

The Decision on Roberts Bank Container Terminal 2 (RBT2).

1. Introduction to the Decision Process.

Under its Terms of Reference and in accordance with CEAA 2012, The Review Panel (Hereinafter the Panel) was tasked with conducting an environmental assessment of the RBT2 project, proposed by the Vancouver Fraser Port Authority (hereafter the Port).

The Panel closed the record on August 26 2019 and moved to prepare its report and recommendations to the Minister of Environment and Climate Change Canada (ECCC). That report is required to include the rationale, conclusions and recommendations of the Review Panel. It has to include any environmental effects, cumulative effects, the significance of these and any mitigation measures and follow-up programs.

The Panel Report, which as already noted contains recommendations from the Panel, is a step in the review process, but it is not a decision.

Whatever the Federal Review Panel's Environmental Assessment Report says, it is the Minister of Environment and Climate Change Canada (ECCC) who is the decision-maker and it is he will make the decision and must take action in accordance with the act – CEAA 2012.

What is the decision? It is not a political decision; it is a decision made by politicians based on science and facts.

Importantly, if, taking into account the implementation of any mitigation measures, the Panel concludes that the project is likely to cause significant adverse environmental effects, the Panel **may** include in its report information that it has received with respect to whether those significant adverse environmental effects are justified in the circumstances. The first question therefore is – how can the Panel not conclude that there are significant adverse environmental effects, given the evidence submitted by both ECCC scientists and independent experts, who testified at the public hearings. It will be a serious omission if the Panel decides not to include such information in its report. If the Panel in their wisdom deems there are no significant adverse effects and recommends RBT2 be approved, with mitigation and a follow up program (i.e. they side with the Port) that creates a serious problem. Simply put, ECCC senior management, will be put in a position of either siding with the Panel or its own scientists in making recommendations to the Minister as to what he should decide.

The science is clear. The business facts are clear. To build RBT2 would be a bad business decision and a very damaging science decision, one that will create significant adverse environmental effects that cannot be mitigated.

2. How the Minister Makes his Decision

Section 52 (1) of the Act says:

“The decision maker must decide if taking into account the implementation of any mitigation measures that the decision maker considers appropriate, the designated project:

- *(a) is likely to cause significant adverse environmental effects referred to in subsection 5(1); and*
- *(b) is likely to cause significant adverse environmental effects referred to in subsection 5(2).”*

Subsections 5 (1) and (2) describe environmental effects that are to be taken into account and such effects include to: fish, fish habitat, migratory birds, aquatic species.

There are therefore two aspects to the decision on RBT2:

(i). Are there likely to be significant adverse environmental effects?

And

(ii). Are mitigation measures appropriate?

The ECCC scientists have already addressed both of these questions.

Their report to the Panel in February 2018 (#1146 on the registry) stated:

“ECCC maintains that there is insufficient, science-based information to support the Proponent's finding that the Project would not adversely impact intertidal biofilm and consequently, migratory shorebirds in general, and the Western Sandpiper species in particular. . ECCC characterizes the Project's residual adverse impacts on biofilm due to predicted changes in salinity as potentially high in magnitude, permanent, irreversible, and, continuous. ECCC's confidence in the EIS's predictions is characterized as low (IBID). In particular, impacts to biofilm could potentially implicate the long-term viability of Western Sandpipers as a species (IBID). ECCC similarly characterizes impacts to Western Sandpipers as potentially high in magnitude, permanent, irreversible, and continuous”

That informs the two questions;

Are there likely to be significant adverse effects – YES

Are they immitigable – YES

ECCC scientists have issued a number of other reports identifying significant environmental concerns In addition ECCC made presentations to the RBT2 Panel Public Hearings underlining these concerns.

In making his determination, whom does the Minister rely on? Is he guided by the Port's own science carried out by scientists hired by the Port, which has determined the environmental effects are minimal and can be mitigated? Or is he informed by the ECCC scientists?

In making that determination the following points are fundamental:

- The findings of the ECCC scientists are based on many years of research in Environment Canada.
- The ECCC findings are supported and endorsed by independent scientists whose expertise in wetlands habitat and biofilm is world-renowned.
- Recent independent peer-reviewed studies have confirmed the ECCC science in relation to biofilm and salinity oscillations.
- The Port's science has never been peer-reviewed.
- Not one scientist independent of the Port supported or endorsed the Port's science during the Panel hearings. To the contrary a number of presentations to the Panel by recognized experts in their field were critical of the Port's science.

It is clear that the Minister must base his determination on the ECCC science and decide that RBT2 - the project - is likely to cause significant adverse environmental effects, which cannot be mitigated.

This therefore means that the Minister is now to take action under Section 52 (2) of the act, which says:

“If the decision maker decides that the designated project is likely to cause significant adverse environmental effects referred to in subsection 5(1) or (2), the decision maker must refer to the Governor in Council the matter of whether those effects are justified in the circumstances.”

3. Decision by Governor in Council

Under 52(4) of the Act:

“When a matter has been referred to the Governor in Council, the Governor in Council may decide

- *(a) that the significant adverse environmental effects that the designated project is likely to cause are justified in the circumstances; or*
- *(b) that the significant adverse environmental effects that the designated project is likely to cause are not justified in the circumstances.”*

So at this point the Governor in Council (the Cabinet) is tasked solely with deciding whether the adverse environmental effects are justified.

Here then the Cabinet will have to determine whether spending \$3.5 - \$.4.0 billion is justified for a second container terminal on Roberts Bank. In so doing they will have to look at not only the environmental issues but also the business case. Necessarily they will have to look at the Port's performance against its own forecasts. They will have to determine whether the economics make sense. They will also have to consider whether the additional container terminal capacity is needed and what alternatives there are.

Cabinet must therefore take the following into consideration:

- If built RBT2 will become the most expensive container terminal in the world. This means that RBT2 will need to charge fees much higher than surrounding terminals in order to cover their costs. As a result RBT2 will not attract sufficient traffic to cover its costs.
- 25 percent or more of the volumes moving through the Port of Vancouver are US. This traffic adds nothing to the Canadian economy and is discretionary. That is, some or all of this traffic could disappear, with US Ports on the west coast, in the Gulf, or on the east coast picking up this traffic.
- How reliable are the Port's growth forecasts. They have missed every one of their last five forecasts.
- Is there sufficient container terminal capacity in operation or planned such that RBT2 is not needed? Three of the four Vancouver terminals are expanding or have plans for expansion. Prince Rupert has plans to double its container terminal capacity. That additional capacity is sufficient to satisfy Canada's trading needs for many years to come.
- The Port's contention that the west coast will be out of container terminal capacity by the mid to late 2020s is a fallacy as the statistics already show.
- The Vancouver area container terminal compound annual growth rate over the last ten years is less than three percent. In 2019 Vancouver had no growth, whereas Prince Rupert grew at an annualized rate of 17 percent.
- Are there non-government funded alternatives? Yes there are. Global Container Terminals is proposing an incremental approach, which avoids adding a huge man-made island on Roberts Bank. DP World at Prince Rupert has a phased expansion plan that will bring in capacity equivalent to RBT2. Both Global Container Terminals and DP World will provide the funding, but only when the need for more capacity is there.
- Two previous attempts to contract with an operator for RBT2 failed. The only one that expressed any interest was a foreign government owned entity – the Singapore Port Authority. In the end they walked away.
- The market has changed. RBT2 is an out-dated idea – even more so now in 2020. It is not market driven. It risks introducing over capacity. It is high risk to taxpayers and the environment.
- Canada in 2020 is providing over \$120 billion to support the country. To spend \$3-4 billion on RBT2 is irresponsible.
- When and if new Canadian west coast container terminal capacity is needed, it is the expansion of Prince Rupert's container capacity that makes sense. It is two sailing days closer to Asia, has an excellent uncongested rail service, unlike the rail route through the Fraser Canyon, little or no environmental issues and where there is a need for more jobs.

The conclusion, based on science, facts, past performance and forecast growth is clear. The significant adverse environmental effects that RBT2 is likely to cause are not justified in the circumstances.