is a laudable goal, it should be recognized that it may not be achievable so Government will need to rely on the robustness of a transparent regulatory process. Consensus-based decision making on technical aspects of EA, as contemplated in reconciliation, is not well understood. This is further complicated by the introduction of Alternative Dispute Resolution (ADR), a concept that is not always well-aligned with a consensus-based decision making approach.

CAPP applauds the Government's efforts to support self-determination of Indigenous nation's objectives. Currently, Government decision making is a well-defined process with clear roles for engagement, transparency and accountability including a clear mandate to ensure decision in the best interest of the province. The pursuit of a co-decision making model represents substantive systemic change and a long-term commitment from Government.

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It is critical that greater consideration is given to the potential risks associated with this effort. There is a need for a deep understanding of the capacity needs of Indigenous nations in order to effectively manage aspects of the EA process. Furthermore, there is a need to consider the time required to establish effective working relationships between Government and Indigenous nations.

Recommendation: A commitment to consensus-based decision making requires adequate financial and administrative capacity be afforded to Indigenous communities and a clear understanding of timelines and the role of the Statutory Decision Maker be set out within the process. Without capacity, it will not be possible to achieve certainty and predictability of EA process.

The opportunity for ADR is proposed at many points in the EA pathway. CAPP requires clarity in terms of triggers for when it will be applied, as to not erode the perceived value of consensus-based decision making.

In closing, we recognize EAs as a tool that guides the refinement of development plans for more complex projects in sensitive environments where there may be potential significant adverse effects. To this end, EAs help Governments to determine whether or not there is sufficient value from resource development to meet the public interest. At the same time, we believe that any changes to EA process need to take into account existing policy and regulatory frameworks to maintain certainty and predictability that investors expect.

Should you have any questions regarding our submission, please contact me at 778-265-3819 or geoff.morrison@capp.ca.

Sincerely,

A handwritten signature in blue ink, appearing to read "Geoff Morrison", is written over a light blue grid background. The signature is fluid and cursive.

Geoff Morrison
Manager, British Columbia Operations

Cc: Ines Piccinino, Assistant Deputy Minister, Oil and Gas Division, MEMPR
Cc: Ken Paulson, Exec. VP, COO, Applications and Operations Division, BC OGC