Re: Petition File 153 – New and Additional Information on Port Development on Roberts Bank, B.C.

Dear Madam Fraser:

The Boundary Bay Conservation Committee (BBCC) submitted a petition (File 153) to your office in July, 2005, concerning port development on Roberts Bank, British Columbia. Since that submission, the BBCC has learned of a premature proposal by Environment Canada to develop a management plan for Roberts Bank without adequately addressing the issues raised under the CEAA Assessment process for the Deltaport container expansion project.

Paul Kluckner, Pacific and Yukon Regional Director of Environment Canada, in a letter to Dave Carter, Senior Program Officer, Canadian Environmental Assessment Agency, regarding the DP3 application is proposing:

“a formal arrangement under which the VPA would mitigate any significant impacts of DP3 on the intercauseway area in accordance with a scientifically rigorous adaptive management plan developed jointly with E.C.” …

“This letter focuses on the path forward that EC is recommending for managing potential impacts of the DP3 proposal on wildlife within EC’s mandate.”
(July 26, 2005: Letter to Dave Carter, Senior Program Officer, CEAA, re: Environmental Assessment Application – Deltaport Third Berth)

The BBCC questions how such a proposal can be made given the fact that Environment Canada (EC) is a Responsible Authority (RA) in the harmonized environmental assessment process for the Deltaport Third Berth (DP3) application and given that EC has raised a number of concerns indicating that proper scientific studies and a cumulative effects assessment have not been done as required under the Canadian Environmental Assessment Act (CEAA). In letters and reports, Environment Canada (EC) has documented major flaws in the proponent’s studies and conclusions. These are documented in a letter BBCC sent to The Honourable Stephane Dion, Minister of Environment, August 19, 2005. The letter is attached for your information. (See Appendix #1, p.4). There is compelling evidence that CEAA requirements are not being met.
In the July 26th letter, Mr. Kluckner admits:

"EC is not in a position to accept the conclusions of the VPA Application that DP3 would have no significant adverse environmental effects."

The BBCC queries how Environment Canada (EC) can presume to implement a “scientifically rigorous adaptive management plan” without the scientific data their scientists admit has not been gathered and studied? It appears that Environment Canada is planning mitigation without knowing the potential impacts and intends to mitigate problems as they arise and after the damage is done. In the July 26th letter, Mr. Kluckner states:

“EC is not recommending additional field studies to resolve the potential risk that may be associated with the Project prior to the conclusion of the environmental assessment.”

How can Mr. Kluckner propose a “path forward” when the public and government agencies, including his own department, have documented ongoing dismal failure to properly manage past developments at Roberts Banks as outlined in our June 30, 2005, letter to your office and in the attached letter? (Attachment #1, p.4).

Another issue relates to an amendment made late in the process. The Scoping Document for DP3, dated July 23, 2004, was amended on February 10, 2005, to include consideration of Terminal 2, a second project with three new berths. Reference is made to this in a letter to Dave Carter of the CEA Agency, July 22, 2005, from the Acting Director, Mr. M.D. Nassichuk, Acting Regional Director, Environmental Protection Branch, Pacific & Yukon Region:

"February 10, 2005, Amended CEAA Project Scoping Document (PSD) for the DP3 Project….This scope specifically requires consideration of the “proposed future development of Container Terminal 2 at Roberts Bank and other proposed future projects in the study area…The cumulative effects assessment will consider the potential cumulative effects of the Terminal 2 proposal, as well as of other proposed projects in an approval process in the study area, cumulatively to residual impacts of the Deltaport Third Berth Expansion proposal…”

Contrary to the above information, as of August 9, 2005, the VPA continues to claim:

"The Terminal 2 proposal is completely independent of the Deltaport Third Berth Expansion in all aspects including site location, terminal configuration, environmental study and impact assessment, construction, operation and development schedule.” (Aug. 09/05, EAO DP3 website; response to comments by the Corporation Delta, pages 11 & 12)

The fact that the VPA has not included Terminal 2 in the cumulative effects assessment is a serious omission.

It is interesting to note that in the original Scoping Document (July, 23, 2004), references were made to responsibilities of VPA, DFO and EC under Section 2.0 (Scope). These references
were omitted in the amended Scoping Document (Feb. 10, 2005) as were references to principle components that likely require a regulatory decision under the Fisheries Act.

Surely amendments to the Scoping Document require public input and new recommendations to the federal Minister of Environment under Section 21 of CEAA. The decision to proceed with a comprehensive study and the current Terms of Reference was based on different information.

The BBCC is concerned that in current meetings (June 17, July 4, 2005, others??), the Vancouver Port Authority (VPA), Environment Canada (EC), the Department of Fisheries and Oceans (DFO), the Canadian Environmental Assessment Agency (CEAA) and the B.C. Environmental Assessment Office (EAO) are ignoring vital issues that have been raised throughout the process. It is difficult to comprehend how they can seriously consider more paper promises of management plans, compensation, stewardship programs and mitigation without properly addressing the issues. Mitigation/compensation schemes are often unscientific, unproven, and not enforced. The long-term implications to the Fraser River Estuary could be devastating to habitat of national and international significance.

BBCC is concerned that the Responsible Authorities, Environment Canada (EC) and the Department of Fisheries and Oceans (DFO), are planning a “path forward” without adherence to legal requirements. Due process, credible science and environmental integrity will be compromised if a misleading report is sent to the federal Minister of Environment stating that the DP3 project is not likely to cause significant adverse environmental effects. This would be inaccurate and would pave the way for the project to proceed.

Yours truly,

Susan Jones
Director: BBCC