



# SIERRA LEGAL DEFENCE FUND

March 6, 2002 – *Via Facsimile*

The Honourable David Anderson, P.C., M.P.  
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Dear Members of the CEC Council:

**RE: BC Logging Citizen Submission (SEM-00-004)**

We write on behalf of the Submitters of the BC Logging citizen submission (the David Suzuki Foundation, Greenpeace Canada, the Sierra Club of British Columbia, the Natural Resources Defense Council and the Northwest Ecosystem Alliance; SEM-00-004).

Resolution 01-12 of the Council, issued November 16, 2001, raises serious concerns about the handling of the BC Logging Submission and the integrity of the citizen submission process generally. The BC Logging Submission was intended to highlight issues of widespread non-enforcement of the federal *Fisheries Act* engendered by the operation of provincial laws regulating the conduct of logging operations in British Columbia. Specifically, the BC Logging Submission was intended to highlight three particular types of damage routinely permitted under provincial law: clearcutting the riparian areas of certain fish bearing streams; falling and yarding of logs across fish bearing streams; and the clearcut logging of areas that have been determined to be highly prone to landslides. The significant environmental harm from these practices arises not necessarily from any one instance, but more importantly, from the cumulative effects of these practices occurring on a frequent basis in widespread parts of British Columbia.

Resolution 01-12 narrows of the scope of the factual record for the BC Logging Submission, contrary to the recommendation of the Secretariat, and only allows the examination of factually isolated instances and precludes examination of logging conducted under the provincial *Forest Practices Code*. The result is that the factual record that will be prepared in this matter will not address the environmental concerns that prompted the filing of the Submission.

The Submitters have two major concerns regarding Resolution 01-12. First, the Resolution cites as its rationale the allegation made by Canada in its response that it was “unable to meaningfully respond to other matters raised in the Submission.” What is particularly troubling about the Council’s decision is that the Secretariat had directly considered Canada’s Response and indicated that the “other matters” could and should be part of any factual record. Despite the findings of the Secretariat – and the Council’s promise to respect the independence of the Secretariat – the Council rejected the Secretariat’s recommendation without so much as an explanation. This is in contradicts the spirit of the Council’s commitment, in Resolution 01-06.

The Submitters second concern relates to what appears to be a *de facto* revision of the Article 15 of the *North American Agreement on Environmental Cooperation*. Specifically, the Council in several of the November 16, 2001, resolutions restricts the Secretariat’s ability to examine the failure to enforce environmental laws on a systematic basis. This occurred despite the fact that there is no basis for such a limitation in the NAAEC or in the *Guidelines for Citizen Submissions* and despite the fact that the Secretariat has previously considered such issues in the context of citizen submissions such as BC Hydro (SEM-97-001). In effect, the Council has changed in rules of citizen submissions, mid-process, without any public consultation or input. This is highly unfair to the Submitters. Leaving aside for the moment the problems with such limitations, if the limitations had been clear from the outset, the Submitters would likely have raised different issues and examples in their Submission. Moreover, the response of the Council to the JPAC’s request to conduct a public review ensures that the Submitters concerns will not be addressed in a timely or meaningful manner.

Given the seriousness of the issues raised by Resolution 01-12, we respectfully request that Council reconsider the terms of Resolution 01-12 and direct that factual record be prepared pursuant to the terms of the Secretariat’s recommendation. Alternatively, we would ask that the Council direct the JPAC to conduct a public review of the narrowing of factual records forthwith and, subject to the recommendations of the JPAC, allow the broadening of ongoing factual record investigations. We kindly request that the Council respond to our request by its next regular session in June 2002.

Sincerely,

(Original signed by)

Randy L. Christensen

Cc: Jonathan Plaut, Chair, Joint Public Advisory Committee  
Janine Ferretti, Executive Director, Commission for Environmental Cooperation