

FEDERAL COURT

BETWEEN:

**MARSHA WAGNER, DIANE JANE DREWRY,
JOHN ROGER ROBINSON, RYAN JOHN ROBINSON,
PHILIP COPITHORNE and MARY ELLEN ROBINSON**

APPLICANTS

AND:

**MINISTER OF ENVIRONMENT AND CLIMATE CHANGE and
ALBERTA TRANSPORTATION**

RESPONDENTS

AFFIDAVIT OF HEATHER SMITH

I, Heather Smith, of the City of Ottawa, in the Province of Ontario, **SOLEMNLY AFFIRM THAT:**

1. Since 2014, I have been employed as Vice-President of the Operations Sector of the Canadian Environmental Assessment Agency (the "Agency"). In this position, I am accountable for the delivery of environmental assessments by the Agency and by review panels. As such, I have personal knowledge of the matters deposed to in this affidavit, except where I state my knowledge is based on information and belief and where I so state, I believe the same to be true.
2. I have reviewed the Notice of Application and the affidavit filed in support of the Applicants' position. I affirm this affidavit in support of the position of the Respondent the Minister of Environment and Climate Change.

The Agency's Role in Environmental Assessments under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012)

3. The *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 52 ("CEAA 2012") applies to designated projects. Designated projects are physical activities that are either designated under the *Regulations Designating Physical Activities*, SOR/2012-147 (the "Regulations"), or in an order made by the Minister of Environment and Climate Change (the "Minister") under subsection 14(2) of CEAA 2012. Every designated project is also linked, under the Regulations or in the ministerial order, to one of the responsible authorities identified in section 15 of CEAA 2012. The Agency is one of these responsible authorities.
4. For a designated project that is linked under the Regulations to the Agency, the first step in the environmental assessment process is for the Agency to decide, upon completion of a 45-day screening, if an environmental assessment of the designated project is required (the "screening decision"). This screening process is set out in sections 8 to 12 of CEAA 2012. As Vice-President of the Operations Sector of the Agency, it is part of my responsibilities to make these screening decisions.
5. If the Agency decides that an environmental assessment is required, it must post a notice of commencement of an environmental assessment on its Internet site, and then proceed with the conduct of the required environmental assessment.
6. Within 60 days after the notice of commencement of the environmental assessment of a designated project is posted on the Agency's Internet site, the Minister may, if she is of the opinion that it is in the public interest, refer the environmental assessment to a review panel. A public interest determination must include a consideration of the factors set out in subsection 38(2) of CEAA 2012, being:
 - (a) whether the designated project may cause significant adverse environmental effects;

- (b) public concerns related to any such significant adverse environmental effects; and
- (c) opportunities for cooperation with other environmental assessment jurisdictions.

7. Under section 103 of CEAA 2012, the Agency is required to advise and assist the Minister in exercising the powers and performing the duties and functions conferred on her by CEAA 2012. To support the Minister in the exercise of her discretionary authority to refer an environmental assessment of a designated project to a review panel, the Agency has established an internal process for the purposes of notifying and advising the Minister when there is a reasonable basis to refer a project to a review panel under section 38 of CEAA 2012.
8. As part of the screening process, or upon receipt of a request to refer the environmental assessment of a designated project to a review panel, the Agency reviews any available information associated with the designated project that may substantiate a referral to a review panel. This information is considered by the Agency against the factors set out in subsection 38(2) of CEAA 2012. In its analysis, the Agency focuses on areas under federal jurisdiction, having regard to "environmental effects" as defined in section 5 of CEAA 2012.
9. Where, in the Agency's opinion, the information available on a designated project suggests that a review panel may be warranted, the Agency provides the Minister with its recommendation on whether to refer the environmental assessment to a review panel.
10. Where, in the Agency's opinion, the information available does not disclose a reasonable basis to refer an environmental assessment to a review panel, the Agency keeps a record of its analysis, but does not provide any recommendation to the Minister on whether to refer the environmental assessment to a review panel.
11. Environmental assessments by the Agency and by review panels must consider the same factors, identified in subsection 19(1) of CEAA 2012. Both types of environmental

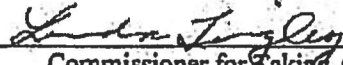
assessments are also subject to the same decision making process, set out in sections 52 to 54 of CEAA 2012.

The Springbank Off-Stream Reservoir Project

12. On June 23, 2016 I decided, upon completion of the screening process, that an environmental assessment of the Springbank Off-Stream Reservoir Project (the "Project") was required. On the same day, a notice of commencement of the environmental assessment was posted on the Agency's Internet site. The information I considered in making this decision (the "screening record") is included in the certified record that was served on the parties and transmitted to the Court in response to the Applicants' request under rule 317 of the *Federal Courts Rules*. The screening record is also attached as Exhibit L to the affidavit of Ryan John Robinson that was prepared in support of the position of the Applicants.
13. Consistent with the internal process described in paragraphs 7 to 11 of my affidavit, the screening record also included information on whether a referral of the environmental assessment of the Project to a review panel may be in the public interest and therefore warranted. This included information on each of the three factors set out in subsection 38(2) of CEAA 2012, that are described in paragraph 6 of my affidavit.
14. Based on the information available, I was satisfied that the issues identified through the screening process could be addressed effectively through an environmental assessment conducted by the Agency, and that there was no reasonable basis to refer the environmental assessment of the Project to a review panel. Accordingly, and in accordance with the established process, the Agency did not provide any recommendation to the Minister on whether to refer the environmental assessment to a review panel.
15. Following the commencement of the environmental assessment of the Project on June 23, 2016, the Minister received a number of requests to refer the environmental assessment

of the Project to a review panel. In my review of these requests against the factors set out in subsection 38(2) of CEEA 2012, I formed the opinion that these requests did not disclose any new information warranting a different determination than the one that had been made based on the information in the screening record, i.e. that there was no reasonable basis to refer the environmental assessment of the Project to a review panel.

AFFIRMED before me at the City of Ottawa,
in the Province of Ontario, this 14 day
of November, 2016.



Commissioner for Taking Affidavits
within Ontario
LINDA TINGLEY
LAW SOCIETY OF UPPER CANADA
MEMBER 41584R



HEATHER SMITH