

**MINISTRY OF NATURAL GAS DEVELOPMENT
AND MINISTER RESPONSIBLE FOR HOUSING
DIVISION NAME**

ISSUE: Update on Provincial Permitting regarding the Trans Mountain Pipeline Expansion Project

BACKGROUND:

- May 19, 2016, the NEB recommended to the federal government that the Project be approved, subject to 157 conditions. November 29, 2016, the federal government announced its approval;
- January 11, 2017, BC announced that an EA Certificate with an additional 37 conditions had been issued to Trans Mountain Pipeline (TMP). These conditions respond to concerns raised by Aboriginal groups during consultation and address key areas of provincial jurisdiction and interest, such as: vegetation and wildlife, parks and protected areas, and greenhouse gas emissions;
- As part of the Agreement reached with KM, the Province has an obligation to maintain a Project Office (PO) and to continue to endeavour to have a timely and efficient regulatory and decision making process. The PO and a management structure is in place at the Ministry of Natural Gas Development (MNGD);
- KM plans to begin work on the Westridge Marine Terminal in August 2017, with pipeline construction to commence in September 2017 and to be completed by 2019. While the Project falls under NEB jurisdiction, it needs an estimated 3,000 provincial permits requiring First Nation consultation;
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- KM is in the best position to mitigate and accommodate concerns raised through consultation, including accommodation, or mitigation through localized relocation and/or changes in construction methodology;
- Statutory decision makers in provincial permitting agencies must make their own unfettered determination as to whether the impacts on the asserted or established treaty or Aboriginal rights, including title (Aboriginal interests) arising from the proposed provincial permits have been adequately consulted on, and accommodated for, based on their review of the KM record of consultation;
- Provincial permitting agencies will focus consultation on the novel or incremental impacts of the proposed permits on Aboriginal Interests that have not been previously addressed;
- Provincial permitting agencies include Ministry of Forests, Lands and Natural Resource Operations (FLNRO), Ministry of Transportation and Infrastructure (MOTI), Ministry of Environment (MOE), including BC Parks, and the Oil and Gas Commission (OGC);

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CROSS-REFERENCE / BRIEFING NOTES:

1. Kinder Morgan Trans Mountain Pipeline Expansion Project
2. Five Conditions and Kinder Morgan Trans Mountain Pipeline Expansion Project

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**MINISTRY OF NATURAL GAS DEVELOPMENT
AND MINISTER RESPONSIBLE FOR HOUSING
OIL AND STRATEGIC INITIATIVES DIVISION**

**ISSUE: Kinder Morgan Trans Mountain Pipeline Expansion
Project**

KEY MESSAGES:

- The decision to approve the Trans Mountain Pipeline Expansion Project (Project) was made by the Federal government because interprovincial pipelines are federal jurisdiction. To that end the Prime Minister has said the Project is in the national interest.
- The Project requires an estimated 3,000 provincial permits requiring First Nation consultation.
- The provincial permits will ensure the project is constructed properly and in accordance with the 157 conditions laid out by the National Energy Board, as well as the 37 additional conditions set down by the Province in its Environmental Assessment Certificate. The Province's conditions further protect wetlands, wildlife habitat and caribou and grizzly populations.

BACKGROUND:

- The Trans Mountain Pipeline Expansion Project (Project) falls under the National Energy Board (NEB) hearing process as it crosses provincial borders. It begins near Edmonton, Alberta and terminates on the British Columbia (B.C.) coast. Hearings began in April 2014 and concluded mid-February 2016.
- The Province participated as an intervenor in the NEB process, submitting 139 information requests focused on marine and terrestrial spill response, prevention and recovery.
- In its Final Argument on January 11, 2016 the Province stated it could not support the Project at this time based on the information filed with the NEB. The Province was concerned over emergency management plans and spillage responses on land and water.
- May 19, 2016 the NEB released its recommendations report to Governor in Council (GiC) supporting the Project subject to 157 conditions.
- As per the June 20, 2016 Federal Court of Appeal decision¹ that Canada must fulfil its duty to consult with affected First Nations, the Federal Government embarked on deeper consultation with First Nations.

¹ *Gitxaala Nation et. al. v. Canada* (Environment) 2016 FCA 187

- November 29, 2016 the GiC approved the Project taking into consideration information from a Ministerial Panel on engagement, greenhouse gas (GHG) assessment and deeper First Nations consultation.
- As per the B.C. Supreme Court decision² (January 2016), the Project requires a provincial Environmental Assessment (EA) Certificate. Environmental Assessment Office (EAO) accepted the NEB report as the assessment report for the Project.
- EAO produced a Summary Assessment Report, a Joint Federal/Provincial Consultation and Accommodation Report, and an additional 37 recommendations for the consideration by the Ministers. Decision on EA Certificate was made after GiC decision.
- January 11, 2017 the Province announced Kinder Morgan has successfully addressed the Five Conditions.
- B.C. signed an Agreement with Kinder Morgan on benefits to the Province.
- Kinder Morgan reached a financial investment decision on May 31, 2017 and plans to begin construction on September 1, 2017 and commence operation December 2019.
- The Operational and Construction phase of the Project has begun. Permit applications are being submitted to Ministry of Forests, Lands and Natural Resource Operations (FLNRO), Ministry of Environment (MOE) (including Parks), Ministry of Transportation and Infrastructure (MOTI) and the Oil and Gas Commission (OGC).
- First Nation consultation has begun with certain procedural aspects to be undertaken by Kinder Morgan. However, the ultimate legal responsibility for consultation and accommodation rests with the provincial Crown.
- Statutory Decision Makers (SDM) cannot slow their decision-making for any improper purpose and cannot be fettered by anyone in making their decisions.
- Section 92(10)(a) of the *Constitution Act*, gives the federal government jurisdiction over interprovincial works and undertakings (e.g., pipelines) and the Province would be limited in its ability to prevent the Project.

CROSS-REFERENCE / BRIEFING NOTES:

2. Five Conditions and Kinder Morgan Trans Mountain Pipeline Expansion Project
3. Kinder Morgan Trans Mountain Pipeline Expansion Project and Provincial Permitting
4. Spillage Regime (Ministry of Environment)
5. Tanker Traffic, Marine Spills and Oil Tanker Moratorium
6. Oceans Protection Plan

² *Coastal First Nations v. British Columbia (Environment)* 2016 BCSC 34

TRANS MOUNTAIN EXPANSION PROJECT

- An Environmental Assessment Certificate for the Trans Mountain Expansion Project was issued on January 11, 2017.
- The Environmental Assessment Certificate includes 37 legally-binding conditions that Trans Mountain Pipeline ULC must meet. The company must also build the project as specified in the certificate's Certified Project Description.
- The Environmental Assessment certificate's conditions are in addition to the 157 conditions required by the National Energy Board.
- The Environmental Assessment Certificate requires Trans Mountain Pipeline ULC to develop various environmental management plans in consultation with the Province and Aboriginal groups.
- Once approved, the final plans will be posted on the Environmental Assessment Office's website once they have been approved or accepted by the Environmental Assessment Office.

