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Chair

Mr. Mark Warawa

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● (1105)

[*English*]

The Chair (Mr. Mark Warawa (Langley, CPC)): Colleagues, I call this meeting to order.

I want to thank the witnesses for being with us here today.

We have a translation service if you want to avail yourselves of that.

Each witness or witness group will be given up to 10 minutes to present.

We will begin with Madam Arlene Kwasniak, for up to 10 minutes.

You may proceed. Thank you.

Professor Arlene Kwasniak (Faculty of Law, University of Calgary, As an Individual): Thank you.

First I wish to thank you for the invitation to address this committee. I am happy and honoured to be here.

What happens to the CEAA as a result of this committee's deliberations will strongly influence the kind of federation we in fact have in Canada and the kind of environmental and social legacy we leave to our children and their children. As you know, you have a lot of responsibility to the citizens of Canada—the common citizens—and their children and your children.

In my submission I will largely make and substantiate a plea that in this seven-year review, the federal government, for the sake of the public interest and the sake of Canadian democracy, reverse its retreat from its role and responsibilities in federal environmental assessment. Instead it should strengthen and improve federal environmental assessment presence, processes, and legislative authority.

To these ends, this submission will cover the following few relevant areas.

First is why we need strong federal environmental assessment in Canada. Second is why we should avoid the myth and trap of overlap and duplication rhetoric. Third is why a federal project approach will not work in the Canadian federal democracy.

Finally, I will make a very brief comment on the Keystone project, because I think it teaches us some lessons about doing environmental assessment right the first time.

Why do we need strong federal environmental assessment? As we know, in Canada the federal government may assess a project when it falls under its constitutional jurisdiction and some other conditions are met. The constitutional jurisdiction is exclusive in Canada, meaning that if the federal government has the exclusive right to regulate something, no other level of government may do it. The areas that are most important in environmental assessment are fisheries, navigation, migratory birds, federal lands, aboriginal interests, nuclear facilities, and interprovincial and international matters.

Having the exclusive right to regulate in these and other areas, only the federal government can in fact, law, and from a political and moral perspective do an effective job in assessing these impacts.

It's “in fact” because it's only the federal government, which has to do the regulation in the end, that knows what it needs in order to regulate; knows what it needs in order to set out monitoring provisions; to do follow-up; and to put in any adaptive management provisions.

It's “in law” because only the federal government is accountable for its areas of jurisdiction. It cannot delegate its matters to the provinces. The provinces simply cannot do it. If the federal government doesn't do it, it will not get done.

It's “from a moral and policy perspective” because only the federal government, again, is politically and morally accountable to the people with respect to these resources. As the federal government retreats from this, I would say that it also retreats from its responsibilities under our constitution, and our federal democracy is thereby eroded.

I'd like to say that this is not missed. In Calgary there are discussions about the federal government retreating from its federal responsibilities, not just among the people who are occupying Calgary but also among intelligent academics and others.

Moving on to overlap and duplication—I've written about this in my submission and elsewhere—I basically want to address the fact that we always hear this rhetoric about overlap and duplication: we have to get rid of it, so let's get rid of the federal government.

Well, as a matter of fact, overlap is not a bad thing. Under our constitution, there are bound to be overlapping issues that are of interest to both the federal and the provincial governments because of the way our division of powers work. There may be a fisheries issue with respect to a project, and there may be all kinds of provincial issues. So overlap is not bad in and of itself. It just is. Unless one is complaining about the constitution, one really shouldn't complain about overlap.

Duplication, of course, is something different. That's when a proponent or someone is asked to do something more than once, perhaps in different formats, and so on. Duplication is something that can be dealt with. I think the federal government and the provincial governments have tried to deal with duplication. I think there are more things that can be done, such as better harmonized agreements, a new federal coordination regulation, which we've been promised for eight years, and effective dealing with late triggering within the federal family to deal with federal duplication.

The fact that there is overlap and duplication should not be a reason for the federal government to recede from environmental assessment or make environmental assessment less effective. There are ways of dealing with that duplication. Overlap just is.

With respect to a project list approach, I understand that the federal government is looking at a project list approach to replace the trigger approach, which we now have. I would like to say that I don't think this is going to work. Because of the way our constitution works, there are projects that fall under federal jurisdiction unless, for example, it's completely on federal lands or a couple of other exceptions. Even if you had a project list approach, you would still need a trigger, so why do away with the trigger in the first place?

Only looking at projects of national significance or the like, such as under the NEPA in the United States or under the Australian legislation, just doesn't work here because in both of those countries their constitutions are different. They don't have exclusive legislation over important things like fisheries and navigations seated in the federal government. There's more of a concurrent type of power, where the federal government will prevail if there's a conflict. I think you have to take into account these constitutional differences when you're thinking about a project-based approach. I would be happy to talk about that more.

Finally, I have a couple of comments on the Keystone pipeline. As we know, President Obama recently announced that he is going to delay that decision, and he wants to study the environmental, social, and health impacts on Americans. As I'm sure everyone here knows, the environmental impacts of that project have been studied quite extensively both in Canada and in the United States. However, the environmental assessments—especially the one under the National Environmental Policy Act in the United States—were very roundly criticized by not just environmentalists, but by farmers, ranchers, and a lot of other common people because the route around the Ogallala aquifer just wasn't seriously considered. Industry's evidence was pretty much just taken for the way things were, and so the assessment was determined on the basis of the pipeline going through the aquifer.

What we've ended up with now, because of the incomplete environmental assessment, is the mess we have. Not only do we have the decision being delayed—some people like that, some people don't—but we also have this turning into a major battle having to do with climate change and dirty oil. I think if a proper environmental assessment had been done in the first place without the shortcuts, the Keystone pipeline would have been a done deal and it would have avoided the Ogallala aquifer, which is probably going to happen, but probably not for two or three years.

I'm finished. Thank you very much.

● (1110)

The Chair: Thank you so much.

Next we have Mr. Peter Usher, for up to 10 minutes.

Dr. Peter Usher (P.J. Usher Consulting Services, As an Individual): I'd like to thank the committee for asking me to participate in this work.

I've had the honour of serving on review panels for over eight years and have participated in review processes for forty. My written submission has addressed what major project review panels are intended to accomplish and the challenges they face, the critical role of monitoring and follow-up once a project is approved, and the scientific framework and resources required to ensure the success of both.

My concern is with outcomes and what you as legislators can do to improve those outcomes.

Major projects are elevated to a panel review precisely because they are not routine. The core questions a major project review should address are these. Does the project require the application of technology and methods that are novel or are untested in the receiving environment? What are the risks of accidents or malfunctions in terms of probability of occurrence and severity of consequences?

A major project review, then, is not simply a planning approval hoop. It provides guidance to proponents and regulators on how to ensure that the objectives of the CEA Act are realized over the life of a project, from the time a shovel goes into the ground until decommissioning and abandonment, and it ensures public input in doing that. It must also consider the cumulative impacts of a project with other developments, and applying a contribution-to-sustainability approach ensures that its economic and social benefits are taken into account—not only short-term benefits, but durable and lasting ones.

Now, as the CEAA representatives have already told you, panels have the statutory obligation that was made clear by court cases to fulfill all the requirements of CEAA, and it's for them to be satisfied in each case that they have all the information they need to report back to the minister.

There are other obligations concerning both product and process that a panel must meet by law. I invite you to be aware of those with respect to the three questions that you've already been asked to consider, one of which is whether there ought to be mandatory time limits. I have to tell you personally as a panel member that I would have welcomed anything that would have allowed me to return to my family, my home, and my work sooner rather than later. I'm sure that every panel member with whom I have served would heartily endorse that view; however, it is a public process and its participants have both legal rights and reasonable expectations that must be addressed.

The process, once begun, has certain required steps. The rules of procedure must be within established guidelines and legal norms. Motions on procedure or substance must be given due consideration. If a proponent chooses to postpone the proceedings, the panel cannot compel it to do otherwise. If there is a court-imposed injunction on the panel proceedings, the panel must abide by it. If the panel does not fully address its mandate, it may be subject to challenge. If such challenges occur—and they have—then whatever time and money was saved taking shortcuts may be more than expended in the courts later on.

Is there room for improvement? Absolutely, and I've mentioned some improvements in my submission. The point is, I don't think you can accomplish any of them by simply imposing a time limit. I think those are matters for the agencies and responsible parties to deal with as a matter of their own policies and procedures.

You've already heard submissions on the need for review processes that go beyond the project-specific, such as strategic level and regional level reviews, and that may be a good idea, not least if it reduces the burden on panels for project reviews. If you go in that direction, I would caution you to provide substantial clarity on the distinction between strategic review and project review, and that clarity should address matters of how a review panel is constituted, how it should go about its business, and who would pay for it.

Recently, the NEB and the CNSC have been assigned greater authority over the environmental review of projects within their jurisdiction.

● (1115)

With due respect to their competence as regulatory bodies, it is not clear whether either of them, in their mandate, culture, or scope of expertise, has the means to consider cumulative impacts or project contribution to sustainability. They are in the business of regulating industrial operators, not making recommendations to governments. Therefore, the NEB and CNSC can add to but not substitute for major project review panels as they now exist.

I want to talk about monitoring and follow-up. They are crucial to ensuring that impact predictions are verified, prescribed mitigations are of demonstrated effectiveness, unanticipated adverse effects are detected and addressed, and there is a prescribed course of action to correct for significant adverse effects as they occur. Those are the fundamental means of ensuring that the review process actually produces tangible results with respect to environmental integrity and sustainability.

If effective monitoring and follow-up do not occur, the public benefit of reviewing major projects is much reduced. Effective monitoring and follow-up are a science program at their core. A similar base of data, information, and analysis is required by both a review panel and the agencies that will later be responsible for monitoring and follow-up over the life of the project. The science programs required for both purposes, especially to determine cumulative impacts, must by their nature be continuous over time; regional if not national in scope; and meet high, consistent, and recognized standards of measurement and analysis.

So who generates the required information, how does the science get done, and how does it get put on the table? There's no reason to expect individual proponents to conduct baseline scientific research or ongoing monitoring programs at a regional level. Proponent monitoring is properly limited to its own compliance with permitting and contractual conditions. But once government adopts a review panel's recommendation on mitigation, monitoring, and follow-up, it is government that must ensure it has the resources and can take the necessary follow-up action to improve the quality of future environmental assessments, as the act calls for. If governments can't do that, there's no basis for expecting the desired environmental quality outcomes or improvements specified by the CEA Act to be fulfilled.

Most of the time that our EA system has been in place, which is nearly 40 years, both review panels and the responsible authorities have relied heavily on the federal government's in-house science capacity to provide baseline monitoring, impact assessment expertise, and the scientific infrastructure for monitoring. Canada has for a long time maintained an internationally recognized standard of excellence in this regard, and we should be proud of it.

Unfortunately, much of this is now at risk. As a result, Canada's system of environmental review will be of decreasing effectiveness,. Government, on behalf of its citizens, must set the objectives and standards for scientific research and monitoring programs, and design them. The private sector, the universities, and citizen organizations can each contribute to that design and conduct much of the work, but none of those actors have the interest, incentive, or capacity to design and maintain permanent research and monitoring programs of national scope.

Thank you.

● (1120)

The Chair: Thank you, Mr. Usher.

Next, from the Canadian Construction Association, we have Mr. Barnes and Mr. Atkinson for 10 minutes.

Mr. Michael Atkinson (President, Canadian Construction Association): Thank you, Mr. Chair. I'll be giving most of my time to Mr. Barnes.

Good morning, and thank you very much for the invitation to appear. My name is Michael Atkinson. I'm the president of the Canadian Construction Association. I'm accompanied today by Mr. Jeff Barnes, who is a senior principal with Stantec Consulting Inc., a member of our association. Mr. Barnes has over 30 years of experience in environmental assessment across Canada and internationally, and he will be outlining our position on the CEA Act.

The Canadian Construction Association has some 17,000 member firms from coast to coast to coast across Canada, working primarily in the non-residential construction industry. As an industry, construction employs over 1.25 million Canadians and accounts for just under 7% of Canada's overall GDP.

I mention this to provide you with some context and to emphasize that when planned projects experience issues of uncertainty, unpredictability, and unnecessary duplication in relation to the environmental assessment process, our members and the economy of Canada are both adversely affected.

CCA members remain extremely supportive of environmental assessment and believe it can be an important contributor to sustainable development in Canada. But our membership is greatly concerned about matters relating to the efficiency and effectiveness of the administration of the CEA Act, and the uncertainty and unpredictability of its implementation. That is why our association fully supports the amendments the government made to the CEA Act through clause 20 of Bill C-9 and the issuance of the establishing timelines for comprehensive studies regulations. We are therefore before you today to provide some additional recommendations on the CEA Act for how it can be further improved.

I will now turn to Mr. Barnes to outline the position of the CCA, as outlined in more detail in our written submission.

Mr. Jeff Barnes (Member, Board of Directors, Canadian Construction Association): Thank you, Michael.

The CCA believes the Government of Canada should continue its effort to improve administration of federal environmental assessment, recognizing that substantial legislative reform is necessary.

We believe this committee should consider the following interrelated factors: the way in which the environmental assessments are triggered; the entrenchment of duplication, and the lack of reciprocity with and substitution by the processes of other jurisdictions; inherent process uncertainty and issues of timeliness; the wasted resources applied to the assessment of inconsequential projects, or those that have minimal environmental risk.

With regard to triggering, it's important to note that self-assessment remains a key principle of CEAA screenings. The triggering mechanism for environmental assessment remains a fundamental problem with the act. The act is presently triggered by one of four mechanisms, wherein the federal authority is responsible to undertake an environmental assessment if it's the proponent; will transfer land to facilitate its implementation; will provide funding; or issues a permit or authorization pursuant to a variety of legislation under the law list regulations.

The process to determine which federal authorities must undertake an environmental assessment as triggered by these mechanisms results in a gross waste of time and resources and offers no value from an environmental protection perspective. Further, the assessment of projects by different agencies leads to an unnecessary diffusion of responsibility and inconsistency in application of the law.

Thus, the recent amendments making the agency responsible for the coordination of comprehensive studies are excellent. This should be done for screenings as well, in our view, provided that overall, fewer of them are done.

We believe that coupled with centralizing responsibility, a list-based approach to deciding which projects require assessment and at what level—analogous to the approach of international financial institutions and several provinces in Canada—would improve both efficiency and consistency and eliminate the bureaucratic wasteful process.

The second related matter of interest to our members pertains to duplication and the limited ability to recognize reciprocity and substitution between jurisdictions. As an organization, CCA feels it does not make sense for a federal environmental assessment to be triggered if a comparable environmental assessment is being conducted by another jurisdiction; if it is triggered based solely on the issuance of a permit, or the transfer of land or funding to another jurisdiction; if the project is of little environmental consequence and unlikely to result in significant environmental effects; or if it will have no significant transboundary environmental effects.

For example, a simple Fisheries Act authorization for a small component of a project, such as a culvert on a road to a mine, or a federally funded project, such as a highway, that is otherwise being fully assessed by a province should not result in a broadly scoped duplicative federal environmental assessment. There is no value in the federal government duplicating the effort and mandate of other jurisdictions.

CCA members believe a solution to this challenge of duplication would be the development of a national framework for environmental assessment. The federal government needs to work with provinces, territories, and other jurisdictions to ensure equivalency, reciprocity, and substitution, to facilitate it across Canada to minimize duplication. The fundamental objective would be one project, one assessment.

Such a practice would simplify scoping, improve the timeliness of assessments, and permit governments to better employ limited resources where they are needed most. A list-based approach would also ensure that federal environmental assessments, when triggered, are respectful of the existence of other tools for the achievement of sustainable development, including policy, strategic environmental assessment, legislation, guidance, environmental management systems, and codes of practice.

At CCA we remain concerned that the bar for requiring federal environmental assessment is currently very low. We are doing thousands of environmental assessments under CEAA every year, many of which are for projects that are inconsequential or will have minimal environmental effects.

For example, the Canadian Environmental Assessment Agency, in a study entitled "Federal Screenings: An Analysis based on information from the Canadian Environmental Assessment Registry Internet Site", found that of 2,259 screenings reviewed in 2004, "over 90% dealt with projects that appeared unlikely to cause more than minor adverse environmental effects or pose more than minor environmental risks".

● (1125)

I would like to make a point that is obvious, yet unrecognized by most. The birth of environmental assessment in the 1960s and 1970s arose from the recognition that society needed to include environmental considerations when planning projects. It was a broad-brush tool, aimed at addressing a significant societal problem. Since that time, society has supplemented this early measure, passing environmental laws and developing environmental standards, codes of practice, and a range of tools like strategic environmental assessment, environmental management systems, environmental protection plans, pollution abatement technology, and environmental guidelines.

Consequently, we now have four decades of experience in managing project-related environmental effects. I would argue that the need for environmental assessment has been largely eclipsed for many of the projects subjected to the Canadian Environmental Assessment Act. Many EAs conducted today under CEAA have become mere checklists for legislative compliance and not true environmental assessments, as originally intended. Not recognizing this is a key contributing factor to the persistent pursuit of unnecessary environmental assessment now entrenched in CEAA.

The parliamentary review should therefore, in our view, consider very carefully the number of current environmental assessments triggered and ensure that the number of projects triggered is reduced to ensure that only aspects not presently dealt with through other statutory or regulatory requirements and not duplicative are in fact assessed. The CCA believes that this will free up federal resources to tackle projects that may have greater environmental consequences or a requirement for unique mitigation.

Michael.

Mr. Michael Atkinson: In conclusion, Mr. Chairman, the Canadian Construction Association strongly suggests that the committee propose significant changes to federal environmental assessment by recommending that the Government of Canada adopt a leadership position in establishing a national framework for environmental assessment that minimizes duplication and assures "one project, one assessment".

We believe that federal resources should be focused on those projects that would benefit from environmental assessment—namely, those projects that have the risk of high consequence environmental effects, or for which standard mitigation and environmental legislation may not effectively manage potential environmental effects. We also believe that the triggering mechanisms for environmental assessment must be simplified by adopting a list-based approach, which will also improve the timeliness of the assessment process. Lastly, consideration should be given to the principle of self-assessment and how it contributes to the overall diffusion of responsibility and a general lack of efficiency and effectiveness.

In short, we seek environmental assessments that are certain, non-duplicative, and not overly delaying projects that have already gotten a green light. The most frustrating thing our members see, when there is a green light for a project to proceed, is when the light goes amber or red because of confusion or uncertainty or duplication with respect to the environmental process.

Once again, thank you for inviting us to share our members' views on the CEA Act.

● (1130)

The Chair: Thank you very much, Mr. Atkinson and Mr. Barnes.

Next, from the Canadian Hydropower Association, we have Mr. Irving and Mr. Wojczynski. You have together up to 10 minutes.

Mr. Jacob Irving (President, Canadian Hydropower Association): Thank you, Mr. Chair.

My name is Jacob Irving, and I am the president of the Canadian Hydropower Association. With me today is Ed Wojczynski of Manitoba Hydro. He is the chair of our board of directors and also the chair of our regulatory processes working group.

The Canadian Hydropower Association is the national voice of the hydro power industry. We represent the generators, manufacturers, engineering firms, and construction companies who help make Canada the world's second-largest hydro power-producing nation. Providing over 60% of Canada's electricity, hydro power is our single largest generation source and it makes our electricity system one of the cleanest and most renewable in the world.

Strong as we are, it is still surprising to many that we could more than double our current hydro power capacity and that this potential is spread across the country in every province and territory. This provides Canada with an outstanding opportunity to fight air pollution and climate change while securing a sustainable energy future.

Our presentation today will focus on some of the recommendations from both the Canadian Hydropower Association and the Canadian Electricity Association and will complement those presented to you by my colleague from the Canadian Electricity Association, Ms. Sandra Schwartz, who presented to you on November 1.

I would like to call on Ed Wojczynski from Manitoba Hydro, chair of the Canadian Hydropower Association, to continue our presentation.

Mr. Ed Wojczynski (Chair, Board of Directors, Canadian Hydropower Association): Continuing to supply safe, reliable, and economic electricity while reducing greenhouse gases and air pollutants requires large investments in electricity generation, transmission, and distribution. For example, hydro power developers alone are planning to invest over $50 billion in Canada over the coming decade to help generate the electricity and meet this challenge.

To make these investments, though, the electricity sector requires regulatory efficiency and predictability. Unfortunately, the current federal environmental assessment regime, especially when combined with authorizations under other federal statutes and provincial environmental assessment legislation, causes considerable duplication, delays, and uncertainty. These problems jeopardize Canada's capacity to modernize and expand its electricity infrastructure.

The major projects management office initiative and the 2010 amendments to the CEAA have brought some improvements, and we are thankful for that. However, much more needs to be done to make the process really efficient, timely, and predictable. Deeper changes to CEAA need to be made and will have to be accompanied by changes to some of the other acts that CEAA interfaces with.

Please do not misunderstand me or the CHA members. Environmental stewardship is a priority concern for our industry. Both the CEA and CHA support the principle of rigorous environmental assessment; we're not trying to get rid of it. We cannot successfully develop and operate our projects without a social license to operate. It's more than getting a legal permit; we need a social license. This needs to be earned and maintained through hard work with the first nations, local communities, and a wide range of stakeholders.

We believe that well-designed changes to CEAA can not only bring greater improvement in regulatory efficiency but can also enhance environmental performance by allowing more focus on the priority environmental issues.

Our main recommendations are laid out in our submission, but in brief, they are: reduce duplication through process substitution, delegation, tighter scoping, and avoiding triggering the environmental assessment process when it does not bring added value; improve consistency between the environmental assessment and the authorizations that follow; improve timelines, especially in screenings and panel reviews; and take into account positive environmental effects in the assessment of the projects and have all project benefits recognized in the final decision under CEAA.

Going into a bit more detail, all hydro power projects and many other electricity sector projects are subject to both a provincial and a federal environmental assessment. A clear and efficient environmental assessment is one where duplication is avoided, where one project is subject to one assessment only, and where the assessment is led by the best-placed jurisdiction. Currently, despite the coordination agreements that have been signed, there is still considerable overlap and redundancy between the federal and provincial EA processes. If coordination means only that two similar processes take place at the same time and look at the same things, it still leaves much duplication. This is a waste of public, government, and corporate time, effort, and resources.

To really reduce duplication we need to recognize that CEAA is not the only process capable of delivering a robust EA. The provinces all have sound processes too. When projects are subject to a full provincial EA, CEAA should allow the federal minister to recognize these processes by using the provincial output to inform the federal decision-making. To ensure consistency between the assessment phase and the authorization phase, federal authorities such as the DFO should be required to participate in the provincial EA process when process substitution occurs.

These changes to enable substitution can be made while respecting the jurisdiction and the constitutional separation I was referring to earlier of the two levels of government. In all cases the federal government would still retain its ultimate decision power under the CEAA, the Fisheries Act, and other legislation.

When substitution cannot be granted—and in many cases, that would be the case—CEAA already provides a partial form of substitution called delegation; however, CEAA should be modified to enable delegation to be more flexible. This delegation provision should be used to ensure that all environmental assessment tasks not primarily in areas of federal jurisdiction are delegated to the provinces whenever the two levels of government assess the same project.

More focused scoping of the federal EA process would also contribute to reducing redundancy and making the process more efficient. For example, when provincial legislation adequately ensures that all project impacts will be addressed, focusing the federal EA on the triggering components of the project would help reduce duplication and inefficiency without reducing the effectiveness of the process. In order to facilitate a working solution to the 2010 scoping amendment to CEAA, further changes are required to the act. Those amendments were good, but they're not fully operational yet. This would mean that the project scope should be established before the assessment track is determined by the minister, and that the track decision would then be made on the project as the minister has scoped it.

● (1135)

Triggering the Canadian environmental assessment process only where it leads to an improved environmental outcome can also reduce duplication or excessive redundancy. Yes, we agree some redundancy is needed, but we think there's too much.

Today, the federal government and the provinces both have, in addition to their EA processes, legislation or regulations that protect important environmental resources. In this increasingly regulated context, the CEAA process should apply only where it brings added value. In other words, CEAA should not be triggered if significant impacts are effectively addressed through other federal or provincial regulatory means. This is often the case for smaller, more routine projects that are well-studied and better understood.

Sustainable development requires an evaluation of environmental, social, and economic factors, but CEAA is focused solely on the avoidance of negative environmental effects.

Environmental benefits like those that occur when a hydro power project creates new fish habitat are not taken into account in the assessment. They may only be used currently at the very end to decide whether significant environmental effects are justified or not. We recommend that positive environmental effects, not just the negative ones, be considered in the EA phase. This should be in addition to including an explicit provision that ensures all project benefits, social and economic as well as environmental, are taken into account in the final decision under CEAA.

To conclude, I'd like to stress the critical importance of timelines in the assessment processes and the authorizations that follow. For a large hydro power facility, a delay of one year may result in large losses. For example, a one-year delay in the $8-billion Conawapa generating station project that my company, Manitoba Hydro, is working on, would cause a loss of in the order of half a billion dollars in revenue, delay thousands of jobs, and result in increased greenhouse gases.

In summary, reducing duplication, ensuring consistency between environmental assessment processes and their downstream authorizations, improving timelines, and optimizing triggering and scoping are all achievable. None of these improvements would affect the assessment outcome, and they would greatly encourage investments in clean and renewable Canadian electricity generation and their associated infrastructure.

Thank you, Mr. Chair and committee members.

The Chair: Thank you.

Mr. Irving, you had closing comments and you have a minute.

● (1140)

[*Translation*]

Mr. Jacob Irving: Thank you, Mr. Chair.

I just wanted to say that we can take questions in French and answer them in French.

[*English*]

The Chair: Thank you, Mr. Irving and Mr. Wojczynski.

I want to thank each of the witnesses for providing briefing materials for us well in advance of this meeting. It helped for each of us to be prepared.

Our first questioner will be Mr. Lunney, for seven minutes.

Mr. James Lunney (Nanaimo—Alberni, CPC): I want to thank you all very much for being here with us today. It's an important subject, and we're wading into how to make the system more efficient.

We have an environmental assessment act. It's been in place for a while. We know what the objectives are, and achieving those objectives is what this review is all about, as well as how to get a more effective process in place, if indeed that's possible.

Of course, the whole objective of this is how we can make the act more predictable and efficient. We've had numerous regulations and laws over the years, both at the federal and provincial levels.

I guess the first question that I might address, first to the Canadian Construction Association and the Canadian Hydropower Association, is with regard to having multiple authorities responsible for government assessment and environmental assessment. How does having multiple authorities affect environmental protection from your perspective?

Mr. Jeff Barnes: Thank you for that question.

In reality, we see really little environmental value added by multiple jurisdictions working on an assessment and time being spent on sorting out who should be doing the assessment, who has administration, and harmonizing different processes. To us, and to me personally, it doesn't really add a whole lot of value to environmental protection.

It's this that we're getting at: there's a lot of administration of environmental assessment, and those resources could be redirected in the ways that we suggested, towards perhaps focusing on key questions around technical matters, as Dr. Usher pointed out, around the science of environmental assessment, instead of the administration of process without achieving any positive outcome as a result of the efforts in harmonization, if you will.

Mr. James Lunney: I guess I could rephrase my question: how does applying varying and sometimes conflicting requirements affect the investment in projects?

Mr. Jeff Barnes: It slows it down and increases the debate. I don't think it improves projects necessarily. Certainly debate does improve projects, but duplication of process or competing processes that are not really actually well harmonized, even when they're supposedly harmonized, do not really achieve very much in the way of environmental protection in themselves.

Mr. James Lunney: You note that the construction industry employs about 1.25 million Canadians and accounts for nearly 7% of Canada's GDP. Looking at the Canadian Hydropower Association website, I understand that you represent more than 95% of the hydro power capacity in Canada with nearly 50 members, including producers, manufacturers, developers, engineering firms, organizations, and individuals who are interested in developing hydro power.

For the Canadian Hydropower Association, can you tell us approximately how many people are employed through hydro power projects?

Mr. Jacob Irving: I can give you a projection going forward. Our members have indicated that about 25,000 megawatts of projects across the country are currently being seriously looked at. That represents a direct investment of roughly $50 billion, and that in turn translates into about 150,000 jobs over the next ten-year timeframe. That helps give an indication.

Mr. James Lunney: Of course, hydro power is green power. It's renewable as long as we have water flowing. Where I come from, British Columbia, we have elevation. It seems to me as long as we have elevation and water....

We still have significant rainfall on the coast. On the west coast, we get about 10 feet of rainfall a year in Tofino. So we have elevation, we have opportunities for even micro hydro projects. It seems to me this is something that's very green, sustainable, and renewable; even with changes we're still going to have a lot of rainfall.

So we have green power there. We gave you an example, I think a Manitoba example there, of a delay. I guess the point would be that if you have a delay, how does unwieldy, lengthy, duplicative process impact the development of projects? What happens to people if you have a project for which you're anticipating a one-year review process and it takes much longer? How does that impact the employment of people both in the construction and hydro side, people who are waiting to move ahead?

● (1145)

Mr. Ed Wojczynski: I can give a good example of that. In Manitoba we just signed two power purchase agreements with Minnesota and Wisconsin that would result in about $15 billion to $20 billion of capital expansion where mainly what we would be doing is displacing thermal generation both in Canada and the United States, but more in the United States.

Our contracts have stipulated timeframes for deliveries, because they need to supply their load. If we have built in some buffer into those contracts so that if there are delays in construction, but more importantly on the regulatory side, that they can be accommodated... but there's a limit to those delays. If our process takes a lot longer than we're planning on, then those contracts would no longer be valid and they would turn to shorter-term alternatives.

The tendency is for thermal generation to have much shorter construction and regulatory times than for the hydro projects. So there would be a very explicit impact. They're not just delaying, but actually there could be a loss of those contracts, and a loss of those projects.

Mr. James Lunney: One of the points you raised in your presentation—I think the fourth bullet—was to take into account positive environmental effects in the assessment of projects, and have all project benefits recognized in the final decision under the CEAA.

I think somebody made the point that it seems that CEAA focuses only on the negative impacts and creating a new lake, new fish opportunities, would be a positive impact on employment.

Are you talking about the socio-economic impact when you're talking about all the factors, and could you expand on that?

Mr. Ed Wojczynski: There are the two phases in the process that we're thinking of here.

One is the assessment phase. Let's just say it's a CSR, for the sake of discussion here. In that right now, the process only considers the negative environmental impacts, or social impacts that are caused by changes in the physical environment. It does not consider positive environmental impacts, and does not consider, say, social impacts that are not related to direct environmental changes.

For instance, there are negative impacts on fish due to hydro projects. We try to mitigate those, we deal with those, but there's no consideration given to the positive side. So we're saying if you're going to focus in that assessment phase only on environment, at least consider both parts of it.

The second phase is that if a project is found to have significant impacts, then at the RA or the cabinet level a decision would be made as to whether or not the project should proceed or not given the overall benefits. At that stage, all the benefits should be considered: environmental, social, and economic.

The Chair: Your time is up. Thank you so much.

Ms. Leslie, seven minutes.

Ms. Megan Leslie (Halifax, NDP): Thank you, Mr. Chair.

Thank you to all of the witnesses. This is very interesting and informative.

To Mr. Usher, you talked quite a bit about the importance of monitoring and follow-up and the need to improve this regime. I'd like to explore that a bit more with you. Could you describe to us what a robust and effective monitoring system would look like, why it's important, and what role it plays?

Dr. Peter Usher: In terms of the role it plays, if you don't have effective monitoring, then all the work that was done in assessing the project basically has dissipated, because people made predictions but they were never verified. People made undertakings but they were never verified as to whether they would actually work.

If we want value out of our environmental assessment system, it surely is to ensure that for the life of the project, the proponents, and indeed other actors, including governments, are held to account for what they're doing. The way to measure that is through a robust monitoring system, which has to be science-based.

I mean, everybody has an opinion. If I were to take, for example, the replacement of fish habitat, well, people can make an undertaking to replace fish habitat, but whether it really works or not has to be followed up. Somebody down the road has to say, well, the attempt was made in all sincerity, but in fact it didn't work.

So then what do you do? What's the fallback response to something that isn't working? I feel that it has to be objective and science-based. You have to have a rigorous monitoring program that, in order to be efficient, needs to be well-designed. You can't monitor everything. You have to have a reliable system for demonstrating that the...because people might think, well, the project caused something. Maybe it did and maybe it didn't. There has to be a proper objective, scientific method of assessing whether or not that impact or alleged impact is in fact attributable to the actions of a proponent, or whether it's cumulative in relation to other activities or whatever it might be.

I think without that kind of rigorous monitoring program, we're really in trouble in the downstream benefits of having gone through this environmental review. It takes time, it costs money, and a lot of people get involved. But if everybody just walks away from it at the end and does nothing to verify the predictions and verify the mitigations that were done, I think we've lost a great deal of value out of what we've put into it.

● (1150)

Ms. Megan Leslie: Thank you for that.

You touched in your testimony on the fact that you didn't think that was happening, if I understood you correctly, or it wasn't happening as well as it could be because of a lack of capacity perhaps at the agency.

Is that what you were getting at?

Dr. Peter Usher: Well, I think in order to design a sound, robust monitoring program, you need good science, and the science has to start somewhere. There's no reason to expect proponents to be doing that.

I think proponents are sometimes asked to do far too much with respect to impact assessment. It's actually the job of governments to do the baseline research and the ongoing monitoring and to do it in a way that will prove useful for environmental assessment.

So if you don't have the science capacity...and I don't know who else is going to do it if it's not the proponents—well, I mean, it isn't the proponents, or shouldn't be, I don't think. Governments have to maintain their science capacity to be able to design such programs. Just collecting data and throwing them into a computer without having some serious way of analyzing them, without having a hypothesis about cause and effect, about what it is about this project that might cause harm....

To be able to test that with measurable indicators is the challenge. I don't see it happening a whole lot. Part of the reason it's not happening a whole lot is because people don't devote time to talk about it.

I'll give you the example of the cumulative impact monitoring program in the Northwest Territories. This was announced some years ago by a previous government with great fanfare. I have to tell you that during our review of the Mackenzie gas project, we heard a great deal about how it wasn't working. It's just not happening.

I know that governments have...and in fact this government has put some money into that program, but it doesn't have any overarching design. It doesn't have any program. It's just throwing money at things that so-and-so wants to do, or that this community wants to do, or whatever. You'll never get a serious result that way.

Ms. Megan Leslie: Thank you.

Ms. Kwasniak, I found your submission very interesting, especially the part where you talk about the myth, and avoiding the trap, of overlap and duplication. If you've read the testimony we've heard here or even listened to today, that myth is very pervasive here.

I want to give you an opportunity to talk more about it or even to respond to the assertion by Mr. Atkinson, or perhaps by Mr. Barnes, that multiple jurisdictions don't add value to environmental protection.

Prof. Arlene Kwasniak: Thank you very much.

There's one thing I'd like to thank my colleagues at the table for, and that is for the most part, I think, properly using the terms “overlap” and “duplication”. Overlap is something that our constitution has. It's just the way it is. Duplication is something that can be inefficient, doing things more than once.

There are lots of ways of dealing with duplication. As I mentioned, the federal coordination regulation is one. There can be duplication within the federal family. A lot of the complaints I heard today had to do with duplication within the federal family, when more than one agency or ministry is involved in an environmental assessment.

We've been waiting for a new federal coordination regulation since the five-year review. We still don't have it. That new federal coordination regulation is meant to do such things as determine who's going to do what when.

Ms. Megan Leslie: And that could solve a lot of the problem?

Prof. Arlene Kwasniak: Yes, absolutely.

The Chair: Thank you so much. Your time has expired.

Ms. Rempel, seven minutes.

Ms. Michelle Rempel (Calgary Centre-North, CPC): Thank you to all the witnesses for coming out today. Very comprehensive presentations have been made here.

I'll start with the Canadian Construction Association, and then maybe parallel questions for the Hydropower Association.

Mr. Atkinson, you spoke a bit about a potential list approach as one of the things we should be looking at in this review. So you're aware that right now CEAA utilizes an “all in unless” approach. This means that projects are automatically subject to environmental assessments unless specifically noted otherwise in regulations or legislation. An alternative approach, a list approach, is used in many provinces and other countries, and the list approach involves legislation or regulations listing which projects are subject to environmental assessment.

Based on your comments, could you elaborate on your thoughts about this approach and some of its potential benefits as opposed to current approaches, and could you provide specific examples where this approach could have improved assessments by providing more clarity?

Then I'd like the Hydropower Association to answer this question as well.

● (1155)

Mr. Jeff Barnes: As I mentioned in our discussion, triggering can occur in four different ways. There's a “federal coordination process”—I do put that in quotations—of federal agencies figuring out who needs to do an environmental assessment. That process takes two, three, four, sometimes five or six months, and even longer on larger projects.

A list-based approach, contrary to that, will be one where certain projects or projects with certain attributes would require an environmental assessment at a certain level. The whole administration of who should do the assessment and so on just wouldn't occur with a list-based approach, provided you also made amendments that look to centralizing the responsibility for decision-making around screenings as well, as we've done with comprehensive studies.

The fact that you have different actors is not a very efficient process.

Mr. Ed Wojczynski: I think we agree with everything Mr. Barnes said. Our perspective on this is not a simple one in the sense that we don't think the current process is a good one. We think a pure inclusion list may not be workable in itself, though, because just because there's a project....

Let's just use the criteria. What criteria would you use? I'll stick to electricity. Let's say, as in Manitoba, anything over 200 megawatts needs to have a full-scale environmental assessment in the federal system. I just use that as a possible example. Well, there could be projects that currently aren't even subject to the federal triggers and don't have a lot of environmental impact.

So you need to have something more than just a list of projects, because it would be very hard to define the characteristics that would then cause you to include these projects.

We have actually an expert from our association, Pierre Lundahl, who spent decades on environmental assessment. If you wish, Mr. Chair, I can ask him to supplement that answer. He has a lot more experience on this particular topic.

Ms. Michelle Rempel: We'll just move on to the next question here, I think, for the sake of time.

Mr. Ed Wojczynski: Okay, sure.

Ms. Michelle Rempel: You can finish your answer, then.

Mr. Ed Wojczynski: I think that would probably be answered. Thanks.

Ms. Michelle Rempel: Okay.

You spoke about how one would structure a list, if there was one. If we're looking at best practices in other jurisdictions, perhaps both associations could speak to how a list could be structured, or to some of the potential pitfalls of taking such an approach.

Mr. Jeff Barnes: As Ed said, a list isn't necessarily a perfect process, but it does work. The World Bank and the IFC and various other IFIs use a list approach. It has a number of project attributes. That could include things like how it affects the habitat of, say, an endangered species, or something like that. So it can be more than just projects. It's a list of projects or project attributes that would trigger an environmental assessment under a specified legislation.

The thing is to take the administrative debate about who's supposed to do it out of the equation. At the outset, proponents and governments and the public all should be able to see that this project requires a comprehensive study. There should be no four- or five-month debate that doesn't produce any discussion of how to mitigate the environmental effects or to plan a better project.

● (1200)

Ms. Michelle Rempel: You've both mentioned in your testimony some of the issues with reviews being triggered by a “federal decision”. If we were looking at other alternatives or improving that process, what would you suggest could be used instead?

Mr. Jeff Barnes: To me, in the case of, say, a mining project, which is largely the jurisdiction of provinces when there's an environmental assessment being conducted, if there's some minor trigger—a small component of the project requires a fisheries authorization—it doesn't make a lot of sense to use that as a basis for requiring an environmental assessment that duplicates the provincial process.

This is particularly problematic because before the Red Chris Supreme Court decision, the federal government was implementing a policy of doing intelligence scoping and not duplicating other mandates. That was rubbed out by the Supreme Court decision.

Basically, what it points out is that the legislation's flawed in this regard. It entrenches duplication, and that's a real problem.

Ms. Michelle Rempel: Ms. Kwasniak, some of the industry groups have spoken about the need for a more efficient coordination process. I think both you and Dr. Usher have spoken about that little bit in your testimony.

Can you speak to some ways the legislation could be improved or added to in order to facilitate that?

Prof. Arlene Kwasniak: So you're asking about facilitating more coordination.

The Chair: I'm sorry; unfortunately, the time has expired.

Can you give a 30-second answer?

Prof. Arlene Kwasniak: That might be difficult, actually.

The Chair: Okay. Then we will move on.

Ms. Duncan, seven minutes.

Ms. Kirsty Duncan (Etobicoke North, Lib.): Thank you, Mr. Chair.

My thanks to all of you for coming. We appreciate your time and your testimony.

I'd like to pick up on something Dr. Usher said, which is the need for effective monitoring and follow-up. As you say, this is essentially a science-based program. It must be continuous over time throughout the country. It must meet high standards. This means baseline monitoring and scientific infrastructure.

Who does the monitoring now? What are the rules on monitoring? What is the follow-up? And what would you like to see done?

Dr. Peter Usher: Let's start with who does the monitoring now. This is distributed among such science agencies as Fisheries and Oceans, Environment Canada, and Natural Resources Canada. I suppose, if you were looking at socio-economic monitoring, there would be Statistics Canada. There are a number of government agencies. They monitor in the largest sense, and when I say environment I'm talking about socio-economic as well. They monitor a large range of phenomena. Their monitoring programs may or may not be tailored to specific project impacts, but they are more likely to be useful with respect to cumulative impacts.

It's my impression that the monitoring programs are no longer as robust as they used to be. I don't think it's for me to go into why or exactly how; it's probably beyond my competence. I think we need to maintain and refine the monitoring programs we have, and we have to find a way to ensure, particularly through cumulative impacts monitoring, I think, how to tailor the monitoring we do so that it effectively answers the questions we ask.

I mean, I start with “What's the question, and what are we trying to answer here?”, rather than just go out and collect data. That's a basic principle I've applied in my own private practice for many years and the advice I give.

That's what we have to do. Whether the CEAA should be responsible.... I don't think I should speak to who should be responsible in terms of the specific government agencies, but the—

● (1205)

Ms. Kirsty Duncan: But you would like to see cumulative impact assessments and you would like to have the right questions asked.

Dr. Peter Usher: Yes.

Ms. Kirsty Duncan: You mentioned that much of this is at risk, and I would agree. We're currently facing a 43% cut to CEAA, a possible cut of 700-plus scientists at Environment Canada. I'll provide one example. It's the adaptation group at Environment Canada. Many of those scientists shared part of the 2007 Nobel Prize. Eight were fired in June. Twelve of the 17 remaining have received workforce adjustment letters. And I can provide other examples.

In light of what you've said, how are these cuts going to impact environmental assessment?

Dr. Peter Usher: I don't think I could answer specifically how they will do that, but I would have to say that as in-house capacity within the federal government declines, it cannot but affect it adversely. You have to have competent scientists, who are capable of understanding what the problem is, asking the right question and designing the right response.

It's really at that basic level that I think I'd have to reserve my comments. I can't get more detailed than that, I don't think.

Ms. Kirsty Duncan: Thank you.

Dr. Usher and Professor Kwasniak, should strategic environmental assessment be legislated?

Prof. Arlene Kwasniak: Yes, I believe it should be legislated. I think we should have strategic environmental assessment.

It is already partially legislated, but it's very limited the way it is legislated right now. I think it should certainly be opened up.

There should be more provincial-federal type partnerships, more ability for the federal government to be involved with other entities, such as municipalities and the like, to do strategic environmental assessment. I think in the end that doing good strategic environmental assessment will lead to the need for fewer environmental assessments and may deal with some of the multiple screenings we have.

There are lots of tools in the CEAA already to deal with all the assessments we have. They are just not being used very well—replacement assessments and class screenings—but strategic EA is definitely one of the better ways to go. We've played with it a bit. I think now it's time to get out there and do it.

Ms. Kirsty Duncan: Thank you, Professor Kwasniak.

Dr. Usher.

Dr. Peter Usher: I'm not sure how to answer the question, because I've heard a lot of different versions about what a strategic EA would be. In the absence of some better definitions, should it be legislated? Well, I guess in order to legislate it, you'd have to define what it is.

I don't know if legislation is the best way to go at that question, because I think that's an evolving situation. I'd be loath to see some sorts of strictures put on it that may or may not be appropriate.

I think it's important that there be a distinction between what project-specific reviews do, even to the extent as they must incorporate cumulative impact assessment to keep them conceptually separate from what I understand a strategic-level review to be.

Let me give you an example. Suppose we had done a strategic review at the outset of what would be involved in developing the oil sands in Alberta—it was never done—and on a project-specific basis you're going at it piecemeal. Can the same kind of panel deal with a project review as can deal with a strategic-level review? I rather doubt it.

Who should pay for it? If you're doing a strategic-level review, you can't ask individual proponents to pay for that. That's far beyond what they ought to be paying for.

So I think there are very significant problems here that would need to be addressed. I can only suggest what they are rather than provide a solution at this point.

The Chair: And time has expired.

There was a previous question regarding observers who may be with one of the groups joining and testifying. If you needed to have another expert come to the table and speak, that would be fine, if that's how the questioner wanted to use their seven minutes, or now five minutes.

We will begin our five-minute round with Ms. Liu.

Ms. Laurin Liu (Rivière-des-Mille-Îles, NDP): Thank you, Mr. Chair.

I think we all heard some very interesting ideas come from all of our witnesses today, also, of course, some conflicting points of view. I'd like to start by talking about the ideas that were brought forth around triggers versus a list-based approach.

I think it was Mr. Barnes who talked about the fact that a list-based approach is preferable to a trigger.

Ms. Kwasniak, you talked about how the trigger and the list approach are not reconcilable. Maybe you could respond to what was said.

● (1210)

Prof. Arlene Kwasniak: If I'm not mistaken, I think Mr. Barnes did suggest that you would still need something much like a trigger in order to get the federal government involved in a project, unless it's a project that's totally on federal land or is totally under federal jurisdiction. You will need something to trigger it, to trigger federal... even if you did have a list-based approach.

Ms. Laurin Liu: This is a question for Mr. Wojczynski. You talked about the importance of sustainable development being integrated into our approach towards environmental assessments. From that perspective, do you think environmental assessments should also suggest alternatives to—subject to review? Should that be part of the conclusion of an environmental assessment?

Mr. Ed Wojczynski: CEAA already, as you know, has that as a discretionary possibility for the minister to include in, let's say, a panel review. Our view on that one would be that we can see the need for that kind of an "alternatives to" analysis, but where that analysis is already happening in provincial jurisdictions, the federal decision-making should take that as the input into that.

I tend to use my own province as an example, because I'm the most familiar with it, although I know it happens elsewhere too. We have had and we're going to have provincial-led panels that do what we call a need for alternatives to assessment that has paid intervenor funding, interrogatories, panels of experts, and that thoroughly addresses the need for an "alternatives to" from that provincial perspective.

If that's the case, then we would suggest that the federal panel, let's say, take that, or the federal decision-making take that, as the input rather than duplicating it by having a very thorough provincial process and then repeating that in the federal process.

Ms. Laurin Liu: Thank you for your answer.

Something that I also found really interesting about your presentation was the fact that you mentioned the need for a social license. This is a recurring idea that we've heard from industry time and time again throughout our study. I'll just cite that part of your presentation, where you say: "We cannot successfully develop and operate our projects without a social license to operate. This needs to be earned and maintained through hard work with First Nations, local communities and a wide range of stakeholders".

If I can just sum up your ideas on this, basically you're saying that development projects don't just need to respect the law to the letter, but they also have to be socially acceptable to be viable projects.

Mr. Ed Wojczynski: Yes, absolutely.

Ms. Laurin Liu: We also know that various levels of consultation are possible. They range from a sort of very shallow public consultation, involving simply information sharing from the top down, to the sorts of more extensive public consultation processes that involve shared decision-making. In order to have a proper social license, what kind of consultation process do you think is necessary?

Mr. Ed Wojczynski: We think a thorough consultation process that starts long before the federal or provincial processes kick in.... There always will be some potentially affected communities and people and they should be involved right at the front end. In our case in Manitoba, we focus to a great degree on the local aboriginal people, but other developers who have other people who are also going to be affected do the same thing.

In our case, as an example, for the local first nations in the area of our projects we went through six years of consultation. There were joint studies, joint management of the studies, and joint hiring of consultants. We provided funding for them. We had a lot of TK work—traditional knowledge work—where they did their own TK work—

Ms. Laurin Liu: I'm sorry to interrupt. I'd just like to get a response—

Mr. Ed Wojczynski: Oh, sorry.

Ms. Laurin Liu: —from Mr. Atkinson before my time runs out.

● (1215)

The Chair: Unfortunately, your time has expired.

Ms. Laurin Liu: Okay. I'm too late.

Thank you.

The Chair: Five minutes goes very quickly.

Next we have Mr. Woodworth for five minutes.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you very much.

My thanks to all the witnesses.

To the Canadian Construction Association and the Canadian Hydropower Association, I just want to say that it's great to have this sort of first-hand experience at the table about some of the issues that you encounter.

I really would be remiss if I didn't particularly thank Dr. Usher.

I want to say that if all of the witnesses who came before us had your degree of care and thoughtfulness, my job would be a lot easier. I just want to make the point that when I see someone who stays to facts and who presents things logically, I do listen very carefully, much more carefully than when I hear journalistic headlines and demonizing of opponents coming out. Thank you for that.

I want to try to be specific in my questions. I'll direct them to the industry representatives, beginning first with the idea, the notion I have, that there are times when more than one federal body gets involved in conducting environmental assessments. For example, we have the Department of Fisheries and Oceans. We have the environment department, which may be involved in migratory birds or SARA or who knows what else. There's a diffuse accountability and, I would say, a fragmented accountability.

I'm wondering if either or both of the two associations here could give us an example, if you know of one, where that has happened, where you've had a project or you've observed a project that has gone through several different federal authorities in order to ultimately get a final assessment.

I'll start with the construction association, and then we'll go to Hydropower.

Mr. Jeff Barnes: Briefly, almost all of the larger assessments involve multiple triggers and more than one agency. If you're affecting a large area of land, you're going to affect migratory birds and maybe fish and so on, so almost all of the assessments of those larger projects do involve many agencies, and necessarily, in the context of when they're being triggered. I don't really see that as a problem, but it does take a lot of coordination.

The real challenge is that especially when we have harmonized processes with other jurisdictions, where those folks who are required to do an environmental assessment of a whole project when they are fisheries resource scientists or responsible for the Migratory Birds Act.... Those things, they're really outside their sort of core expertise and their mandate, and certainly that's why we applaud the Canadian Environmental Assessment Agency taking on a decision-making and coordinating role for comprehensive studies.

Mr. Stephen Woodworth: I sense a little bit of the scoping issue in what you've just said. If I have time, I would like to come back to that, but first I would like to go the hydro power people.

You mentioned a specific project in Manitoba; I forget the name.

Mr. Ed Wojczynski: Wuskwatim.

Mr. Stephen Woodworth: Not having been involved in any of this, I'm just trying to imagine a case, or I'd like to have a case described to me, where this has occurred, where there have been multiple assessments required by multiple federal authorities.

Mr. Ed Wojczynski: I'll try to be quick.

Wuskwatim is a $1.6-million hydro project done in partnership with the local Cree. It went through a CSR. It's nearly finished construction now. In that project we had navigable waters involved, and DFO; they were the two main issues.

I would say there wasn't really conflict between having the Transport people and navigable waters and DFO. That wasn't a problem, but we had a very specific problem where caribou were an issue. Environment Canada and DFO, for about three or four months, delayed the whole CSR because they couldn't figure out who should deal with that on our project.

We also applaud the CEA agency as now having the lead role because those kind of issues would hopefully be dealt with much better than they were then.

Our problem often is not so much between the departments, but even within the department. For instance in DFO—most of our interactions are with DFO—we can go through a CSR process, as we did with Wuskwatim, and think we've reached a resolution in all the major issues. Then, later on, we had authorization under the application of the Fisheries Act, and essentially we had to redo most of the stuff and we got different answers. Only in the last six months—here's a project that we'll have spent $1.2 billion on—did we get the authorizations for operating the facility. In retrospect, we never would have started it if we'd known it would take so long.

● (1220)

Mr. Stephen Woodworth: Keeping in mind—

The Chair: Time has expired.

Mr. Stephen Woodworth: Oh, the time has...? That's it.

Thanks.

[*Translation*]

The Chair: Mr. Choquette has the floor for five minutes.

Mr. François Choquette (Drummond, NDP): Thank you, Mr. Chair.

Thank you, ladies and gentlemen, for appearing before us.

My first question is for the representatives of the Canadian Construction Association and Ms. Kwasniak.

There's been a lot of talk about multiple assessments and wastes of time and money. I think we're all agreed as to the importance of the Canadian Environmental Assessment Act and its improvement. It's important to do assessments.

Do you think that better coordination among the federal authorities and between the federal and provincial governments could settle many of the problems you have now?

[*English*]

Mr. Jeff Barnes: Yes, precisely; that is a solution. We've offered in our submission a number of different ways in which resources could be focused on very important matters of environmental assessment—that is, understanding the project and environmental effects and developing mitigation and so on.

These administrative aspects of the act, particularly the trigger mechanism and federal coordination, result in an expenditure of resources that is enormous—6,000 assessments a year in Canada—and that is not achieving any analysis, discussion, or value added around the environmental questions.

I'll leave it at that.

Arlene.

Prof. Arlene Kwasniak: Thank you, Jeff.

In a lot of the issues that have been discussed is the fact that you do have multi-triggering and that is a problem with the coordination within the federal family. I know the idea of perhaps replacing self-assessment with some other mechanism, such as extending the agency's authorities over screenings, might be an answer. I think that is certainly something that is worth exploring, because if the federal family really got its act together, I think that would relieve a lot of the inefficiencies.

[*Translation*]

Mr. François Choquette: My next questions are for Mr. Usher and the representatives of the Canadian Hydropower Association.

There's been a lot of talk about the possibility of establishing timelines and deadlines for environmental studies. It's been said that this could save the industry some money. What do you think? Is this really a solution? Mr. Usher, I know that you've already said a few words about this. Could you say whether timelines are a solution that would save money?

If there's time, the representatives of the Canadian Hydropower Association could say a word about the criteria. You said that lists were perhaps not the best solution. Could you say more about this?

I'm listening, Mr. Usher.

[*English*]

Dr. Peter Usher: Thank you.

I really ought not to say very much about the question of lists. I don't feel I know enough about the pros and cons of that to give you a good answer. I think we all would agree that things should be done faster than slower, and that whatever can be done to speed up the process should be done.

Having said that, we can't cut corners. I think, if I could remark on it, there's a lot of suggestion from time to time that somehow the processes take so long that an investment opportunity is lost. I would argue, actually, that if there is a good business case for a project, it's going to happen whether the review takes six months or a year. If it doesn't go, it's probably because there wasn't a good business case in the first place.

I'll give you an example. It's a great myth in the city of Calgary that Tom Berger spiked the original pipeline, that it didn't happen because of him. Well, the reality is that it didn't happen because they didn't have a good business case. The banks were no longer prepared to give them any money to do it. So maybe he did them a favour.

A good review should improve a project, not stop it necessarily. I mean, there's always the possibility that it should be stopped, but most of the time, it should be made better.

I don't know how much more I can say about that. I did suggest some things....

I think you're telling me to wind up, so I will.

● (1225)

The Chair: And I thank you. Time has expired.

You had an extra thirty seconds there.

Mr. Sopuck, you have five minutes.

Mr. Robert Sopuck (Dauphin—Swan River—Marquette, CPC): Thank you.

I understand that the established timelines for comprehensive studies regulation came into force in June 2011. To both industry associations, what is your view regarding these new timeline requirements, and why are such legislated timelines important?

Mr. Jeff Barnes: I actually have first-hand experience. I'm personally involved as a consultant on three comprehensive studies that are under way. What we're seeing is a clear understanding of who has authority—that would be the agency—with the amendments. Then the timeline regulations are causing a great deal of focus on efficiency, harmonization, resolving issues with other jurisdictions, and living up to meeting the timelines.

To date on those three projects, with my first-hand experience, I've been extremely impressed with the way the agency has been conducting itself. I think it's proving to be, at least from an early perspective, a very good move to have those regulations in place.

Mr. Robert Sopuck: Just as a follow-up question, then, I do have an unusual focus on the environment itself in terms of environmental quality. I find these hearings so process-oriented that we often lose sight of the environment itself. Regarding these legislated timelines, have you seen any compromising of environmental quality based on scientific data?

Mr. Jeff Barnes: No, I have not. In fact, I don't think the administration of process has a whole lot to do with the quality of environmental assessment. If anything, the fact that people are focused on it seems to keep people thinking clearly about what needs to be done and what's involved.

Mr. Robert Sopuck: That begs another question I have asked other industry witnesses. Given that when you design a project you take into account the Species at Risk Act, the Fisheries Act, the migratory birds act, and all of the applicable provincial, territorial, and municipal regulations—those are built into the project's design—in terms of the environment itself, in terms of the physics, chemistry, and biology of the environment itself, what is the value added of the CEAA process?

Mr. Jeff Barnes: Well, that's a very good point, and we allude to that, I think, in our presentation, in my musings that we've lost touch with the fact that EA was born in the sixties, when we didn't do anything to plan our projects.

In planning and revising CEAA, we need to be aware of the fact that there are many tools, such as laws and regulations, that actually deal with and make many things routine. The environmental assessment isn't of any value to the fisheries authorization, for example, in my opinion. That has to be done regardless of whether you have assessment or not.

So I don't see a lot of value added for triggered authorizations.

Mr. Robert Sopuck: Mr. Wojczynski, regarding your point about environmental change caused by hydro developments, for example, I do strongly subscribe to your view that CEAA should look at the positive environmental effects of a project. Too often we confuse "any" environmental change; we assume it's a negative thing, and it's often not. I think your example of fish populations is exactly right in terms of what happens behind water control structures and reservoirs.

Could you expand on other positive environmental effects of some of the developments you've been involved with?

Mr. Ed Wojczynski: Yes, and I'll talk about the environmental effects, not the social right now.

Another one is reduction in greenhouse gases. When we've had CSRs or there were federal panel reviews, the preparers of the reports had the proponents...and being told, well, you can throw in something about reducing greenhouse gases, but that's not part of our mandate; we're looking at what the negative environmental impacts are; so throw it in, but that isn't part of our overall consideration—except at that final decision at the cabinet level on whether the project should proceed or not.

That's a very clear one that we've always struggled with. So you could help reduce climate change and warming....

Okay, I'm finished.

● (1230)

Mr. Robert Sopuck: I have one last point, then, regarding your social license point, Mr. Wojczynski. Don't you think it's the proper role of elected officials to decide the social license? We have a consultation process called elections, so where do folks like us fit in this process?

Mr. Ed Wojczynski: I think they have a different role.

Now, I'm really getting out on a limb here—

Mr. Robert Sopuck: Good.

Voices: Oh, oh!

Mr. Ed Wojczynski: —but I think there's a role for both. I think government needs to be there to provide firm indications of what needs to be done as an absolute minimum and to set resource allocation decisions—I'm thinking about provincial governments there—but at the same time, companies need to demonstrate that they don't just do the absolute minimum. In our view we need to go further than the minimum, in many cases, and I think probably most industries do.

The Chair: The time has expired.

[*Translation*]

Ms. St-Denis, you have the floor for five minutes.

Ms. Lise St-Denis (Saint-Maurice—Champlain, NDP): Good day. Thanks to all of you for being here today.

First of all, I'd like to come back to the problem of lists. Mr. Barnes seems to be saying that, if lists are made, all time and delay issues will be resolved. So I'd like to ask Mr. Barnes first, then Ms. Kwasniak, what they think about this. It seems to me that, to determine a list, it takes time and consultations. In your case, it's as if the word "list" were synonymous with a miracle solution.

Mr. Barnes, how do you see the list being organized? Who's going to do it? How much time will it take? How much will it cost? Who will be in charge of this list?

[*English*]

Mr. Jeff Barnes: I would say that the House of Commons and Senate would pass some sort of legislation or we could have regulations. I think the act has the ability to establish regulations for a list. I would see the government establishing what those lists should be. There would probably have to be quite broad consultation across Canada on establishing the list.

The bottom line is that for the 6,000 assessments that are done in Canada every year there is a federal coordination dance that takes two to six months, or longer, to decide who is going to do the assessment. The list-based approach is not the panacea, but it is a way we can provide certainty from the outset and waste no resources on deciding who is going to be the assessor.

I believe and we believe there's a strong benefit to clarifying what level of assessment is required and which projects require assessment without any deliberation.

[*Translation*]

Ms. Lise St-Denis: Ms. Kwasniak, what makes you think the lists wouldn't work?

[*English*]

Prof. Arlene Kwasniak: It's because of the way our federation works that the list won't work. Even if you had a list, you would still need a trigger; I mean, we have lists under the Canadian Environmental Assessment Act. Once something is triggered, you can then look at the exclusion list to see if it's excluded. If something is not physical, you can look at the inclusion list to see if it might be on it anyway. But in every case you need a trigger before you have a list.

You could always beef up the list approach by adding to the exclusion list, and you could deal with what Mr. Barnes called the "federal coordination dance" by doing something other than trying to deal with that as a list. For example, as was suggested, you could look at self-assessment again, and maybe just have one agency do all assessments—one that's better funded than the CEAA currently is—or you could have a new federal coordination regulation.

I don't see the connection between the list and efficiency. I guess the list is going to reduce the number of assessments, but I don't think that is a good thing when the federal government is the only one who can regulate within certain areas in this country.

[*Translation*]

Ms. Lise St-Denis: I'd now like to ask Mr. Usher a question.

You wondered who would pay for strategic reviews. Do you have a solution to propose?

● (1235)

[*English*]

Dr. Peter Usher: It seems to me that when you get to the level of a strategic review, which is really some sort of policy-wide or region-wide assessment of something well beyond a project level, you're then beyond proponents. It's a proponent who proposes a project.

Keep in mind that in our system of environmental assessment where there are project reviews, it's done on a cost-recovery basis. A proponent pays, if I'm correct, two-thirds or 70% of the cost of a review, which I think is fair game for the project review, but once you get to the level of a strategic review, a region-wide thing that is much less defined, why proponents would want to pay for something they're not responsible for and for which they will not derive benefit, I can't imagine.

So who does that leave? I guess it leaves government, unless maybe it was an industry-wide thing. There's a government responsibility in the same way that governments pay for royal commissions or public inquiries.

The Chair: Your time has expired. Thank you so much.

Next, Ms. Ambler, you have five minutes.

Mrs. Stella Ambler (Mississauga South, CPC): Thank you, Mr. Chair.

I'm going to direct my questions to the Canadian Hydropower Association.

Mr. Wojczynski, could you please elaborate on why hydro power is considered a clean energy source?

Mr. Ed Wojczynski: First of all, it is renewable.

Second, there are impacts, such as on fish, but we do have a lot of regulation and measures in Canada that ameliorate the impacts.

The best example is that if we affect habitat, then we have to replace that habitat under the Fisheries Act no net loss policy. We have to put in, let's say, at least four times replacement habitat to deal with the risks.

So I think the kinds of impacts that do happen are dealt with, and there are no greenhouse gas emissions and air emissions.

Mrs. Stella Ambler: Thank you.

Mr. Irving, you told us in your presentation that hydro power is our single largest generation source. Is hydro power generation also an efficient source of energy?

Mr. Jacob Irving: Yes. In terms of efficiency, our history in Canada is a storied one in hydro power. We operate at over 90% efficiency, meaning that when turning the water power into electricity, when it goes through the turbine, that conversion happens at an over-90% rate in general throughout our facilities in Canada.

There are always opportunities to up that percentage, but comparing hydro power with other sources of electricity generation, we'll see other ones coming in around the 60% or 40% range at their upper limits.

When you look at raw efficiency, as you mentioned, hydro power is a clear leader.

Mrs. Stella Ambler: The average is 90%?

Mr. Jacob Irving: The average is 90% or higher.

Mrs. Stella Ambler: Thank you.

How much energy does Canada generate each year from hydro power?

Mr. Jacob Irving: We generate roughly a little over 360 terawatt hours a year from hydro power. That's what puts us in the second-place position in the world.

Mrs. Stella Ambler: Can you estimate how much untapped hydro power exists in Canada?

Mr. Jacob Irving: We have a current installed capacity of about 74,000 megawatts in Canada. We could more than double that potential. Studies that we've conducted and that are well known, have been broadcast, and have been in existence since 2006, indicate we could develop roughly another 163,000 megawatts.

Mrs. Stella Ambler: That would necessitate, obviously, the building of more projects.

In your experience, have environmental assessments delayed or cancelled hydro power projects in the past?

Mr. Ed Wojczynski: Certainly the environmental assessment process has caused some projects to be delayed. There was one in B. C. that was a bit of an unusual case. There was a provincial override on an earlier licence, which actually sort of goes to the example of needing good environmental assessment and regulatory process in the first place so you withstand and have a social license later.

Mrs. Stella Ambler: The override was...?

Mr. Ed Wojczynski: The B.C. provincial government overrode an earlier decision, and a project was cancelled. I believe it was called Kemano.

But, certainly, I think what happens is that companies look ahead to decide whether or not they're going to invest in the first place, and even begin the process.

I agree with just about everything our colleague Dr. Usher said, including the need for more research and monitoring. However, I disagree with one comment he made that having a longer process would not affect investments and the decisions because it only makes the projects better.

In our projects, we're talking of regulatory processes of not six months to a year; we're talking about four years. Certainly a number of projects have had that.

When companies are looking at developing thermal resources for which the process often takes a year, and the construction period is shorter, upfront that's going to have a cost impact, and a risk impact, and a meeting-the-market timing impact. So I think what will happen is not that the projects get cancelled, but that the investor decides not to go into hydro in the first place.

● (1240)

Mrs. Stella Ambler: Right. You're talking about a four-year process to construct something that takes only a year.

Mr. Ed Wojczynski: For the hydro projects often I've had four-year federal regulatory processes to get the authorization, and then there's the construction period.

The Chair: Time has expired.

Closing off the last of the five-minute segments is Mr. Lunney.

Mr. James Lunney: Thank you.

We've been discussing timelines a little bit, and that's come up from a number of our colleagues here. I think hydro was mentioned as your third bullet, and improving timeliness. That just came up in the previous discussion here.

Dr. Usher, I appreciate your thoughtful approach. You've been at this a long time, as have other people at the table. I notice you started your remarks with your primary concern, products and outcomes, rather than with process. I appreciate that you said somewhere in your remarks that you like to ask what the question is that you're trying to address in a review process.

You made some comments about mandatory time limits, on which there seemed to have been some discussion here. But I thought you did make some good points in your presentation about room for improvement. There are things that can and should be done with respect to the timely and effective provision of technical support to panels. You mentioned timely and fulsome provision of information to panels by all participants and—a third bullet—panel guidance and training with respect to procedures and conduct.

Those are things that perhaps can be tweaked. You've obviously put some thought into this. I'm wondering if you have any recommendations specifically about how to achieve those objectives.

Dr. Peter Usher: I'm not sure how you could put them into legislation or even regulation. A lot of it has to do with the culture of how we do things. I find that if I would go to, for example, the provision of information to panels by all participants....

I would draw attention to something that I didn't mention in my submission. You know, our system relies on proponents to...and I know the term "self-assess" is used in a different mode than has been used all through these proceedings, which has to do with self-assessment by federal departments. Proponents are also expected to self-assess in the sense that they do the assessment of what they think the impact of their project will be. Not surprisingly, they try to put a good light on it; fair enough, as they should.

Trying to get information, for example during rounds of information requests, can sometimes take an enormous amount of time, and after a while one thinks, you cannot wring blood from a stone here.

I don't want to get too detailed about the kinds of...because I think they're very project-specific, or event-specific maybe. But I think there's an issue around the timely provision of information.

On the business of technical support to panels, once the parties have set up panels, they should think through the obligations that they have imposed on those panels and ask whether they've provided them sufficient resources to do the work they are expected to do, because they have not always.

I can tell you there was a certain point in our review on the Mackenzie gas project when we desperately needed assistance and we were told, "Don't worry. You don't need assistance. No problem. You've got 11,000 pages of transcript and 100,000 pages of evidence to go through. What's the problem?" Well, we didn't set that up.

So when you set up a process, you have to give very careful thought to what the consequences are of fulfilling the objectives that you have set to meet.

I don't know if that answers your question, but I've tried.

● (1245)

Mr. James Lunney: I appreciate your taking a stab at it.

The other thing you talked about was monitoring and follow-up. Some of these projects have been done repeatedly, whether we're talking about building a hydro dam or a micro hydro project or whether we're talking about highway construction and a culvert under a road. Some of these things have been done before. We've put regulations in place to cover this type of project.

When you talk about monitoring and follow-up, do you have suggestions on how we might create a science base that would establish the parameters of what is going to be required, so that we can cover a broader range of projects, in a general sense, so they know upfront what the requirements are?

Dr. Peter Usher: I'm not sure you can establish it upfront, and that was the point of my remark about why reviews should focus on what is new.

You know, if you're just doing routine culvert construction or routine pipe installation at a river crossing, which has been done many times before, the issue is not to review the impact of that single event, which may be done under a specific permit, but what happens when you put them all together.

What happens, for example, on the Mackenzie River when you do 300 crossings of tributary streams, any one of which may have very little impact, but all of which may have a very substantial impact on the fisheries of the Mackenzie River? You have to figure out how to monitor that.

It's at that level that we need the work, not where somebody is going out and saying, at this very tiny level, "Is there is a grain of sand here? Is there a drop of water there?"

The Chair: Thank you so much.

That has ended the appearance of today's witnesses. We want to thank each of you for coming and for providing the briefs.

We will suspend for a few minutes and committee will reconvene in camera.

[*Proceedings continue in camera*]

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