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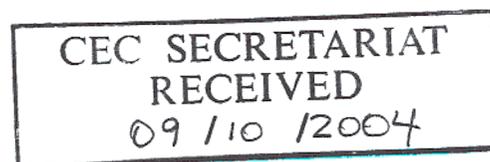
September 7, 2004

Commission for Environmental Cooperation  
393, rue St. Jacques Oest, Bureau 200  
Montreal, Quebec  
H2Y 1N9

Enclosed is a copy of our submission on enforcement matters under Article 14 of the North American Agreement on Environmental Cooperation.

Please contact me if you require any additional information.

sincerely,



**The Friends of the Oldman River**  
**North American Agreement on Environmental Cooperation**  
**Article 14 Submission on the Federal Fisheries Act and CEAA**

**History**

This submission is a follow-up to our October 1997 submission (Oldman River II Submission SEM-97-006). The Factual Record on our earlier submission was made public in 2003. Unfortunately, Council Resolution 01-08 limited the scope of the Factual Record to the Sunpine Forest Products Forest Access Road case and therefore missed addressing the main focus of our submission.

**Purpose of This Submission**

The purpose of this submission is to address the general failure of the Government of Canada to comply with and enforce their environmental laws. It is our belief that that is the main purpose of Articles 14 and 15.

Furthermore, it is our belief that preparing a Factual Record in response to this submission will “enhance compliance with, and enforcement of, environmental laws and regulations” (Article 1(g)).

**The Friends of the Oldman River**

The Friends of the Oldman River (FOR) is a non-profit society incorporated under the *Societies Act of Alberta* in September 1987. I, Martha Kostuch, am the Vice-President of FOR.

One of the objectives of FOR is to recognize the importance of the environment and to engage in activities related to the protection of the environment. We have focused on protection of rivers including fish habitat. FOR was actively involved in the development of the *Canadian Environmental Assessment Act* (CEAA) and its recent review. FOR has utilized the Canadian Courts in an attempt to enforce compliance with the *Fisheries Act*.

**Submission**

The Government of Canada is failing to apply, comply with and enforce the habitat protection sections of the *Fisheries Act* and CEAA. In particular, the Government of Canada is failing to apply, comply with and enforce Sections 35, 37 and 40 of the *Fisheries Act*, and Section 5(1)(d) of CEAA.

It is our position that the “Decision Framework for the Determination and Authorization of Harmful Alteration, Disruption or Destruction of Fish Habitat”, 1998 is not authorized by or compatible with the *Fisheries Act* or CEAA.

Where a project is brought to the attention of the Minister of Fisheries and Oceans Canada (DFO) such that the project as proposed would likely result in the harmful alteration, disruption or destruction of fish habitat (HADD), the legislation requires that the project be assessed under CEAA. This is the case even if imposition of mitigation and follow-up conditions results in no HADD.

The *Fisheries Act* does not give the Minister the discretion to review or assess projects outside of the *Fisheries Act* and CEAA.

DFO has been avoiding triggering CEAA by providing advice outside of the *Fisheries Act*.

The Preamble of CEAA states (in part):

“Whereas the Government of Canada seeks to achieve sustainable development by conserving and enhancing environmental quality and by encouraging and promoting economic development that conserves and enhances environmental quality;

Whereas environmental assessment provides an effective means of integrating environmental factors into planning and decision making processes in a manner that promotes sustainable development;

...And Whereas the Government of Canada is committed to facilitating public participation in the environmental assessment of projects to be carried out by or with the approval or assistance of the Government of Canada and providing access to the information on which those environmental assessments are based;”

These are admirable goals that are not being achieved when DFO issues advice without conducting an environmental assessment under CEAA.

The purposes of CEAA are (in part):

“to ensure that projects are considered in a careful and precautionary manner before federal authorities take action in connection with them, in order to ensure that such projects do not cause significant adverse environmental effects;

to encourage responsible authorities to take actions that promote sustainable development and thereby achieve or maintain a healthy environment and a healthy economy;

... to ensure that there be opportunities for timely and meaningful public participation throughout the environmental assessment process.”

These are admirable purposes that are not being achieved when DFO issues advice without triggering CEAA.

The *Fisheries Act* does not enable advice letters to be issued.

Section 5(1)(d) of CEAA indicates that an environmental assessment of a project is required before a federal authority “takes any other action for the purposes of enabling the project to be carried out in whole or in part.” Issuing advice is taking an action that enables the project to be carried out.

Between April 1, 2001 and March 31, 2002, DFO was involved in 12427 referrals and provided 6922 advice letters. (Annual Report to Parliament on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act* for the period of April 1, 2001 to March 31, 2002)

It is our submission that the 6922 advice letters provided between April 1, 2001 and March 31, 2002 were unlawful because they were not authorized under Sections 35 of the *Fisheries Act* and because no environmental assessment was conducted as required by Section 5 of CEAA prior to the advice letters being issued. This conduct constitutes a failure to enforce the law.