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This brief to the Senate Committee reviewing the Impact Assessment Act (IAA) in Bill C-69 was prepared by Roberta Frampton Benefiel, Riverkeeper for Grand Riverkeeper Labrador, Inc. (GRK) and member of the standing committee for the Labrador Land Protectors (LLP). Both groups are based in Happy Valley-Goose Bay, Labrador.

We welcomed Prime Minister Justin Trudeau's campaign promise that **"We will make environmental assessments credible again. And"success depends on regaining public trust"**. And that **"Canadians must be able to trust that government will engage in appropriate regulatory oversight, including credible environmental assessments, and that it will respect the rights of the most affected, such as Indigenous communities. While governments grant permits for resource development, only communities can grant permission."**

To members of grass roots organizations like ours that had just come through a massive environmental assessment of the Lower Churchill Hydro Project (which eventually became the single project, Muskrat Falls now unfortunately known as a "boondoggle"), there were so many hurdles for our small group to overcome that the campaign rhetoric sounded almost too good to be true. And, in many cases, it was/is.

That we here in Newfoundland and Labrador are smack in the middle of a two year long and very expensive public inquiry into the Muskrat Falls project speaks volumes about what BAD Environmental Assessment can lead to. Unfortunately, it doesn't stop with Muskrat Falls..... We had a presentation in Goose Bay not many months ago from the experts that looked at the Site C project in British Columbia and their recommendation that it was cheaper to stop that project than proceed was totally ignored. I'm sure that you are well aware of the media reports and the negative government and proponent issues coming out of that process and the Muskrat Falls process.

From the get-go we would like to say , We strongly support Bill C-69 becoming law because there are benefits over CEAA 2012 that absolutely must be enacted in order to even begin to regain public trust. That said, we cannot stress enough that with regards to Section 392, **Review of Act after 10 years:** GRK is of the opinion that because of the many negative issues with the new act we must strongly recommend that this legislation be reviewed much earlier than 10 years, perhaps even in as little as 2 years to determine what is working and what isn't.

Since the Lower Churchill Project/Muskrat Falls, was assessed under the old CEEA 1992/1998 Act, we were certainly pleased we didn't have to abide by the CEEA 2012.

The new IAA is better in some respects, and we are hopeful that CEEA 2012, will be discarded because we are convinced that it was influenced more by Industry than any concern for the environment. However, we are more than a little concerned that in the new Act, the Minister has even more discretion than in any of the past Acts, meaning that concerned citizens groups and local communities' voices could be ignored in favor of "the greater good", and the "greater good" is often jobs and economic benefits that help politicians get elected, or re-elected. It's the proverbial "election pavement"that wins the day, not the effects a project has on the environment.

INSERT BIAS HERE:

The section quoted below is taken directly from the Abstract of an article in the Spring/Summer of 2013 Harvard Design Magazine. It is written by Dr. Bent Flyvbjerg, from the University of Oxford-Saïd Business School, a witness called by the Commission of Inquiry Respecting the Muskrat Falls project:

Some years ago, I was threatened by a high-ranking government official as I was beginning research on cost overrun in large public works projects. The official told me in no uncertain terms that if I came up with results that reflected badly on his government and its projects he would personally make sure my research funds dried up. I replied he had just demonstrated the research must be done and was likely to produce interesting results. The results are now being published and if the official walks his talk, I will never receive another research grant.

Dr. Flyvbjerg's presentation to the Commission spoke of "optimism bias" which is a name we were not aware of as newby's to environmental assessment, but, that we now understand as exactly what we felt when we first began reading the Environmental Impact Statement for the Lower Churchill Project. We were looking at a Statement written and viewed through "rose coloured glasses" as the old saying goes. Dr. Flyvbjerg explains optimism bias as the demonstrated systematic tendency for people to be overly optimistic about the outcome of planned actions ♣ This includes overestimating the likelihood of positive events and underestimating the likelihood of negative events

But, we were unsure of how we could possibly show that this EIS was totally manufactured and had very little bearing on the reality of the negative effects of this massive project. We find the title of the article listed above, **Design by Deception: The Politics of Megaproject Approval**, apropos as it relates to Muskrat Falls and many other mega projects we have looked at over the past few years.

In his presentation to the Commission, and looking at over 200 Hydro projects world wide, Dr. Fryvbjerg talks about Hydro-Electric Dam projects he calls "outliers" or sometimes called "Black Swans" i.e. Projects with VERY HIGH OVERRUNS....and he continued to describe the causes and root causes for these "Black Swands" as 1. Causes: Scope changes, complexity,

delays, inflation, geology, weather, bad data and models, etc. 2. Root causes: Optimism bias, strategic misrepresentation. He divides these causes and root causes into three specific areas: Technical-i.e. errors in data, Psychological-i.e. optimism bias and Political-Economic, i.e. strategic mis-representation. GRK and LLP believes that all three are at play in the Muskrat Falls project and that the new Impact Assessment Act MUST have legislated ways and means to prevent these kinds of problems for future projects.

Here are a few of Dr. Flyvbjerg's recommendations:

Improve viability and risk assessments to de-bias projects upfront and during project delivery • Plan projects with an outside view. • Use full distributional information in planning cost and schedule; set targets according to risk appetites based on distributional information. • Use Reference Class Forecasting to systematically take an outside view and bypass optimism and political biases.

Please note the references to “outside views”. GRK and LLP believe this falls squarely in the recommendations from us and from the RCEN Environmental Assessment and Planning Caucus to the current Liberal Government that in order to re-gain public trust in EA, Peer Reviews of all Proponent led studies MUST be ingrained in the Legislation of IAA.

Although we feel there are many negative issues with the IAA ; With only a few minutes to speak we want to point out two of the most important that we feel as concerned citizens, would make IAA better. They are

(1)enhanced and better funded public participation and

(2) Independent Peer Reviews of all proponent studies.

Why are we so concerned about having enhanced and better funded public participation? Because we have been there and we know what it takes out of a community when proponents are writing glowing environmental impact statements and touting the proverbial “jobs and economic benefits”, and donating to various and sundry community projects as “bribes” etc.... It divides communities, especially small northern communities where jobs are few and far between. We also know that when a small number of concerned citizens are up against the proverbial “Goliath” it is a fight that most citizens can't sustain, not financially nor capacity wise. So, as a member of the Canadian Environment Network Environmental and Planning Caucus for the past 12 years, I/we agree that public participation needs fixing. We suggested that the “Agency” either CEAA or the IAA should have a mandate to provide a separate arm of their department that is dedicated totally to helping community groups and Aboriginal groups find their way through the maze that is EA , and that funding for groups be increased so that they can participate more meaningfully. These recommendations have not been written into the new Act, as far as we can see.

Then, leading from the idea of public participation and into the idea of Peer Reviewed studies, we feel that if a totally Independent Group of Scientists were to review all proponent studies for accuracy and absence of optimism bias, it could be the catalyst that community groups need to better trust the process. That was a recommendation provided to government as well... and as well, as far as we can see, that too was ignored. (see notes above re optimism bias)

Here are just a few examples of our issues with the Muskrat Falls/Lower Churchill project:

- (a) Failure to include the Churchill Falls, upstream project in cumulative effects.
- (b) The threshold for “significance” was set too high. (i.e. the Proponents idea of significance of effects was, in our opinion, too optimistic .
- (c) Methyl Mercury contamination was not properly assessed, in fact, the Proponent continually stated there would be no effects beyond the mouth of the river, without doing the proper studies to show this was the case, and when an aboriginal group brought in Harvard University to show them a different outcome, they, and the government of Newfoundland still have not taken Harvard’s and an Independent Science Committee’s recommendation that the soil and vegetation must be cleared in order to mitigate poisoning of traditional food sources.
- (d) Dam failure was assessed using outdated methods, even as eminent scientists from Sweden gave their time and effort to show Nalcor that newer methods for assessing failure of layers of quick clay were available and should be used. (downstream effects of a dam failure would be catastrophic and one community of 50 people could be drowned with less than one hours notice.
- (e) Nalcor proposes to re-create lost fish habitat the likes of which has never been done before. The science is unproven, and even though DFO told our group in a fish habitat planning meeting that Nalcor would have to provide a Letter of Credit that they (DFO) would determine the amount of, in case their “optimistic” plans failed, we are now told by the VP of Nalcor at the Inquiry that the letter of credit does not exist.
- (f) Nalcor said Atlantic Salmon cannot get above the Muskrat Falls... yet they only did one small fishing expedition, at the wrong time of the year, to verify their statement. We have information from former DFO workers that this is false and that they have netted salmon up as far as Gull Island, the tailrace of the Churchill Falls hydro project.
- (g) Wetlands and Riparian habitat that will be inundated were not properly counted, nor were all the species that exist in those habitats stated.
- (h) Now we are at a place where this project has doubled in price and has basically thrown this small province into possible bankruptcy and we are more than a little concerned that all the mitigation promises made by Nalcor will never be achieved.
- (i) Our Expert from the Helios Centre in Montreal disputed Nalcor’s justification for the project, and the Joint Panel agreed.

All of these things and many more were noted and agreed to by the 5-member Joint Federal and Provincial Panel assessing the project, yet, the Federal and Provincial Ministers, at their discretion, approved the project.

Now, as we move through the Inquiry Process, the Commission's Forensic Auditor, Grant Thornton, in their Summary of findings/observations on page 5 and 6 of their Phase 1 (Sanctioning Phase) report state that Nalcor inappropriately eliminated the option of importing power from Hydro Quebec, or deferring the development of the Lower Churchill Project until 2041 when the Churchill Falls project reverts back to Newfoundland; Conservation and Demand Side management was not properly factored into the justification for the project; elasticity of demand was not factored into the methodology and assumptions when justifying the project, and Nalcor excluded approximately \$500 million of strategic risk exposure from the capital cost estimate when comparing Muskrat Falls with an on -Island alternative for providing the power needed, and they selected a risk P factor that was disputed by their own experts in order to keep the price of the Muskrat Falls project lower than the alternative on-Island possibility.

This is how concerned citizens lose total trust in processes that are funded and controlled by governments and proponents, especially Crown Corporations. Our recommendation that Independent Peer Reviews of Proponent studies and documents occur in the EARLY stages of a project, BEFORE money is spent to the extent that there is no way back from the abyss, is not a panacea but it is an absolute step in the right direction. We hope the Senate Committee will agree.

And so, when the Ministers' brought down their decision that the project could proceed we felt the Minister's discretion was not exercised in the interest of those closest to the project nor in the interest of the environment. Thus, we welcomed PM Trudeau's statement during his campaign that **"We will end the practice of having federal Ministers interfere in the environmental assessment process."** We recommend that In order to restore public trust, the Ministers reviewing the impacts MUST adhere to a set of rules to ensure that their decision is based on sound reasoning and that an independent peer review of all studies must take place. This is paramount to regaining public trust.

We realize that in the past, none of the legislation looked at the issue of accounting financially for the benefits that the environment provides humans. However, we seem to have no issue with accounting for the jobs and economic (financial) benefits that will be provided by these projects. We quote former Premier of Alberta, Rachel Notley: *"Projects should be rewarded for creating good jobs for Canadians, which in turn help grow the provincial and federal economy and create resilient families and communities."* Unfortunately, it appears this is the overarching mantra for most politicians. Our opinion is that resiliency for families and communities is better served when they have control over what takes place within their communities and again unfortunately, that is very often not how major projects turn out. Thus, we are very interested in the PM's statement on the Liberal web site, that **"only communities can grant permission."** And are hopeful that communities where projects cause the greatest harm will not be ignored due to the "greater good".

The idea of ecosystem services and the pricing of those services are not new. Before we forge ahead with the destruction, manipulation and altering of land, forests, rivers, oceans and the air we breathe, and considering the current situation with the warming of the oceans, the melting of the glaciers and the multitude of detrimental effects globally of these changes, i.e. Climate Change, it is imperative, in our opinion, that cost benefit analyses be performed on projects that have the potential to affect these massive changes globally as well as the effects locally.

We are pleased to read that the government will undertake, in full partnership and consultation with First Nations, Inuit, and the Metis Nation, a full review of laws, policies and operational practices, and that the Crown will fully execute its consultation, accommodation, and consent obligations, in accordance with its constitutional and international human rights obligations... We have yet to see a truly concerted effort, but we are hopeful that once this bill is passed, future governments will be motivated to do a better job of consultation with Aboriginal communities as that is certainly paramount to regaining trust of ALL peoples.