



Communities and Coal

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February 18, 2016

RE: Port Authority Structure and Governance

Dear Minister Garneau:

We are writing you today as a group of residents from communities along and South of the Fraser River, including residents from the cities of Surrey, Delta, White Rock, Richmond, and New Westminster. The purpose of this letter is to provide you with input regarding the potential reform of Port Metro Vancouver's governance and structure.

BACKGROUND:

Almost three years ago, we formed a grassroots organization, called **Communities and Coal**, over our concern with a proposal to ship US thermal coal from Wyoming, through BC communities, to Fraser Surrey Docks (located in Surrey, BC), later to be exported to Asia.

Although there were many personal, and varied reasons why residents became involved, we were able to agree upon one central point: in order to have a fair assessment of the project it was necessary to include a "Health Impact Assessment and full public hearings" as part of the Environmental Assessment process.

Although we had unprecedented support from nine municipalities, MLAs, MPs, scientists, doctors, the health authorities, Metro Vancouver, businesses, unions, school boards, and the public, our request was denied, and Port Metro Vancouver ultimately approved the project in August of 2014.

Shortly after, we filed a federal court case challenging Port Metro Vancouver's decision, alleging:

1. That the Port was Biased in its decision making process
2. That they failed to take into account the effects of Climate Change as per the Canadian Environmental Assessment Act
3. That Robin Silvester, the CEO of the Port, lacked the authority to approve the project

The cities of Surrey and New Westminster have since joined our legal case as interveners, and we hope to have a court date set soon for the fall of 2016.

Further, on September 24, 2014 the Musqueam filed their own judicial review in Federal Court citing that the permit approval for the FSD coal proposal "infringes on their Aboriginal right to fish for food, social and ceremonial purposes".

WHAT HAVE WE LEARNED:

This journey has provided us with some very useful insight into how the Port Authorities' review process works and the challenges faced by communities impacted by potential projects. The Trudeau Government has professed its openness to input from Canadians. Hence we feel it important to discuss with you our ideas on how to improve a system that is in serious need of revision.

We say this knowing the important role Port Metro Vancouver plays in moving goods in and out of Canada and we respect this important part of our economy. However, currently the system is out of balance, and improvements could be made to satisfy both the economic role that the Port plays and the needs and interests of the communities affected by the Port's operation, which include a meaningful consideration of the environmental impact of its decisions, both locally and globally. Balance is key, and achieving it would bring about the badly needed social license the Port Authority is currently lacking in order to successfully operate.

After dealing with the Port Authority for almost three years, we suggest the following points be given serious consideration and changes implemented accordingly:

- Reform is needed to the Port's *letters patent* to increase the diversity, expertise and representation of the Board of Directors. As it stands, 7 of 11 board members are nominated by the industries that use the Port. First Nations and environmental and health experts are not present. And strong community representation is lacking – there is only one representative from local governments.
- The Port's conflicting mandates are problematic. Whereas the *Canada Marine Act* directs the Port to consider a range of factors in its decision-making – competitiveness, safety, environmental protection, and responsiveness to local needs – the Port sees the promotion of trade as its primary objective, such that this takes precedence over all other concerns. The *Canadian Environmental Assessment Act, 2012* delegates responsibility to the Port to make the determination of which projects will cause significant adverse environmental effects. Not surprisingly, this puts the Port in a position where the interests of industrial users takes priority. The Port should not be allowed to review and approve projects – all projects should go through Environment Canada, which should decide when and what level of screening is required.
- The Port finances its operations through leases and fees from Port users. The Port's direct financial interest in the projects under its review only further highlights the need for an independent review process, one that avoids the appearance of bias that exists with the current project approval system.
- A 2014 omnibus bill authorizes the federal government to sell federal lands to a Port Authority. These lands would no longer be designated as “federal lands” and therefore certain provisions of the *Canadian Environmental Assessment Act, 2012* and *Species at Risk Act* would no longer apply. These lands should remain classified as “federal”.
- Significantly enhanced transparency and accountability in regard to the Port and its operations are required. Beyond vague and very general objectives, much of the Port's operations and intentions remain unknown or unclear, and the community, including local government, is left to speculate on what the Port is doing and why. For example, recent land purchases by the Port along the Fraser River have raised concerns that it is seeking to expand its industrial base. Rather than merely providing vague reassurances, the Port needs to be subject to legislation requiring that the details of its operations, plans and the related decision-making process be routinely available. The 2014 omnibus bill also established rulemaking powers whereby a Port may destroy or dispose of documents, and Port Authorities are not subject to the *Lobbying Act* and can exempt records relating to a regulatory decision from the *Access to Information Act* based on the Port's own financial interest in proposed developments. This is wholly unacceptable.
- The compensation of Port Officials and directors should be reviewed to ensure that conflicts of interest are absent and that compensation is not linked to the approval of projects in any way.
- Projects applying for permits within the Port's jurisdiction should include impacts to the entire footprint of the project, even if outside of their jurisdiction.
- Project reviews must consider cumulative impacts of various projects in a region when rendering a decision.

In summary, improvements could be made to the governance and structure of Port Authorities, without undermining the need for growth and trade within Canada. We would like to see balance restored to the system, which will help to create the required social license needed to operate.

We hope that you consider our recommendations and we look forward to hearing back from you with your thoughts on this matter.

Regards,

Paula Williams, Co-founder, Director
Steven Faraheer-Amidon, Director
Robert Winston, Director
Greg Simmons, Director
Brian Lauder, Director
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