



## Research conclusions regarding the amended *Navigable Waters Protection Act*, as included in the *Budget Implementation Act, Bill C-10*.

### Specific concerns with the legislation

- 1 - The new NWPA eliminates environmental assessments for development projects on Canadian waterways, with very few exceptions.
- 2 - The new NWPA means decisions about Canada's waterways will be based on politics and financial clout rather than science or long-term socio-economic needs.
- 3 - The new NWPA divides Canada's rivers into those worth protecting and those not worth protecting.
- 4 - The "class" lists may be drafted by the Cabinet in secrecy, with no public consultation, scientific basis, or opportunity for appeal.

### Bigger picture concerns:

- 1 - The legislation fails to recognize that navigation is a public right, stemming from both Aboriginal and European history. The new NWPA mistakenly presumes that the Government of Canada and its friends, rather than Canadians, own and control our rivers.
- 2 - The legislation is part of an ongoing attack on science, transparency, and fairness when it comes to making decisions that affect Canada's environment. We are seeing similar efforts to gut the *Fisheries Act*, environmental assessment legislation, and the Environmental Bill of Rights among others. This attack blames "red tape" for standing in the way of progress. In reality, these laws are the only things standing between citizens and a massive sell-off of our waterways from coast-to-coast, be it through pollution, development, or diversion.

### Recommendations:

- 1 - Decouple the new NWPA from the *Budget Implementation Act, 2009* so that there can be proper, thorough, and transparent consultation with the public.
- 2 - Restore the environmental assessment trigger.
- 3 - Remove the Minister's discretion when it comes to major projects, such as the four named works in the existing legislation: bridge, boom, dam or causeway.
- 4 - Eliminate the system for dividing up Canada's rivers or classifying different types of "works". In the alternative, create these classes only after significant public consultation and scientific review, allow for exemptions in special cases, and explicitly maintain the existing common law and traditional right to use navigable waters.

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## **Additional Note of Clarification**

Proponents of the new NWPA say the current Act is creating red tape, delay, and additional expense. This is untrue. The Minister already has the authority to exempt projects from an environmental assessment process; this authority applies to most projects, except for bridges, booms, dams, and causeways, which interfere with navigable waters by their very definition.

## **Background:**

For more than 2500 years, people have enjoyed a common right to free passage on public waterways. This right can be traced from the Roman era, through such influential documents as the Magna Carta of 1215, to modern times. Canada's *Navigable Waters Protection Act* recognizes the public right to navigation in Canadian waters; passed in 1882, it is one of our oldest pieces of federal legislation.

The *Navigable Waters Protection Act* recognizes the importance of protecting navigable waterways. At the same time, the Act allows individuals and agencies to proceed with projects that interfere substantially with navigation, provided they obtain approval from the Minister. In this sense, the Act both reinforces the historic common right to navigation for Canadians and creates a legal process for limiting or interfering with this right.

The act of obtaining approval from the Minister triggers a federal environmental assessment process. Through this process, environmental impacts and mitigation measures are determined. This assessment process helps to balance the traditional common right to free passage and the need or desire to construct works on or near navigable waterways.

On April 17, 2008, Waterkeeper received an invitation from Mr. Mervin Tweed, Chair of the Standing Committee on Transport, Infrastructure and Communities, to provide a submission regarding proposed amendments to the *Navigable Waters Protection Act*. A list of seven proposed changes was included in the letter. Waterkeeper provided written submissions on May 12, 2009 and, on very short notice, had an opportunity to appear before the Transportation Committee on May 29, 2008. To our knowledge, we were the only organization expressing concerns that had an opportunity to appear.

On June 12, 2008, the Trans Committee presented its recommendation to Parliament and promised additional public consultation would occur. The next time information was released to the public was February, 2009, with the *Budget Implementation Act*.

Background materials and transcript of the presentation are available on our web site, [www.waterkeeper.ca](http://www.waterkeeper.ca).

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