

Federal Government Releases New Interim Principles for Natural Resource Development Projects Currently Under Regulatory Review

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The Government of Canada has announced five “interim” principles to guide the review of a number of major resource projects while it undertakes a broader review of the federal environmental assessment (EA) process.¹ On January 27, 2016, the Minister of Environment and Climate Change Catherine McKenna and the Minister of Natural Resources Jim Carr announced that the interim measures are intended to restore public trust and provide greater certainty in the EA process. The five principles are:

1. The views of the public and affected communities will be sought and considered;
2. Indigenous Peoples will be consulted and their rights and interests accommodated;
3. Both direct and upstream greenhouse gas (GHG) emissions of projects under review will be assessed;
4. Decisions will be based on science, traditional Indigenous knowledge and other relevant evidence; and
5. No project proponent will be asked to return to the starting line - project reviews will continue within the current legislative framework and in accordance with treaty provisions, under the auspices of relevant responsible authorities and Northern regulatory boards.

A number of major projects are currently under review and will continue within the current legislative framework. However, in order to incorporate the new interim principles in the review of two contentious pipeline projects, the Government is extending deadlines for review and decision:

1. A four-month extension to make its decision on the Trans Mountain Expansion Project for increasing the capacity of the oil pipeline running from Edmonton to Burnaby, BC; and
2. A nine-month extension for the review and decision on the Energy East Project, which would carry crude oil from Alberta and Saskatchewan to delivery points in Quebec and New Brunswick.²

¹ “Government of Canada Moves to Restore Trust in Environmental Assessment,” Press Release, Natural Resources Canada, January 27, 2016, <http://news.gc.ca/web/article-en.do?mthd=index&ctr.page=1&nid=1029999>

² “Interim Measures for Pipeline Reviews,” Press Release, Natural Resources Canada, January 27, 2016, <http://news.gc.ca/web/article-en.do?mthd=tp&ctr.page=1&nid=1029989&ctr.tp1D=930>

The delays are intended to allow the government to undertake “deeper consultation with Indigenous Peoples”, including providing funding to support consultations, and to consider the two projects’ upstream GHG emissions. The Government of Canada plans to appoint a Ministerial Representative to engage communities affected by the Trans Mountain Project. For the Energy East Project, the federal Government hopes to facilitate increased public participation in the NEB review. The Ministers stated that ultimately it will be the Cabinet that decides whether the two pipeline projects and other major energy projects are in the “national interest”.

The interim set of principles is the first step in a much broader review of the federal environmental regulatory regime. During last summer’s election campaign, the Liberals promised to restore robust oversight to federal environmental reviews, increase opportunities for meaningful participation, work closely with Indigenous Peoples, end political interference, assess upstream GHG emissions, and require the use of best available technology in projects.³ The Liberals also pledged to restore lost environmental protections with the review of extensive changes the Conservatives had made to the *Fisheries Act* and the *Navigable Waters Protection Act* – an Act that was replaced by the *Navigation Protection Act*. Yesterday, Minister McKenna commented that the broader review would likely take a number of years to complete.

In an upcoming article, we will examine the issues that are likely to be considered in the broader review of Canada’s environmental assessment process.

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³ “We will make environmental assessments credible again,” Liberal party of Canada, www.liberal.ca/realchange/environmental-assessments/