



9 November 2016

Standing Committee on Transport, Infrastructure and Communities  
Sixth Floor, 131 Queen Street  
House of Commons  
Ottawa ON K1A 0A6

Attn. Andrew Bartholomew Chaplin, Clerk of the Committee

Dear Sirs/Mesdames:

**Re: Submission on Review of Navigable Waters in Canada**

The Wilderness Committee, founded in 1980, is Canada's people-powered, citizen-funded wilderness protection group. We have more than 60,000 supporters, volunteers and activists from coast to coast to coast working together to preserve wilderness, protect wildlife, defend parks, safeguard public resources and fight for a stable and healthy climate. Our head office is in Vancouver, with field offices in Victoria, Winnipeg and Toronto.

It is with the voice of our 60,000 supporters that I am pleased to present this submission to your committee as you review changes to the Navigable Waters Protection Act. This submission will mention the strengths of previous Navigable Waters protection legislation, touch on the loss of protection which occurred in 2009 and 2012, and put forward recommendations on how to restore protections lost under the Navigation Protection Act, thereby increasing the ecological protection for our water.

The Original Navigable Waters Protection

The Navigable Waters Protection Act (NWPA) is widely considered Canada's oldest environmental legislation. The Wilderness Committee objects and refutes the concept that the NWPA was simply law preserving navigation, as was asserted during changes to NWPA in 2012.

While it was principally aimed at maintaining waterways for transportation in 1882, it was already considered that navigation protection was about more than just water. As West Coast Environmental Law (WECL) mentioned in their brief submitted to your committee, AG v. Harrison in 1866 talked of navigation protection so the public could enjoy the river and that navigation protection also meant preserving the water for fish. Further, the concept of the government or monarchy holding waters and adjacent lands in trust for the free enjoyment and use by the public was widely mentioned in legal decisions.

The 1992 Supreme Court of Canada decision *Canada v. Friends of the Oldman River Society* stated that NWPA has a more expansive environmental dimension, and that NWPA was in fact a part of a valid environmental assessment. While the word environment wasn't used in the establishment of the law, by 1992 the Supreme Court of Canada had recognized it as an environmental law. Until 2010, the NWPA website stated that the Act was also designed to protect the environment.

One of the great strengths of the NWPA was that the seeking of approval permits for works that would fall under the authority of NWPA triggered a federal environmental assessment. The Wilderness Committee believes that the best decision making for the environment happens out in public view. An environmental assessment, rather than being a hindrance as it is sometimes portrayed, is an opportunity for projects that affect the commons — public lands, air, and water — to be viewed and commented on by the public.

Issuance of proposed works subject to the NWPA were posted publicly for a 30-day comment period. Again, the Wilderness Committee believes that public notice of proposals and developments is essential to good decision making on protection of the commons.

#### Troublesome Changes in 2009, 2012

In 2009, the federal government introduced changes which eliminated the need for smaller projects like culverts to require approval under NWPA. In addition smaller creeks and seasonal streams were exempted from requiring NWPA approval for works on them.

The Wilderness Committee believes that water quality in Canada continues to decline. Turbidity and contamination are affecting all our waterbodies. It is the Wilderness Committee's position that lessening the environmental protection on our water is the opposite of what is required. We need stronger protection to ensure our waterways and riparian areas remain natural and undisturbed.

In 2012, when the NWPA was replaced with the Navigation Protection Act (NPA), protection for a majority of waterways in Canada was removed. There is no scientific basis for the removal of water protection from the majority of the country. The Wilderness Committee believes navigation protection and water protection must be restored to all navigable waters in Canada.

In 2012, major pipelines and hydro transmission lines were exempted from the protection authorized by the NPA. Instead the National Energy Board (NEB) would examine the impacts of these developments. The NEB is not equipped to do a fulsome independent environmental review of energy projects. And again, there is no scientific basis for the removal of environmental protection for pipelines or hydro transmission lines. The Wilderness Committee believes pipelines and transmission lines need to be subject to the protection of the NWPA/NPA.

In 2012, approval granted for a works under the new NPA no longer automatically triggered a federal environmental assessment. As stated earlier, one of the greatest contributions the NWPA had was that it

triggered an environmental assessment. The Wilderness Committee believes that this component needs to be reintroduced.

### Applied Navigable Waters Protection

When the NWPA was changed in 2012, the government stated the provinces would take on responsibilities for protecting waterways which were previously provided by the NWPA. This wasn't possible, as waterways were federal jurisdiction. Provinces did not have legal protections in place that overlapped the NWPA. Attached to this submission is a copy of the Manitoba Stream Crossing Guidelines, 1996, which was the guiding document for waterways development in Manitoba through 2012. It states that in Manitoba the two pieces of legislation that protect waterways are the federal Fisheries Act and the NWPA. In 2012 protection from both of those was drastically cut.

A supporter from rural Manitoba walked into the Wilderness Committee office in Winnipeg last summer with a video showing a farmer — who had recently purchased the farm — bulldozing trees along the edge of the field into the Boyne River, in an apparent effort to make more farmland. We explained to the concerned individual that the NWPA and Fisheries Act were gutted in 2012, and that there was no specific law that we could cite to indicate that pushing trees into the river was not permissible. The NPA does not protect the Boyne River.

### Recommendations

1. The major loss of protection relating to the NWPA was the minor waterways change in 2009 and the schedule of protected waterways in 2012. Both of these changes need to be eliminated. Protection of water, and the careful consideration of any developments around it, has to occur on the smallest streams as well as the largest lakes.

2. Approvals sought under the NWPA in the past were the trigger for an environmental assessment. This is an essential component of managing the commons, allowing the public to see what is proposed and provide comment and guidance. NWPA approvals should require a public environmental assessment.

3. Major pipelines and hydro transmission lines can not be exempt from navigation and waterways protection. They require appropriate approvals, as well as environmental assessments conducted by the Canadian Environmental Assessment Agency.

4. The intent of the Navigable Waters Protection Act was to protect navigable water. The act should be named as such. The intent of the act should be clarified to explain that it is providing protection for the water, as well as navigation.

4. Components of automatic public participation when NWPA approval was sought were removed in 2012. Requiring permits to be publicized 30 days before work occurs allows for concerns to be raised, and understanding of a project to occur before potential problematic development begins. This public process should be incorporated into navigation and waterway protection legislation.

5. Waterways, water quality, and our environment are safeguarded by a whole scheme of legislation in Canada. The Canadian Environmental Assessment Act, the Fisheries Act, the Navigation Protection Act, the National Energy Board Act, and the Species At Risk Act all play roles in ensuring that ecology is sustained in this country. It is essential that restoration to lost waterway protection be done with well planned out consideration of how the new protections under navigation and waterways will mesh together with our safety net of other environmental protections.

6. Coordination with First Nations as well as provincial and municipal governments on management of waterways is the best path forward. From the beginning of a project proposal First Nations communities must be a meaningful part of the consideration of a project.

7. Riparian areas are critical to water quality. Shorelines with natural vegetation provide an essential filter to keep waterways clean. As part of navigable waters protection, shoreline protection must be added. Whether in stand-alone legislation, or in conjunction with the new navigable waters protection, shoreline protection similar to what is found in the New Hampshire Shoreland Water Quality Protection Act should be added to Canada's scheme of water protection.

### Conclusion

The Navigable Waters Protection Act served a useful purpose, however it was not enough to preserve our most precious gift — water. The Navigation Protection Act is far worse. Along with the other Acts mentioned above that are currently under review, a revamped Navigable Waters Protection Act must truly protect the ecological integrity of our waterways, and reverse decades of deterioration.

We hope that your review will find new and robust ways to safeguard Canada's navigable waters, and ensure Canada's healthy natural heritage is secured for the future.

Sincerely,



Eric Reder, Manitoba Campaign Director