February 5, 2019

Clerk of the Senate Standing Committee on Energy, the Environment and Natural Resources
via e-mail: enev@sen.parl.gc.ca

RE: SMA submission on Bill C-69, the Impact Assessment Act to the Senate Standing Committee on Energy, the Environment and Natural Resources

Summary

The Saskatchewan Mining Association (SMA) would like to thank you for the opportunity to provide this brief to the Senate Standing Committee on Energy, the Environment and Natural Resources (the Committee) for its study of the Impact Assessment Act (IAA) as set out in Bill C-69. We would note that we also have grave concerns with the Canadian Navigable Water Act as it is proposed to be revised by the Bill, but have focused our remarks on the impact assessment regime that would be created.

The SMA is proposing an amendment to the IAA regarding the treatment of uranium mines and mills summarized as follows:

The IAA must allow the impact assessment (IA) process to be scaled depending on the complexity of the proposed designated project. Currently, the IAA automatically refers uranium mines and mills to a lengthy review panel assessment process. Designated projects that are uranium mines and mills, like any other designated mining project, must have access to the same types of assessments as all other designated mining and milling projects similar to all prior versions of federal assessment legislation. This requires an amendment to the IAA to ensure the Agency-led IA process (described in Sections 24 to 33) is available to uranium mines and mills with full access to provisions for cooperation with the Canadian Nuclear Safety Commission (CNSC), the provinces and Indigenous governing bodies.

We also have the following commentary about the yet-to-be revealed Regulations Designating Physical Activities (Project List) that we believe is crucial to the continued success of the Saskatchewan mining industry, summarized as follows:

Assessment of mining projects should be led by the provincial government in Saskatchewan. Mining projects are not designated projects that merit the federal impact assessment process proposed and should continue to be assessed only through the robust provincial environmental assessment process in Saskatchewan. It must be recognized that mining and resource development is constitutionally under provincial jurisdiction.
The SMA and its member companies have continued to actively participate in the CEAA 2012 review and consultation process, from the initial Expert Panel review process and throughout the development and study of Bill C-69 by the House of Commons and Senate. As active and interested participants, we provide for consideration the above two recommendations, the supporting information and rationale for these recommendations, as well as our comments on the IAA portions of Bill C-69. These additional comments are provided to highlight areas where the IAA could be further refined to allow for a more practical and reasonable approach to conducting impact assessments in Canada.

As identified in a recent report by Natural Resources Canada¹:

- Total mining projects planned and under construction have decreased by more than 50% (or $86 billion) in value from June 2014 to June 2017; and
- Metal mines experienced the single largest drop, accounting for 81% or 40 of the 49 suspended projects, and 79% (or $68 billion) of suspended investment.

**Mining needs a reasonable and practical approach to impact assessment and life cycle regulation.**

**Mining and Impact Assessment – The Saskatchewan Perspective**

The SMA is the voice of the mining industry in Saskatchewan and has the role of liaison and consultant with government and public to advance a safe, sustainable and globally competitive exploration and mining industry in Saskatchewan that benefits all residents of the province. Environmental protection and stewardship are important to the members of the SMA as shown by their commitment to environmental planning, monitoring, compliance and reclamation.

The SMA represents over 35 member companies including producers and exploration companies. Our commodity basket is unique to Canada, as Saskatchewan is currently the sole producer of both potash and uranium. This provides both our companies and provincial regulators (and in the case of uranium – the CNSC) with specific expertise and perspective with respect to the regulatory environment.

Saskatchewan is one of Canada’s leading mining jurisdictions and polling in Saskatchewan consistently demonstrates that the Saskatchewan public is supportive of the mining industry (89%); with 97% indicating it is very important to the province. The large majority (75%) of respondents are also confident that the existing federal/provincial regulatory system (i.e., not including the additional regulatory process provided by the IAA) ensures the safety of residents and the environment.²

The international competitiveness of Saskatchewan (and more broadly Canadian) mining companies continues to be a significant challenge due to lower rates of international taxation and less stringent regulatory requirements in other jurisdictions. It should be stressed that the

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¹ Natural Resources Canada’s Natural Resources: Major Projects Planned and Under Construction – 2017 – 2027
² Saskatchewan Mining Association Awareness & Perceptions of Mining Industry Survey Report (November 2016)
Saskatchewan mining industry believes strongly in a robust and protective regulatory regime, but this regime must be practical, cost-effective, and demonstrate improved environmental outcomes if industry is to succeed in Saskatchewan and Canada and generate the associated socio-economic benefits.

The regulatory uncertainty and increased financial burden of proposed changes to CEAA 2012 (i.e. IAA), the *Fisheries Act* and the *Metal and Diamond Mining Effluent Regulations*, the proposed *Coal Effluent Regulations*, and the *Navigation Protection Act (Canadian Navigable Waters Act)*, in conjunction with the requirements of the *Greenhouse Gas Pollution Pricing Act* and the Clean Fuel Standard, continue to be key issues for our industry that are likely to continue to cripple investment in future years.

**SMA Detailed Comments on Proposed Amendments**

**Proposed Amendment**

Uranium mines and mills currently have a proven and effective approach to federal environmental assessment, provincial impact assessment and regulatory life cycle assessment encompassing development, operation, decommissioning and reclamation. Requiring all uranium mine and mill projects to go through an estimated 7 to 15 year review panel process as currently proposed, in conjunction with the loss of the single-window assessment and licensing process under CEAA 2012, would effectively mean that no new uranium mines or mills would be built in Canada. It is important to recognize that the joint federal-provincial regulatory oversight that is maintained for this industry, inclusive of mitigation requirements for environmental, social, health, and economic issues, was established through prior joint federal-provincial review panel processes. As such, there is no gap in sustainability governance in the Saskatchewan uranium mining and milling industry that supports the automatic referral to an extensive review panel process as currently described in the IAA.

Therefore, the SMA would strongly encourage the Committee to amend the IAA to apply the same process to uranium mines and mill designated projects as is available to all other designated mining projects in Canada. This would mean that designated uranium mining and milling projects would, similar to prior versions of federal assessment legislation, have access to a screening process, Agency-led assessments, and the optional referral to a review panel.

The SMA has outlined specific recommendations below to address this issue.

**SMA Recommendations – Uranium Mines and Mills**

Amend section 43 of the IAA (with additional amendments to ss. 39(2)(a), 44(1), 46 and 67(1)) as indicated by the following underscored text would remove the mandatory referral to a review panel for designated uranium mining or milling projects and would achieve the goal described above:

39(2) However, the Minister is not authorized to enter into an agreement or arrangement referred to in subsection (1)…

   (a) the *Nuclear Safety Control Act* other than for a uranium mine or mill.
43 The Minister must refer the impact assessment of designated project to a review panel if the project includes physical activities that are at a nuclear facility regulated under any of the following Acts:
   (a) the *Nuclear Safety Control Act* other than a uranium mine or mill.

44(1) When the Minister refers an impact assessment of a designated project that includes activities regulated under the *Nuclear Safety Control Act*, other than a uranium mine or mill, to a review panel...

46 For the purposes of conducting..., including preparing a report with respect to that impact assessment, a review panel referred to in s. 43 may exercise the powers...

67(1) The Minister...the *Nuclear Safety and Control Act* other than a uranium mine or mill, designate...

**Commentary on the Project List**

Assessment of mining projects should remain under provincial jurisdiction and the federal IAA requirements should only apply in jurisdictions in which an established environmental assessment (impact assessment) process is absent or where a jurisdiction requests for the federal requirements to apply. The basis for this recommendation is that mineral resource development is constitutionally under provincial jurisdiction.

With respect to Saskatchewan mines, the Government of Saskatchewan has a proven robust, effective and efficient process by which potential environmental and socio-economic impacts of a project can be assessed. The Government of Saskatchewan also has jurisdiction over provincial mineral resources and is in the best position to weigh the overall benefits of the project against any potential environmental impacts and their proposed mitigation measures. Unlike federal environmental impact assessments, Saskatchewan assessments have long considered sustainability factors, which are also under provincial jurisdiction. Saskatchewan mines continue to have life-cycle environmental assessment and regulatory oversight through the provincial Ministry of Environment.

**SMA Comments on Specific Provisions of the IAA**

1. **Cooperation with Jurisdictions**

   As identified in our proposed amendment, we believe that the provincial government (along with the Canadian Nuclear Safety Commission for uranium mines and mills) is best suited to manage the impact assessment and life-cycle regulatory requirements for mining operations.

   We also believe that the IAA has the potential to more cooperatively involve the province and Indigenous governing bodies in other matters that will be captured by the IAA. Specifically,
provisions related to substitution, cooperative assessments, joint review panels and delegation can be utilized to foster greater federal/provincial/territorial/Indigenous governing body cooperation. The challenge will be to ensure that these mechanisms are implemented in a more reasonable and effective manner than similar options under CEAA 2012. For example, there were no equivalency agreements reached and only one substitution agreement was entered into under CEAA 2012. In order to ensure that these mechanisms are available and utilized, the federal government should proactively enter into cooperation agreements as soon as possible. Having a clear understanding of the process and requirements for the various cooperation mechanisms is important and should be communicated in conjunction with the implementation of any changes to CEAA 2012.

The IAA also proposes to enhance the ability of the Agency to follow up on compliance with IAA conditions. The SMA suggests that this follow up be done in a coordinated manner to prevent duplication of efforts by other federal and/or provincial regulatory agencies. In other words, this Agency follow up must be limited to any “residual” conditions that are not otherwise addressed by currently existing federal or provincial regulatory authority.

2. **Coordination with Federal Departments**

Federal regulatory departments are responsible for providing a variety of approvals, authorizations, permits or other regulatory direction to proponents and it is imperative that the IAA process incorporate provisions that require these departments to provide input into the IAA process to inform proponents of the anticipated future regulatory requirements. In the past, there has been very little certainty with respect to these future requirements so the SMA is encouraged by the provision outlined in s. 13(2).

3. **Importance of Legislated Timelines**

Consistent with our recommendations to increase certainty of IAA process and requirements, certainty around timelines is a key foundation for an effective and efficient assessment process. Uncertainty around timelines continues to be a challenge for the mining industry so we are encouraged that legislative timelines are being proposed in the IAA.

The SMA is concerned that the overall timeframe to complete an assessment will in fact be longer than under the current CEAA 2012 process, which is already unreasonably lengthy and uncertain. Specifically, the 300 days allocated in s. 28(2) is too long and there are too many opportunities for government to “stop the clock” within the proposed IAA. There should also be no unregulated timelines in the legislation and subsections 18(4) and 65(6) should be amended accordingly to set a time limit on Ministerial and Governor in Council decisions.

4. **Factors to be Considered**

The federal government has proposed a number of additions to the factors to be considered in s. 22(1), which will not be appropriate for all designated projects. The most notable of these is found in s. 22(1)(f) being “any alternatives to the designated project”. This provision is highly inappropriate in the case of a mine as mines are constructed in proximity to an ore body and there is no alternative. Section 22(1)(e) is appropriate in that it requires proponents to consider
“alternative means of carrying out the designated project”. In this case, how you extract the ore and subsequently process it to create a final product are amenable to an alternatives assessment. It is important to recognize that by the time a mine has entered into the assessment phase, they will have already invested $10–100 million in exploration, and will have completed an internal prefeasibility study. No project would be financed without this.

It will be important for the Agency or Minister to appropriately scope the factors to be considered in order to prevent the inclusion of inappropriate or irrelevant factors in an impact assessment.

5. Cumulative Effects Assessment

The SMA continues to be concerned with the focus that the federal government has on mining projects when other activities such as municipal, agriculture and forestry are consistently identified as having significantly larger impacts on the environment than mining, but are not part of the cumulative effects assessment discussion. It is the SMA’s expectation that the new regulations designating physical activities will be developed in a manner that more accurately and appropriately looks to assess activities that are truly impacting our environment rather than unduly focusing on mining as was the case with CEAA 2012 where mining projects represented 60% of all federal project assessments.

Mining projects tend to have a very small footprint with well managed water treatment, tailings and waste management areas, and in Saskatchewan, strict requirements around decommissioning and reclamation. Projects in Canada have been delayed or cancelled due to cumulative impacts from other operations or activities that are not subject to CEAA 2012, and in the case of municipal projects and agriculture, there are no assessment requirements or meaningful regulatory oversight.

While the SMA agrees that regional and strategic assessments are best undertaken by governments, they must not be a prerequisite for, or hold up, project specific assessments. With respect to regional assessments, these should only be undertaken by the federal government on federal Crown land, or for assessments that are off federal Crown lands, that they be undertaken, or led by, the province.

6. Decision Making

The SMA would suggest that it is appropriate for the Minister to make a decision with respect to approval of a project or to refer it to Governor in Council, however the scope of the decision must be made within the context of federal jurisdiction. The SMA would therefore recommend that at a minimum, s. 60(1) and s. 63(b) and (c) be amended as follows:

60(1)(a) determine if the adverse effects within federal jurisdiction indicated in the report are, in light of the factors referred to in section 63, in the public interest; or

63(b) the extent to which effects within federal jurisdiction indicated in the impact assessment report in respect of the designated project are adverse;
(c) the implementation of the mitigation measures to address adverse effects within federal jurisdiction that the Minister or Governor in Council, as the case may be, considers appropriate.

As noted above, there should also be no unregulated timelines in the legislation and subsections 18(4) and 65(6) should be amended accordingly to set a time limit on Ministerial and Governor in Council decisions.

7. Decision Statement and Reasons

The SMA acknowledges the provisions in s. 65 regarding the issuance of a decision statement and detailed reasons for the determination and that this information will be made publicly available.

It should be noted that the Saskatchewan Ministry of Environment has used this approach for decades and we believe that this transparency is part of the reason that there is a consistently high level of public acceptability and support for Saskatchewan mining projects, and confidence in the Saskatchewan regulatory system.

8. Cost Recovery

The SMA does not support the proposed cost recovery provisions described in s. 76-80. The 2018 Budget set out $1 billion to support the new Act. It is not clear whether or not government intends to utilize the cost recovery approach to recoup this expenditure, nor have they been able to explain how the funds would be used to support improved environmental outcomes and a more timely impact assessment review. The mining industry already pays a significant amount of taxes to the federal and provincial governments and these taxes should, in part, be utilized to regulate industry. This is the approach taken by the Saskatchewan government in regulating our industry.

As expressed to the federal government, including Minister McKenna, the SMA remains deeply concerned that the cumulative impact (cost and regulatory uncertainty) of all of the federal legislative and regulatory changes will negatively impact the competitiveness of the mining sector and result in investment shifting to other jurisdictions. Some examples of these cumulative impacts are from changes proposed to: CEAA 2012 (i.e. IAA); the *Greenhouse Gas Pollution Prevention Act*, the *Clean Fuel Standard*, the *Fisheries Act and Metal and Diamond Mining Effluent Regulations*, the proposed *Coal Effluent Regulations*, and the; *Navigation Protection Act (Canadian Navigable Waters Act).*

Closing Summary

The SMA is proposing one amendment to Bill C-69 that we believe is crucial to the continued success of the Saskatchewan mining industry. The SMA specifically requests that the Committee consider:

Authorizing uranium mines and mill designated projects to have access to the same types of assessments as all other designated mining and milling projects as was available in all

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prior versions of federal assessment legislation. This amendment would require removing the prohibition on the availability of the Agency-led assessment process, and providing full access to provisions for cooperation with provinces and Indigenous governing bodies.

The SMA is also proposing that the Project List should exclude Saskatchewan mining projects subject to provincial assessments:

Assessment of mining projects should be led by the provincial government in Saskatchewan. Mining projects are not designated projects that merit the proposed federal impact assessment process, and should continue to be assessed only through the robust provincial environmental assessment process in Saskatchewan. It must be recognized that mining and resource development is constitutionally under provincial jurisdiction.

Yours Sincerely,

Pam Schwann
President