

**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;
- s.14

- 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

Contact: s.19
Cell Phone:
Date: June 5, 2017

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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.

Background:

- The Trans Mountain Expansion Project (Project) consists of approximately 987 kilometres of new oil pipeline and the reactivation of 193 kilometres of existing oil pipeline. Trans Mountain ULC (Trans Mountain, a wholly owned subsidiary of Kinder Morgan Canada) will transport crude, semi-refined and refined petroleum products, and the expansion will increase the capacity of the existing pipeline from 47,700 cubic meters per day to 141,500 cubic meters per day.
- On November 29, 2016, the federal government announced its approval of the Project with 157 conditions. A number of Aboriginal and citizen groups have initiated litigation regarding the federal approval.
- Trans Mountain received an environmental assessment (EA) certificate for the Project. The certificate and the table of conditions can be found at: <https://projects.eao.gov.bc.ca/p/trans-mountain-expansion/docs?folder=23>.
- Judicial reviews challenging the issuance of the certificate have been commenced by the City of Vancouver and the Squamish First Nation.
- In June 2017, Trans Mountain announced it reached a final investment decision.
- Key conditions of the certificate require Trans Mountain to:
 - consult with Aboriginal groups and provincial agencies when developing and implementing relevant plans and programs required by the NEB and the provincial certificate;
 - develop wildlife species-at-risk offset plans and grizzly bear mitigation and monitoring plans for all impacted Grizzly Bear Population Units;
 - prepare and implement access management plans to avoid or mitigate disruption to access by members of Aboriginal groups carrying out traditional use activities and by provincially authorized trappers and guide outfitters;
 - prepare and implement a worker accommodation strategy that describes the potential environmental and social-economic impacts of construction camps on Aboriginal groups and includes a plan to provide medical and health services for employees and contractors using the construction camps;
 - prepare offset plans for any provincial parks, protected areas and recreation areas that would be impacted by the project;
 - report greenhouse gas emissions consistent with BC's Greenhouse Gas Industrial Reporting and Control Act and offset the greenhouse gas emissions from project construction in BC through the BC Carbon Registry;
 - conduct a research program regarding the behaviour and clean-up of heavy oils spilled in freshwater and marine aquatic environments to provide Trans Mountain and spill responders with improved information on how to effectively respond to spills;
 - develop emergency response plans that include guidelines for: incident notification and communications; oiled wildlife care; volunteer management; environmental sampling and monitoring and describe how Trans Mountain would coordinate emergency response participation of first responders, agencies, municipalities and regional districts, and Aboriginal Groups;
 - increase Trans Mountain's emergency preparedness and response exercise and training program to include full scale exercises or deployments of emergency equipment for certain pipeline rupture and tank fire scenarios before operations begin;
 - implement an Aboriginal marine outreach program along the marine shipping route to address the impacts of increased project-related tanker traffic in the Salish Sea; and

- provide opportunities for Aboriginal Groups to participate in construction and post-construction monitoring, including training for Aboriginal monitors.
- A decision by provincial Ministers on the project under the British Columbia *Environmental Assessment Act* was required as a result of a January 2016 Supreme Court of British Columbia decision regarding the Environmental Assessment Office's (EAO) equivalency agreement with the National Energy Board (NEB).
- Pursuant to its equivalency agreement, the EAO considered the NEB's recommendation report as the assessment for the project. In addition, the EAO gathered information throughout the remaining provincial process, including joint consultation with the federal government with 96 Aboriginal groups in B.C. about the project, to help inform the decision by Ministers on whether to issue a certificate.
- Under the legal terms of its certificate, Trans Mountain must provide various management plans to the EAO and the Province for review, comment and approval, and the EAO is required to respond within certain time periods. As a result, the EAO will be writing to Trans Mountain with the results of the review of these various plans and posting them online as they are approved or accepted.

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CORE MESSAGING

Last updated: June 2017

Ministry of Environment

FIVE CONDITIONS FOR HEAVY OIL PIPELINES

- In July 2012, our government released a heavy oil policy paper outlining five conditions that must be met for B.C. to consider any heavy oil pipelines.
- While inter-provincial pipelines are up to the federal government to ultimately approve – our five requirements look out for B.C.’s interests and ensure there is a balance between responsible economic development and environmental protection.
- Kinder Morgan has met the five conditions for the Trans-Mountain Expansion Project as follows:
 - Condition 1 – The Trudeau government has approved the project, subject to the 157 conditions recommended by the National Energy Board. The Province has also issued an EA certificate which includes 37 additional legally-binding conditions.
 - Condition 2 – The federal government’s Oceans Protection Plan is a world-leading marine safety system with new spill prevention and response measures. The plan includes upgrades to Coast Guard facilities along B.C.’s coast, two multi-purpose tugs and a 24-7 emergency operations centre in Port Hardy.

- Condition 3 – B.C. has passed legislation which enables a world-leading provincial spill preparedness and response regime. Regulations will be introduced this year and over the coming two years to ensure a world-leading system is up and running by 2019.
- Condition 4 – Kinder Morgan has signed 41 mutual benefit agreements with First Nations worth more than \$350 million and provided \$13 million in capacity funding to assist First Nations in carrying out their due diligence. The Trudeau government has also made substantial progress on consultation and accommodation, including a First Nations monitoring and advisory committee with a \$64 million funding envelope.
- Condition 5 – Kinder Morgan will pay the Province between \$25 million and \$50 million annually for 20 years with revenues dedicated to environmental protection initiatives. Other economic benefits include:
 - 75,110 person-years of employment for B.C. throughout construction and operation.
 - \$3.8 billion in GDP to B.C. in construction and \$15.3 billion (over 20 years) during operation for a total of \$19.1 billion.
 - Estimated \$2.2 billion in provincial tax revenue, including construction and operation benefits.
 - Estimated \$512 million in property taxes to municipalities in B.C. over 20 years of operation.

- The five conditions are:
 - Successful completion of the environmental review process.
 - World-leading marine oil spill response, prevention and recovery systems for B.C.'s coastline and ocean to manage and mitigate the risks and costs of heavy oil pipelines and shipments.
 - World-leading practices for land oil spill prevention, response and recovery systems to manage and mitigate the risks and costs of heavy oil pipelines.
 - Legal requirements regarding Aboriginal and treaty rights are addressed, and First Nations are provided with the opportunities, information and resources necessary to participate in and benefit from a heavy-oil project.
 - British Columbia receives a fair share of the fiscal and economic benefits of a proposed heavy oil project that reflects the level, degree and nature of the risk borne by the province, the environment and taxpayers.

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- On November 29, 2016, the federal government announced its approval of the Project with 157 conditions. A number of Aboriginal and citizen groups have initiated litigation regarding the federal approval.
- Trans Mountain received an environmental assessment (EA) certificate for the Project. The certificate and the table of conditions can be found at: <https://projects.eao.gov.bc.ca/p/trans-mountain-expansion/docs?folder=23>.
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 - conduct a research program regarding the behaviour and clean-up of heavy oils spilled in freshwater and marine aquatic environments to provide Trans Mountain and spill responders with improved information on how to effectively respond to spills;
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Kinder Morgan Trans Mountain Expansion Project

Issue:

- Kinder Morgan Trans Mountain Expansion Project

Background:

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- Note: The Environmental Assessment Office has a separate note on the Environmental Assessment Certificate.



Review of Environment Management Plans:

- Plans prepared by Kinder Morgan (KM) addressing NEB/EAO conditions have opened for consultation with provincial agencies in seven batches. ENV staff members have reviewed batches of plans for numbers 5, 6 and 7. s.12,s.13

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Next Steps:

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

**ISSUE: Five Conditions and Kinder Morgan Trans Mountain
Pipeline Expansion Project (Project)**

BACKGROUND:

- In 2012 British Columbia (B.C.) released a technical analysis, “Requirements for British Columbia to Consider Support for Heavy Oil Pipelines” which identified five conditions.

Condition 1: Successful completion of the environmental review process(es)

- Federal Government approved the Project subject to the National Energy Board’s (NEB) 157 conditions. B.C.’s environmental assessment added 37 additional conditions.

Condition 2: World-leading marine oil-spill preparedness and response system

- Marine safety concerns are being addressed by Canada and Kinder Morgan. Canada’s major initiative is the \$1.5 billion Oceans Protection Plan. The largest share will benefit B.C. through upgrades to the Canadian Coast Guard, new navigation and radar systems, enhanced response, further studies, plans, and funds for clean-up. Of importance is the addition of two dedicated high-powered multi-purpose tow-capable vessels.
- Kinder Morgan has committed to: providing a \$150 million investment in Western Canada Marine Response Corporation; requiring two local expert pilots on loaded tankers; and an increased escort tug regime for the Juan De Fuca Strait.

Condition 3: World-leading on-land spill preparedness and response systems

- Initiatives to address the terrestrial environment include: B.C. Ministry of Environment *Environmental Management Amendment Act* passed in May 2016 and pending regulations; NEB Orders on emergency plans; and Kinder Morgan’s geographic response planning, leak detection research and investment, plus \$20 million for GHG offsets to B.C.

Condition 4: Consultation and partnership with First Nations

- Providing opportunities for First Nations and addressing legal and treaty rights are being addressed by Canada and Kinder Morgan. Canada conducted deeper consultations on rights and accommodation which resulted in the joint federal/provincial “Crown Consultation and Accommodation Report.” Canada is providing \$65 million to fund an

**MINISTRY OF NATURAL GAS DEVELOPMENT
MINISTRY OF ENERGY AND MINES**

BRIEFING NOTE FOR INFORMATION

I PREPARED FOR: Dave Nikolejsin, Deputy Minister of Natural Gas Development

II ISSUE: Trans Mountain Pipeline Expansion Project (Project) and First Nations' Benefits

III BACKGROUND:

Trans Mountain Pipeline ULC (TMP) has been actively engaged with First Nations since the beginning of the National Energy Board process in 2013.

TMP engaged with affected Aboriginal groups through its "Aboriginal Engagement Program". TMP originally identified 133 Aboriginal groups (including communities, associations, councils and tribes and Métis groups) which include 96 First Nations in British Columbia (B.C.).

TMP ensured all Aboriginal groups on the engagement list have been consulted with a focus on building relations, sharing information, gathering interests and concerns, pursuing Traditional Land Resource Use studies, Traditional Marine Resource Use studies and Traditional Ecological Knowledge studies, providing participatory assistance in the regulatory processes and facilitating meetings with the Crown.

TMP also developed Mutual Benefit Agreements (MBAs). These agreements focused on a business development between partners (TMP/First Nations) to achieve long-term benefits, rather than impact agreements.

IV DISCUSSION:

Kinder Morgan has provided in excess of \$13 million in capacity funding; and committed over \$350 million in MBAs ^{s.21} to First Nations in B.C. Amounts do not include the internal resourcing spend made by TMP in relation to achieving these agreements, nor the significant economic benefits that will flow to Aboriginal groups in the form of procurement, employment and training, emergency response, environmental monitoring and remediation activities, which will be in the multiple millions of dollars.

MBAs are unique to each group and could include: a capital component; procurement and business maximization process; employment and training maximization; environmental participation; archaeological planning and involvement; emergency response involvement; marine initiatives; implementation committees; and/or dispute resolutions process. TMP negotiated separate agreements to cross ten Indian Reserves which come with additional payment for consent to cross the Reserves.

First Nations involvement goes beyond the MBAs. While MBAs are one component of accommodation, there has been a broader effort on the part of the proponent and the Provincial

and Federal Governments to mitigate both the probability and the magnitude of a potential spill event arising from the Project.

This effort encompasses the Federal Oceans Protection Plan (OPP), ^{s.16}
s.16 Federally funded initiatives and resources to improve spill preparedness and response on B.C.'s coast, as well as stricter regulation regarding spill response and liability. The OPP mandates unlimited liability on the part of the polluter, which will guarantee reimbursement of costs for any clean-up efforts. Stricter requirements regarding tug escorts and pilotage for vessels in transit have also been adopted in anticipation of increased vessel traffic. First Nations have a significant role in OPP initiatives.

Canada also conducted deeper consultations on rights and accommodation which resulted in the joint federal/provincial "Crown Consultation and Accommodation Report." One outcome was that Canada is providing \$65 million to fund an Indigenous pipeline environment committee to ensure ongoing monitoring of the Project

Kinder Morgan also has provided \$150 million to the Western Canada Marine Response Corporation (WCMRC) that is involving First Nations in spill response and emergency measures training.

III CONCLUSION:

TMP has provided over \$13 million to facilitate First Nations participation, and has committed to over \$350 million in MBAs that accrue to First Nations when the project proceeds. Other benefits include the \$65 million Federal Indigenous initiative to monitor the pipeline along with benefits and opportunities provided by the OPP and WCMRC. All of these initiatives and funding commitments lead to First Nations benefits in areas, such as training, continued community support, hiring/employment and small business development. Should the line not proceed these dollars will cease.

Indigenous pipeline environment committee to ensure ongoing monitoring of the Project. Kinder Morgan has provided in excess of \$13 million in capacity funding; and committed over \$350 million in Mutual Benefits Agreements ^{s.21} to First Nations in B.C.

Condition 5: Fair share of fiscal and economic benefits for B.C.

- April 6, 2017, the Province and Kinder Morgan signed an Agreement that will:
 1. put British Columbians first in line for jobs of the more than 75 thousand person-years of employment;
 2. boost B.C.'s GDP by \$19.1 billion during construction and operations over 20 years; and
 3. generate over \$2.2 billion in tax revenue for provincial and local governments.
- The revenue-sharing agreement will bring up to \$1 billion over 20 years, or up to \$50 million per year for B.C.

BACKGROUND (Project):

- May 19, 2016 the National Energy Board recommended to the Federal Government that the Project be approved, subject to 157 conditions. November 29, 2016, the Federal Government approved the Project subject to the 157 conditions.
- December 8, 2016, the Ministers of Environment and Natural Gas Development (Ministers) were provided the project environmental assessment package for review.
- December 14, 2016 Cabinet was briefed on the Five Conditions, and the Ministers were recused from the meeting because they were the statutory decision makers.
- January 9, 2017 the Ministers received a complete, final briefing on the Project's environmental certificate and granted the certificate. Prior to this approval, both Ministers recused themselves from any discussions/ briefings on the Five Conditions.
- January 10, 2017 the Ministers issued the environmental assessment certificate with 37 conditions. Following the issuance of the certificate, the Ministers were provided a briefing on the Five Conditions.
- January 11, 2017 Cabinet met to review the Five Conditions and decided to approve with an announcement on the Five Conditions later in the day.
- Kinder Morgan reached FID, May 31, 2017 and plans to start construction September 1, 2017 and commence operation December 2019.

CROSS-REFERENCE / BRIEFING NOTES:

1. 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
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