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September 28, 2012

**Livain Michaud**  
**Panel Manager, Canadian Environmental Assessment Agency**  
160 Elgin Street  
Ottawa, ON K1A 0H3  
Newprosperityreview@ceaa-acee.gc.ca

**RE: Draft Public Hearing Procedures and  
Draft Procedures for Requesting Confidentiality  
for the proposed New Prosperity Gold-Copper Mine Project  
(Registry #63928)**

Dear Livain Michaud,

Thank you for the opportunity to submit comments on the Federal Review Panel's ("Panel") draft Public Hearing Procedures and draft Procedures for Requesting Confidentiality.

### **About West Coast**

West Coast Environmental Law Association ("West Coast") is a British Columbia-based non-profit organization of environmental lawyers and analysts dedicated to safeguarding the environment through law. One of Canada's oldest environmental law organizations, West Coast has provided legal support to British Columbians to ensure their voices are heard on important environmental issues and worked to secure strong environmental laws for almost 40 years.

Since its founding, West Coast has been involved with various aspects of, including the precursors to, provincial, federal and joint environmental assessment. West Coast was also involved in the development of the *Canadian Environmental Assessment Act* SC 1992, c.37 ("CEAA") and is active with the Environmental Planning and Assessment Caucus of the Canadian Environmental Network. We have a long history of serving on the federal government's Regulatory Advisory Committee ("RAC") and provide environmental legal aid to citizens and organizations involved in EA processes. We made submissions to the Environment and Sustainable Development Committee's Seven Year Review of CEAA in autumn 2011, to the Finance Subcommittee and Senate Standing Committee on Energy, the Environment and Natural Resources in Spring 2012 in relation to Part 3 of the omnibus Budget Bill C-38. We have most recently recommended amendments to the current Regulations Designating Physical Activities (RDPA) under the *Canadian Environmental Assessment Act 2012* SC 2012, c.19 (CEAA 2012).

## **Comments on the Draft Public Hearing Procedures**

### **Allow time for all voices to be heard**

While the Draft Hearing Procedures state that all are welcome to make oral and written comments to the Panel, we are concerned that there is no provision that guarantees that everyone who wants to be heard orally will be. This is because the Panel is giving priority to registered Interested Parties and will only hear from those who do not have Interested Party status 'time permitting' (e.g. 2.8, 1.10 of Attachment A).

We believe that the public's comments are critically important to the environmental assessment process. In 1992 Canada signed the Rio Declaration<sup>1</sup> agreeing to a national environmental assessment process, which affirmed that:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have ... the opportunity to participate in decision making processes (United Nations, 1992).

This contributed to making public participation a key part of environmental assessment in Canada through the previous legislative regime. The inclusion of the public in the environmental assessment process results in better decisions; the opportunity to hear public concerns and questions will facilitate dialogue among all parties, leading to an increased chance of mutual understanding and agreement, and improved public acceptance of the project in the end. Studies have demonstrated these assertions. A 2008 study by the US National Research Council<sup>2</sup> found that:

Substantial evidence indicate(s) that public participation is more likely to improve than to undermine the quality of decisions... Although scientists are usually in the best position to analyze the effects of environmental processes and actions, good analysis often requires information about local conditions, which is most likely to come from residents. Moreover, public values and concerns are important to frame the scientific questions asked, to ensure that the analyses address all of the issues relevant to those affected.

The same study also suggests that public participation increases the legitimacy of decisions and builds citizens' knowledge of the scientific aspects of environmental issues assisting the effectiveness and efficiency of implementation.

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<sup>1</sup> United Nations Conference on Environment and Development. June 3-14 1992. Rio Declaration on Environment and Development. Retrieved from:

<http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>

<sup>2</sup> National Research Council. 2008. Public Involvement Usually Leads to Better Environmental Decision Making. Retrieved from: <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=12434>

Local citizens and members of the public should be allowed to rely upon their knowledge, values and concerns to challenge others including experts and ask hard questions about the potential impacts of a project on the places, people and resources that are of value to them.

We believe that potentially having to turn away members of the public with a real interest in this proposed project and the development priorities it represents will undermine the environmental assessment process. It will silence not only environmentalists, but also landowners, hunters, fishers, industry associations, community groups and members of the public. In doing so, it will also undermine the social license that industry needs to successfully operate.

It is our view that, at minimum, the Panel guarantee those interested in making an oral statement an opportunity to do so, and allocate sufficient time to accommodate these people.

### **Interested Party Status**

We do not support the approach taken by CEAA 2012 that alters who gets to make submissions and what type of submissions they get to make by introducing the ‘interested party’ provisions. We have made public submissions on this aspect of CEAA 2012 before.<sup>3</sup> We recognize that the Panel must work within the changing legislative framework and it is beyond its power to change that, and so we will not repeat our previous arguments here. Thus our primary comment on the application process for Interested Party Status is simply that we encourage the Panel to apply its criteria broadly and carefully. We also support the automatic inclusion of the 14 First Nations, government agencies and proponent as Interested Parties.

### **Guarantee equal consideration of both oral and written statements**

According to the Draft Public Hearing Procedures, the Panel will ‘generally give more weight to submissions that have been presented in the hearing when an opportunity to question the information is afforded to other participants’ (section 2.3).

We do not believe that this is an equitable practice because not all people or organizations will be able to attend hearings in person in Williams Lake or in local communities in addition to preparing their written submissions. Given the financial burden associated with the logistics and resources required to attend hearings in person, it is not feasible to expect that all those with written submissions regarding the proposed project be present for an oral statement.

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<sup>3</sup> Andrew Gage. Who is silenced under Canada’s new environmental assessment act? April 2012. West Coast Environmental Law Association Environmental Law Alert. <http://wcel.org/resources/environmental-law-alert/who-silenced-under-canada%E2%80%99s-new-environmental-assessment-act>

Rachel Forbes. Report Card. June 2012. Failing Grade: New Federal Approach to Environmental Assessment Leaves Canadians at Risk and Without a Voice. West Coast Environmental Law Association. <http://wcel.org/sites/default/files/publications/Report%20Card%20June%2020%202012%20Legal%20Analysis%20Report.pdf>

This provision together with the provisions in the Draft Public Hearing Procedures (e.g. 2.8, 1.10 of Attachment A) that state those who are not registered Interested Parties will only be heard from orally 'time permitting' could have the effect of preventing people or organizations who would like to make oral submissions (whether in support of their written submissions or not) from doing so.

Finally, while we appreciate that the Panel is seeking to ensure it is considering the best information and evidence about the proposed project and its impacts, we do not believe that a different 'weight' should be given to otherwise-credible written submissions than is given to submissions that have also been presented orally.

Barring a serious issue with credibility of information or evidence presented orally or in writing, we do not believe that the Panel should pre-determine the weight it will give to different types of submissions. Imposing a bias on weighting of submissions also may disadvantage those who have personal or linguistic reasons for not making oral submissions.

If there is a circumstance where the Panel feels it must have a participant answer questions regarding their written submissions, we support procedure 5.0, which allows the use of teleconferencing.

### **Specify the location of Community Hearings**

The Panel has not yet specified the number, location and duration of the Community Hearings. Without this information it is difficult to comment on whether we find the number and location of Community Hearings to be appropriate or sufficient.

Before making a decision on the number and location of the Community Hearings, we believe that it would be prudent to consult with the local residents, especially the listed First Nations. Consulting with those who will participate in Community Hearings prior to setting a schedule for them is especially important given the geographical distribution of the existing Interested Parties, including 14 First Nations,

We recommend that the Panel publish a detailed schedule at the earliest opportunity after consultation so that those wishing to make submissions or attend can make scheduling and travel plans in advance.

### **Maintain linguistic flexibility and cultural sensitivity**

We support the Panel's attempts to accommodate those who would like to make submissions in languages other than English, those who would like to request that written or oral submissions be kept confidential, and the Panel's stated ability to adapt procedures when holding hearings in Aboriginal communities in order to respect specific cultural circumstances. We recommend that those provisions remain in the Public Hearing Procedures.

## **Comments on the Draft Procedures for Requesting Confidentiality**

Generally, we support the default rule that all information obtained by the Panel for the environmental assessment be made available to the public. However, there are circumstances where the public disclosure of information that is critical to the assessment could be detrimental to the interests – cultural, legal or otherwise – of some individuals or groups.

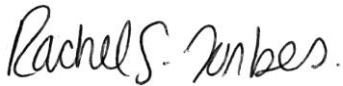
In particular, this can be the case with traditional or local knowledge held by Aboriginal peoples and First Nations governments, some of which may be considered sensitive and not appropriate for sharing with the public. There are many different types of information that Aboriginal peoples may wish to share with the Panel in order to provide evidence of the use of certain areas or resources, governance traditions, or potential impacts on people, lands, waters or rights.

The Draft Procedure for Requesting Confidentiality permits parties to request that certain information be kept confidential, including a request to modify the Hearing Procedures to allow for the presentation of evidence at the hearing in a way that keeps the evidence confidential. We support this premise of the Procedure as we strongly believe it is important to allow both written and oral evidence to be kept confidential in order to respect First Nations-rights related issues concerning land and resource use.

Thank you for considering our submissions.

Yours truly,

**WEST COAST ENVIRONMENTAL LAW**

A handwritten signature in cursive script that reads "Rachel S. Forbes".

Rachel S. Forbes  
Staff Counsel