

# EVERY LAKE, EVERY RIVER

**Restoring the Navigable  
Waters Protection Act**



THE  
COUNCIL  
OF CANADIANS



LE  
CONSEIL  
DES CANADIENS

## Acknowledgements

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## TABLE OF CONTENTS

<b>Executive Summary</b> .....	4
<b>The Growing Water Crisis in Canada</b> .....	5
<b>99% of Lakes and Rivers Lose Protections</b> .....	7
Canadian Environmental Assessment Act .....	10
Fisheries Act .....	10
<b>Case Studies</b> .....	11
The Energy East pipeline .....	11
Liquefied natural gas (LNG) terminals and navigable waters .....	14
The Keeyask Dam and the Bipole Transmission Line .....	15
Ajax Mine .....	18
Sandy Pond .....	20
<b>How You Can Take Action to Protect Every Lake and Every River</b> .....	22
<b>Five Things You Can Do to Help Restore The Navigable Waters Protection Act</b> .....	23
<b>Endnotes</b> .....	24



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## EXECUTIVE SUMMARY

In 2012, the Harper government's omnibus budget bill, Bill C-45, gutted the *Navigable Waters Protection Act* (NWPAs). Aside from removing the word "waters" from the title of the act and renaming the legislation the *Navigation Protection Act* (NPA), Bill C-45 stripped protections from 99 per cent of lakes and rivers, leaving only three oceans, 97 lakes and 62 rivers under the purview of the NPA. The NPA also exempts large pipelines and powerlines from scrutiny so the impacts of these projects are no longer assessed for any navigable waterway.

The changes impact local economies, Indigenous' rights and waterways from coast to coast. In 2012, Mountain Equipment Co-op CEO David Labistour presented a list of 40 recreationally important waterways – half of which are Heritage Rivers – that are no longer protected. Labistour reminded the Senate committee studying the issue that the outdoor recreation industry creates at least 6 million jobs in Canada. The former Harper government not only washed its hands of protecting lakes and rivers, it also washed its hands of its constitutional duty to consult with First Nations.

Industrial projects are moving forward with little or no scrutiny under the NPA. This report examines four case studies, including the Energy East pipeline which would run from the Alberta tar sands to New Brunswick, the Keeyask Dam and the Bipole Transmission Line in Manitoba, the Ajax Mine in British Columbia and the Vale Inco mine near Sandy Pond in Newfoundland and Labrador. These case studies will show the interconnections between clean drinking water, recreation and healthy fisheries, and why the *Navigable Waters Protection Act* must be restored and strengthened. This act, along with other pieces of legislation, is important to protecting water in Canada and in Indigenous communities.

The Trudeau government must show leadership in protecting water now – and for the future – by:

- Restoring and enhancing the NWPAs so that all lakes, rivers and waterways are fully protected.
- Reinstating and strengthening federal scrutiny of large pipelines and powerlines under the NWPAs and assessment of waterways under the Canadian Environmental Assessment Act.
- Consulting with Indigenous peoples and incorporate the obligation to obtain free, prior and informed consent into the NWPAs so that Indigenous treaty and water rights are respected and a nation-to-nation relationship is truly established.
- Implementing strict safeguards for waterways within the framework of the United Nations-recognized human right to water and sanitation.

### **Five things you can do to help restore the Navigable Waters Protection Act:**

1. Sign the Council of Canadians' Every Lake, Every River petition to restore and enhance the *Navigable Waters Protection Act* at [www.canadians.org/everylakeeveryriver](http://www.canadians.org/everylakeeveryriver).
2. Meet with your Member of Parliament and ask them to restore and enhance the *Navigable Waters Protection Act* and other freshwater protections.
3. Take a photo of you, friends, family or colleagues putting water from a local lake or river in a mason jar. Tweet the photo with the hashtag #EveryLakeEveryRiver and your Member of Parliament's twitter handle to join people from coast to coast calling for every lake and every river to be protected.
4. Organize a community meeting to talk about local water issues and come up with a plan to restore and enhance the *Navigable Waters Protection Act*.
5. Become a supporter of the Council of Canadians and join our network of people who care about and take action to protect water.

# THE GROWING WATER CRISIS IN CANADA

Clean water connects us all. We all use water for drinking, cooking and cleaning. Local farmers need water for their livelihoods and to feed community members. People who fish rely on clean water for healthy fish. Indigenous peoples also rely on clean water for healthy fish and need water for cultural and spiritual practices. Firefighters need a secure supply of water to combat wildfires. Health care professionals need clean water to care for patients. Every community member relies on water. We must all recognize our shared responsibility to carefully steward water sources to ensure water is available for everyone.

Yet threats to water are growing. Melting glaciers in British Columbia, which feed lakes and rivers through the Prairies, impact water availability in communities as far east as Manitoba. According to the University of Northern British Columbia, there are 17,000 glaciers in B.C. and they are disappearing. Last year, Alberta declared a state of agricultural disaster for farmers whose crops were destroyed by drought. Much of B.C. was under the highest level of drought alert last year. The pattern of record-breaking spring temperatures in B.C. and summer droughts in southern Ontario forewarns of more drought to come. Author Robert Sandford warns about the link between water security and climate stability in a warming world. A Regional District of Central Kootenay official warned how climate change can cause drought, flooding as well as erosion and landslides, which all impact clean water supplies and water security.

Lakes, rivers and aquifers know no national or provincial boundaries, but face many of the same threats. Any polluted water from tar sands operations in Alberta can flow north to communities in the Mackenzie River Basin. Fracking projects remove clean water from local watersheds. Pipelines put the drinking water of communities along their routes at risk. Pharmaceutical substances, pesticides and other chemicals have spread through the Great Lakes Basin, building in locations that the International Joint Commission lists as “Areas of Concern.” There are routinely more than 100 First Nations under drinking water advisories at any given time.

Despite droughts and threats to watersheds, the former Harper government removed freshwater protections and significantly weakened environmental legislation. During its nine years in power, the Harper government slashed critical funding and gutted freshwater protections. In the report *Blue Betrayal: The Harper government's assault on Canada's freshwater*, Maude Barlow describes the government's record of gutting water protections: “The Harper government has taken clear steps to gut the regulatory framework that – modest as it was – offered some protections to lakes, rivers and groundwater in Canada, and turned policy and practice upside down to advance the interests of the energy industry.”

Harper's 2012 omnibus budget bills gutted the *Fisheries Act* and removed protections from the *Navigable Waters Protection Act* for 99 per cent of the lakes and rivers in Canada. Changes to the *Canadian Environmental Assessment Act* resulted in the cancellation of nearly 3,000 environmental assessments. These changes were a flashpoint for Indigenous communities, environmental organizations, unions and community residents. The omnibus budget bills led to the creation of the Indigenous-led movement Idle No More and a group supporting science-based evidence called Evidence for Democracy. The bills also led the Professional Institute of the Public Service of Canada to abandon its traditional position of neutrality to campaign against Stephen Harper in the 2015 federal election.

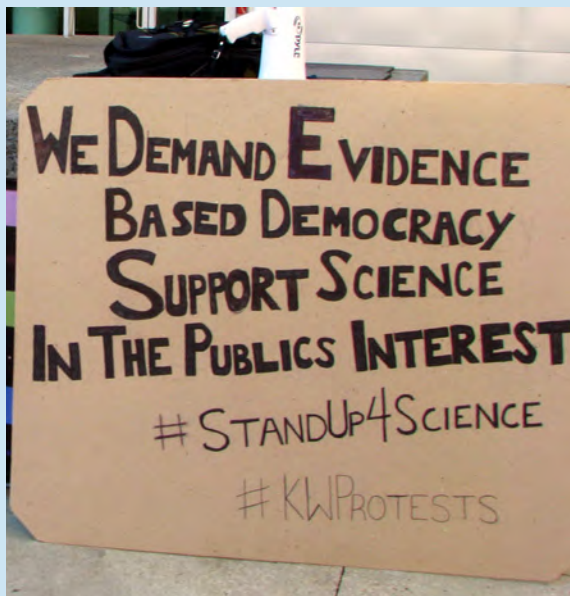
Leading up to the October 2015 election, Justin Trudeau and the Liberal Party campaigned on a promise for “real change.” The party committed to ending the boil water advisories in First Nations within five years and to restoring and modernizing the gutted water and environmental legislation.



On June 20, 2016, six federal ministers, whose mandates impact the environment, announced they would review legislation gutted by the former Harper government. The reviews will include consultations through the fall of 2016 about one regulatory agency and four different pieces of legislation, including the National Energy Board, the *Canadian Environmental Assessment Act, 2012*, the *Fisheries Act* and the *Navigation Protection Act*. The government will also create two expert panels to examine how the National Energy Board and the federal environmental assessment process approve projects. The expert panels will detail their findings in reports that are expected to be tabled in January 2017.

All eyes are on Prime Minister Trudeau and federal ministers to see whether they will deliver on their “real change” promises and restore and enhance the legislation in a manner that adequately protects water sources and the environment for generations to come.

*Harper's 2012 omnibus bills led to widespread protest against the gutting of environmental protections.*



"Stage" by Laurel L. Russwurm via Flickr. CC by 2.0



"Idle No More" by Lotus Johnson via Flickr. CC by-nc 2.0

## 99% OF LAKES AND RIVERS LOSE PROTECTIONS

Dating back to 1882, the *Navigable Waters Protection Act* (NWP) is one of Canada's oldest pieces of legislation. Originally, the NWP prohibited any "work"—constructed or placed in, on, over, under, through or across any navigable water without the Minister of Transport's approval. If the project would substantially interfere with navigable waters, it automatically triggered an environmental assessment under the *Canadian Environmental Assessment Act*.

The former Harper government began clawing back protections under the NWP in 2009. That year, the federal government weakened the NWP by creating a tiered system that reduced the number and types of projects into categories of "major" and "minor" works.

In 2012, the Harper government's omnibus budget bill, Bill C-45, dealt the act its final fatal blow. Aside from removing the word "waters" from the title of the act and renaming the legislation the *Navigation Protection Act* (NPA), Bill C-45 stripped protections from 99 per cent of lakes and rivers, leaving only three oceans, 97 lakes and 62 rivers under the purview of the NPA. It is estimated that there are nearly 32,000 major lakes and more than 2.25 million rivers in Canada. The list of oceans, lakes and rivers that are protected under the NPA, set out in the schedule of the act, does not include some of the largest lakes in the country. The NPA also exempts large pipelines and powerlines from scrutiny so the impacts of these projects are no longer assessed for any navigable waterway.

*"The interrelationship between navigation and the environment is such that the protection of the former consistently promotes the health of the latter." - Ecojustice*

Bill C-38, the omnibus budget bill passed earlier that year, scrapped the old *Canadian Environmental Assessment Act* and replaced it with one where approvals required under the NWP no longer trigger environmental assessments.

Ecojustice's legal backgrounder, *Bill C-45 and the Navigable Waters Protection Act*, highlights the intimate link between navigation and environmental protection. Ecojustice points out, "The interrelationship between navigation and the environment is such that the protection of the former consistently promotes the health of the latter. Consequently, the NWP has consistently served as a federal tool to achieve environmental protection."<sup>1</sup>

Previously, the Navigable Waters Protection Program's website made clear, "The Navigable Waters Protection Program (NWPP) is responsible for the protection of the public right to navigation and the protection of the environment through the administration of the Navigable Waters Protection Act (NWP)."<sup>2</sup> The current language on the Navigation Protection Program's website has been scaled back, but the program still considers the safety of navigation, access to waterways, recreational and traditional use of navigable waters, and environmental effects when reviewing a project for approval.<sup>3</sup>

According to Ecojustice's backgrounder, Bill C-45 made several significant changes to the NWP:

- Companies no longer have to notify the federal government that they are building a "work" that interferes with navigation and will not need to get the Minister of Transport's approval for waterways not listed in the schedule of the 97 lakes, 62 rivers and three oceans.

- The changes remove all automatic public consultation requirements, squelching the public's democratic right to provide input on projects that could potentially interfere with navigation on a local lake, river or other waterway.<sup>4</sup>

Section 4 of the NPA outlines an opt-in clause. For waters not listed in the schedule, private companies can request that the NPA apply to their project. According to Ecojustice, "The NPA would allow the owner of a work to opt into the regulatory process if the Minister deems it justified in the circumstances."<sup>5</sup> Key to this section is that this opt-in process is voluntary and there is no legal requirement for the Minister or the proponent to request this. Ecojustice adds that: "This provision inappropriately places the decision of applying the regulatory regime in the hands of the proponent."<sup>6</sup>

The Harper government's 2012 budget bills fanned the flames of discontent amongst Indigenous communities. The federal government not only washed its hands of protecting lakes and rivers, it also ignored the constitutional duty to consult with First Nations. That fall, four Saskatchewan women started Idle No More, a movement that grew over the winter of 2013 and sparked a massive wave of rallies and actions across the country.

Ecojustice has stated, "Although the Crown has a duty to consult and, where appropriate, accommodate Aboriginal peoples where the Crown is contemplating conduct that could adversely impact aboriginal rights, no such duty lies on private entities."<sup>7</sup> The changes to the NPA seriously hamper Indigenous rights and raise significant concerns about the federal government's obligation to obtain free, prior and informed consent to projects under the UN Declaration of the Rights of Indigenous Peoples.

In December 2014, the Mikisew Cree First Nation won its legal challenge against Harper's omnibus bills C-38 and C-45, which removed federal protection for most of the waterways in the traditional territory of the Mikisew Cree in northern Alberta.<sup>8</sup> Federal Court Justice Roger Hughes ruled that the Harper government should have consulted with First Nations before introducing the bills two years ago. If the Trudeau government is truly committed to establishing a nation-to-nation relationship with Indigenous nations, it will need to restore and enhance the NWPA so that the federal government obtains free, prior and informed consent of Indigenous peoples on legislation and projects impacting waterways in their traditional territories.

The changes also threaten recreational paddlers, fishers and anglers, as well as other members of the outdoor communities such as hikers and campers. As Ecojustice points out, "As well as protecting businesses with a direct interest in the waterways, a strong federal law also protects businesses that are supported by recreational paddlers and fishers, such as outfitters, outdoor gear retailers, restaurants and hotels."

In 2012, Mountain Equipment Co-op CEO David Labistour presented a list of 40 recreationally important waterways – half of which are Heritage Rivers – that are no longer protected.<sup>9</sup> Labistour reminded the Senate committee studying the issue that the outdoor recreation industry creates at least 6 million jobs in Canada.<sup>10</sup> This is a significant number when it is compared to the 211,803 jobs in mining and oil and gas extraction in Canada.<sup>11</sup>

An Access to Information request by Greenpeace revealed that the 2012 budget bill changes to the NWPA were guided by the advice of the Energy Framework Initiative, which is made up of the Canadian Association of Petroleum Producers, the Canadian Energy Pipeline Association, the Canadian Petroleum Products Institute (now the Canadian Fuels Association), and the Canadian Gas Association.<sup>12</sup> According to the *Globe and Mail*, a number of industry groups are registered to lobby Trudeau's government on the environmental legislation reviews. The Canadian Construction Association, one of the registered groups, states in its lobbying disclosure that it plans to talk to the government to "halt reforms that would relist all waterways across Canada, regardless of their navigability." Shell Canada, the Canadian Electricity As-



sociation, the Canadian Energy Pipeline Association, Ontario Power Generation Inc. and Canadian Natural Resources Ltd. are also registered to lobby on the environmental assessments review. It is also likely that the Energy Framework Initiative is lobbying to keep the 99 per cent of lakes and rivers from scrutiny under the *Navigation Protection Act*.<sup>13</sup>

Industrial projects are moving forward with little or no scrutiny under the *Navigation Protection Act*. This report examines four case studies: the Energy East pipeline, the Keeyask Dam and the Bipole Transmission Line in Manitoba, the Ajax Mine in British Columbia and Sandy Pond in Newfoundland and Labrador. These case studies will show the interconnections between clean drinking water, recreation and healthy fisheries, and why the *Navigable Waters Protection Act* must be restored and strengthened. This act, along with other pieces of legislation, is important to protect water in Canada and in Indigenous communities.



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## Canadian Environmental Assessment Act

The Harper budget bills also made changes to the *Canadian Environmental Assessment Act* (CEAA) that resulted in the cancellation of nearly 3,000 environmental assessments. The scope of environmental assessments was also drastically narrowed. Ecojustice notes that under the CEAA 2012, projects that go through comprehensive environmental studies – the second most rigorous of the three processes – no longer need to include a range of information in their project descriptions including:

- A description on the impact on navigable waters or any unique or special resources not already identified.
- A description of the components of the environment that are likely to be affected by the project. This would include a summary of potential environmental effects and information relating to the terrain, water bodies, air, and vegetation that would give federal authorities a more accurate picture of the environment that may be impacted by the activity.
- A description of the name, width and depth of any waterway affected by the project and a description of how the waterway is likely to be affected.<sup>14</sup>

## Fisheries Act

The *Fisheries Act* was arguably one of the most important pieces of anti-water pollution legislation in Canada. The purpose of the act was to safeguard public interest by protecting a community's health and safety and ensuring environmental health and sustainability.

The Harper government's 2012 omnibus budget bills significantly changed the act by weakening the prohibition against the "harmful alteration, disruption or destruction of fish habitat" (HADD). The Harper government further gutted the *Fisheries Act* by allowing the Minister of Fisheries and Oceans to authorize the dumping of deleterious substances into water inhabited by fish as long as that deposit does not kill more than 50 per cent of the fish at 100 per cent concentration over a 96-hour period. This threshold does not take into account that sometimes the most damaging pollution is slow and chronic.

More than 50 organizations from legal, environmental, Indigenous and scientific groups, as well as a dozen university professors, sent a letter to former Fisheries Minister Hunter Tootoo, urging him to immediately reinstate the previous habitat protections and hold consultations on modernizing safeguards within a two year timeframe.<sup>15</sup> West Coast Environmental Law launched the report *Scaling up the Fisheries Act: Restoring lost protections and incorporating modern safeguards*, which outlined detailed recommendations, including restoring protection for all native fish and fish that sustain First Nations food, ceremonial and social needs (not just those that are part of or support a fishery), returning to HADD, and restoring the prohibition against destroying fish.<sup>16</sup>

While it is important to restore the *Fisheries Act*, it must be noted that the former act also needed strengthening. Schedule 2, a loophole in the Metal Mining Effluent Regulation of the *Fisheries Act*, which gave the green light to mining companies to dump their toxic waste into lakes, must be eliminated. Passed by Jean Chrétien's Liberal government in 2002, the Harper government continued to allow healthy lakes to be used as mining dumpsites. Environment Canada has released the names of 24 natural water bodies that mining companies have applied to use as toxic waste dumps.

## CASE STUDIES

### The Energy East pipeline

The changes made by the former Harper government exempts pipelines from federal scrutiny under the *Navigation Protection Act*. The Energy East pipeline is an example of a project that is moving forward without scrutiny of how it will impact navigation and navigable waterways.



If built, the Energy East pipeline would be the largest pipeline in North America, transporting 1.1 billions of crude oil from the Alberta tar sands to New Brunswick. According to the report *Quantifying Risk: Calculating the probability of an Energy East pipeline rupture*, TransCanada's Energy East pipeline would have a 15 per cent chance of a full bore rupture per year.<sup>17</sup> A catastrophic rupture could produce the largest oil spill in recent Canadian history – up to 30 million litres of diluted bitumen – in a worst case scenario.

TransCanada's proposed leak detection system can only detect leaks greater than 1.5 per cent of the pipeline's capacity. This means that based on Energy East's total capacity of 1.1 million barrels per day, an undetected leak of 1.5 per cent could release up to 16,500 barrels or 2.6 million litres of oil in a single day.

*Diluted bitumen [from the tar sands] is much harder to clean up than conventional oil, creating a bigger threat to navigable waters.*

Diluted bitumen is much harder to clean up than conventional oil, creating a bigger threat to navigable waters. In December 2015, the U.S. National Academy of Sciences released a comprehensive study that shows how diluted bitumen differs dramatically from other types of oil commonly transported by pipeline.<sup>18</sup> The report explains, "The properties of dilbit create unique and complex spill scenarios as bitumen sinks in water after a short period of weathering. The study concluded that special response strategies and tactics are needed to respond and cleanup diluted bitumen spills. However, these special response strategies and tactics have not yet been developed in Canada or the U.S. The pipeline industry, government agencies and first responders are simply not prepared to deal with these additional risks."<sup>19</sup>

The difficulty of cleaning up diluted bitumen was made clear by a spill in the Kalamazoo River in Michigan in 2010. The Enbridge spill leaked the thick tar-like substance into the river for 17 hours before the pipeline was shut down. More than \$1 billion was spent on cleanup, which continues to this day.

After the spill in the Kalamazoo River, sections of the river and Morrow Lake remained closed to recreational use and boating for nearly two years.<sup>20</sup> Sections of the river also remained closed for dredging operations to retrieve some of the submerged diluted bitumen more than three years after the spill.<sup>21</sup>

The 4,600 kilometre Energy East pipeline would cross 2,963 identified waterways and countless smaller streams and wetlands along the way. Energy East will not undergo any scrutiny under the NPA despite putting thousands of waterways at risk. From drinking water sources, to fishing, tourism and recreational waters, to a beluga habitat and the home of the world's largest tides in the Bay of Fundy, these waterways would all be in danger from a pipeline spill.

*The Energy East pipeline puts the drinking water of more than 660,000 people in Winnipeg at risk of an oil spill.*

The report *Energy East: A Risk to Our Drinking Water* warns that the drinking water of more than five million people in Canada will be put at risk if the pipeline is approved.<sup>22</sup> A spill could affect the drinking water of cities like Winnipeg, North Bay, Montreal and Saint John. It would also affect fishing, boating and recreational use.

*Energy East: A Risk to Our Drinking Water* also warns about the impacts a spill from the Energy East pipeline would have on Indigenous peoples. The report states, “Many of the waterways along the Energy East route examined in this paper are on First Nations’ treaty, traditional and unceded

land. Waterways continue to play a critical role in subsistence cultures and beyond. These waterways and land are subject to unique rights enshrined under the Canadian Charter of Rights and Freedoms, Treaty Rights and the UN Declaration on the Rights of Indigenous Peoples that must be respected by TransCanada and the federal government. In its pre-application to the National Energy Board (NEB), TransCanada presents an initial list of 155 Aboriginal communities that may be affected by this project.”

The City of Winnipeg draws its drinking water from a 100 kilometre-long aqueduct that pulls water from Shoal Lake. The Energy East pipeline puts the drinking water of more than 660,000 people in Winnipeg at risk of an oil spill. The report points out, “In several places between Shoal Lake and Winnipeg, Energy East and two other existing natural gas pipelines would be located just two metres below Winnipeg’s drinking water aqueduct. The aqueduct is not only at risk of contamination in the event of a natural gas line explosion from one of the existing pipelines that could rupture the nearby oil pipeline, but also from small, more frequent, undetected pipeline spills between Falcon Lake and Hadashville where the aqueduct and pipeline are very close. A slow, pinhole leak in Energy East, which could go undetected for a long time, may permit oil to leak into the aqueduct through its pores and cracks.”<sup>23</sup>

Shoal Lake is also used for navigation. Shoal Lake 40 First Nation, which was displaced by Winnipeg’s aqueduct, still uses Shoal Lake for transportation. Manitoba Pioneer Camp, founded in 1942, is a summer camp where children and youth learn leadership and outdoors skills, including canoeing on Shoal Lake every year.

Out of the 2,963 identified waterways at risk now in Canada, 1,200 of them are in Ontario.<sup>24</sup> The town of Nipigon draws its drinking water from the Nipigon River. The Energy East pipeline crosses the Nipigon River north of the town, threatening the drinking water of the town’s 1,600 residents.<sup>25</sup> Just 10 kilometres to the south, the river merges into Lake Superior, the cleanest of all the Great Lakes and the third-largest freshwater lake on Earth.<sup>26</sup> The Nipigon River is used for boating, fishing and kayaking. The region plays host to a thriving tourism industry where visitors hike, paddle and fish.

The City of North Bay is located between the two freshwater lakes – Lake Nipissing and Trout Lake – and has numerous smaller lakes in and around the city. There are more than 40 public beach access points and the community enjoys swimming, canoeing, sailing, waterskiing and fishing. Lake Nipissing is an important economic driver and a drinking water source for the broader region. In North Bay, the local economy and community are closely tied to the health of Trout Lake, which is the only source of drinking water for more than 54,000 people.<sup>27</sup>

The proposed Energy East pipeline project would cross the source water protection area for North Bay that extends east to the Mattawa River, crossing the escarpment on the northern shore of Trout Lake less than six kilometres from the city’s main intake pipe in Delaney Bay.<sup>28</sup> The pipeline threatens both surface and groundwater recharge areas in the Trout Lake basin.





*"Lower Madawaska River" by Mark Totten via Flickr. CC by-nc-nd 2.0*

The Madawaska River flows from Source Lake in Algonquin Park – approximately 230 kilometres – before joining with the Ottawa River in Arnprior. It is an important waterway for First Nations and is a well-loved whitewater rafting destination.<sup>29</sup> The pipeline crosses the Madawaska River less than 30 kilometres from Arnprior and poses a threat to the 9,000 residents who use the river as their source of drinking water. Mountain Equipment Co-op lists the Madawaska River as a recreationally significant waterway and notes it is an important canoeing and whitewater destination.<sup>30</sup>

Energy East would cross a number of municipalities in the greater Montreal area as well as three important rivers: Rivière des Outaouais (Ottawa River), Rivière des Mille Îles, and Rivière des Prairies (both are part of the Ottawa River system), all of which are commonly used for various forms of boating.<sup>31</sup> In January 2016, the Communauté Métropolitaine de Montréal (CMM), representing 82 municipalities, rejected the Energy East pipeline, citing the threat to municipal drinking water as the group's biggest concern.<sup>32</sup>

The terrain in the area also makes the pipeline route very risky. The report *Energy East: A Risk to Our Drinking Water* states: "A study concluded that the proposed pipeline route north of the St. Lawrence River would be at high risk from landslides due to unstable river banks in 19 locations. Icy winter conditions on the rivers in the Montreal area would make any clean up even more difficult and costly."



Tourism and commercial traffic on the St. Lawrence River, as well as agricultural and industrial sectors, could all be affected. A spill could impact the \$4 billion worth of economic benefits reaped from ecological services provided by local watersheds, such as carbon capture, flood prevention, heat wave mitigation and pollination support.<sup>33</sup>

More than 60 per cent of New Brunswick residents rely on groundwater for drinking water with the remaining sources originating from surface waters, mostly lakes. The report notes that “the provincial government has legislation that aims to protect drinking water by way of Wellfield Protected Areas, (locations where water is drawn from aquifers to supply public water systems), and Watershed Protected Areas (locations where water is drawn from surface waters for public water systems).”<sup>34</sup> The Saint John River recharges the nearby Wellfield Protected Areas and watersheds that supply drinking water for New Brunswick communities. Although Energy East would not cross the river directly, it would cross the Salmon River and other significant tributaries. The report warns, “The pipeline would run parallel to the Saint John River, creating additional spill risks. A number of Wellfield Protected Areas are located beside the St. John River in places that could be contaminated by an upstream pipeline spill entering a tributary less than 30 kilometres away.”<sup>35</sup>

The Salmon River is used for fishing and the Saint John River is used for boating, kayaking and fishing.

The proposed Energy East pipeline shows how a large energy project can pose great risks to navigation and to the drinking water of municipalities and communities along the route. The NPA does not assess the impacts an oil spill would have on navigation, nor did the former NWPA. The Energy East pipeline demonstrates why the Act must be enhanced to include assessments of potential spills and impacts on navigation. It also demonstrates the intimate link between navigation, clean healthy water and safe drinking water. By reinstating and strengthening federal scrutiny of pipelines under the NWPA, and assessment of waterways under the CEAA, the federal government will be taking steps to fulfill its responsibility to protect all waterways and drinking water.

## Liquefied Natural Gas (LNG) Terminals and Navigable Waters

In British Columbia, there are 20 proposals for liquefied natural gas (LNG) terminals slated for the Pacific coast. There are at least two proposals in Nova Scotia and one in Quebec.

Communities have raised many concerns about them, including their impacts on wild salmon and aquatic life, the violation of the self-determination of Indigenous communities, and the potential for increased fracking, a natural gas extraction process that causes additional impacts to water sources. Local groups and communities are also concerned about the increase in greenhouse gas emissions from fracking projects and how this will compromise the 1.5 degree global warming limit Canada agreed to in Paris.

Blakes, a law firm that provides legal services to businesses in Canada and internationally, prepared the assessment *Overview of the Permitting Requirements for LNG Projects in British Columbia*, which highlights how the changes to the former *Navigable Waters Protection Act* affects the permitting process of LNG terminals. The overview points out that, “The most significant aspect of the amendments relates to its prohibition and associated approvals of construction of works associated with navigable waters. The new NPA will no longer prohibit works on or over all navigable waters, but rather, will only prohibit works on navigable waters that are listed in a schedule to the NPA, which includes three oceans, 97 lakes and 62 rivers across Canada ... [O]nly works associated with the LNG plant that will substantially interfere with navigation on waterways listed in the schedule will require approvals.”<sup>36</sup>

## The Keeyask Dam and the Bipole Transmission Line



On July 16, 2014, construction of the Keeyask Dam began on the lower Nelson River, the largest river in Manitoba. The Keeyask Dam is expected to start generating power in 2019 and the whole project will be completed by 2021. The dam will be the fourth largest in the province and will generate a net capacity of 695 megawatts. The Keeyask generating station is located about 725 kilometres northeast of Winnipeg, where Gull Lake flows into Stephens Lake.<sup>37</sup>

In June 2014, Fisheries and Oceans and Environment Canada issued their decision that gave the green-light to the project. Both ministers decided that the “project is not likely to cause significant environmental effects.”<sup>38</sup> Days before the ministers issued their decision, Manitoba Hydro wrote Transport Canada withdrawing its *Navigation Protection Act* applications for the project.<sup>39</sup> The application was no longer required because the schedule of lakes, rivers and oceans listed under the *Navigation Protection Act* did not include the Nelson River. Less than one week later, the Manitoba government gave provincial approval.

The \$6.5 billion Keeyask Dam has been promoted as a source of clean, renewable energy. Some argue that Keeyask is not a new dam, but an expansion of the Churchill River Diversion and Lake Winnipeg Regulation.<sup>40</sup>

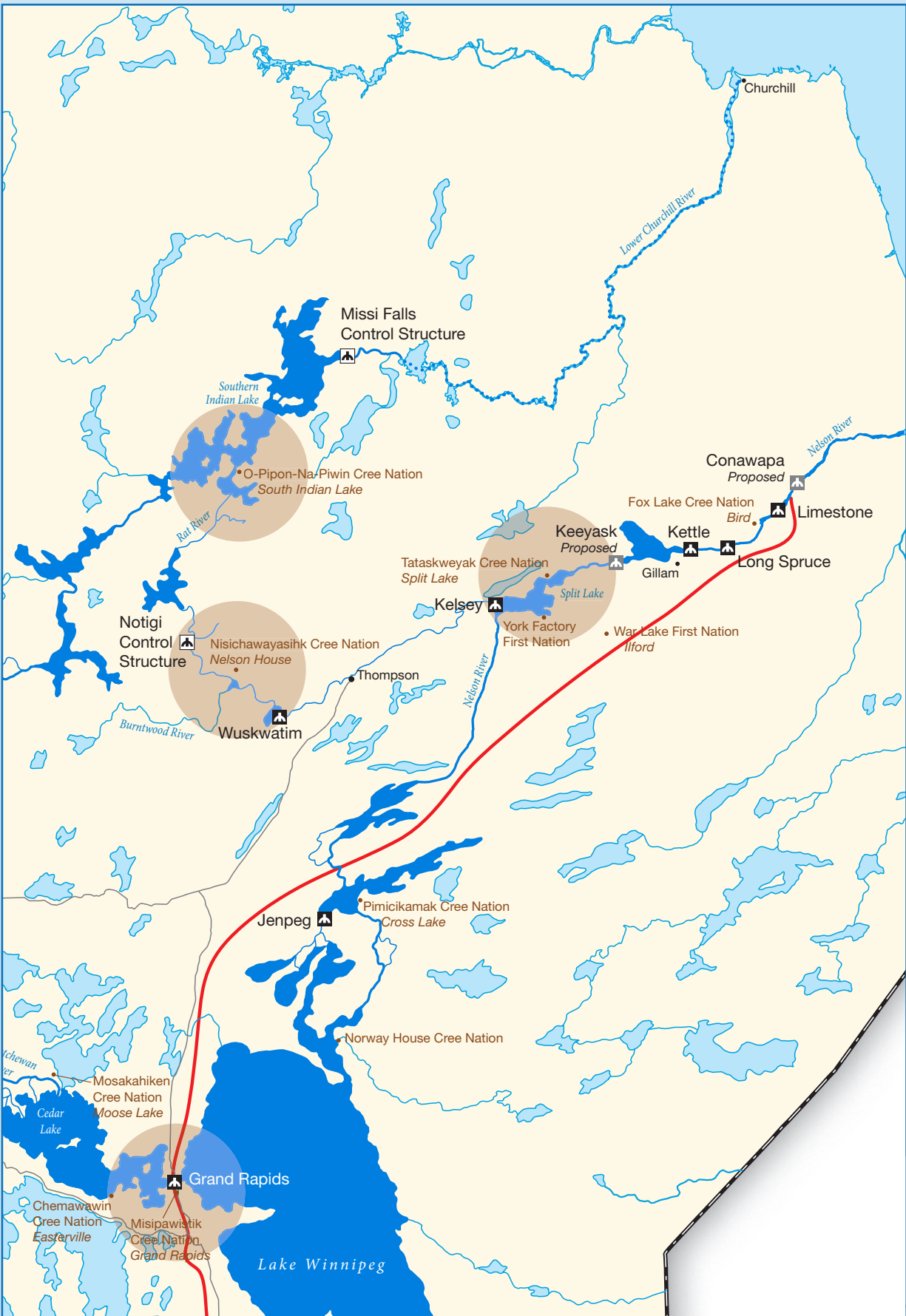
While dams can provide some benefits, such as electricity, supplying water, controlling floods and facilitating navigation, much evidence suggests that these are benefits of smaller dams.<sup>41</sup> Council of Canadians National Chairperson Maude Barlow has sounded the alarm about the harmful impacts of large dams on Indigenous peoples, greenhouse gas emissions, and the displacement of large amounts of freshwater. She has noted that large dams are a source of greenhouse gas emissions because large dams trap organic materials and rotting vegetation from submerged lands, which in turn creates methane gas, a major source of greenhouse gas emissions.<sup>42</sup> A large dam is considered to be higher than 10 metres. The Keeyask has three dams that range from 19.5 metres to 28 metres in height.

The Keeyask Dam is expected to flood approximately 46 square kilometres of boreal taiga lands, which will likely increase with erosion.<sup>43</sup> Boreal forests are critical to addressing climate change and greenhouse gas emissions. Boreal Songbird Initiative notes that, “Boreal forests store more carbon than any other terrestrial ecosystem on Earth – twice as much per area as tropical forests.”<sup>44</sup>

Historically, Indigenous peoples used the Nelson River for transportation and trade. University of Manitoba Professor Peter Kulchyski says that the river was traditionally the main highway, spiritual centre and fishing, trapping and hunting territory of Inninew/Inninewak (the Cree people) of the region. But a series of dams – with the Keeyask being the latest – have affected the river. The Keeyask project destroys the last natural spawning ground of an endangered sturgeon species.

Manitoba Hydro has a long history of hydropower development that has significantly impacted a number of Cree Nations in northern Manitoba. The Mennonite Central Committee reports that over the past 60 years, Manitoba Hydro has constructed hydropower projects that have dramatically altered the five largest rivers and six of the 12 largest lakes in the province.<sup>45</sup> These hydropower projects have impacted traditional trapping, hunting, fishing and gathering activities, both for domestic and commercial uses in Indigenous communities.<sup>46</sup>

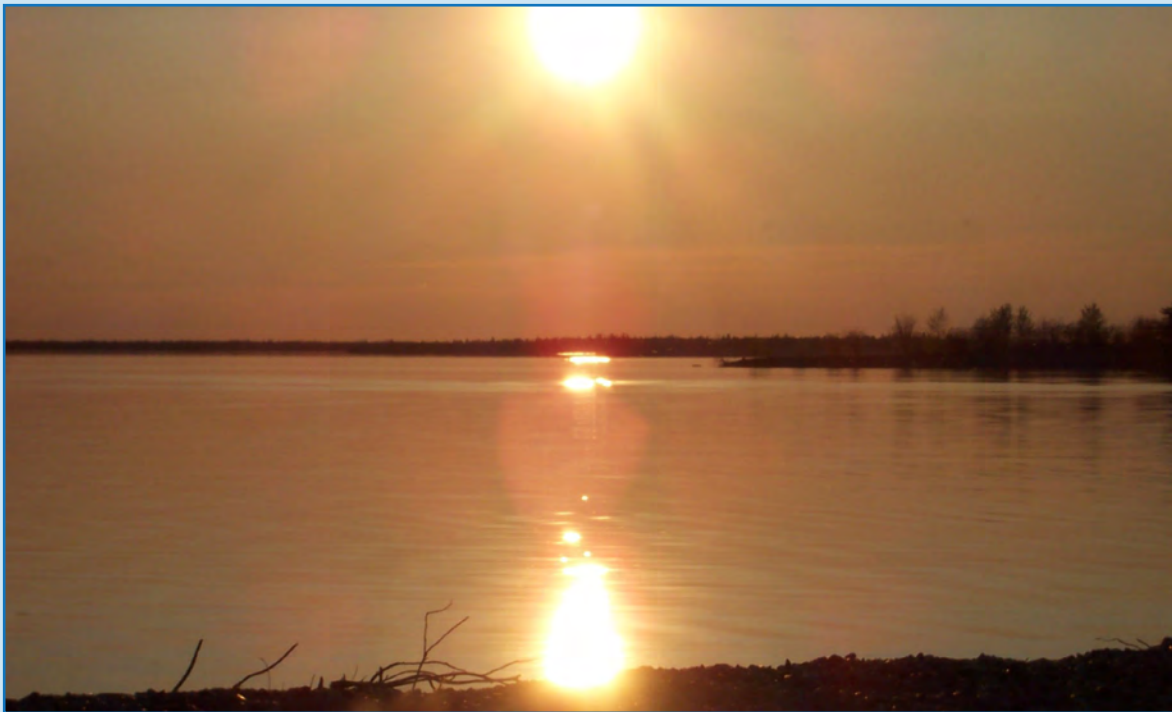
There is an agreement between Manitoba Hydro, Tataskweyak Cree Nation, War Lake First Nation, York Factory First Nation and Fox Lake Cree Nation for the Keeyask Dam. The Manitoba Métis Federation opposed the project,<sup>47</sup> but later signed a deal in 2014 that allocates \$20 million over 20 years for the federation to evaluate the environmental impact of hydro development on lands they claim in Manitoba.<sup>48</sup>



The electricity generated by the Keeyask Dam will be transported 1,400 kilometres south via the \$4.6 billion Bipole III hydro line. Manitoba Hydro plans to continue supplying the province with energy and potentially sell the electricity to the U.S. Included in the province's electricity consumption is what Manitoba Hydro calls "pipeline load."<sup>49</sup> Manitoba Hydro has told the Manitoba Public Utilities Board that there are two pipeline proposals – the Energy East pipeline and the Alberta Clipper pipeline – that would transport crude oil from Alberta. Ed Wojczynski, Manitoba Hydro's manager of portfolio projects, told the *Winnipeg Free Press*, "For all that oil to flow both pipelines need around-the-clock supply of electricity.... We're looking at increased energy consumption from the pipelines – the oil pipelines need electricity for their pumps."<sup>50</sup>

In January 2015, the Sapotaweyak Cree Nation set up a blockade to stop Manitoba Hydro from clearcutting a path 65 metres wide and 250 kilometres long through their traditional hunting and gathering territory and ancestral grounds, including burial grounds and spiritual sites.<sup>51</sup> Manitoba Hydro's preferred route for the transmission line would cross a number of waterways, including Partridge Crop Lake, Hargrave Lake, the edge of Cormorant Lake in the Cormorant Forest Reserve and Clearwater Lake in Clearwater Lake Provincial Park.<sup>52</sup> In addition to pipelines, powerlines were also exempted for review under the *Navigation Protection Act*, which means the impacts of Bipole III and the clearcutting of its path have not been assessed for impacts on navigable waterways.

The Keeyask Dam clearly impacts the Nelson River. The exemption of powerlines from the *Navigation Protection Act* raises significant concerns. The Bipole III transmission line shows that the federal government is not able to properly assess the impact of powerline projects on waterways even though navigable waters is under the jurisdiction of the federal government.



Stephens Lake, Manitoba, near the site of the Keeyask Dam. Photo by Sancho McCann via Wikipedia, CC BY-SA 2.0

## Ajax Mine

KGHM Ajax Mining Inc. is proposing to build a copper and gold mine south of the city of Kamloops in British Columbia. The open pit mine will produce 65,000 tonnes of ore per day, which will be transported to the Port of Vancouver for shipping.<sup>53</sup>

The Ajax Mine is a controversial project that is expected to operate for approximately 18 years. In a May 2016 survey, the mine made it to the top of the list of subjects most important to local residents.<sup>54</sup>



*If KGHM were to pump 1,045 cubic metres every hour 24 hours a day, it would be using the same amount of water that approximately one-third of the entire population of Kamloops uses in one day.*

The Kamloops Area Preservation Association (KAPA) is a local group that has launched the Stop Ajax Mine campaign. KAPA has raised several concerns about the project, including noise, exposure of toxic dust and air quality concerns for 90,000 local residents, the use of 15 billion litres of water, impacts on the water table, and the long term pollution of the Thompson River.<sup>55</sup>

The 2016 Feasibility Study states that the mine will pump 1,045 cubic metres – or 1,045,000 litres – of water every hour from Kamloops Lake. The water pump system will be designed to draw 1,500 cubic metres an hour.<sup>56</sup> If KGHM were to pump 1,045 cubic metres every hour 24 hours a day it would be using the same amount of water that approximately one-third of the entire population of Kamloops uses in one day.

Residents and local groups have also raised concerns about the proximity of the mine to the city.

The mine is on the edge of the city limits. According to KGHM's *Environmental Impact Statement*, a rock storage facility is approximately 1,000 metres from the city's Urban Growth Boundary, approximately 1.4 kilometres from the Knutsford community, and approximately 1.7 km from the neighbourhood of Aberdeen.<sup>57</sup> The rock storage facility will be 85 metres high (279 feet). Silty topsoil and waste will be stored on top of the rock pile, which will be very susceptible to the high winds that blow into the city. KAPA has warned that "within six kilometres, downwind and downslope of the perimeter of the proposed Ajax Mine are eight elementary schools, four high schools, four senior citizens' residences, one hospital (Royal Inland), and one university (Thompson Rivers)."<sup>58</sup>

KGHM Ajax Mine threatens Jacko Lake. Dust pollution falling on the lake from the mine has the potential to destroy the lake. There is also a risk that the lake will drain into the open pit. The proposal shows an open pit many times larger that will be dug beside Jacko Lake, which is 40 hectares. The proposed rerouting of Peterson Creek will destroy wetlands in the creek.<sup>59</sup> The company, a subsidiary of KGHM Polska Miedź, one of the largest producers of copper and silver in the world, claims it will "protect Jacko Lake from being drained, even as it reroutes Peterson Creek [around] the pits to a new course down through the city to the river."<sup>60</sup>

Jacko Lake is known as one of the best fly-fishing lakes and one of the most productive trout fishing lakes in B.C. Retired miner Tony Brumell believes the lake will "essentially die" if the mine is built.<sup>61</sup>

The proposed mine site is on the traditional territories of the Tk'emlups and Skeetchestn Indian bands. The two bands, who are known by the name Stk'emlupsemc of the Secwepemc Nation (SSN), made a



Declaration of Title on June 21, 2015 at Jacko Lake, which they call Pípsell.<sup>62</sup> In September 2015, the bands filed a title claim in the B.C. Supreme Court to lands KGHM Ajax Mine Inc. claims to own.<sup>63</sup> The lake and surrounding area have spiritual and historical significance to the SSN.<sup>64</sup> The Notice of Civil Claim notes that the Secwepemc's exercise of aboriginal rights include fishing, specifically in Jacko Lake, Peterson Creek, Cherry Creek and the other lakes, streams and rivers that run through the proposed project and through Stk'emlupsemc of the Secwepemc Territory.<sup>65</sup>



Council activists at Peterson Creek. Photo by the Council of Canadians. CC by-nc-sa 2.0

KGHM submitted an 18,000 page application for the mine, but has posted “plain language” summaries on its website. However, Jill Calder, a member of Kamloops Physicians for a Healthy Environment told *Kamloops This Week*, “I’m somewhat concerned the plain language will omit things and dumb them down.”<sup>66</sup>

The project requires authorizations under the *Navigation Protection Act* for dewatering (removal of water or building walls to stop water flow). A portion of Jacko Lake and Inks Lake will be “dewatered.” Dewatering can release toxic substances such as methylmercury and negatively impact water tables.

Since Jacko Lake is not listed in the schedule of protected lakes in the NPA, there will be no assessment of the impact of the replacement of the Jacko Lake dyke or dam construction on the lake itself.<sup>67</sup>

Under the former *Navigable Waters Protection Act*, an authorization was needed for cofferdams between Fish Lake and Prosperity’s proposed open pit mine.<sup>68</sup> While KGHM touches on navigation and recreation, Transport Canada must assess the impact on navigable waters like Jacko Lake.

The city has requested a federal review process, the most rigorous of the Canadian Environmental Assessment processes, three times over the years, but all requests have been rejected, including recently by federal Environment and Climate Change Minister Catherine McKenna. The Community Advisory Group, a coalition of 14 local groups, requested a second comment period, but the request has been rejected.

There were 2,000 questions raised over the 180-day public comment period. More than 100 days into the comment period, the B.C. Environmental Assessment Office paused the comment period and put the

timeline of the application on hold to give the company time to answer the questions posed. The comment period is expected to resume in the fall of 2016.

Changes to the *Navigation Protection Act* have limited federal oversight on lakes like Jacko Lake, which will be seriously at risk of impacts from the Ajax Mine. Without federal scrutiny under this act, the safety of navigation in Jacko Lake, impacts on recreational and the SSN's traditional use of the lake, as well as the environmental effects of the mine, may be ignored. Protections must be put back on all lakes, rivers and navigable waters under the NPA. The act must also be strengthened by creating mechanisms that give communities the power to stop projects that threaten clean water and navigation and that obtain free, prior and informed consent of Indigenous communities.

Mining should only operate under very strict conditions and not without adequate public consultation, social licence and the free, prior and informed consent of Indigenous peoples. Dewatering must be minimized in order to prevent excessive disruption of groundwater and surface water balances as well as potential contamination. Federal regulation and assessments, particularly under the NPA and the CEAA, should be conducted in a manner that incorporates community input and respects a community's right to say "no."

## Sandy Pond

Sections 21 and 22 of the former *Navigable Waters Protection Act* prohibited throwing or depositing, sawdust, edgings, slab, bark, stones, gravel, earth or other materials in navigable waters. Despite the significant changes that the former Harper government made to the current *Navigation Protection Act*, these sections remained intact.

Even with these prohibitions, several mining companies have been authorized to deposit waste in navigable waters, including Sandy Pond (nickel processing plant), Lake Pignac and Lake B (iron mine in Quebec),<sup>69</sup> Mink Arm portion of South McMahon Lake (uranium mine)<sup>70</sup> and Tom MacKay Lake (gold mine).<sup>71</sup>

In 2009, a *Proclamation Exempting the Waters of Sandy Pond from the Operation of Section 22 of the Navigable Waters Protection Act* was issued, giving Vale Inco permission to dump mining waste into Sandy Pond. This allowed Vale to develop "a residue storage facility for the proposed Vale Inco Hydromet facility at Long Harbour."<sup>72</sup> The justification was that dumping residue into Sandy Pond would "protect the environment and the public from residue that has the potential to acidify if not disposed under water."<sup>73</sup>

Public consultations about Sandy Pond were held on June 10, 2008 in Long Harbour, Newfoundland and Labrador and on June 12, 2008 in Gatineau, Quebec. Members of the public and local environmental



***Sandy Pond is a 38-hectare headwater lake that has trophy-sized brook trout and is a habitat for the already endangered American eel, a species of concern that has special significance for the Mi'kmaq people.***

groups expressed concerns about the dumping of residue into a natural fish-bearing pond and called on Vale to build a man-made storage facility. Vale argued that building a man-made facility was not “economically or environmentally feasible.” The Regulatory Impact Analysis Statement says that the public failed to express concern about the facility’s impact on the public’s right to navigate on Sandy Pond even though recreational fishing did occur in Sandy Pond.<sup>74</sup>

The Statement also says, “Aboriginal consultation was not deemed necessary during the environmental assessment process for the Long Harbour development proposal because there are no known Aboriginal interests in the surrounding project area.”

But a joint statement from Maritime Aboriginal Peoples Council, the Council of Canadians, MiningWatch Canada, David Suzuki Foundation and Sierra Club Canada noted, “Sandy Pond is a 38-hectare headwater lake that has trophy-sized brook trout and is habitat for the already endangered American eel, a species of concern that has special significance for the Mi’kmaq people.”<sup>75</sup>

Sandy Pond was also listed as a Schedule 2 lake under the Metal Mining Effluent Regulation of the *Fisheries Act*, which allows mining companies to dump toxic waste in healthy lakes and rivers. In 2009, the Sandy Pond Alliance formed to save Sandy Pond and other waters and ecosystems in Canada. The Sandy Pond Alliance launched a legal challenge against the decision to turn the lake into a tailings pond to service Vale’s multibillion-dollar hydromet nickel processing plant. In 2013, the federal court dismissed the Alliance’s application and reaffirmed the Schedule 2 designation for Sandy Pond. With the Schedule 2 listing and the proclamation, a healthy navigable waterway was turned into a dumpsite for mining waste.

Sandy Pond is an example of how even the former *Navigable Waters Protection Act* needed strengthening because it allowed a healthy lake that people fished on to be taken over as a dumpsite for mining waste. There should be no exemptions on the prohibitions of throwing or depositing materials in healthy waters.



Sandy Pond, NL. Photo by the Council of Canadians. CC by-nc-sa 2.0

# HOW YOU CAN TAKE ACTION TO PROTECT EVERY LAKE AND EVERY RIVER

These case studies are stark examples of how pipelines, dams, mining and other projects are moving forward with little or no scrutiny under the *Navigation Protection Act* despite the projects' threats to navigable waters and clean waters.

The Trudeau government has committed to restoring and modernizing legislation to protect waters. Protections must be put back on all lakes, rivers and navigable waterways. The case of Sandy Pond shows how even the former act allowed the pollution and destruction of navigable waters and demonstrates that the act must also be strengthened. Strong safeguards must be added to the act to protect waterways for navigation, recreation and community use.

The Trudeau government must show leadership in protecting water now – and for the future – by restoring and strengthening the *Navigable Waters Protection Act*.

Specifically, the federal government must:

- Restore and enhance the NWPA so that all lakes, rivers and waterways are fully protected.
- Reinstate and strengthen federal scrutiny of large pipelines and powerlines under the NWPA and assessment of waterways under the CEAA.
- Include a clause in the NWPA so that potential spills or discharge of harmful substances are assessed for their impact on all navigable waters.
- Hold public consultations and independent expert panels and incorporate feedback to strengthen the NWPA. The Standing Committee on Transport, Infrastructure and Communities began inviting written comments from the public with the deadline of November 9, 2016. The Standing Committee and Transport Canada has met with select groups and experts, but consultations must also be held with the public.
- Ensure that a consultation process is established in the Act that fosters true collaboration between communities and government so regulatory agencies implement community recommendations on an ongoing basis. Develop a mechanism that establishes a community's right to say "no" to projects that threaten waterways and empowers communities to create low-carbon, sustainable jobs that safeguard water.
- Consult with Indigenous peoples and incorporate the obligation to obtain free, prior and informed consent into the NWPA so that indigenous treaty and water rights are respected and a nation-to-nation relationship is truly established.
- Implement strict safeguards for waterways within the framework of the United Nations-recognized human right to water and sanitation.

Communities must be included in decision making on projects affecting waterways. Water is a human right, part of a commons – a shared resource that belongs to all – and a public trust. Community consultation is critical to restoring more democratic control over waterways and fostering stewardship between communities and governments.<sup>76</sup> Decision making and collaboration must be based on principles of social equity, ecological survival and governance by the people most impacted.<sup>77</sup>



## FIVE THINGS YOU CAN DO TO HELP RESTORE THE NAVIGABLE WATERS PROTECTION ACT:

1. Sign the Council of Canadians' Every Lake, Every River petition to restore and enhance the *Navigable Waters Protection Act* at [www.canadians.org/everylakeeveryriver](http://www.canadians.org/everylakeeveryriver).
2. Meet with your Member of Parliament. Request a meeting with your local Member of Parliament to give them a copy of this report and ask them to restore and enhance the *Navigable Waters Protection Act* and other freshwater protections.
3. Take a photo! Check the link at [laws-lois.justice.gc.ca/eng/acts/N-22/page-8.html#h-27](http://laws-lois.justice.gc.ca/eng/acts/N-22/page-8.html#h-27) to see if your local lake or river is unprotected. Any waterway that isn't listed there is unprotected. Visit the lake or river and take a photo of you, friends, family or colleagues putting water from it in mason jar. Send the photo to [webmaster@canadians.org](mailto:webmaster@canadians.org) or tweet the photo with the hashtag #EveryLakeEveryRiver and your Member of Parliament's twitter handle to join people from coast to coast calling for every lake and every river to be protected.
4. Organize a community meeting. Gather local groups, friends, family and colleagues to talk about water issues in your community and come up with a plan to restore and enhance the *Navigable Waters Protection Act*. The meeting can be a community town hall, a gathering at a coffee shop, or a small meeting in your home.
5. Become a supporter of the Council of Canadians and join our network of people who care about and take action to protect water.



Council of Canadians' Water Campaigner Emma Lui at the Fraser River. Photo by the Council of Canadians. CC by-nc-sa 2.0



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