Senate Standing Committee:  
Energy, the Environment and Natural Resources  

Re: Bill C-69 IIA (Impact Assessment Act)  
Murray Hidlebaugh Review

I appreciate the opportunity to submit a brief on Bill C-69 to the Senate Standing Committee. I hope it is of value when you are developing your recommendations. I found it somewhat difficult to read. When providing my responses I put in some of the text from the Act along with page and section numbers to try to make my responses as relevant as possible. If I am in error of fact I would appreciate it if you could let me know. My intent is to provide feedback that relates to concerns I have in the sections selected, along with some suggestions for consideration.

I support the federal government’s stated objective of establishing a federal assessment process that will regain public trust, protect the environment, introduce modern safeguards, and advance reconciliation with Indigenous persons. However, I suggest the statement “and ensure good projects go ahead, and resources get to market” is not the primary responsibility of the Ministry. The objective findings from a rigorous environmental impact assessment should be the deciding factor as to whether any development project is approved.

From my review of the Act and from reviewing other published assessments I find there are several proposed reforms that are major improvements on CEAA 2012. These include proposals to:

- Establish an independent authority to conduct and coordinate impact assessments for designated projects;
- Mandate a new early planning phase that seeks Indigenous and public input on the proponent’s project description and the upcoming impact assessment;
- Broaden the scope of the impact assessment requiring the process to evaluate the need for, and alternatives to, the proposed project.
- Require detailed reasons for impact assessment decisions that approve (or reject) projects subject to the Act.

However, I have concerns that the Impact Assessment Act has some significant inadequacies, particularly as related to building capacity for effective public involvement. The concerns fall generally under three areas; 1) Project scope, 2) Public participation, and 3) Review panel system.

1) Project scope:

- There is an absence of a draft projects list at the present time and I can find no listing of criteria in the Act that would trigger an assessment except as related to federal lands. This is a concern.
- It narrowly applies to only major projects designated by regulation or Ministerial order, rather than smaller projects that may also have direct, indirect, or cumulative negative impacts.
• **Waterways remain unprotected.** Bill C-69 fails to restore environmental protections to all of Canada’s navigable waterways. Rather than re-instate the Navigable Waters Protection Act, Bill C-69 just has provisions that create a complicated process that requires ministerial approval to add a waterway to the protected list. **I suggest this isn’t an acceptable approach to either water management or environmental protection of our most essential resource.**

• There is a concern that there is a lack of clarity regarding the federal Act’s jurisdiction over provincial decisions regarding impact assessment requirements. In the Act, under **Purpose Section 6, 1 (e) p.9**: to promote cooperation and coordinated action between federal and provincial governments. This is useful. However in the section **Minister’s Power Section 31, 1 p. 24**: it appears to empower the Minister to be able to substitute the federal impact assessment process with provincial processes deemed to be “equivalent”. I can find no criteria that would determine what would be equivalent at the provincial level. This process will result major environmental problems on the prairies particularly related to farmland drainage issues. There should be no Ministers option to defer to provincial equivalents in situations regarding impacts to water, air, and resource development. These impacts are not controlled within any provincial boundaries.

2) **Public participation:** There is a need for details on how and when the Agency shall implement its duty to ensure meaningful public participation. The following are concerns:

• I can find no clear requirement in the IAA that the federal government will ensure there are resources available to support participant opportunities to prepare for and participate in federal environmental hearings. This includes funding that would be made available to individuals, groups, and Indigenous communities/activists who wish to become involved early in the planning process. The support would also ensure free access to relevant information along with technical support to interpret it. Timely access to useable information is essential if participation is to be meaningful. In short, there is a lack of details in the IAA that articulate how the planning phase is supposed to be implemented, and how meaningful public participation will be facilitated during this phase. **A percentage of the cost could be included in the proponent’s application fee as part of a shared contribution with the federal government to provide financial support to non-government participants. Establishing what public participation is and who qualifies needs to be considered. Also, the time frames need to be flexible to enable public participation to be effective.**

• The Act states the proponent can submit an initial project description that provides the information to be prescribed by regulation. This enables the proponent to file its proposal before public participation has even started. This approach seems to **contradict section 22-d-e,f, p.19** of the Act. **Section 22** states that it is the obligation of the proponent to publically consider “alternatives to the project, and alternative means of carrying out the project, within the assessment process”. It seems that the one part of the Act says the proponent can submit an initial project and then in another says there must be alternatives presented. I find this ambiguous.

• The Impact Assessment Act would continue to require the consideration of cumulative effects that are likely to result from designated projects in combination with other activities that have been or would be carried out. **P.19, 22 (1) (a) (i) (ii) (iii)**

*I think this is excellent. However, it also needs to address the areas where projects are currently exempted such as airports that are exempted from municipal zoning and ILOs determined to be agriculture, and agriculture being exempted. There are also, currently,
exemptions for additions to existing projects that are already in operation regardless of the size of the addition. There should be no automatic exemptions for any development proposal that has the potential to negatively impact water or air quality and fish habitat and that requires a licence or permit from any government jurisdiction. There would just be varying degrees of sophistication within the Impact Assessment, depending on potential for environmental and social impact. It should not be up to the proponent to decide whether the project requires an impact assessment.

Cumulative affects need to be projected over time including cases of development abandonment due to changing economic conditions as well as environmental conditions. At present companies can walk away and leave the public to pay for the “mess”. E.g. Uranium mines, coal mines, clear cut areas, oil and gas wells, buried service station fuel tanks, to name a few.

I think there needs to be a review of the tools for enforcement and decommissioning insurance bonds or some form of secure financial instrument not subject to avoidance through bankruptcy or company dissolution needs to be developed if the Act is to become more than just a “suggestion”. There are several references to financial responsibility. That is good. However, it isn’t clear how bankruptcy and dissolution of the company will be handled.

- **Referencing Section 81, P 47** “The following definitions apply in this section and sections 82 to 91

(a) Project means a physical activity that is carried out on federal lands...

Projects carried out on federal lands

82 An authority must not carry out a project on federal lands....”

I have concerns with sections 81 and 82 p.47. The federal Act particularly related to watershed, fisheries, and oil and gas need to be a joint effort with the provinces. The federal government needs to ensure that environmental degradation and GHG issues are not sacrificed for short-term, narrow economic interests, or for provincial environmental policies that are less stringent or less likely to be required, than federal environmental impact policies.

My assessment on this is it seems that only federal lands are considered and not provincial lands. What happens if a project, like farmland drainage, crosses provincial boundaries or watersheds and negatively impacts both water quality and fish habitat.

- **The Agency, Act Section 38 p. 28**, states that it may “require the proponent of the designated project to collect any information or undertake any studies that, in the opinion of the Agency, are necessary for the impact assessment by the review panel. There seems to be no provision to ensure that information is available on a public platform or real clarity on what a “designated project” is or how it is determined. The Act should require the Agency to take all necessary steps to ensure meaningful public participation occurs in all stages of the impact assessment and reporting process, starting from the early planning phase and continuing to post-approval monitoring and follow-up programs.

3) **Review panel process**

- The Minister should, upon request or on their own initiative, have a duty to refer a designated project to a review panel when it is in the public interest to do so. **If a referral is refused I would suggest that public reasons should be posted.**
The Act should be amended to establish an independent Review Panel Hearings Office, comprised of full- and part-time unbiased permanent members drawn from regions across Canada and appointed by Cabinet on the basis of their education, training, local or traditional knowledge, and experience in environmental issues, as recommended by the Committee. Section 39, p.29 and section 41, p.30.

There is a concern that the Act allows members of federal regulatory bodies to be appointed as members of review panels even when there can be an apparent conflict of interest.

The Act enables the Minister to dispense with the need for an impact assessment for designated projects with no public appeal process. For example it appears, with a strong lobby from the Canadian Nuclear Safety Commission, there is the capacity for the Minister to exempt the Small Modular Reactor construction from requiring an impact assessment. This is a concern.

It should be required that the assessment reports submitted by the Agency and review panels to the Minister include a comparative analysis of alternatives to the project, alternative means of carrying out the project, and the null alternative. It should be specified that the purpose of, and need for, a designated project is considered on the basis of sustainability criteria and the public interest, rather than just from the proponent’s own perspective. General reference Act- Section 28, (2) and (3), P.22.

In summary the Act, while a good start, I suggest falls short in the key areas listed above. The lack of a clear strategy to address environmental issues, particularly related to water and fisheries that cross provincial boundaries. Also developments that impact watersheds need to have automatic federal environmental oversite.

Finally, transparency related to selection and involvement of panel members involved in the review process is important. There is a concern that without transparency and without meaningful public participation in impact assessment process there will be an erosion of public confidence in the Act. The Act should provide the federal government with the tools to ensure that development has a minimal negative impact on the health of the environment, and to ensure there is meaningful support for citizen involvement in the impact review process.

Sincerely

WMHidlebaugh
Murray Hidlebaugh
Citizens’ Environmental Alliance
306-934-6907