



# The Farce

## of Environmental Reviews

by Anne Sherrod

When activist Ingmar Lee took action against a Pacific Coast blasting project, he unveiled a system of environmental review designed to conceal and enable destruction

Many environmentalists feel that their most important role at this time is to help the public accept that global warming and peak oil are real and potentially deadly problems. We hope to persuade people that solving these problems will require radical change in a short timeframe. But what kind of radical change? Exploitative and dictatorial forces in society have historically claimed a need for rapid and radical action as an excuse for seizing more control.

The proposed Bute Inlet independent power project (IPP) is being justified as a producer of “green energy,” yet it includes diversion of 17 streams, 445 kilometres of transmission lines, 314 kilometres of roads, 142 new bridges, 16 power houses and a substation – all in a coastal wilderness area teeming with wildlife and crucial fisheries. That’s radical change, alright. The environmental damage stands to be massive. IPPs that will produce over 50 megawatts are subject to Environmental Assessments (EAs). Will EAs prevent or even significantly reduce the impacts of these developments?

The Bute Inlet proposal will receive the highest form of federal environmental assessment currently available in Canada: a full public hearing and a federal panel review. But even at their best, Canadian and BC Environmental Assessments seldom turn down projects, even when there is extensive evidence of major environmental damage. Instead they offer “mitigation.” In practice mitigation usually means minor adjustments to projects to lessen environmental damage, which may still remain major and irreversible.

### Big Questions Unasked, Unanswered

Even the best environmental assessments cannot answer the larger questions that cloud the horizon of our transition to new energy sources. They cannot tell us whether

we actually need the new power badly enough to cause serious environmental impacts. They cannot tell us whether the new power will truly reduce carbon emissions significantly enough to affect global warming, even though global warming is being used as an excuse to ignore other kinds of environmental impacts. They cannot tell us what are the best ways to address climate change.

This is why many knowledgeable observers are calling for an open, transparent, independent panel review of these questions. Such a review should establish basic environmental protection criteria first, before projects are proposed. Instead, a horde of corporate profiteers has been set loose to propose virtually anything that is technologically and financially feasible. The whole vast, expensive machinery of Environmental Assessment processes is then employed to serve them.

In its application for the Glacier-Howser Project the developer, “Purcell Green Power” (alias Axor Corporation), explains that the initial proposal for Howser Creek could not generate enough power to pay for the connection of the project to the provincial grid, so Glacier Creek and two tributaries were added. Now the area is threatened with two dams, the diversion of four creeks that will remove most of the water from them permanently, 16 kilometres of tunnel big enough to accommodate a dump truck, the dumping of a huge quantity of waste rock near streams and rivers, with potential acid drainage into the nearby creeks and lakes, seismic lines and the logging of 91 kilometres of corridor for transmission lines.

### Inadequate Reviews Provoke Public Reactions

The proponent already had an Electricity Purchase Agreement from BC Hydro before the environmental as-

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assessment process began. And Glacier-Howser did not receive the “best” kind of Environmental Assessment. This BC provincial EA provided no panel review, and gave the public only 45 days for review and comment of over 1,000 pages of environmental impact statement by the proponent.

This and other aggravating factors help to explain why, in June of this year, approximately 1,100 enraged citizens descended on a Glacier-Howser EA meeting in Kaslo. They lambasted the proponent, the EAO officials, the provincial government, and the project itself for three hours, sometimes articulately and technically, sometimes with hurled invective or in a deafening collective roar.

Around the same time, environmentalist Ingmar Lee was on Denny Island off the BC coast, studying sandhill cranes. One day in July drilling equipment arrived on the island. Geologists from several universities were studying batholith rock formations. They planned to drill holes in the ground at 16 locations across western BC, and conduct underground explosions of up to 1,000 kilograms of dynamite – an activity known to be potentially harmful to nearby wildlife.

Lee frantically sought information to help him determine whether there were threats to the sandhill cranes. Many readers will know that when Lee was unable to find the kind of information that an environmental assessment should have provided, he banged the lock off the cover on the hole and cut the cord to the dynamite. The outraged scientists stated in the media that their project had gone through a full federal Environmental Assessment.

I wondered what kind of an Environmental Assessment could have taken place without anyone in the environmental movement knowing about it. I pored through the *Environmental Assessment Act*. Raincoast Conservation Society provided a written analysis by Ecojustice lawyer Lara Tesaro, who also provided a telephone consultation.

I was surprised to learn that there is no central body that administers federal Environmental Assessments. An EA could be conducted by any of 35 federal departments. If a department is interested in assisting a project with funding, it must conduct an EA. In such cases, the policeman charged with protecting the citizens is literally in cahoots with the potential criminals.

In the case of the batholiths seismic testing, the Natural Sciences and Engineering Research Council of Canada (NSERC) wanted to put funding into the research project. Thus it became the Responsible Authority for the Environmental Assessment. The EA started in November 2008. There was a legal requirement to post a notice on the EA Registry on the internet within 14 days. It apparently wasn't

posted until 8 months later. And when it was posted, there were only two weeks left before a decision was to be made.

### Public Review Discretionary

There are different kinds of federal environmental assessment. This one was what is known as a screening process. About 99% of EAs are screening processes. Under the rules for a screening process, public review is at the discretion of the Responsible Authority. Not surprisingly, NSERC decided against public review.

By law a screening process is supposed to produce a screening report. The report, or instructions where to find it, must be posted on the internet before a decision is made. On the day before the seismic tests, Raincoast Conservation Society and Ecojustice requested the document. They were told that it wasn't available because it needed editing.

Ecojustice didn't receive the report until well after the explosion had occurred.

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### BC Permit Reviews Kept Secret

Despite the federal EA, it was BC's Integrated Land Management Bureau (ILMB) that issued the permits for the explosions. The ILMB's decision was

based upon review of the screening report by BC government ministries and the federal Department of Fisheries and Oceans of the screening report. When I asked the ILMB for the provincial government reviews, I was told I could not have the documents unless I went through the *BC Freedom of Information Act*. This can take up to 30 days.

According to a court ruling, the federal *Environmental Assessment Act* must provide citizens with information without making them go through a *Freedom of Information Act* request. But the ILMB informed me that BC had done no environmental assessment itself and had no links with the federal EA.

While I was waiting for a response to my *Freedom of Information Act* request, the scientists themselves sent me their screening report and other documents, but all of the information was generated by them. I felt I had a right to know what the scientists of the Environment Ministry, whose salaries are paid by my tax dollars, had said about it. But after waiting two weeks for the government reviews, I was informed by the ILMB that the time limit had been extended another 30 days because:

“The requested records contain information that may affect the business interests or invade the personal privacy of a third party. To assist us in determining whether we may disclose this information, we are giving this third party an opportunity to make representations concerning disclo-

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↔ *EAs continued*

sure.” (ILMB, August 14, 2009)

Business interests? The scientists had claimed there were no business interests involved.

**Environmental Assessment Hides Impacts**

The provisions of Canada’s *Environmental Assessment Act (CEAA)* on screening processes can function as a shelter to enable large projects to go forward without public review. The proposed Red Chris copper/gold mine project would cover 110 square kilometers in an area known as the “Sacred Headwaters,” an area in northwestern BC that gives birth to three major salmon rivers. The mine would destroy fish habitat by damming these rivers and dumping toxic waste in the headwaters.

The *CEAA* requires a comprehensive Environmental Assessment process with public participation for a project so large. However, the Responsible Authority – the Department of Fisheries and Oceans (DFO) – excluded the mine itself from the project description, so that the EA would only look at the tailings pond, water drainage and a dynamite facility. Since the scope of the review no longer included a large mine, it was bumped down to a screening process with no public participation. Both the federal and provincial EA processes determined that the “project” thus defined would cause no significant environmental damage.

MiningWatch Canada, represented by Ecojustice, sued the government for violating the *Environmental Assessment Act* and won. The decision was struck down by the Federal Court of Appeal, but the case has now gone to the Supreme Court of Canada.

**Amendments Exclude Most Projects**

The spring 2009 newsletter of West Coast Environmental law reported that Canada is planning to downgrade its *Environmental Assessment Act* to reduce the number of assessments by 95%. This has already started. In March of this year, without any public notice, the federal government began a series of amendments to the *Act* that have excluded many kinds of projects, such as landfills, wastewater treatment plans, roads and highway construction, from review. One amendment allows the federal government to shift an EA process to the provincial government.

The *BC Environmental Assessment Act* was butchered in 2002 so that public participation and public access to information is no longer legally required, but only discretionary. According to a 2004 analysis by West Coast Environmental Law, the new *Act*:

“requires that where an EA occurs, the review must reflect government policy as defined by the government agency or organization for the identified policy area (s. 11(3)) ... For example, the government has stated its inten-



1,100 people turned up at the rally and public meeting for the Glacier/Howser project in Kaslo. This exceeded the town’s population of 1,029. Quite extraordinary!

tion to double oil and gas production in BC by 2011. Government could use the provision to dictate that an EA of a natural gas processing plant must support government’s goal ... regardless of environmental implications.”

**Renewable Energy Ducks Reviews**

In Ontario, the new *Green Energy and Economy Act* has removed requirements for environmental assessment from most renewable energy projects. It sets up a “Renewable Energy Facilitator Office” to fast-track “green energy projects.” According to the *Gallon Environment Letter*, the agency will generally be exempt from the *Freedom of Information Act*.

The intent and result of all these problems is to keep the public from knowing the true extent of environmental damage. Environmental assessments as practiced in BC and Canada regularly certify projects with tragic and dangerous environmental impacts as being environmentally safe. Citizens continuing to protest these developments face huge hurdles. In cases of civil disobedience, the government or the developer can go to court and show that they have gone through all the hoops required by the law, and conducted “studies” that ensure the environment will be protected.

At this time, Ingmar Lee has been charged with mischief with the intent to injure others. The governments that bend, break and stealthily revoke our environmental assessment laws injure millions of Canadians, yet they are not charged with any crime. Against today’s mega-onslaught of environmental destruction – Bute Inlet, the Enbridge pipeline across BC, the Red Chris Mine – Canada’s disabled and dishonoured environmental assessment laws are helpless to prevent massive environmental damage.



Anne Sherrod is Chair of the Valhalla Wilderness Society.