

**NATIONAL ENERGY BOARD**  
**OH-001-2014**  
**Trans Mountain Pipeline ULC (Trans Mountain)**  
**Application for the Trans Mountain Expansion Project (Project)**  
**File OF-Fac-Oil-T260-2013-03 02**

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**Tsleil-Waututh Nation's  
Record of Written Evidence**

**Volume 3 of 9  
(Affidavit of Ernie George)**

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Filed on May 26, 2015

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**AND TO:**

**Intervenors to the Trans Mountain Pipeline Expansion Project**

**Proceeding before the National Energy Board** (by E-mail and Courier  
where directed by the NEB)

# Tsleil-Waututh Nation's Record of Written Evidence

## TABLE OF CONTENTS

TAB	ITEM	PAGE
<b>Volume 1 of 9</b>		
<b>1.</b>	<b>Affidavit of Leonard George, sworn on May 25, 2015</b>	<b>1</b>
A.	Map 1: Consultation Boundary (Tsleil-Waututh Nation, May 2015); and Map 4: Tsleil-Waututh Nation Village Sites (Tsleil-Waututh Nation, May 2015)	17
B.	Map 24: Resource Harvest and Cultural Sites 1919–1972 (Tsleil-Waututh Nation, May 2015)	20
C.	Table 1: Tsleil-Waututh Title, Rights, and Interests	22
D.	British Columbia, <i>Treaties and other Negotiations</i> , “British Columbia Treaty Commission Agreement Six-Stage Treaty Process”	24
E.	Map 18: Sensitive Habitat and Cultural Sites (Tsleil-Waututh Nation, May 2015)	27
F.	Map: Location of Select Restoration Plans and Actions (Tsleil-Waututh Nation, April 2014)	29
<b>Volume 2 of 9</b>		
<b>2.</b>	<b>Expert Report: <i>Tsleil-Waututh Nation's History, Culture, and Aboriginal Interest in Easter Burrard Inlet</i> (Jesse Morin, PhD, May 25, 2015) (Redacted Version)</b>	<b>31</b>
<b>Volume 3 of 9</b>		
<b>3.</b>	<b>Affidavit of Ernie George, affirmed on May 21, 2015</b>	<b>508</b>
A.	Map 1: Consultation Boundary (Tsleil-Waututh Nation, May 2015); and Map 4: Tsleil-Waututh Nation Village Sites (Tsleil-Waututh Nation, May 2015)	532
B.	Letter from Tsleil-Waututh Nation to Kinder Morgan Canada, dated April 30, 2014	535
C.	Letter from Kinder Morgan to Tsleil-Waututh Nation, dated May 15, 2014	538
D.	Letter from Tsleil-Waututh Nation to Kinder Morgan Canada, dated June 4, 2014	542
E.	Letter from Tsleil-Waututh Nation to Kinder Morgan Canada, dated November 14, 2014	545
F.	Letter from Trans Mountain to Tsleil-Waututh Nation, dated January 23, 2015	569
G.	Letter from Kinder Morgan to Tsleil-Waututh Nation, dated June 5, 2014	572

# Record of Tsleil-Waututh Nation's Written Evidence

---

<b>TAB</b>	<b>ITEM</b>	<b>PAGE</b>
H.	Letter from Tsleil-Waututh Nation to the National Energy Board, dated January 31, 2014	575
I.	Letter from the National Energy Board to Tsleil-Waututh Nation, dated March 4, 2014	579
J.	Letter from Tsleil-Waututh Nation to the National Energy Board, dated April 22, 2014	582
K.	Letter from the National Energy Board to Tsleil-Waututh Nation, dated May 15, 2014	586
L.	Letter from Tsleil-Waututh Nation to the National Energy Board, dated May 23, 2014	590
M.	Letter from the National Energy Board to Tsleil-Waututh Nation, dated June 20, 2014	593
N.	Letter from Tsleil-Waututh Nation to the National Energy Board, dated November 14, 2014	596
O.	Letter from the National Energy Board to Tsleil-Waututh Nation, dated December 6, 2014	601
P.	Letter from Tsleil-Waututh Nation to the National Energy Board, dated April 23, 2015	604
Q.	Letter from the National Energy Board to Tsleil-Waututh Nation, dated May 8, 2015	607
R.	Letter from Tsleil-Waututh Nation to the Minister of Natural Resources, dated November 12, 2014	610
S.	Letter from Tsleil-Waututh Nation to the Minister of Natural Resources, dated April 27, 2015	613
T.	Map 28: 2007 Westridge Oil Spill in Burnaby (Tsleil-Waututh Nation, May 2015)	616
U.	Tsleil-Waututh Nation Band Council Resolution, dated May 21, 2015	618
V.	Letter from Tsleil-Waututh Nation to the Minister of Natural Resources, dated November 5, 2012	622
W.	Letter from the Minister of Natural Resources to Tsleil-Waututh Nation, dated January 18, 2013	625
X.	Letter from the National Energy Board to Tsleil-Waututh Nation, dated August 12, 2013	628

# Record of Tsleil-Waututh Nation's Written Evidence

TAB	ITEM	PAGE
Y.	Letter from Tsleil-Waututh Nation to the Minister of Environment and the Minister of Natural Resources, dated March 5, 2014	637
Z.	Letter from Natural Resources Canada, Major Projects Management Office to Tsleil-Waututh Nation, dated May 20, 2014	643
AA.	Letter from Tsleil-Waututh Nation to the Minister of Natural Resources, dated May 23, 2014	646
BB.	Letter from Tsleil-Waututh Nation to Natural Resources Canada, Major Projects Management Office, dated June 26, 2014	648
CC.	Letter from Natural Resources Canada, Major Projects Management Office to Tsleil-Waututh Nation, dated July 21, 2014	691
DD.	Letter from the Minister of Natural Resources to Tsleil-Waututh Nation, dated August 15, 2014	694
EE.	Letter from Tsleil-Waututh Nation to the Minister of Natural Resources from the Chiefs of 11 First Nations, dated November 28, 2014	698
FF.	Letter from the Minister of Natural Resources to Tsleil-Waututh Nation, dated December 11, 2014	700
GG.	Letter from Natural Resources Canada, Major Projects Management Office to Tsleil-Waututh Nation, dated February 6, 2015	702
HH.	Letter from Tsleil-Waututh Nation to the Minister of Natural Resources Canada, dated February 25, 2015	710
II.	Letter from Tsleil-Waututh Nation to the Minister of Natural Resources Canada, dated March 23, 2015	713
<b>Volume 4 of 9</b>		
4.	<b><i>Tsleil-Waututh Nation Assessment of the Trans Mountain Pipeline and Tanker Expansion Proposal, (Tsleil-Waututh Treaty, Lands &amp; Resources Department, May 2015)</i></b>	716
<b>Volume 5 of 9</b>		
A.	Appendix 1: Expert Report— <i>An Assessment of Spill Risk for the Trans Mountain Expansion Project</i> , prepared by Drs. Thomas Gunton and Sean Broadbent	806
<b>Volume 6 of 9</b>		
B.	Appendix 2: Expert Report— <i>Oil Spill Trajectory Modeling Report</i> , prepared by Dr. Jerry Galt, Genwest Systems Inc., dated March 26, 2015	979

# Record of Tsleil-Waututh Nation's Written Evidence

TAB	ITEM	PAGE
<b>Volume 7 of 9</b>		
C.	Appendix 3: Expert Report— <i>Fate and Effect of Oil Spills from the Trans Mountain Expansion Project in Burrard Inlet and the Fraser River Estuary</i> , prepared by Dr. Jeffrey Short, JWS Consulting LLC, dated May 11, 2015	1118
<b>Volume 8 of 9</b>		
D.	Appendix 4: Expert Report— <i>Technical Analysis of Oil Spill Response Capabilities and Limitations for Trans Mountain Expansion Project</i> , prepared by Nuka Research and Planning Group, LLC, dated May 2015	1226
<b>Volume 9 of 9</b>		
E.	Appendix 5: Expert Report— <i>Air Quality Dispersion Modelling Report: Air Quality Impacts from Simulated Oil Spills in Burrard Inlet &amp; English Bay</i> , prepared by Levelton Consulting Ltd., dated May 11, 2015	1390
F.	Appendix 6: <i>Burrard Inlet Oil Spill Time Progression Atlas</i> (available upon request)	1443
G.	Appendix 7: <i>Burrard Inlet Oil Spill Ensemble Location Atlas</i> (available upon request)	1444
H.	Appendix 8: <i>Burrard Inlet Oil Spill Ensemble Sensitive Marine and Cultural Sites Atlas</i> (available upon request)	1445
I.	Appendix 9: <i>Stories Relied on to Articulate Tsleil-Waututh Legal Principles in Section 8</i>	1446

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**AFFIDAVIT OF ERNIE GEORGE**

(for Tsleil-Waututh Nation intervention in NEB hearing for the  
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**AFFIDAVIT OF ERNIE GEORGE**

(for Tsleil-Waututh Nation intervention in NEB hearing for the  
Trans Mountain (Pipeline) Expansion Project)

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I, Ernie George, of the District of North Vancouver, in the Province of British Columbia, AFFIRM THAT:

**Introduction**

1. I am a member of the Tsleil-Waututh Nation (“**TWN**”) and I am the Director of TWN’s Treaty, Lands and Resources Department (“**TLR**”). I have been the Director of TLR since 2011.
2. I am the third of four children of TWN Hereditary Chief Ernest I. George and Deanna D. George. My mother was born as a member of the Squamish Nation. I was raised on TWN’s main reserve. I had close relationships with elders from TWN who taught me our oral history.
3. In my capacity as Director of TLR, I have personal knowledge of the matters set out in this affidavit, except where I have obtained information from others, in which case



I state the source of the information and specifically affirm that I believe such information to be true.

4. I am affirming this affidavit as part of the evidence that TWN is submitting to the National Energy Board ("**NEB**") for the hearing and environmental assessment of the proposed Trans Mountain (Pipeline) Expansion Project ("**Project**").

5. I have reviewed the affidavit of Leonard Henry George which is being filed concurrently with my affidavit. There, Mr. Leonard George describes:

- (a) the Tsleil-Waututh Nation;
- (b) our historic and current use and occupation of Burrard Inlet and the waters draining into it ("**Territory**");
- (c) Tsleil-Waututh's title, rights, and interests in relation to the Project;
- (d) that the federal and provincial Crowns have acknowledged that we have a strong claim to title and rights in our Territory, including those parts of our Territory which the Project is proposed to traverse;
- (e) Tsleil-Waututh's stewardship responsibility and legal principles; and
- (f) the steps TWN has taken to protect, enhance, and restore ecosystems in Burrard Inlet.

6. Mr. Leonard George's affidavit is consistent with my understanding of those issues and I adopt, but will not repeat, his evidence here.

7. In this affidavit, I describe:

- (a) TWN's Stewardship Policy;
- (b) TWN's assessment of the Project;
- (c) Trans Mountain's 2007 Oil Spill in Burrard Inlet;
- (d) TWN's Stewardship Policy decision in relation to the Project;
- (e) TWN's correspondence with the federal Crown in which we asked the Crown to initiate a government-to-government consultation process for the Project, and the Crown has refused to do so; and
- (f) required next steps.

### **TWN's Stewardship Policy**

8. Tsleil-Waututh has a sacred duty to act as the stewards of our Territory by taking steps to manage, protect, and enhance it. It is a duty which our ancestors have exercised in Burrard Inlet since time out of mind—which is a term we use and has a similar meaning to the phrase more commonly used “time immemorial.”

9. A critical component of discharging this duty requires us, as our ancestors did, to consider the potential effects caused by activities in our Territory and assess what potential impacts there may be on our title, rights, and interests.

10. TWN has a Stewardship Policy that is an exercise and example of our inherent jurisdiction, stewardship responsibility, and application of our legal principles. The Stewardship Policy mandates a review of all proposed water, land, and resource policies, plans, and developments inside of our Consultation Area. Assessments carried out under our Stewardship Policy provide us with the information we require to make informed decisions on whether to consent to a proposal or withhold support.

11. Our Consultation Area extends approximately from the vicinity of Mount Garibaldi to the North, the 49th Parallel to the south (and beyond), west to Gibsons, and east to Coquitlam Lake.

12. Our Consultation Area encompasses all waters and lands used by us. For example, it includes waters and lands that we use during our extensive seasonal rounds of travel and resource harvest. It encompasses both the areas exclusively occupied and governed by Tsleil-Waututh, which I refer to as our Territory in this affidavit, as well as those areas where access has been granted to us by other nations in accordance with Coast Salish protocols.

### **TWN's assessment of the Project**

13. TWN's TLR staff assessed the Project in accordance with our Stewardship Policy. The assessment was required because many Project components are located in our Consultation Area and have the potential to affect us. The elements of the Project in our Consultation Area include: (i) part of the 987 km of new pipeline from Edmonton to Burnaby; (ii) an expanded petroleum storage facility in Burnaby; (iii) a new and expanded dock complex at the Westridge Marine Terminal ("**Terminal**"); (iv) two new pipelines from the storage facility to the Terminal; and (v) a roughly seven-fold increase in the frequency of tanker departures from Burrard Inlet, from about once a week to once or more each day.

14. Maps showing the location of our Consultation Area, the location of our ancestors' villages, the location of our main reserve, as well as key elements of the Project are attached as **Exhibit "A"**. These maps, and all other attached maps, were prepared by TLR staff that have expertise in GIS mapping.

15. TWN sent letters to Canada, the NEB, and Trans Mountain inviting them to participate in, and providing them with regular updates on, our assessment of the Project. Various letters between TWN, Canada, the NEB, and Trans Mountain in relation to our assessment of the Project are attached as **Exhibits "B"–"S"**.

16. TLR hired 6 independent experts to assist us in assessing the potential impacts of the Project in Burrard Inlet and on Tsleil-Waututh's title, rights, and interests, as well as other risks associated with the Project which are relevant to us.

17. TLR staff then prepared an assessment report which sets out our detailed findings about Project impacts in Burrard Inlet and on TWN's title, rights, and interests ("**Assessment Report**"). The Assessment Report, including the key expert reports on which it relies, will be filed concurrently with my affidavit.

18. Some of the potential effects and other risks associated with the Project identified in the Assessment Report include:

- (a) the likelihood of oil spills in Burrard Inlet will increase if the Project is implemented, and because spilled oil cannot be cleaned up completely, the consequences in such circumstances will be dire for sensitive sites, habitat, and species, and in turn for the Tsleil-Waututh's subsistence economy, cultural activities, and contemporary economy;
- (b) any delay in spilled oil cleanup response will decrease the total volume of oil which may be cleaned up significantly, and in turn increase the negative effects and consequences;
- (c) the direct effects of marine shipping are likely to add to the effects and consequences of spilled oil, which in turn will further amplify the negative effects of the Project on Tsleil-Waututh's title, rights, and interests;
- (d) the effect of the Project on Tsleil-Waututh cultural activities would be as large as, if not larger than, its effect on natural resources;

- (e) TWN cannot accept the increased risks, effects, and consequences of even another small incident like the 2007 Westridge or 2015 MV Marathassa oil spills, let alone a worst-case spill; and
- (f) implementation of the Project will (i) slow or deny achievement of the objectives of our Marine Stewardship Program, and (ii) violate Tsleil-Waututh law because it will undermine our stewardship obligations.

19. The Assessment Report concludes that the Project:

- (a) has the potential to deprive past, current, and future generations of Tsleil-Waututh peoples of control and benefit of the water, land, air, and resources in our Territory;
- (b) does not represent the best use of our Territory and its water, land, air, and resources to satisfy the needs of our ancestors, and the needs of present and future generations; and
- (c) fails the first lens test of the Stewardship Policy.

#### **Trans Mountain's 2007 Oil Spill in Burrard Inlet**

20. The conclusions reached in the Assessment Report are consistent with the impacts that the 2007 oil spill from Trans Mountain's existing pipeline caused in Burrard Inlet and on TWN's title, rights, and interests.

21. On July 24, 2007, a backhoe operated by a third party contractor accidentally ruptured the *existing* Trans Mountain pipeline which carries crude oil to the Westridge Marine Terminal. Approximately 100,000 litres of oil were spilled into Burrard Inlet.

22. On that occasion, TWN observed on a first hand basis how Trans Mountain and others were ill prepared to quickly respond to an oil spill in Burrard Inlet.

23. A map showing the location of Trans Mountain's 2007 oil spill, the approximate area impacted by the spill, primary impact areas, as well as other key ecosystem and habitat features is attached as **Exhibit "T"**.

24. The 2007 Trans Mountain oil spill caused a number of adverse effects in Burrard Inlet and corresponding impacts on TWN's title, rights, and interests, including:

- (a) contamination of lands in our Territory, and of the marine environment in Burrard Inlet, including waters, sediment, marine habitat, and marine organisms that we harvest;
- (b) elevated levels of toxic polycyclic aromatic hydrocarbons ("**PAHs**") in sediment and tissue samples taken from Burrard Inlet that originated from the spilled oil. In that regard, I understand that PAHs are hazardous to human and ecosystem health as they have been identified as carcinogenic, mutagenic, and teratogenic;

- (c) continued elevated levels of contaminants in sediment at the Westridge Marine Terminal, and in shellfish tissue taken from Maplewood Flats and Cates Park;
- (d) termination of TWN harvesting activities of bivalves in Burrard Inlet in front of IR#3 and adjacent to Maplewood Flats after the spill as a result of perceived and actual bivalve contamination;
- (e) the oil spill reversed our work and progress to officially open shellfish beaches to re-establish the basis for TWN members to exercise our Aboriginal right to harvest bivalves;
- (f) increased difficulty for us to identify potential locations where our members could safely harvest bivalves; and
- (g) increased time required to remediate the marine ecosystem and, working with Environment Canada, to open up additional areas for TWN harvesting activities in Burrard Inlet.

**Tsleil-Waututh's Stewardship Policy decision in relation to the Project**

25. After receiving and reviewing the Assessment Report, Chief and Council, at a duly convened band council meeting, resolved that:

- 1. The conclusions reached by TLR in the report about the potential for the TMEX proposal to cause adverse impacts in Burrard Inlet and on Tsleil-Waututh's title, rights, and interests are hereby accepted and adopted.



2. Because the TMEX proposal fails the first lens test of the Stewardship Policy:
  - (a) Kinder Morgan Canada shall not be granted the legal authority under Tsleil-Waututh law for the TMEX proposal to proceed in Tsleil-Waututh territory; and
  - (b) Tsleil-Waututh Nation does not consent or authorize the TMEX proposal to proceed in Tsleil-Waututh territory.
3. TLR is directed to inform Kinder Morgan Canada, British Columbia, and Canada of items 1-2 above, and to request a meeting with Canada to (i) advise of Tsleil-Waututh's decision in relation to the TMEX proposal, and (ii) offer to engage in good faith discussions and/or consultation regarding our decision.
4. TLR is directed to take all lawful means necessary to ensure that Tsleil-Waututh's decision in relation to the TMEX proposal is recognized, respected, and enforced.

A copy of TWN's May 21, 2015 band council resolution containing the resolutions is attached as **Exhibit "U"**.

26. TWN is of the view that direct government-to-government consultation between TWN and the federal Crown is required to address TWN's decision.

**TWN asked the Crown to initiate a government-to-government consultation process for the Project, but the Crown has refused to do so**

27. On November 5, 2012, then TWN Chief Justin George wrote to then Minister of Natural Resources Joe Oliver about the NEB's decisions to: (i) hear Trans Mountain's Tolling Application prior to any hearing on approving the facilities and activities needed by the Project; and (ii) deny TWN the right to intervene in the Tolling Application. Chief George:

- (a) raised the issue that the NEB cannot consult with First Nations because it is required to maintain its quasi-judicial objectivity;
- (b) pointed out TWN's view that the NEB cannot delegate the procedural aspects of the Crown's duty to consult First Nations to anyone because the NEB itself does not have the authority to consult with First Nations; and
- (c) asked Minister Oliver to establish a government-to-government consultation process in relation to the Project.

Chief Justin George's November 5 letter is attached as **Exhibit "V"**.

28. In a letter dated January 18 but received January 24, 2013, Minister Oliver responded to Chief Justin George's November 5 letter and stated that:

- (a) "As for the Crown's duty to consult, the Crown would rely, to the extent possible, on the Board's review of the facilities application in fulfilling any Crown duty to consult Aboriginal groups";
- (b) "The Board, in line with its obligations under the *National Energy Board Act*, would consider any issues and concerns raised by Aboriginal groups";
- (c) "The Crown would monitor the adequacy or sufficiency of Aboriginal consultation efforts throughout the Board's process"; and

- (d) “The Board cannot engage in one-on-one discussions outside of its process, but takes steps to ensure that it has sufficient evidence prior to making its decision, including evidence of the impact that the proposed project could have on Aboriginal peoples.”

Minister Oliver’s January 18 letter is attached as **Exhibit “W”**.

29. On August 12, 2013, the NEB wrote a letter to Chief Maureen Thomas about the Project. The August 12 letter notified TWN that Trans Mountain had filed a Project Description on May 23, 2013.

30. A number of documents were attached to the NEB’s letter, including an August 12, 2013 letter from Natural Resources Canada (“**NRCan**”) (Attachment 4 to the NEB letter) explaining the federal Crown’s process and approach to Aboriginal consultation with respect to the Project. NRCan’s August 12 letter stated, among other things, that:

- (a) “The Crown will rely on the National Energy Board’s (NEB) public hearing process, to the extent possible, to fulfill any Crown duty to consult Aboriginal groups for the proposed Project”;
- (b) “Through the NEB process, the NEB will consider issues and concerns raised by Aboriginal groups”; and

- (c) “The Crown will utilise the NEB process to identify, consider and address the potential adverse impacts of the proposed Project on established or potential Aboriginal and treaty rights.”

The NEB’s August 12 letter and its attachments are attached as **Exhibit “X”**.

31. On March 5, 2014, Chief Thomas wrote to the Minister of Environment, Leona Aglukkaq, and Minister Oliver to request a meeting with the Ministers to jointly establish and implement a government-to-government consultation process in relation to the Project which respects and accommodates the respective authorities of TWN and Canada. In her letter, Chief Thomas:

- (a) advised the Ministers that TWN’s title, rights, and interests could be impacted by the Project;
- (b) stated why, in TWN’s view, the federal Crown’s position on consultation—i.e., that it will rely on the NEB process, to the extent possible, to discharge its constitutional duty to consult and accommodate Aboriginal groups—is legally deficient;
- (c) highlighted that, in TWN’s view: (i) the Crown’s duty to consult was triggered when the Crown became aware that Trans Mountain intended to apply for regulatory approvals for the Project and contemplated the process for regulatory review and assessment of the Project; and (ii) the Crown has a duty to consult with TWN in designing the overall framework

for consultation and the environmental assessment and regulatory review of the Project;

- (d) stated TWN's view that the NEB cannot consult with TWN or delegate procedural aspects of the Crown's duty to consult to Trans Mountain because the NEB is not empowered to consult with Aboriginal peoples;
- (e) identified the reasons why TWN takes the view that the NEB cannot address many of TWN's concerns about the Project;
- (f) stated TWN's view that a public hearing such as an NEB hearing is not a substitute for direct consultation with First Nations; and
- (g) highlighted TWN's concern that decisions may already have been made in the absence of consultation with TWN about the definition of the Project, scope of factors that must be assessed under s. 19 of *Canadian Environmental Assessment Act, 2012*, and other key environmental assessment issues. Chief Thomas stated that "[i]f these decisions have already been taken without the involvement of TWN, they may result in the NEB, and subsequently the Crown, failing to assess all of the Project's potential environmental effects and the corresponding adverse impacts they will have on our title, rights and interests."

Chief Thomas' March 5 letter is attached as **Exhibit "Y"**.

32. On May 20, 2014, Jim Clarke, the Director General of Operations at the Major Projects Management Office (“**MPMO**”) wrote to Chief Thomas to follow up on NRCan’s August 12, 2013 letter. The purpose of the May 20 letter was to “clarify” how the Crown intends to discharge its duty to consult Aboriginal groups about the Project.

33. However, on my review of the letter it fails to provide any such clarity. Instead, Mr. Clarke reiterated the Crown’s position that it will rely “to the extent possible” on the NEB process to discharge its duty. The letter also mentions that the Crown will conduct additional consultation, “as appropriate,” after the NEB hearing has been completed. The May 20 letter is attached as **Exhibit “Z”**.

34. On May 23, 2014, Chief Thomas wrote to Minister of Natural Resources Rickford to follow up on a May 15, 2014 in-person meeting they had. Chief Thomas asked Minister Rickford to respond to her March 5 letter requesting that the federal government work with TWN to establish and implement a government-to-government consultation process for the Project. The May 23 letter is attached as **Exhibit “AA”**.

35. On June 26, 2014, I wrote to Mr. Clarke to respond to his May 20 letter to Chief Thomas. My letter:

- (a) highlighted that the May 20 letter is a “standard form letter that completely ignores and fails to acknowledge Chief Thomas’ March 5, 2014 letter to then Minister of Natural Resources Oliver and Environment Minister Aglukkaq”;

- (b) identified that the Crown has not responded directly to TWN's request to establish and implement a government-to-government consultation process for the Project;
- (c) requested a meeting between Chief Thomas and Minister Rickford to discuss TWN's outstanding request; and
- (d) requested that the Crown take immediate steps to provide TWN with capacity funding to pay for its costs of meaningfully participating in the NEB hearing. I outline in the letter that the effect of the Crown's decision to rely on the NEB hearing to discharge its consultation duty and subsequent refusal to work with TWN to create a meaningful government-to-government consultation process is that the hearing is currently the only opportunity for TWN to bring its concerns about the Project to the Crown's attention. I then say that "[t]he amount being provided by the PFP [the NEB's Participant Funding Program] is grossly insufficient to ensure that TWN is able to meaningfully participate in the Hearing and is dishonourable given the Crown's expressed intent to largely, if not exclusively, rely on the Hearing to satisfy its constitutional duty to consult TWN."

My June 26 letter is attached as **Exhibit "BB"**.

36. On July 21, 2014, Tim Gardiner, Director General, Strategic Projects Secretariat, MPMO responded to my June 26 letter to provide "additional" information about the

Crown's consultation process for the Project. The "additional" information included that: (i) meetings to discuss the Crown's approach to consultation—i.e., that it would rely on the NEB hearing for the Project to discharge its duty—and the NEB process would be considered Crown consultation; and (ii) the Crown will consult with Aboriginal groups after the NEB hearing about draft terms and conditions or proponent commitments identified in the NEB process. The July 21 letter is attached as **Exhibit "CC"**.

37. On August 15, 2014, Minister Rickford wrote to Chief Thomas to respond to her March 5 and March 23 letters. Minister Rickford's letter merely repeats the Crown's position that it "will rely on the National Energy Board's (NEB) public hearing to the extent possible to fulfil the legal duty to consult". Minister Rickford offered to have NRCan officials meet with TWN staff to discuss this approach to "consultation". The August 15 letter is attached as **Exhibit "DD"**.

38. On November 12, 2014, Chief Thomas wrote to Minister Rickford to respond to his August 15 letter and Mr. Gardiner's July 21 letter. In her November 12 letter, which is Exhibit "R" to my affidavit, Chief Thomas reiterated TWN's position that the Crown's approach to consultation is legally deficient, fails to uphold the honour of the Crown, and that participating in the NEB hearing and the hearing itself are not substitutes for direct consultation. Importantly, Chief Thomas also informed Mr. Rickford that:

- (a) TWN is carrying out its own assessment of the Project pursuant to its Stewardship Policy;



- (b) TWN's assessment will result in a draft report that will be made available to the Crown to review and comment on;
- (c) TWN's assessment is the process by which it will assess the impacts of the Project on Tsleil-Waututh community, territory, title, rights, and interests, and thereafter make a decision about whether the Project can proceed in TWN's Territory;
- (d) TWN believes that there is a distinct possibility that TWN may decide that the Project cannot proceed, whereas the NEB may recommend that (i) the Crown issue a Certificate of Public Convenience and Necessity for the Project, and (ii) the Project is not likely to cause significant adverse environmental effects or is likely to cause significant adverse environmental effects that can be justified in the circumstances; and
- (e) as a result of the potential for these conflicting outcomes and other reasons set out in Chief Thomas' March 5 letter, there is a need for TWN and the Crown to jointly establish a government-to-government consultation process for the Project.

39. Chief Thomas then confirmed that TWN would welcome a meeting with Minister Rickford and his officials to discuss how to work together to jointly establish a government-to-government process, rather than to discuss the Crown's current approach to consultation, unilaterally developed without input from TWN. The letter again requested additional funding to assist TWN in participating the NEB hearing.

40. On November 28, 2014, the chiefs of eleven First Nations, including Chief Thomas, and one representative of another First Nation jointly wrote to Minister Rickford to (i) express their concerns about the regulatory review of the Project and the lack of consultation, and (ii) ask the Crown to work with them to develop a meaningful consultation process for the Project. The November 28 letter is attached as **Exhibit “EE”**.

41. In a letter dated December 11, 2014 but received on December 17, 2014, Minister Rickford responded to Chief Thomas' November 12 and 28 letters and asked for a meeting between NRCan officials and TWN staff. The December 11 letter is attached as **Exhibit “FF”**.

42. By way of a February 6, 2015 letter from Mr. Gardiner to me, NRCan “formally” communicated the federal Crown’s approach to Crown consultation for the Project. It did so more than 14 months *after* Trans Mountain filed its project description with the NEB. The February 6 letter simply repeats the Crown’s position that it “will rely on the NEB review process, to the extent possible” to satisfy its duty to consult Aboriginal peoples.

The letter:

- (a) provides for four phases of Crown “consultation”: Phase I (early engagement), Phase II (NEB hearing), Phase III (government decision), and Phase IV (regulatory authorizations should the Project be approved);
- (b) states that the MPMO will be the Crown Consultation Coordinator;

- (c) outlines that during Phase III, MPMO will lead “whole-of-government” consultation on outstanding issues, based on the NEB’s draft conditions;
- (d) provides that the Crown will assess the adequacy of consultation following Phase III;
- (e) informs TWN that the MPMO is currently conducting a strength of claim assessment, and has already carried out a “preliminary assessment of which groups could potentially be impacted by the Project and the extent of these impacts”; and
- (f) states that additional consultation may occur in relation to permitting activities for the Project.

The February 6 letter is attached as **Exhibit “GG”**.

43. However, the proposed timeframe for completing Phase I had long since elapsed by February 6 without any consultation with TWN occurring. Moreover, Phase I and Phase II involve no consultation about the Project whatsoever.

44. The February 6 letter also provided for MPMO carrying out a strength of claim assessment with no input from TWN, and assessing the extent of Project impacts on TWN – albeit on a “preliminary basis”—before we completed the Assessment Report or filed our evidence in the NEB hearing.

45. On February 25, 2015, Chief Thomas responded to Minister Rickford, Mr. Gardiner, and other correspondence from NRCan. In the letter, Chief Thomas expressed:

- (a) TWN's ongoing interest to meet with Minister Rickford to discuss how a government-to-government consultation process could be jointly established and implemented;
- (b) TWN's view that the tenor of Mr. Gardiner's February 6 letter suggests little openness to such a discussion, but rather that the February 6 letter reiterates a view of how consultation will work that was put together without any TWN input and does not accommodate TWN's title, rights, or authority;
- (c) TWN's view that there is still time to change course and to craft a meaningful consultation process; and
- (d) that it would be inappropriate for MPMO to assess TWN's strength of claim without any input from or discussion with TWN.

46. Chief Thomas also offered to meet with Minister Rickford to discuss a path forward, and suggested that another meeting be convened between TWN and NRCan once TWN had provided its expert report on its use and occupancy of TWN Territory to discuss the Crown's assessment of TWN's strength of claim. The February 25 letter is attached as **Exhibit "HH"**.

47. On March 23, 2015, Chief Thomas wrote to Minister Rickford to respond to his February 2 letter. Chief Thomas outlined the legal deficiencies with the Crown's approach to consultation for the Project and requested a meeting with Minister Rickford on an urgent basis to discuss a new way forward. The March 23 letter is attached as **Exhibit "II"**.

48. By letter dated April 27, 2015, which is Exhibit "S" to my affidavit, Chief Thomas wrote to Minister Rickford to follow-up on her November 12 letter to him, advising that TWN was carrying out its own assessment of the Project pursuant to our Stewardship Policy. In the letter, Chief Thomas advised that TWN's technical staff is in the process of completing a draft of the Assessment Report, which would be made available to Canada for review from May 4-18, 2015. Chief Thomas also reiterated her request to meet directly with Minister Rickford to discuss how TWN and the Crown could move forward on jointly establishing a government-to-government consultation process for the Project.

49. Canada has not responded to Chief Thomas' April 27 letter or otherwise contacted TWN to review and comment on the Assessment Report.

### **Next steps**

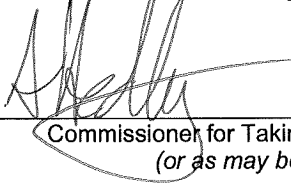
50. TWN has conducted a thorough assessment of the Project under our Stewardship Policy. We have concluded that the Project will deprive past, current, and future generations of Tsleil-Waututh people of the control and benefit of the water, land, air, and resources in our Territory. In that regard, it clearly does not represent the best

NEB Hearing No. OH-001-2014  
 Application for the Trans Mountain Expansion Project  
 Affidavit of Ernie George  
 Evidence of Tsleil-Waututh Nation

use of our Territory, and accordingly, TWN does not consent to the Project proceeding in our Territory. Authorization shall not, therefore, be granted under our laws for the Project to proceed in our Territory.

51. The NEB and the Crown must respect our decision. Direct government-to-government consultation between TWN and the Crown is required in relation to our decision.

**AFFIRMED BEFORE ME** at the City of  
~~North Vancouver~~ in the Province of British  
 Columbia on the 21st day of May, 2015



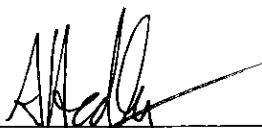
Commissioner for Taking Affidavits  
 (or as may be)



**ERNIE GEORGE**

**STEPHEN HEDLEY**  
 BARRISTER & SOLICITOR  
**GOWLING LAFLEUR HENDERSON LLP**  
 SUITE 2300, 550 BURNARD STREET  
 VANCOUVER, B.C. V6C 2B5  
 TELEPHONE (604) 443-7811

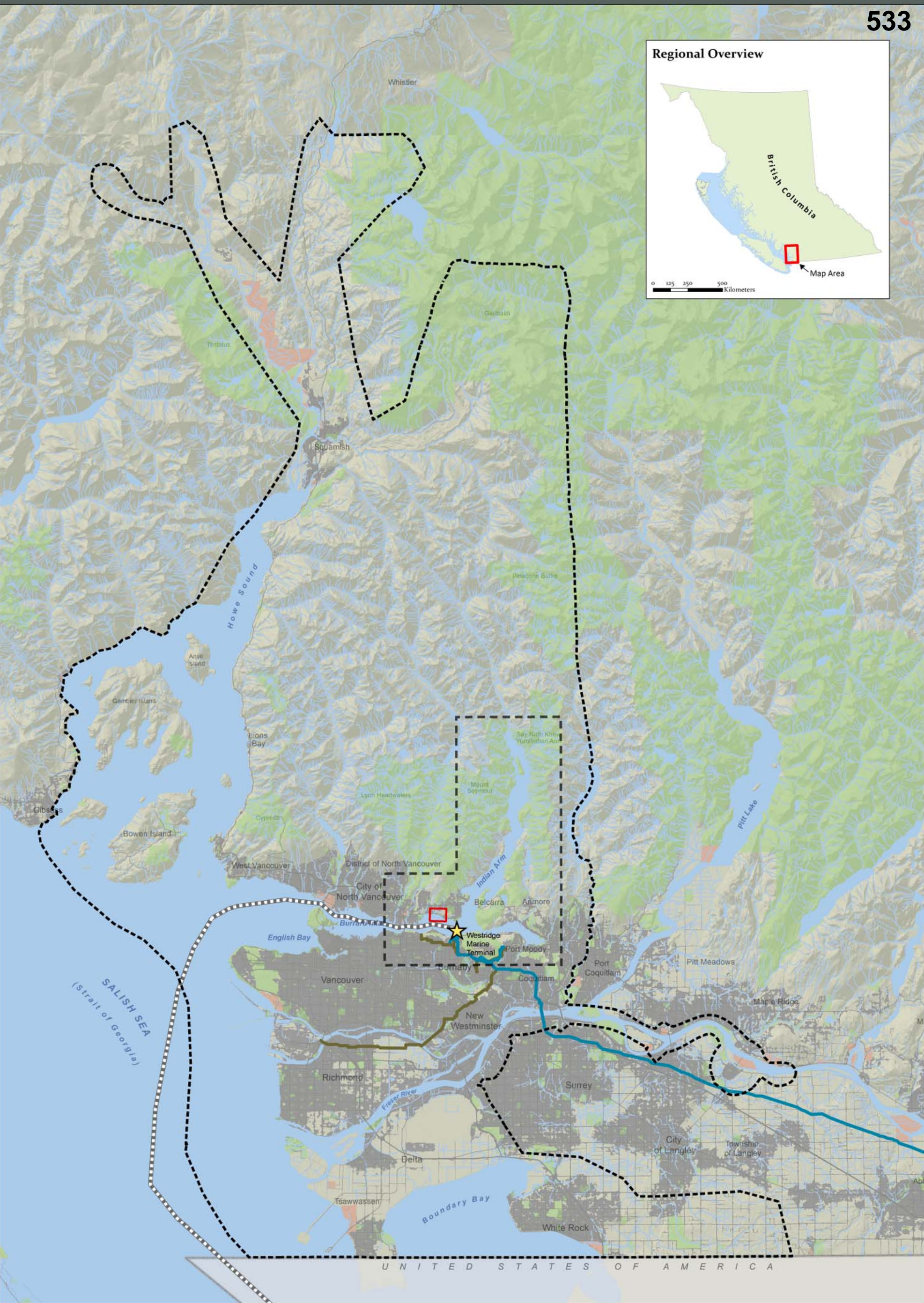
This is Exhibit "A" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)





**TSLEIL-WAUTUTH NATION**  
**MAP 1: CONSULTATION**  
**BOUNDARY**  
**Legend**

- ★ Westridge Marine Terminal
- ==== Tanker Route
- KMC Existing Infrastructure
- Trans Mountain System
- Jet Fuel System

- TWN Consultation Boundary
- ▭ Tsleil-Waututh Nation Reserve
- Tsleil-Waututh Assessment Study Area
- ▭ Other Indian Reserve
- ▭ Greenspace
- ▭ Developed Area

Map Scale: 1: 175,000 Inset Map Scale: 1: 175,000  
Projection: UTM, NAD 83, Zone 10





This map is a living document and is intended to be amended and refined over time. It is not an expression of the location of Tsleil-Waututh aboriginal title, rights, or interests. The data used to produce this map originate from many sources and are presented without prejudice. This map is the property of the Tsleil-Waututh Nation and may not be reproduced without written permission. Sources of spatial data for this map include Tsleil-Waututh Nation, BC Government, Government of Canada, Integrated Cadastral Information Society, Metro Vancouver. Map produced May 2015 by the Tsleil-Waututh Nation.












### MAP 4: TSLEIL-WAUTUTH NATION VILLAGE SITES

### Legend

-  Westridge Marine Terminal  
 Tsleil-Waututh Village

-  Tanker Route  
**KMC Existing Infrastructure**  
 Trans Mountain System  
 Jet Fuel System  
**Proposed KMC Infrastructure Expansion**  
 Proposed KMC Infrastructure Expansion  
 Proposed KMC Alternate Pipeline Expansion  
 Tsleil-Waututh Nation Reserve  
 Tsleil-Waututh Assessment Study Area

Map Scale: 1:35,000  
Projection: UTM, NAD 83, Zone 10

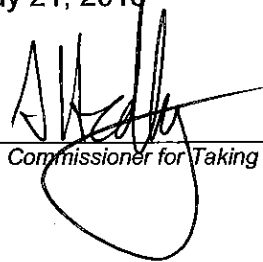


This map is a living document and is intended to be amended and refined over time. It is not an expression of the location of Tsleil-Waututh aboriginal title. The data used to produce this map originate from many sources and are presented without prejudice. This map is the property of the Tsleil-Waututh Nation and may not be reproduced without written permission. Sources of spatial data for this map include Tsleil-Waututh Nation, BC Government, Government of Canada, Integrated Cadastral Information Society.

Map produced May 2015 by the Tsleil-Waututh Nation.



This is Exhibit "B" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015

A handwritten signature in black ink, appearing to be "A. W. Kelly", is written over a horizontal line. The signature is stylized with a large loop at the bottom.

*Commissioner for Taking Affidavits (or as may be)*



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



April 30, 2014

**SENT BY COURIER**

Kinder Morgan Canada  
2844 Bainbridge Avenue, PO Box 84028  
Bainbridge, Burnaby, BC V5A 4T9

**Attention:** Ian Anderson, President

Dear Mr. Anderson:

**Re: Tsleil-Waututh Nation assessment of Kinder Morgan's Trans Mountain Expansion Project**

---

As you are aware, Tsleil-Waututh Nation ("TWN") has a Stewardship Policy applicable to all lands and waters within the consultation area described in the Policy. The Stewardship Policy advises that anyone who has a project that involves use of this area should contact TWN.

In 2012, you applied to TWN pursuant to how you perceived the Stewardship Policy would fit within your engagement process. This application was rejected by TWN in December 2012 on the express basis that TWN objected to participating in your process without a meaningful consultation process led by the Crown. TWN also advised you that it had asked the federal Crown, through the Minister of Natural Resources, to establish a government-to-government consultation process. That request remains unanswered.

In the meantime, TWN is aware that in December 2013 you filed applications with the National Energy Board ("NEB") to address its requirements for obtaining leave to construct and requirements for environmental assessment under the *Canadian Environmental Assessment Act, 2012*.

Pursuant to a notice posted by the Canadian Environmental Assessment Agency on its website, TWN has advised the NEB that: (i) Part 4 of the Stewardship Policy provides for the assessment of proposed developments, including assessment of land use,

cumulative effects, and sustainable development; and (ii) the Policy applies to your proposed Project as it is located squarely within TWN's consultation area.

TWN anticipated that its letter to the NEB would result in further discussions on a cooperative approach to assessing your proposed Project. TWN is therefore surprised and disappointed with the many things decided on April 2, 2014 without any discussion with TWN.

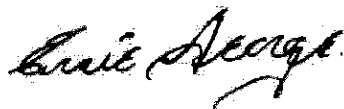
Nevertheless, TWN Chief and Council has determined that it is appropriate for TWN staff to conduct a technical review of your proposed Project and its potential impacts on TWN.

Pursuant to Part 5 of the Stewardship Policy on resourcing, TWN hereby invites you to apply for an assessment of your proposed Project under Part 4 of the Policy. As set out in Part 5: (i) there is a \$250 fee to initiate this process; and (ii) the process requires complete cost recovery for all Tsleil-Waututh activities associated with its assessment.

As a direct result of the continued absence of the Crown and an agreed upon TWN-Crown consultation process in relation to your proposed Project, TWN will not be applying any Crown "consultation" aspects of its Stewardship Policy to the Project. For greater certainty, TWN advises you that no aspect of any interaction between TWN and Kinder Morgan, including this letter, constitutes Crown "engagement" or "consultation" in respect of your proposed Project.

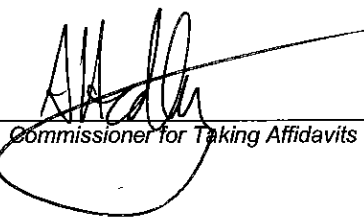
Please send your application to TWN's Information Management Coordinator, Erin Hanson (604-924-4184, ehanson@twnation.ca) or to the mailing address set out in the Stewardship Policy.

Yours sincerely,



Ernie George  
Director,  
Treaty, Lands, and Resources Department  
Tsleil-Waututh Nation

This is Exhibit "C" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015

A handwritten signature in black ink, appearing to be "AM", is written over a horizontal line. The signature is stylized and somewhat cursive.

Commissioner for Taking Affidavits (or as may be)

13-090

CHR



Kinder Morgan Canada Inc.  
Suite 2700, 300 - 5th Avenue SW  
Calgary, AB Canada T2P 5J2  
Tel: (403) 514-8400  
Fax: (403) 514-8401  
Toll Free: 1 (800) 535-7219  
www.kindermorgan.com

May15, 2014

Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, B.C. V7H 3A8

**Attention: Ernie George**

Dear Mr. George:

**Re: Trans Mountain Expansion ("Trans Mountain") and Tsleil-Waututh Nation ("TWN")**

We are responding to your letter of April 30, 2014 regarding the proposed Trans Mountain Expansion, which as you are aware is currently before the National Energy Board for consideration. Specifically, we are responding to your invitation to apply under the TWN Stewardship Policy as Chief and Council have determined it is now time for TWN to consider a "technical review" of the Expansion.

We are somewhat surprised to receive this letter from you at this time. As you are aware, we first approached TWN about the proposed Expansion in September of 2011, for the purpose of allowing us to engage with TWN in the very early planning stages of the potential Expansion. Engagement at that time would have afforded us two full years of discussions before we applied to the National Energy Board for approval of the Expansion, and five full years before any potential construction could occur if approval is granted. Unfortunately, these early attempts to engage were met with a letter from Chief Justin George, indicating among other things that "After serious consideration, Tsleil-Waututh has decided to oppose the proposed project..." and "Tsleil-Waututh will no longer participate bilaterally with you in any processes that may be styled at some point as 'consultation' in respect of the proposed project." A copy of the letter dated October 31, 2011, is attached for your reference.

I personally followed up with Chief George in a letter of November 8, 2011, a copy of which is attached, wherein I expressed disappointment in TWN's refusal to discuss the Expansion with us, and advising I would be open to meet about the proposed Expansion at any time. I followed that up with another attempt to meet in a letter to Chief George on March 21, 2012 (copy of which is attached). My invitations to meet were not taken up.

In keeping with respecting TWN's internal processes, I sent a further letter to Chief George on August 30, 2012, formally requesting the initiation of the TWN Stewardship Policy process, and enclosing the application funds (letter attached). Our letter was met by a December 12, 2012 response from Chief George in which he returned the application funds, advising us that "The obligation to consult and to accommodate in the event of infringement with First Nations is the duty of the Crown..." and "As I previously stated in my letter to you, dated October 31, 2011, Tsleil-Waututh will not participate bilaterally with you in any processes that may be styled at some point as 'consultation' in respect of this proposed project." A copy of that letter is also attached for your reference.

Since receiving the December 12, 2012 letter from the Chief indicating that TWN was not interested in engaging with Trans Mountain on the Expansion, we have continued to reach out to TWN on a number of different levels, with no success.

We are now in a situation where TWN has refused to have any discussions with Trans Mountain representatives for over two and half years, we are into the NEB hearing process and TWN has on May 2, 2014 applied to the Federal Court to challenge the NEB hearing process. All of this leads us to the conclusion that the opportunity to proceed through the TWN Stewardship process has passed us by.

Despite all of the above, we do agree there is a window of opportunity for TWN and Trans Mountain to work together to consider the impacts of the proposed Expansion, and to work together to mitigate any impacts. Indeed, we would like to discuss broader issues that we believe are of mutual interest to TWN and Trans Mountain, including how we might among other issues, utilize the proposed Expansion as an opportunity to study shell fish issues TWN is interested in, and how we might work together toward a mitigation and improvement plan. We believe these discussions can best occur through face to face dialogue. As such, I propose that we arrange a meeting between Chief Thomas and myself at the earliest opportunity to determine if there is an opportunity to work together.

It is no secret that working with the First Nations that our current and proposed operations affect is extremely important to me personally and Trans Mountain as a company. I am extremely committed to working collaboratively with First Nations, including TWN, to come up with creative solutions to enhance the First Nations we affect, and to ensure our operations are conducted in an environmentally sustainable way and one that leaves communities better off, not worse off. While we are aware of the fact that TWN is philosophically opposed to certain aspects of oil development and utilization, we believe that by working together we can most effectively affect and influence changes for the better.

Please advise at your earliest convenience whether Chief Thomas is interested in meeting to discuss TWN's interests and concerns around the proposed Expansion. I look forward to hearing from you.

Yours truly,

KINDER MORGAN CANADA INC

  
Ian D. Anderson  
President

enclosure



This is Exhibit "D" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



\_\_\_\_\_  
Commissioner for Taking Affidavits (or as may be)



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



**SENT BY COURIER**

June 4, 2014

**SENT BY COURIER**

Kinder Morgan Canada  
2844 Bainbridge Avenue, POB 84028  
Bainbridge, Burnaby, BC V5A 4T9

**Attention: Ian Anderson, President**

Dear Mr. Anderson,

**Re: Tsleil-Waututh Nation assessment of Kinder Morgan's Trans Mountain Expansion Project**

Thank you for your May 15, 2014 response to our April 30, 2014 letter.

Consistent with our April 30 letter, Tsleil-Waututh Nation ("TWN") is now conducting a technical assessment of your Trans Mountain Expansion Project ("Project"). TWN's technical assessment of your Project is based on the application that you submitted to the NEB last December, evidence submitted by you and others during the NEB hearing (OH-001-2014) for the Project, and work to be completed by TWN's experts. TWN anticipates that our technical assessment of your Project will take several months.

In your May 15 letter you conclude that the "opportunity to proceed through the TWN Stewardship process has passed us by." We do not agree with your conclusion.

As you correctly state in your letter, TWN rejected your application under our Stewardship Policy in December 2012 on the basis that TWN objected to engaging with you without a meaningful consultation process led by the Crown.

Given the continued absence of an agreed upon Crown consultation process in relation to your Project, TWN wrote to you on April 30 to pursue a different path. Pursuant to direction from TWN Chief and Council, TWN staff has been assigned the task of carrying out a technical assessment of your Project under the Stewardship Policy. This direction comes with explicit guidance that TWN staff must not apply any Crown consultation aspects of the Stewardship Policy to the review process for your Project.

The technical assessment of your Project that TWN is now carrying out is, therefore, a different application of the Stewardship Policy than the one you applied for in 2012. Moreover, the technical

assessment TWN is now conducting could not have happened in 2011 or 2012 since you had not prepared any environmental assessment of your Project at that time.

In your May 15 letter, you asked whether Chief Thomas is interested in meeting with you to discuss TWN's interests and concerns about your Project. As this is a technical Project review and does not include elements of consultation, it is not appropriate for us to arrange a meeting between you and Chief Thomas.

Your letter seeks to engage TWN right now in a discussion about "broader issues" of "mutual interest" to you and TWN. Respectfully, that discussion is part of the second "lens" of TWN's technical assessment of your Project. TWN will only assess those aspects of your Project if it satisfies the criteria of the first "lens" of our technical assessment. Therefore, we are deferring that issue until our technical work on the first "lens" is complete.

TWN will update you periodically on the status of our technical assessment, next steps to be taken in the assessment process, and provide you with an opportunity to comment on TWN's technical assessment.

We repeat our invitation to you to participate in TWN's technical assessment of your Project.

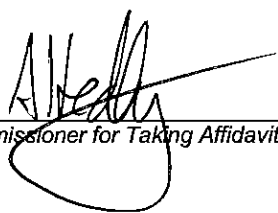
Please feel free to contact me if you have any questions about the technical assessment.

Sincerely,



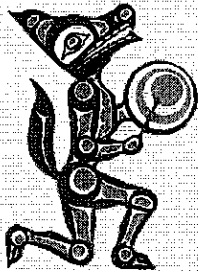
Ernie George  
Director, Treaty, Lands and Resources Department

This is Exhibit "E" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



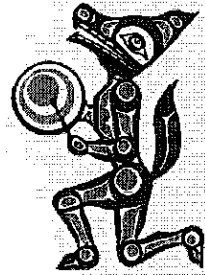
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Commissioner for Taking Affidavits (or as may be)



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



November 14, 2014

**SENT BY COURIER**

Kinder Morgan Canada  
2844 Bainbridge Avenue, POB 84028  
Bainbridge, Burnaby, BC V5A 4T9

Attention: Ian Anderson, President

Dear Mr. Anderson,

**Re: Tsleil-Waututh Nation Update on its Assessment of the Trans Mountain Expansion Project**

This letter follows up on our April 30 and June 4, 2014 letters to you. It also replies to your June 5, 2014 letter to us. In that letter, you asked the Tsleil-Waututh Nation ("TWN") to provide you with details about its technical assessment of your Trans Mountain Expansion Project ("Project").

The purpose of the present letter is to update you on the TWN assessment of your Project being carried out pursuant to our Stewardship Policy and to respond to other issues raised in your June 5 letter.

**Steps taken to date**

As TWN advised you in our earlier letters, we are applying the two-lens approach described in our Stewardship Policy in our assessment of your Project. The assessment under the first lens involves answering the following questions: (i) Is the decision proposed a good land use decision? (ii) Does it represent the best use of lands and resources for the present and for the future? (iii) What impact does it have on the natural and cultural resource base within which it is proposed? and (iv) What does it contribute to the cumulative effects of past land use decisions and what implications does it have for future developments to which it may be linked or that it may enable? The assessment under the second lens focuses on whether the Project will provide benefits to the Tsleil-Waututh commensurate with the impacts that it will have.

TWN is now proceeding with an assessment of the Project under the first lens of its two-lens process. TWN's assessment will focus on potential impacts in TWN's Consultation Area (as shown in the Stewardship Policy) and, in particular, on impacts in eastern Burrard Inlet.

Consistent with the Stewardship Policy, TWN is addressing the first lens as a "screening" lens. TWN Council must conclude that the Project satisfies the first lens before it proceeds to review the Project under the second lens.

TWN has taken the following steps in its assessment of your Project:

1. Invited Trans Mountain to apply for an assessment under the Stewardship Policy;
2. Reviewed Trans Mountain's application;
3. Coordinated TWN's assessment with the City of Vancouver and the City of Burnaby;
4. Attempted to coordinate TWN's assessment with the NEB;
5. Identified information required for the assessment;
6. Requested additional information from Trans Mountain through information requests and a motion in the NEB Hearing for the Project; and
7. Commissioned expert reports for the first lens of assessment.

#### **Future steps**

TWN's assessment will result in a draft report. TWN will be soliciting comments on the draft report from Trans Mountain, the Crown, and the NEB. Following review of comments on the draft report, the report will be finalized and provided to TWN Council for a decision.

Looking forward, TWN is committed to providing Trans Mountain with periodic updates on the status of its assessment under the first lens, next steps to be taken in the assessment process, and opportunities to participate in its assessment process.

Pursuant to these commitments which we originally set out in our June 4 letter, TWN is now providing you with information on the future steps and schedule for this assessment. They are summarized in the table below.

**Table 1: Summary of Future Steps in TWN Assessment Process**

Step	Proposed Timeline
Preparation of draft report on whether Project satisfies the first lens of assessment	January 2015
Solicitation of comments on draft report	February 2015
Draft report finalized for TWN Council	March 2015

TWN Council meeting and decision on assessment and whether project satisfies first lens of assessment	April 2015
If Project satisfies first lens, commence assessment under second lens	May 2015

Pursuant to TWN's plan to solicit comment on the draft assessment report once it is prepared, we expect to invite Trans Mountain to comment on TWN's draft report in February 2015.

**Responsibility for providing requested information and identifying key documents for TWN's assessment**

Pursuant to step 2 of s. 5.3 of the Stewardship Policy, TWN has assessed and identified the need for Trans Mountain to provide us with additional information for our assessment of your Project.

Trans Mountain failed to provide full and adequate responses to many of the information requests TWN filed in the NEB hearing for the Project. Some of those information requests are relevant to TWN's assessment of your Project under our Stewardship Policy. A list of those information requests is attached as **Schedule "A"**.

Please provide full and complete answers to those information requests by November 28, 2014.

More generally, Trans Mountain has filed many documents with the NEB since it filed its application for the Project in December 2013. It is Trans Mountain's responsibility to identify which of those documents, and the specific sections and pages of those documents, that are relevant to TWN's assessment of your Project's impacts in TWN's Consultation Area and, in particular, in eastern Burrard Inlet.

Please complete the following table and return it to TWN by November 28, 2014:

Document Name	Exhibit Number and URL	Section	Page	Issue Addressed

Please also provide TWN with an updated version of the table on the first day of each month beginning in January 2015.

**Other issues raised in your June 5 letter**

In your June 5 letter, you stated that Trans Mountain will assume for efficiency purposes, unless we advise otherwise, that TWN's preferred method of "getting

input, expressing its concerns, and having a dialogue" is through the NEB hearing process.

Your assumption is misguided and incorrect. As we have previously stated in our letters to you, TWN is carrying out a technical assessment of your Project pursuant to the Stewardship Policy. That is the process by which TWN will assess the impacts of the Project on our community, territory, title, rights, and interests and thereafter make a decision about whether the Project can proceed in TWN's territory. It is therefore incumbent on Trans Mountain to actively participate in our assessment of your Project by taking the steps set out in this letter and future steps that we will identify for you.

You also offer in your June 5 letter to "support the Crown consultation effort", to take steps to "encourage the level of Crown consultation TWN proposes", and ask TWN to "advise what preferred Crown consultation TWN proposes".

While we appreciate your offer, TWN has already shared its views on the issue of required Crown consultation directly with the Crown. As I advised you in my April 30 letter, TWN will not be applying any Crown "consultation" aspects of the Stewardship Policy to the Project prior to the establishment of a government-to-government consultation process. Given that Trans Mountain is a privately-owned proponent, it would be inappropriate for Trans Mountain to take any of the steps outlined in your June 5 letter.

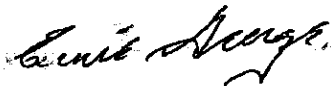
As a reminder, no aspect of any interaction between TWN and Trans Mountain constitutes "engagement" or "consultation" in relation to your Project. Rather, we are providing you with an opportunity to comment, at a technical level, on Tsleil-Waututh's upcoming assessment.

### Closing

You may expect to receive more information from us as this process advances towards the release of the draft assessment report.

Please feel free to contact John Konovsky, Program Lead, at 604-924-4190 or [jkonovsky@twnation.ca](mailto:jkonovsky@twnation.ca) if you have any questions about the technical assessment.

Sincerely,



Ernie George  
Director, Treaty, Lands and Resources Department

Encl.

VAN\_LAW\1588172\3



**Tsleil-Waututh Nation**  
**Assessment of the Trans Mountain Expansion Project**

**TWN File No. 00-282**

**Information Requests to Trans Mountain**

Trans Mountain failed to provide full and adequate responses to many of Tsleil-Waututh's information requests in the National Energy Board hearing for the Project. Pursuant to step 2 of s. 5.3 of the Stewardship Policy, Tsleil-Waututh requires you to provide full and adequate responses to the information requests set out in the table below as part of its technical assessment of your Project. For ease of reference, we have reproduced relevant information requests and explanations from materials Tsleil-Waututh filed in the NEB hearing.

IR# <sup>1</sup>	IR	Trans Mountain's response to IR provided in the NEB hearing for the Project	TWN explanation for why IR response is inadequate
<b>2.1.2 Traffic Controls, Movement Restrictions, and Transit Windows in the MRA</b>			
2.1.2a) Van 9.5a	Provide additional information to explain or clarify the following assumptions and methods from References ii) and iv): ... 3) Explain whether visibility limits other than daylight were considered (i.e. fog). Discuss how incorporation of other visibility limits would influence overall conclusions. ...	With reference to all parts of this information request please refer to the response to City of Vancouver IR No. 1.09.05a.  Trans Mountain response to City of Vancouver IR No. 1.09.05a:  <i>With reference to all parts of this information request (IR) please refer to the response to PMV IR No. 1.2.1.</i>  Trans Mountain response to Port Metro Vancouver IR No. 1.2.1:  <i>Information provided in TERMPOL 3.7 (Volume 8C TR8C-5) and its associated study, Trans Mountain Pipeline ULC, TMEP Simulation Study, Analysis of Second Narrows Transits (Ausenco, November 20, 2013), uses the CHS data published in 2013.</i>  <i>The Second Narrows Movement Restriction Area (MRA) is governed by rules established</i>	With respect to item 3 of the information request, the response provides additional detail regarding the calculation of transit windows based on tidal velocity, tide height, and daytime/night time. However, the 1.5 nm minimum visibility distance is not included in the figures provided, and the source of this data is still unclear. The data sources referenced in Ausenco 2013 list Environment Canada's National Climate Data and Information Archive at <a href="http://www.climate.weatheroffice.gc.ca">www.climate.weatheroffice.gc.ca</a> as the source of historic visibility data that was used to assess transit windows where visibility windows exceeded the 1.5 nm minimum. However, upon reviewing the data available through EC's weather office, it was not possible to locate a historical data set for visibility in the Second Narrows. The potential for fog to impact transit window opportunity is a significant concern.

<sup>1</sup> The IR numbers in this column refer to the IR numbers used in Tsleil-Waututh's information requests to Trans Mountain in the NEB hearing for the Project. For background and context, please review Tsleil-Waututh Nation's May 12, 2014 Information Request No. 1 to Trans Mountain ULC, which is Exhibit # C358-2-2 in the NEB hearing.

Tsleil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

IR# <sup>1</sup>	IR	Trans Mountain's response to IR provided in the NEB hearing for the Project	TWN explanation for why IR response is inadequate
		<p><i>through Port Metro Vancouver (PMV) Harbour Operations Manual and by the Pacific Pilotage Association (PPA). The rules establish transit requirements based on considerations including: visibility, daylight, tidal velocity, and the size and draft of vessels in relation to the available width of the channel which is controlled by the tidal cycle.</i></p> <p><i>Laden Aframax transits are restricted to slack water, which is defined in PMV's Harbour Operations Manual as tidal rates generally not greater than ½ knot. Other types of vessels have fewer restrictions and are allowed to transit at up to 1 knot tidal velocity and for the purpose of the analysis are assumed to do so outside the slack water period. Laden tankers and unladen Aframax vessels are restricted to daylight hours. The duration of these conditions, which vary with the tidal cycle, establishes the potential duration available (the "window") for each type of MRA transit. Based on advice from the PPA, twenty five minutes is assumed as the time required for a vessel to transit the MRA. Any slack water that is less than twenty five minutes duration has therefore been discounted from calculation of the available transit opportunities. As only one vessel is allowed in the MRA at a time the potential duration available for transit (the window) is divided by twenty five minutes and rounded down to the nearest integer to determine the potential number of vessel transit opportunities within</i></p>	<p>Trans Mountain must provide an explicit and accurate link to or copy of the visibility data sets for 1953–2012 and 1998–2012 that are discussed on page 4 of PMV IR No. 1.</p>

Tsleil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

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		<p><i>each window.</i></p> <p><i>Visibility greater than 1.5 nautical miles and westerly winds less than 25 knots are required for the transit. Environmental conditions are assumed based on historic records and applied to the calculation. For the purpose of the analysis a 3.2 metre tidal height has been used to estimate the number of viable laden Aframax transit opportunities. Analysis showed that a modern Aframax design tanker, at a 3.2m tidal height the vessel will be able to load approximately either 550,000 barrels of heavy crude oil or 580,000 barrels of light crude oil.</i></p> <p><i>While larger tides would allow larger cargoes and potentially reduce the number of transits, cargo lift corresponding to 3.2 metres tidal height has been used as a benchmark to simplify the analysis. The daily range of tidal heights varies with the tidal cycle.</i></p> <p><i>The original analysis of the number of MRA windows and transit opportunities uses a 60-year data set for visibility, wind, tide, and current (1953 – 2012), with the daylight hours from 2012 superimposed onto each year. Further analysis has been carried out using a 15-year data set for visibility, wind, tide, current (1998 – 2012) with the 2012 daylight hours repeated each year to refine confidence levels. Information from the more refined assessment of the number of potential windows and transits is provided in the figures below showing monthly averages and variability.</i></p>	

Tseil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

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		<i>accounting for all of the above restrictions and conditions. The data sources used in the analysis are provided in TR8C-5 in Volume 8C (Ausenco November 20, 2013).</i>	
<b>2.1.5 Spills</b>			
<b>2.1.5.1 History of Trans Mountain/Kinder Morgan Oil Spills</b>			
2.1.5.1a)	Please provide a table that describes: (1) all spills, leaks, discharges or other releases from the existing Trans Mountain Pipeline System; (2) when they occurred; (3) where they occurred; (4) how much product was released; (5) how much released product made its way into a water body (stream, river, lake, marine environment, etc.); (6) the nature of the product that was released; and (7) the environmental effects of the release.	Please refer to the response to Eliesen M IR No. 1.10a. The remainder of the information requested that is not covered by Eliesen M IR No. 1.10a is either not available or is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.	The answer provided in response to the Eliesen M IR No. 1.10a is not a "full and adequate" response to this IR.  In particular, no information was provided by Trans Mountain in relation to items (5) and (7).  Trans Mountain must provide the information requested in items (5) and (7).
2.1.5.1b)	Please provide a table that describes: (1) all spills, leaks, discharges or other releases from Kinder Morgan's 130,000 km of pipelines; (2) when they occurred; (3) where they occurred; (4) how much product was released; (5) how much released product made its way into a water body (stream, river, lake, marine environment, etc.); (6) the nature of the product that was released; and (7) the environmental effects of the release.	The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.	The answer provided is not a "full and adequate" response to this IR.  The information requested is reasonable given that Trans Mountain likely already has the information, and the information is highly relevant to understanding (i) the frequency and size of potential releases of crude oil that may occur during the operation of the Project, and (ii) the effects of such releases on the environment and TWN's title and rights.  Trans Mountain must answer this IR.

**Tsleil-Waututh Nation**  
**Assessment of the Trans Mountain Expansion Project**

TWN File No. 00-282

**Information Requests to Trans Mountain**

IR# <sup>1</sup>	IR	Trans Mountain's response to IR provided in the NEB hearing for the Project	TWN explanation for why IR response is inadequate
<b>2.1.5.6 Oil Spill Risk Assessment</b>			
2.1.5.6b) Van 8.4b	Provide documentation of actual incidents or near misses where CCOs have demonstrated the capability to achieve isolation of the appropriate valve(s) within ten minutes of a SCADA alarm.	The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project. Trans Mountain is not prepared to provide detailed SCADA and/or leak detection alarm and shut down statistics for the existing Trans Mountain pipeline system unless specifically requested to do so by the National Energy Board.	<p>The requested information has not been provided.</p> <p>In addition to building a second pipeline, Trans Mountain is proposing to expand the flow of the existing pipeline. Trans Mountain assumes that any pipeline outflow would be controlled within 10 minutes of a SCADA alarm but does not provide any evidence to support this claim.</p> <p>Failure to isolate appropriate valves within ten minutes of a SCADA alarm would result in substantially more oil being discharged from the Project into the environment during a pipeline accident or malfunction.</p> <p>The requested information is required for hazard and gap analysis and, more generally, to determine the scale of the risk of the Project to the public and the environment in the event of a pipeline rupture.</p> <p>Trans Mountain must provide the information requested in this IR.</p>
<b>2.1.5.7 Measures to Prevent and Mitigate Oil Spills</b>			
2.1.5.7d) Van 8.3e	Specify the number of fire and foam monitors required to achieve "adequate" fire suppression.	<p>Please refer to the response to City of Vancouver IR No. 1.08.03e.</p> <p>Trans Mountain response to City of Vancouver IR No. 1.08.03e:</p>	<p>The requested information has not been provided.</p> <p>Trans Mountain must provide the information.</p>

Tsleil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

IR# <sup>1</sup>	IR	Trans Mountain's response to IR provided in the NEB hearing for the Project	TWN explanation for why IR response is inadequate
		<i>The number of fire monitors required to achieve adequate fire suppression at the expanded Westridge Marine Terminal will be determined during detailed engineering and design of the facility which is estimated to occur between Q3 2014 and Q4 2015.</i>	
<b>2.1.5.8 Spill Response Resources</b>			
2.1.5.8a) Van 10.13a	Provide inventory lists and a location map for the seven OSCAR units that are currently along the existing TMPL route. Equipment specifications should include:  1) response boat specifications (type and size of vessel, including engine); 2) boom type and size; 3) number and type of skimmers (including nameplate capacity); 4) quantity and type of sorbents (boom, pads, absorbent or adsorbent, etc.); 5) configuration (tanks, bladders, etc.) and capacity (storage volume) of temporary storage devices; 6) types of tools; 7) amount and types of PPE; and 8) specifications for "specialized equipment."	Please refer to the response to City of Vancouver IR No. 1.10.13a.  Trans Mountain response to City of Vancouver IR No. 1.10.13a:  <i>See map &amp; inventory pg 176 of 213</i>  <i>Location map and inventory lists of OSCAR unit equipment at locations along the existing Trans Mountain Pipeline are shown below: page 176-177 of response.</i>	Trans Mountain's answer is not a full and adequate response. It does not provide many of the details about equipment specifications that were requested in the IR.  Without this information there cannot be a satisfactory assessment of the capacity to clean up a spill.  Trans Mountain must provide the information requested in the IR.

Tsleil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

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<b>2.1.5.10 Marine Spill Response Capacity</b>			
2.1.5.10a) Van 10.17a	Provide copies of WCMRC studies (as referenced on page 14 of Reference i)) for review when completed:  1) Benchmarking study; 2) Gap analysis; and 3) Roadmap.	Please refer to the response to City of Vancouver IR No. 1.10.17a.  Trans Mountain response to City of Vancouver IR No. 1.10.17a:  <i>Copies of the three WCMRC studies requested in this Information Request cannot be supplied by Trans Mountain. Accordingly, Trans Mountain encourages the City of Vancouver to contact WCMRC directly to obtain that information.</i>	Trans Mountain must provide copies of the WCMRC studies to TWN.
2.1.5.10b) Van 10.17b	Provide examples of full GRPs as part of the Application.  1) Ensure that strategies represent best industry practices.  2) Where possible, use standardized classification systems for spill response equipment.  3) Conduct field exercises to verify feasibility of deployment, and adjust strategies to incorporate lessons learned.  4) Provide full equipment inventories and response capacity analysis to demonstrate capability to meet Tier 5 (20,000 m <sup>3</sup> ) response as well as specified capacity for each response base.	Please refer to the response to City of Vancouver IR No. 1.10.17b.  Trans Mountain response to City of Vancouver IR No. 1.10.17b:  <i>Please note that a Tier 5 response does not currently exist; it has been proposed to support the Trans Mountain Expansion Project, under review by the NEB. An equipment inventory and response capacity analysis associated with Tier 5 is detailed in: A3S519, Application Volume 8C, TERMPOL Reports, TR 8C-12 S12 – Review of Trans Mountain Expansion Project Future Oil Spill Response Approach Plan Recommendations on Bases and Equipment.</i>  <i>Trans Mountain does not keep information regarding the development of WCMRC's project to update area coastal maps, GRPs and</i>	The response is inadequate.  The response does not address the IR, as it does not describe the process to be used, beyond stating that it has begun and is anticipated to require 4 years to completion.  Trans Mountain must provide a more detailed explanation of the process, including the opportunity for local and First Nation participation, identification of sites selected during initial review, and a template for the site-specific plans.

Tsleil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

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		<p><i>GRSs. Accordingly, Trans Mountain encourages the City of Vancouver to contact WCMRC directly to obtain that information.</i></p> <p><i>Please refer to the response to Province BC IR No. 1.1.65a.</i></p> <p>Trans Mountain Response to Province BC IR No. 1.1.65a:</p> <p><i>The Western Canada Marine Response Corporation (WCMRC) advises that a program is currently underway to develop Geographic Response Plans (GRPs) and Geographic Response Strategies (GRSs) for the BC coast. The program began in 2013 with the initial focus on higher traffic areas such as Vancouver Harbour, southern Georgia Strait, Havo/Juan de Fuca Straits, associated Douglas Channel passages, and Prince Rupert. The goal is to complete assessment of these areas by the end of 2017. Pre-spill Shoreline Clean-up Assessment Technique (SCAT) requirements will also be addressed concurrent to the GRP planning process for high-risk areas.</i></p> <p><i>Trans Mountain supports WCMRC's intention to develop GRSs, GRPs and pre-spill SCAT data collections for the areas in proximity of the current shipping route.</i></p>	
<b>2.1.6.2 Emergency Response Training and Exercise Programs</b>			
2.1.6.2a)	Provide records for the past 10 years documenting training and exercise events for	Please refer to the response to City of	The answer is not a full and adequate response in that it fails to provide information about such



Tsleil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

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Van 10.8a	the TMPL to support the 20 to 25 training average cited in the Application. Provide information about the type of exercise, its objectives, key outcomes, and corrective actions.	<p>Vancouver IR No. 1.10.08a.</p> <p>Trans Mountain response to City of Vancouver IR No. 1.10.08a:</p> <p><i>Please refer to the responses to NEB IR No. 1.69a and 1.69b for the list of exercises (table top, worst case, and deployment). The additional events that make up the remainder of the average include classroom training on various topics which includes but is not limited to: Incident Command Training, Incident Safe Approach, Fire Systems Trainings, external training, specialized equipment training, jet boat operation, security systems training, Hazardous Waste Operations and Emergency Response, and course refresher training. The request for the associated records for the training is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</i></p>	<p>events before 2009.</p> <p>The table provided lists tabletop, deployment, and worst case discharge exercise by year since 2009. This information does not support Trans Mountain's claim that they conduct 20–25 training and exercise events per year. The tally of exercises ranges from 4 to 7 per year. According to the table, only a single deployment exercise and no table top or worst case discharge exercises have been conducted through April 2014.</p> <p>Trans Mountain must: (i) either provide information to justify its claim that it performs 20–25 training and exercises per year, or to confirm that it in fact has only conducted between 4–7 such exercises per year, and (ii) provide information requested for pre-2009 exercises.</p>
2.1.6.2b) Van 10.8b	Provide a draft Emergency Response Training Plan that demonstrates how Trans Mountain intends to expand its training and exercise regime to incorporate the Project.	<p>Please refer to the responses to NEB IR No. 1.69a and 1.69b for the list of exercises (table top, worst case, and deployment) in Reference i). Trans Mountain Pipeline ULC's Emergency Preparedness and Response Exercise Training Program will be prepared and submitted in accordance with terms and timing outlined in National Energy Board (NEB) draft condition 50.</p> <p>Trans Mountain response to NEB IR No. 1.69a</p>	<p>The requested information is critical for assessing emergency response and contingency planning, risk to the public, the environment, and the economy, and potential impacts on emergency services infrastructure.</p> <p>Trans Mountain must provide the Plan to Tsleil-Waututh.</p>

Tsleil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

IR# <sup>1</sup>	IR	Trans Mountain's response to IR provided in the NEB hearing for the Project	TWN explanation for why IR response is inadequate
		<p>and 1.69b:</p> <p><i>a) The following is a list of all exercises that Kinder Morgan Canada Inc. (KMC) completed from 2009 to March of 2014 related to the Trans Mountain Pipeline ULC System. The list encompasses only those exercises that are organized and executed by KMC.</i></p> <p><u>Definitions:</u></p> <p><b>TT</b>–Table Top Exercise which involves a scenario and varying levels of Incident Command System forms and staffing depending on the objectives of the exercise. The exercise can range from a roundtable discussion with a few individuals to work out early actions, to assigned roles and responsibilities with the expectation of completing the Incident Command System forms.</p> <p><b>WC</b>–Worst Case/Level 3 Exercise which involves all incident management team members, contractors, and responding agencies.</p> <p><b>WC*</b>–Worst Case/Level 3 Exercise with a full deployment of field response equipment the same day and time, responding with real environmental factors.</p> <p><b>D</b>–Deployment Exercise which involves the deployment of equipment to an actual response location, but does not involve the use of an off Site Command Post.</p>	

Tsleil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

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		<p><i>BC-British Columbia</i></p> <p><i>AB-Alberta</i></p> <p><i>Trans Mountain Departments:</i></p> <p><i>-Environmental Health and Safety – includes personnel from Environment, Health and Safety, Security, Emergency Response and Fire Protection.</i></p> <p><i>-Operations – includes personnel from terminals, tank farms, districts, pipeline protection, technical services, stores, and control centre.</i></p> <p><i>-Executive - includes personnel whose job title is one of the following; Director, Senior Director, VP and/or President.</i></p> <p><i>-External Relations – includes personnel from Lands and Right of Way, External Relations, and Media Relations.</i></p> <p><i>-Engineering – includes any Professional Engineers, or Engineers in Training who also work in the Engineering, and Integrity Programs/Risk Assessment. Also includes Drafting/GIS services.</i></p> <p><i>-Procurement – includes personnel from accounting, procurement, human resources, budget analysts and administrative assistance.</i></p> <p><i>...</i></p> <p><i>b) Kinder Morgan Canada Inc. (KMC) held 28 exercises between March of 2009 and March of</i></p>	

Tsleil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

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		<p>2014.</p> <p><i>The following pages list the exercises from Information Request No.1.69a and include emergency management program related learnings, how they were incorporated to the emergency management program, and how they were communicated. Some of the earlier exercises have missing data and the learnings are unavailable, though information gained would have been used in continuous improvement of the program. During the Emergency Management Program Management System review in 2012 a deficiency was identified with regard to the procedure for retention of records related to emergency response exercises. KMC is committed to continual improvement, and as such has corrected the procedure for the capture of learnings within the management program. Exercises with incomplete documentation have been identified in the following list of exercises.</i></p>	
<b>2.1.6.4 Emergency Response Plans and Improvements</b>			
2.1.6.4a) Van 10.15a	<p>Conduct all of the analyses specified in Section 4.8.2.2 of Reference i) and provide reports for review that include method and results for studies that assess:</p> <p>1) Sufficiency of present capacity of OSCAR Units to manage additional spill risks from the Project;</p>	<p>Please refer to the response to City of Vancouver IR No. 1.10.15a.</p> <p>Trans Mountain response to City of Vancouver IR No. 1.10.15a:</p> <p><i>The information requested for item 2 can be found in Section 4.5.1, Table 4.5.1 of Volume 7.</i></p> <p><i>The remainder of other information, analysis</i></p>	<p>Trans Mountain has not provided an adequate response. The information requested is required in order to assess the risk to human health and the environment in the event of a spill and the capacity to respond to a spill. This information is critical to inform the Tsleil-Waututh's consideration of Trans Mountain's proposed emergency response plans and capabilities.</p>

Tsleil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

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	<p>2) Current locations of all equipment caches in the context of strategic deployment;</p> <p>3) Review of inventory of available response equipment, including trained personnel and logistical support components, available through formal and informal mutual aid programs to support a Trans Mountain spill response; and</p> <p>4) Inventory of all existing resources and define future needs.</p>	<p><i>and reports requested is currently being developed as part of Kinder Morgan Canada's update of its Emergency Management Program as described in Section 4.8.2.1 of Volume 7. Section 4.8 of Volume 7 outlines the process to enhance Kinder Morgan Canada's (KMC) existing emergency management programs as they relate to the Trans Mountain Pipeline system to address the needs of the Project. The final programs will be developed in a manner consistent with the NEB's draft conditions related to emergency management.</i></p>	<p>Trans Mountain must provide the Program to Tsleil-Waututh.</p>
2.1.6.4b) Van 10.15b	<p>Provide a comprehensive description of the spill response capacity that will be in place should the Project be approved, including additional resources along the pipeline route and at the Westridge Marine Terminal. Calculate spill capacity to demonstrate containment, recovery, transfer, and storage capabilities in terms of volume of oil recovered over time.</p>	<p>Please refer to the response to City of Vancouver IR No. 1.10.15b.</p> <p>Trans Mountain response to City of Vancouver IR No. 1.10.15b:</p> <p><i>The Application Volume 7, Section 4.8 outlines the process to enhance Kinder Morgan Canada's (KMC) existing emergency management programs as they relate to the Trans Mountain Pipeline system to address the needs of TMEP. The final programs will be developed in a manner consistent with the National Energy Boards (NEB) draft conditions.</i></p>	<p>Trans Mountain has not provided an adequate response. The information requested is required in order to assess the risk to human health and the environment in the event of a spill and the capacity to respond to a spill. This information is critical to inform Tsleil-Waututh's consideration of Trans Mountains proposed emergency response plans and capabilities.</p> <p>Trans Mountain must provide the information requested in this IR.</p>
<b>2.2.2.4 Sinking and Submerged Oil</b>			
2.2.2.4a) Van	<p>Provide mass balance calculations from the Kalamazoo River spill to support assertions of</p>	<p>Please refer to the response to City of Vancouver IR No. 1.12.03a.</p>	<p>Trans Mountain has failed to provide a full and adequate response. Trans Mountain was asked to provide mass balance calculations to support</p>

Tseil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

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12.3a	"most" oil remaining on the water surface.	Trans Mountain response to City of Vancouver IR No. 1.12.03a:  <i>Please refer to the discussion in Section 6.2.2.1 of the Pipeline ERA (Application B18-15_V7_TR_71).</i>	its assertions. Rather than providing the calculations, Trans Mountain references a part of its Application that contains a quote that is not attributed to a published reference.  Trans Mountain must provide a published source that supports the quote or to confirm that no such source exists.  If no such source exists, Trans Mountain must either provide the mass balance calculations that support its assertion or confirm that "most" of the oil from the Kalamazoo River did not remain on the water surface.
<b>2.2.2.6 Mechanical Recovery of Diluted Bitumen</b>			
2.2.2.6b) Van 12.6b	Explain how the quickly changing nature of diluted bitumen will be addressed in spill response planning and equipment stockpiling.	Please refer to the response to City of Vancouver IR No. 1.12.06b.  Trans Mountain response to City of Vancouver IR No. 1.12.06b:  <i>Please refer to the response to Katzie IR No. 1.11b. [Please note that question posed in Katzie IR 1.11b is phrased differently than IR 12.6b]</i>  Trans Mountain response to Katzie IR 1.11b:  <i>The products shipped on the Trans Mountain system are, by tariff, restricted from having a specific gravity greater 0.94 and will not sink in their un-weathered state. Tests conducted for Trans Mountain, by Environment Canada (2013), and by SL Ross (2010, 2011) for the</i>	The response states that any oil that sinks "will be treated as a post emergency response function."  Trans Mountain must explain why submerged oil is no longer an emergency.  The focus of the response to this IR is on explaining why sinking oil is unlikely and relating potential sinking to elapsed time. However, the Government of Canada report on fate and behaviour makes it clear that a spill to a water body with a high sediment load could submerge or sink very early on in the spill.  Trans Mountain must explain (i) why submerged oil is no longer an emergency and (ii) how it will address the quickly changing

Tsleil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

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		<p><i>Northern Gateway application, show that weathered representative samples of diluted bitumen (CLB and AWB) are expected to remain floating on saltwater.</i></p> <p><i>While the Environment Canada Report does not provide a time element for the densities of samples tested, the Gainford report (TR 8C-12 S7 – A Study of Fate and Behavior of Diluted Bitumen Oils on Marine Waters) showed that fresh and weathered representative samples of diluted bitumen (CLB and AWB) would float on freshwater for eight days or more depending on local factors such as turbulence and mixing energy. The same tests showed that conventional skimming equipment is capable of removing both fresh and weathered oil.</i></p> <p><i>While likely oil behavior and potential response options can be predicted from knowledge of the type of oil spilled and its physical and chemical characteristics, details of oil behavior and response options cannot be specified until the actual circumstances of a spill are known.</i></p> <p><i>A systematic approach, which involves both prevention and response, is employed to minimize conditions that may lead to oil sinking. Spill prevention is the most effective countermeasure as it avoids the consequences of oil spills. Spill prevention measures related to the pipeline and are described in Volume 4C of the application and spill prevention measures related to tankers are described in Section 1.4.2</i></p>	<p>nature of diluted bitumen (including the possibility that it will sink if it is spilled into a water body with a high sediment load) in its spill response planning and equipment stockpiling.</p>

Tseil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

IR# <sup>1</sup>	IR	Trans Mountain's response to IR provided in the NEB hearing for the Project	TWN explanation for why IR response is inadequate
		<p><i>of Volume 8A.</i></p> <p><i>In the unlikely event of a spill the responsible party (Trans Mountain for a pipeline spill, the tanker owner for a tanker spill) would work with regulatory agencies in a Unified Command to determine both response and remediation strategies appropriate for the specific circumstances of the event. Response strategies employed to avoid sinking oil are those focused on:</i></p> <ul style="list-style-type: none"> <li><i>• controlling the source of the spill, 4 of the Application describes Trans Mountain's emergency preparedness and response programs and plans for their review and modification to address the needs of the project. <u>Should a portion of spilled oil sink, through a combination of factors, and not easily be recovered during the response phase (such as oil in shallow water or along shorelines) it would be treated as a post emergency response function. Remedial actions, including actions required to recover sunken oil would be developed by the responsible party and regulatory authorities working as part in a Unified Command and would be guided by a net environmental benefit analysis. In this respect, the approach to sunken oil remediation would be similar to cleanup of industrially contaminated sediments in waterways. Each situation will be unique and, where warranted, methods may include:</u></i></li> <li><i>• capturing the oil where currents and</i></li> </ul>	



Tseil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

IR# <sup>1</sup>	IR	Trans Mountain's response to IR provided in the NEB hearing for the Project	TWN explanation for why IR response is inadequate
		<p><i>hydrographic conditions are amenable to the deployment of oleophilic material to trap the oil</i></p> <ul style="list-style-type: none"> <li>• <i>remobilization, containment and removal of the oil through agitation of sediments (raking, dragging, pneumatic agitation)</i></li> <li>• <i>bulk removal of the oil through pumping and/or dredging</i></li> <li>• <i>long-term monitoring and natural attenuation in areas where remedial actions pose more harm than benefit</i></li> </ul> <p><i>The behavior and fate of spilled dilbit (bitumen blended with condensate or synthetic crude oil) was canvassed extensively in the Joint Review Panel hearings relating to Northern Gateway, and the Panel in assessing the issue accepted the following facts:</i></p> <ul style="list-style-type: none"> <li>• <i>The maximum initial density of the dilbit would be 940 kilograms per cubic metre, in conformance with the proposed pipeline tariff specification. When initially spilled, the density would be less than that of fresh water or salt water, making dilbit a floating oil.</i></li> <li>• <i>Experts agreed that dilbit is not a simple two-phase mixture of bitumen and condensate, but is instead a new, cohesive, blended product. When spilled into water, lighter hydrocarbon fractions of the entire blend would begin to evaporate. As lighter fractions evaporate, the viscosity of the weathered dilbit would increase, and evaporation of remaining lighter fractions</i></li> </ul>	

Tsleil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

IR# <sup>1</sup>	IR	Trans Mountain's response to IR provided in the NEB hearing for the Project	TWN explanation for why IR response is inadequate
		<p>would be progressively inhibited.</p> <ul style="list-style-type: none"> <li>• Past examples of spills do not indicate that products similar to dilbit are likely to sink within the timeframe for response options, or in the absence of sediment or other suspended particulate matter interactions.</li> <li>• <u>Dilbit may sink when it interacts with sediment or other suspended particulate matter</u>, or after prolonged weathering.</li> <li>• Bench-top and wave tank testing indicated that dilbit is not likely to sink due to weathering alone within a short to medium timeframe. The evidence indicated that multiple factors, such as the interaction between density, viscosity, potential emulsion formation, and environmental conditions must all be examined together in considering the fate of spilled oil, including the possibility of sinking. Much of the evidence that the Panel heard did not consider these factors collectively.</li> <li>• The weight of evidence indicates that, when spilled in water, dilbit with a maximum density of 940 kilograms per cubic metre would behave similarly to an intermediate</li> <li>• preventing released oil from entering a waterbody,</li> <li>• containing, intercepting and promptly removing oil from the water surface, and</li> <li>• removing stranded oil that could be</li> </ul>	

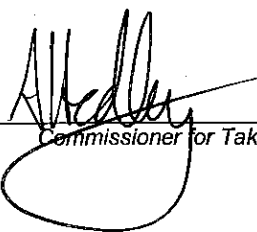
Tseil-Waututh Nation  
Assessment of the Trans Mountain Expansion Project

TWN File No. 00-282

Information Requests to Trans Mountain

IR# <sup>1</sup>	IR	Trans Mountain's response to IR provided in the NEB hearing for the Project	TWN explanation for why IR response is inadequate
		<p>remobilized from the shoreline.</p> <p>Prompt response is important given that the weathering process is in-part related to the time over which oil is exposed to the environment. Westridge loading operations will be conducted inside a pre-deployed boom, which would contain a release. Additional boom and response equipment, including skimmers, will be maintained on site. Similarly the WCMRC report (TR 8C-12 S12 Future Oil Spill Response Approach Plan, Trans Mountain Expansion Project) describes enhanced planning standards that will lead to increased response capacity and reduced response time for WCMRC.</p> <p>Volume 7 Section fuel oil or lighter heavy fuel oil with a density less than 1,000 kilograms per cubic metre. Various experts, including those involved in spill response, said that these products provide reasonable analogs for dilbit behaviour as it relates to oil spill response.</p> <p>• Transport Canada said that a response organization would be likely to treat a dilbit spill as a blended crude oil product spill.</p> <p>Please also see the response to NEB IRs No. 1.63a and 1.74c.</p>	

This is Exhibit "F" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015

A handwritten signature in black ink, appearing to read "A. Reddy", is written over a horizontal line. The signature is stylized with a large, looping flourish at the bottom.

Commissioner for Taking Affidavits (or as may be)

RECEIVED JAN 26 2015

**Trans Mountain Expansion Project**Email: [info@transmountain.com](mailto:info@transmountain.com) | Phone: 1.866.514.6700 | Website: [www.transmountain.com](http://www.transmountain.com) | @TransMtn

January 23, 2015

Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, BC V7H 2V6

**Attention: Ernie George**

Dear Mr. George:

Re: Tsleil-Waututh Nation ("TWN") Update on its Assessment of the Trans Mountain Expansion Project (the "Project")

We are responding to your letter of November 14, 2014 regarding the TWN assessment of the Project. Specifically, we are responding to:

- 1) Your invitation to provide further information to support the "first lens" of the two lens TWN approach;
- 2) Your statement regarding Trans Mountains responsibility to identify information pertaining to TWN as filed with the NEB; and,
- 3) Your request for an updated table (per #2 above) on a monthly basis, starting in January 2015.

As expressed in our May 14, 2014 letter and in our September 18, 2014 letter, Trans Mountain feels that the opportunity to participate in the Stewardship Process has passed us by. We welcome the opportunity to engage with TWN via the National Energy Board (NEB) process to address any Project-related concerns or questions. On September 23, 2014, NEB Ruling No. 33 provided the motion to compel full and adequate responses to the first round of Intervenor Information Requests (IRs). The motion, as submitted by TWN, were denied by the Board. As a result, Trans Mountain will not provide further information in regard to these IR's at this time.

Trans Mountain acknowledges the statement made by TWN that "it is Trans Mountains responsibility to identify which of those documents, and the specific sections and pages of those documents, that are relevant to TWN's assessment of your Project's impacts in TWN's Consultation Area..." and the request made for a monthly update in regard to filings with the Board. Trans Mountain does not agree with this statement and is not be able to accommodate this request at this time.

**TRANSMOUNTAIN**Trans Mountain Expansion Project

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We welcome the opportunity to work together with TWN, to consider the impacts of the proposed Project, and to work together to mitigate any impacts. Please advise at your earliest convenience if Chief Thomas is interested in meeting.

Yours truly,

KINDER MORGAN CANADA INC.

Ian D. Anderson  
President

This is Exhibit "G" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



Commissioner for Taking Affidavits (or as may be)

13-090 GH

RECEIVED JUN 11 2014



Kinder Morgan Canada Inc.  
Suite 2700, 300 - 5th Avenue SW  
Calgary, AB Canada T2P 5J2  
Tel: (403) 514-8400  
Fax: (403) 514-8401  
Toll Free: 1 (800) 535-7219  
www.kindermorgan.com

June 5, 2014

Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, B.C. V7H 3A8

Attention: Ernie George  
Director, Treaty, lands and Resources Department

Dear Mr. George:

**Re: Trans Mountain Expansion ("Trans Mountain") and Tsleil-Waututh Nation ("TWN")**

Thank you for your letter of June 4, 2014. I must say that I am disappointed that Chief Thomas has declined to meet with me to discuss TWN's concerns and interests. In my experience, I have found that "Chief to Chief" meetings have been very helpful in ensuring we understand, and act on, the concerns of Aboriginal communities. I remain willing and able to meet with Chief Thomas when and if she is ready.

It is not clear from your letter what the nature of the "technical review" is that TWN is now undertaking. You advise that the review is "a different application of the Stewardship Policy than the one you applied for in 2012." You further advise that TWN is choosing not to apply the Crown consultation aspects of the Stewardship Policy. As such, it would be greatly appreciated if you could provide details around what the "technical review" will entail.

We note as part of Trans Mountain's application to the National Energy Board for approval of the Trans Mountain Expansion Project ("TMEP"), that TWN has made numerous technical requests from Trans Mountain regarding TWN's concerns and interests. We will assume for efficiency purposes, unless you advise otherwise, that this is TWN's preferred method of getting input, expressing its concerns and having a dialogue (albeit a formal one) with Trans Mountain regarding TMEP.

Finally, I ask for one further point of clarification. You advise that TWN wishes to engage directly with the Crown, not the proponent. Trans Mountain's understanding is that the Crown consultation as it relates to TMEP is being led by the National Energy Board, supported by other



Crown agencies. Specifically, The NEB hearing process allows the Crown to identify issues raised by Aboriginal groups (including TWN). Numerous federal departments are participating as intervenors including: Natural Resources Canada; Aboriginal Affairs and Northern Development Canada; Parks Canada; and, Health Canada. TWN has the opportunity, through the NEB process, to seek information (and it has) and provide evidence of the effects of the Project on its asserted Aboriginal rights and title.

Trans Mountain wishes to support the Crown consultation effort through one on one dialogue with potentially affected communities. If TWN is of the view that this is insufficient Crown consultation, perhaps it can advise what preferred Crown consultation TWN proposes. With this information in hand, Trans Mountain will then be in position to evaluate what it can do, if anything, to encourage the level of Crown consultation TWN proposes.

While we appreciate the direct correspondence with yourself and the current indirect dialogue processes before the National Energy Board and the Federal Court, we continue to strongly believe that one on one dialogue is the preferred approach. If at any time TWN agrees, I would be happy to meet directly with the Chief, or otherwise have my team members meet with TWN representatives as deemed most beneficial and efficient by TWN.

Yours truly,

KINDER MORGAN CANADA INC.



Ian D. Anderson  
President

This is Exhibit "H" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



January 31, 2014

By email

secretary@neb-one.gc.ca  
National Energy Board  
444 Seventh Avenue SW,  
Calgary, Alberta T2P 0X8

Dear Sir or Madam:

The Tseil-Waututh Nation (TWN) writes in response to the notice posted on the Canadian Environmental Assessment Registry on December 20, 2013 regarding the Trans Mountain Expansion Project ("Project").

This notice seeks to hear from any "jurisdiction" within the meaning of subsection 2(1) of the *Canadian Environmental Assessment Act, 2012* ("CEAA 2012"), paragraphs (c) to (h).

We are of the opinion that TWN is a jurisdiction in relation to this Project as set out in the definition of jurisdiction at paragraph (f): *a governing body that is established under legislation that relates to the self-government of Indians and that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project*. Other paragraphs may also be relevant. As requested, TWN is therefore notifying the NEB that we wish to be consulted under section 18 of CEAA 2012.

TWN's powers, duties and functions in relation to assessment of the environmental effects of the Project are derived first and foremost from our Aboriginal title and the governance rights that ground our decision-making authority throughout our territories. The Project proposes new pipelines, docks, berths, and other facilities and shipping routes within unceded TWN territories. This Project has the potential to cause a broad array of impacts and adverse environmental effects on the TWN, including our lands, water, airshed, people, features, resources, uses, rights and interests. In these circumstances our traditional laws place upon us a duty to take all necessary steps to protect our territory and people from the potential impacts of the Project. More specifically, pursuant to our traditional laws we have both the power and the duty to assess all potential effects of the Project in accordance with the sacred trust we hold to protect and care for the lands and waters of our territory, and our people who rely upon them.

Elements of TWN's powers, duties and functions in relation to assessment of the environmental effects of the Project are further embodied in or will be informed by the following:

- (1) TWN's 2009 *Stewardship Policy*, Part 4 of which provides for TWN "Assessment of Proposed Developments" in a defined "Consultation Area". The Project is located squarely within the Consultation Area.
- (2) The *Framework Agreement on First Nation Land Management* with the Government of Canada to which TWN is a 2005 signatory, which confirms TWN's legal power to develop and implement an environmental assessment process, and to pass laws respecting environmental assessment and protection once a Land Code is in place.
- (3) The 2007 TWN *Land Code* passed pursuant to the *Framework Agreement on First Nations Land Management*.

In summary, TWN has the legal authority and power to conduct an environmental assessment of the Project and to do so in a manner that uphold our sacred trust to manage, protect and enhance our territory.

Please direct your future communications with TWN to:

Ernie George, Director  
Treaty, Lands and Resources Department  
Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, BC  
V7H 2V6  
Tel: 604 924-4183  
Fax: 604 924-4158  
Email: [egeorge@twnation.ca](mailto:egeorge@twnation.ca)

And please send a carbon copy to:

Erin Hanson  
Consultation and Accommodation Coordinator  
Treaty, Lands and Resources Department  
Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, BC  
V7H 2V6  
Email: [ehanson@twnation.ca](mailto:ehanson@twnation.ca)

Jessica Clogg  
Tsleil-Waututh Legal Counsel  
200-2006 West 10th Ave  
Vancouver, BC V6J 2B3  
Tel: 604.601.2501  
Email: [Jessica\\_Clogg@wcel.org](mailto:Jessica_Clogg@wcel.org)

In closing, please note that consultation and cooperation pursuant to s. 18 of CEEA 2012 does not replace or supercede the Crown's duty to consult directly with TWN on this project.

We look forward to hearing from you.

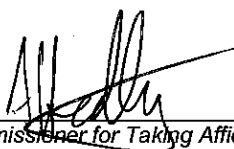
Sincerely,



Chief Maureen Thomas  
Tsleil-Waututh Nation

TOR\_LAW 8345353\1

This is Exhibit "I" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015

A handwritten signature in black ink, appearing to be "J. Kelly", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

National Energy  
BoardOffice national  
de l'énergie

File OF-Fac-Oil-T260-2013-03 02

4 March 2014

Mr. Ernie George  
Director  
Treaty, Lands and Resources Department  
Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, BC V7H 3A8  
Facsimile 604-924-4158

Dear Mr. George:

**Trans Mountain Pipeline ULC**  
**Application for the Trans Mountain Expansion Project dated 16 December 2013**  
**Letter from Tsleil-Waututh Nation dated 31 January 2014**

Thank you for your letter in response to the National Energy Board's (NEB or Board) notice on the Canadian Environmental Assessment Registry offering to consult and cooperate with other jurisdictions with respect to the environmental assessment of the Trans Mountain Expansion Project, pursuant to section 18 of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).

The Board notes that the Tsleil-Waututh Nation filed an Application to Participate as an intervenor in the hearing for the project on 12 February 2014. The Board is currently determining the completeness of the project application. If the application is found to be complete, the Board will issue a Hearing Order providing details on the hearing process. The Board will also determine the list of participants, including the method of participation for each (i.e., commenter or intervenor), in due course.

Intervenors in NEB hearings typically have the right to ask the applicant questions, to submit evidence, and to give final argument. A Hearing Order typically provides details on such methods of participation. Example Hearing Orders issued by the NEB for other projects can be found on the NEB's website ([www.neb-one.gc.ca](http://www.neb-one.gc.ca)), and the NEB's Hearing Process Handbook provides further information related to participation in hearings.

.../2

444 Seventh Avenue SW  
Calgary, Alberta T2P 0X8

444, Septième Avenue S.-O.  
Calgary (Alberta) T2P 0X9

Canada

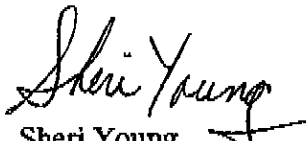
Telephone/Téléphone : (403) 292-4800  
Facsimile/Télocopieur : (403) 292-5508  
<http://www.neb-one.gc.ca>  
Telephone/Téléphone : 1-800-899-1265  
Facsimile/Télocopieur : 1-877-288-8803

-2-

Please advise if the Tsleil-Waututh Nation requests consultation or cooperation with respect to the environmental assessment of the project under section 18 of CEAA 2012, beyond that which would be provided if intervenor status is granted. If so, please provide details of the Tsleil-Waututh Nation environmental assessment process for the project and the specifics of what consultation or cooperation would entail. Please also provide as much detail as possible about Tsleil-Waututh Nation's expected timelines for environmental assessment.

Should you have any questions, please contact Shirley Dawe, Aboriginal Engagement Specialist, at 403-299-3605 or 1-800-899-1265 (toll-free).

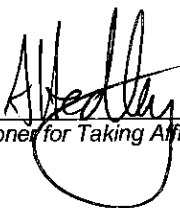
Yours truly,

  
Sheri Young  
Secretary of the Board

- c.c. Ms. Erin Hanson, Treaty, Lands and Resources Department, Tsleil-Waututh Nation,  
email: [ehanson@twnation.ca](mailto:ehanson@twnation.ca)  
Ms. Jessica Clogg, Tsleil-Waututh Legal Counsel, email: [jessica\\_clogg@wcel.org](mailto:jessica_clogg@wcel.org)  
Mr. Scott Smith, Gowlings, Facsimile 416-862-7661  
Mr. Eugene Kung, West Coast Environmental Law, Facsimile 604-684-1312  
Mr. D. Scott Stoness, Trans Mountain Pipeline ULC, Facsimile 403-514-6622  
Mr. Shawn Denstedt, Q.C., Osler, Hoskin & Harcourt LLP, Facsimile 403-260-7024



This is Exhibit "J" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015

A handwritten signature in black ink, appearing to read "A. Hedley", is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



April 22, 2014

**Sent by Courier**

Sheri Young  
Secretary of the Board  
National Energy Board  
444 Seventh Avenue SW  
Calgary, Alberta T2P 0X8

Dear Ms. Young:

**Re: Trans Mountain Pipeline ULC  
Application for the Trans Mountain Expansion Project dated 16 December 2013**

**Response to NEB letter dated 4 March 2014 re: required NEB consultation and cooperation with Tseil-Waututh Nation as a jurisdiction under section 18 of the *Canadian Environmental Assessment Act, 2012* ("CEAA 2012")**

We write in response to your letter of March 4, 2014. As you are aware, Tseil-Waututh Nation ("TWN") has a Stewardship Policy which provides for TWN Assessment of Proposed Developments in its territory. The NEB process or decision cannot act as a substitute or replace TWN's assessment of the Project, or the decision that it will ultimately make, under its Stewardship Policy.

Consistent with your March 4 letter, we confirm that TWN is a "jurisdiction" within the meaning of CEAA 2012. The NEB duty to comply with s. 18 of CEAA 2012 regarding jurisdiction started to apply when the Kinder Morgan project triggered CEAA 2012.

Your letter asks whether TWN seeks "consultation or cooperation" beyond what would occur if TWN obtains intervenor status. Respectfully, we believe that question is problematic. At the time of your letter, the NEB had a positive obligation to comply with s. 18. This obligation is independent of the NEB's treatment of (i) TWN's application to be an intervenor or (ii) TWN as an intervenor. Therefore, respectfully, the starting point for

NEB consultation and cooperation with TWN is the jurisdiction duty, not its status as an intervenor.

This letter therefore addresses that jurisdictional starting point, and defers all questions related to intervenor status.

Starting with jurisdiction issues, TWN hereby advises the NEB that we are very concerned about how the present process is unfolding. There are recent precedents for the NEB working with others to advance jurisdictional cooperation first, before addressing specific details about pipeline applications before it. However, it appears to TWN that the present process is driven by responding to a specific application first, and deferring jurisdictional cooperation. In particular, the NEB made three important decisions on April 2, 2014 *without consulting or cooperating with TWN*. The NEB: (i) defined the factors and scope of factors for the environmental assessment of the Project pursuant to CEAA 2012;<sup>1</sup> (ii) decided that Trans Mountain's application is complete and should proceed to assessment and public hearing;<sup>2</sup> and (iii) established the timing and nature of hearing events and steps for the Hearing.<sup>3</sup> The latter includes very tight time lines and anomalies, such as an opportunity for oral cross-examination of First Nations' traditional knowledge holders but not the proponent's experts.

TWN asks the NEB to change course and reverse these priorities.

In the NEB making those decisions without consulting or cooperating with TWN, we believe that the NEB has failed to satisfy its legal duties pursuant to s. 18 of CEAA 2012. We are also of the view that this approach is prejudicial to TWN's rights, title, and interests, including its regulatory functions. TWN is also concerned that it will now be more difficult for the NEB to cooperate with TWN to ensure that both jurisdictions, to the extent possible, take a coordinated approach to their respective environmental assessments.

Consistent with this request, we ask the NEB for transparency regarding its duties under s. 18 of CEAA 2012. In particular, who is the NEB dealing with now as a "jurisdiction" regarding its s. 18 duties? Second, having already made a number of important procedural decisions, how is the NEB proposing to coordinate its environmental assessment process with other jurisdictions, including TWN?

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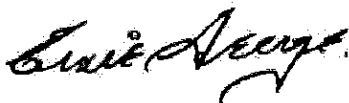
<sup>1</sup> NEB April 2, 2014 letter re: Factors and Scope of the Factors for the Environmental Assessment pursuant to the *Canadian Environmental Assessment Act, 2012*.

<sup>2</sup> NEB April 2, 2014 letter re: Completeness Determination and Legislated Time Limit.

<sup>3</sup> NEB April 2, 2014 Hearing Order OH-001-2014.

Once we receive information from the NEB on its discussions with other jurisdictions, TWN looks forward to meeting with you to discuss a coordinated approach to our respective environmental assessments of the Project.

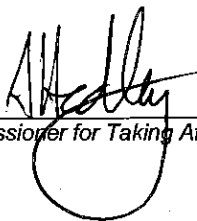
Yours sincerely,



**Ernie George**  
Director  
Treaty, Lands and Resources Department  
Tsleil-Waututh Nation

cc: Ian Anderson, Trans Mountain Pipelines

This is Exhibit "K" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015

A handwritten signature in black ink, appearing to read "A. H. Kelly", is written over a horizontal line. Below the line, the text "Commissioner for Taking Affidavits (or as may be)" is printed. The signature is written in a cursive style with a large loop at the bottom.

Commissioner for Taking Affidavits (or as may be)

National Energy  
Board



Office national  
de l'énergie

File OF-Fac-Oil-T260-2013-03 02  
15 May 2014

Mr. Ernie George  
Director, Treaty, Lands and Resources Department  
Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, BC V7H 3A8  
Email [egeorge@twnation.ca](mailto:egeorge@twnation.ca)

Dear Mr. George:

**Trans Mountain Pipeline ULC (Trans Mountain)  
Application for the Trans Mountain Expansion Project (Project)  
Letter from the Tsleil-Waututh Nation dated 22 April 2014**

Thank you for your 22 April 2014 letter in response to the National Energy Board's (Board or NEB) 4 March 2014 letter seeking additional information for the purpose of meeting section 18 of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).

You have asked the Board for "transparency regarding its duties under s.18 of CEAA 2012." The Board considers the purposes of section 18 to, among other things, enable improved effectiveness and efficiency of the Board's and other applicable jurisdictions' processes for assessing the environmental effects of a designated project. [This could include, among other things, considering ways to avoid duplication between those assessments, coordinating process steps, facilitating information exchanges, and coordinating timing.] As noted in section 4 of the CEAA 2012, this legislation is also intended to promote communication and cooperation with Aboriginal peoples regarding environmental assessments.

The Board will offer to consult and cooperate with respect to the environmental assessment of a designated project to the extent practical with those "jurisdictions" listed in paragraphs (c) to (h) of the definition of "jurisdiction" in subsection 2(1) of the CEAA 2012. As noted in that definition, "jurisdictions" falling within paragraphs (e) and (f) must have powers, duties, or functions in relation to an environmental assessment of a designated project. In order to explore opportunities to cooperate, the Board needs information from potential jurisdictions about how they meet the definition of "jurisdiction" in the CEAA 2012 and their intended environmental assessment process for a designated project, or how they intend to exercise their powers, duties, or functions related to the environmental assessment of a designated project.

.../2

444 Seventh Avenue SW  
Calgary, Alberta T2P 0X8

444, Septième Avenue S.-O.  
Calgary (Alberta) T2P 0X8

**Canada**

Telephone/Téléphone : 403-292-4800  
Facsimile/Télécopieur : 403-292-5503  
<http://www.nsb-ene.gc.ca>  
Telephone/Téléphone : 1-800-899-1265  
Facsimile/Télécopieur : 1-877-288-8803

- 2 -

Once that information is received, the Board can explore these opportunities. There are likely some opportunities that could be realized, although there are some constraints as well. For example, as you are aware, the Board is required to complete its assessment of a designated project within certain time limits. This is one of the considerations the Board would take into account when determining the extent to which cooperation is practical. In addition, the Board must remain mindful of its quasi-judicial role, and cannot enter into cooperation arrangements that could conflict with that role.

With respect to the current Project before the Board, in addition to the Tsleil-Waututh Nation, the Board has also received correspondence from one other potential jurisdiction under section 18 of the CEAA 2012. This group responded to the Board's section 18 offer to consult and cooperate that was made via the NEB's posting on the Canadian Environmental Assessment Registry Internet Site. Correspondence with that group is available on the Board's online public registry (please see Filings A3T4U0 and A3V0R3).

Your letter refers to the Board's various decisions and documents of 2 April 2014 and asks the Board to "change course and reverse these priorities." Regarding your concern about the oral questioning of First Nations' traditional knowledge holders, please be aware that this issue is addressed in the Board's Procedural Direction No. 1 – Oral traditional evidence participation. When the Board issued its Hearing Order and other correspondence on 2 April 2014, there had not yet been a response from Tsleil-Waututh Nation regarding the Board's 4 March 2014 letter. As stated in that letter, in order to consider opportunities to cooperate pursuant to section 18 of the CEAA 2012, the Board requires additional details of the Tsleil-Waututh Nation environmental assessment process for the Project or how the Tsleil-Waututh Nation intends to exercise its powers, duties, or functions. Such information could include the timing for your assessment and the steps you were undertaking, as well as identifying any further opportunities for cooperation the Tsleil-Waututh Nation may wish to explore with the Board.

The Tsleil-Waututh Nation was granted intervenor status on 2 April 2014. As described in the Hearing Order, as an intervenor, the Tsleil-Waututh Nation will be notified of, or receive, all documents that are on the online public registry, and has the ability to ask written questions to test Trans Mountain's and other intervenors' evidence. The Board notes that the Tsleil-Waututh Nation has already asked written questions of Trans Mountain. As an intervenor, the Tsleil-Waututh Nation can also ask Trans Mountain its own questions about the Project through the Board's process. In addition, intervenors will be able to comment on draft conditions and suggest additional conditions. Aboriginal intervenors may also provide oral traditional evidence, as well as written and oral final argument.

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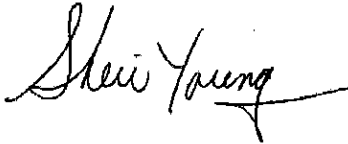
In addition, as mentioned above, if the Tsleil-Waututh Nation would like to explore other opportunities for cooperation in conducting its own environmental assessment of the Project, please provide additional information so that the Board can explore those opportunities.

.../3

- 3 -

Should you have any questions, please contact Shirley Dawe, Aboriginal Engagement Specialist, at 403-299-3605 or 1-800-899-1265 (toll-free).

Yours truly,



Sheri Young  
Secretary of the Board

c.c. Mr. Eugene Kung, West Coast Environmental Law, Representative for Tsleil-Waututh Nation, Email [eugene.kung@wcel.org](mailto:eugene.kung@wcel.org)

Mr. Scott Smith, Gowlings, Representative for Tsleil-Waututh Nation and Shxw'ōwhámel First Nation, Email [scott.smith@gowlings.com](mailto:scott.smith@gowlings.com)

Mr. Alfred James, Director of Community Development, Shxw'ōwhámel First Nation, Facsimile 604-869-9903

Ms. Maya Stano, Gowlings, Representative for Shxw'ōwhámel First Nation, Email [maya.stano@gowlings.com](mailto:maya.stano@gowlings.com)

Trans Mountain Pipeline ULC, Email [regulatory@transmountain.com](mailto:regulatory@transmountain.com)



This is Exhibit "L" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



May 23, 2014

**Sent by Courier**

Sheri Young  
Secretary of the Board  
National Energy Board  
444 Seventh Avenue SW  
Calgary, Alberta T2P 0X8

Dear Ms. Young:

**Re: Trans Mountain Pipeline ULC  
Application for the Trans Mountain Expansion Project dated 16  
December 2013**

**Response to National Energy Board letter dated 15 May 2014 re: Letter  
from Tsleil-Waututh Nation dated 22 April 2014**

---

We write in response to your letter of May 15, 2014.

This is Tsleil-Waututh Nation's ("TWN") third letter to the National Energy Board ("NEB") on this issue. Approximately four months have now passed since TWN advised the NEB that it is a jurisdiction which the NEB must consult and cooperate with pursuant to s. 18 of the *Canadian Environmental Assessment Act, 2012* ("CEAA 2012").

On April 2, 2014, the NEB unilaterally made decisions that decided the EA framework, process, and schedule for the Project ("April 2 Decisions"). Each of these topics is central to the practice of jurisdictional cooperation. Yet the NEB failed to offer to consult, consult, or cooperate with TWN before it made the April 2 Decisions. Nothing in the December 2013 update on the Canadian Environmental Assessment Agency website that you refer to in your letter identifies it as an offer being made by the NEB to consult and cooperate with other jurisdictions.

Rather than addressing how the NEB now proposes to coordinate its EA with other jurisdictions in light of its April 2 Decisions, your letter asks TWN to provide additional details of TWN's EA process for the Project.

TWN is implementing the assessment process identified in our earlier letters. As you are aware, TWN has a Stewardship Policy, the Policy governs its assessment of development proposals, and the Policy applies to the Project.

A copy of the Stewardship Policy is publicly available on TWN's website and is attached for ease of reference. Notably, TWN is not applying any of the Crown "consultation" aspects of the Stewardship Policy to the Project. This point arises as a direct result of the continued absence of the Crown and any agreed upon TWN-Crown consultation process in relation to the Project.

TWN recently contacted Kinder Morgan to advise it that TWN is carrying out an environmental assessment of the Project under the Stewardship Policy.

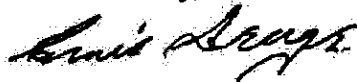
You suggest in your May 15 letter that the NEB's ability to cooperate with TWN is constrained by time limits applicable to its assessment. Respectfully, those constraints only exist because the NEB determined that the application before it was complete (which started the time limits) before consulting and cooperating with other jurisdictions.

Nevertheless, meaningful consultation may require the NEB to "change course" and revisit its April 2 Decisions, including its determination that the application is complete. If the NEB takes these required steps, the time limits you refer to in your May 15 letter may no longer constrain the NEB's ability to meaningfully cooperate with TWN.

In any event, the NEB has not identified any reason why it failed to seek to discharge its legal obligation to consult jurisdictions and coordinate the EA of this Project with them before it decided that the application was complete. TWN's correspondence with the NEB commenced before the NEB made that determination on this Project. Similarly, your initial March 2014 letter to TWN did not advise us that the NEB was subject to any imminent timeline or otherwise required TWN's response by any specific date.

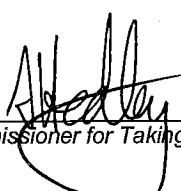
Please call me to set up a meeting between TWN and the NEB in our Territory in the next few weeks to discuss how a coordinated approach to our respective EAs of the Project can be implemented. In the mean time, TWN will continue with our very important assessment of the Project.

Yours sincerely,



Emie George

This is Exhibit "M" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)

National Energy  
Board



Office national  
de l'énergie

File OF-Fac-Oil-T260-2013-03 02  
20 June 2014

Mr. Ernie George  
Director  
Treaty, Lands and Resources Department  
Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, BC V7H 3A8  
Email [egeorge@twnation.ca](mailto:egeorge@twnation.ca)

Dear Mr. George:

**Trans Mountain Pipeline ULC (Trans Mountain)  
Application for the Trans Mountain Expansion Project (Project)  
Letter from the Tsleil-Waututh Nation, dated 30 May 2014, regarding section 18 of  
the *Canadian Environmental Assessment Act 2012* (CEAA 2012)**

Thank you for your 30 May 2014 letter re-iterating your request to consult and cooperate with the National Energy Board (Board), pursuant to section 18 of the CEAA 2012.

As stated in the Board's letter of 15 May 2014, before the Board can consider opportunities to consult or cooperate pursuant to section 18 of the CEAA 2012, it requires additional details of the Tsleil-Waututh Nation's environmental assessment process for the Project, or information regarding how the Tsleil-Waututh Nation intends to exercise its powers, duties, or functions. Such information could include the timing for your assessment and the steps you were undertaking, as well as identifying any further opportunities for cooperation the Tsleil-Waututh Nation may wish to explore with the Board. To date the Board has not received a response to any of the specific details that it has requested from the Tsleil-Waututh Nation. While you have referred to your Stewardship Policy, this does not provide clear responses to the Board's requests for information.

With respect to the request for a meeting, the Board must respectfully decline. Without any specific information being provided from Tsleil-Waututh Nation, the Board does not see a basis for a meeting. Now that the hearing process is underway the Board is of the view that any communications with the Tsleil-Waututh Nation regarding potential consultation and cooperation pursuant to section 18 of the CEAA 2012 should take place transparently on the hearing record.

.../2

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Calgary, Alberta T2P 0X8

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Calgary (Alberta) T2P 0X8

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<http://www.neb-one.gc.ca>  
Telephone/Téléphone : 1-800-899-1265  
Facsimile/Télécopieur : 1-877-288-8803

- 2 -

Should you have any questions, please contact Shirley Dawe, Aboriginal Engagement Specialist, at 403-299-3605 or 1-800-899-1265 (toll-free).

Yours truly,



 Sheri Young  
Secretary of the Board

c.c. Mr. Eugene Kung, West Coast Environmental Law, Representative for Tsleil-Waututh Nation, Email [eugene\\_kung@wcel.org](mailto:eugene_kung@wcel.org)

Mr. Scott Smith, Gowlings, Representative for Tsleil-Waututh Nation and Shxw'ōwhámel First Nation, Email [scott.smith@gowlings.com](mailto:scott.smith@gowlings.com)

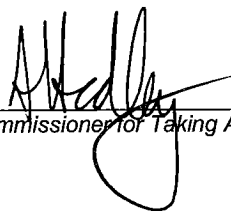
Mr. Stanley Morgan, Representative for Matsqui First Nation, Email [stan.morgan@shaw.ca](mailto:stan.morgan@shaw.ca)

Ms. Elisa Penn, Bram Rogachevsky Law Corporation, Representatives for Matsqui First Nation, Email [elisa@brlaw.ca](mailto:elisa@brlaw.ca)

Mr. Bram Rogachevsky, Bram Rogachevsky Law Corporation, Representatives for Matsqui First Nation, Email [bram@brlaw.ca](mailto:bram@brlaw.ca)

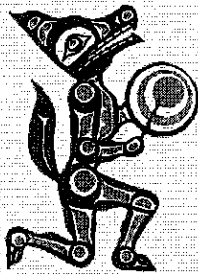
Trans Mountain Pipeline ULC, Email [regulatory@transmountain.com](mailto:regulatory@transmountain.com)

This is Exhibit "N" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



November 14, 2014

*Sent by Courier*

Sheri Young  
Secretary of the Board  
National Energy Board  
444 Seventh Avenue SW  
Calgary, Alberta T2P 0X8

Dear Ms. Young:

**Re: Trans Mountain Pipeline ULC  
Application for the Trans Mountain Expansion Project ("Project")**

## **Tsleil-Waututh Nation Update on its Assessment of the Project**

This letter follows up on our January 31, April 22, and May 23, 2014 letters to you. It also replies to your June 20, 2014 letter to us.

Having regard to the earlier correspondence, we must agree to disagree on whether your process complies with the NEB's legal duties under s. 18 of the *Canadian Environmental Assessment Act, 2012* ("CEAA"). Despite Tsleil-Waututh Nation's ("TWN") numerous requests, the NEB has still failed to offer to consult and cooperate with TWN in respect to the technical assessment of the Project. Contrary to the assertions in your June 20 letter, additional details about TWN's assessment process were not required before consultation and cooperation could occur. Rather, those details could have been the subject of initial consultation between TWN and the NEB.

Declining to meet with TWN to consult and cooperate with us as you did in your June 20 letter is also inconsistent with the NEB's duties under s. 18 of CEAA.

Our May 23 letter advised you that TWN is implementing the assessment process identified in our earlier letters to you. It also advised you that TWN had contacted Trans Mountain to advise it of the TWN assessment process.

The purpose of the present letter is to update you on the TWN assessment process being carried out pursuant to our Stewardship Policy.

### **Steps taken to date**

TWN re-affirms that our assessment of this Project started in December 2013.



TWN is applying the two-lens approach described in our Stewardship Policy. The assessment under the first lens involves answering the following questions: (i) Is the decision proposed a good land use decision? (ii) Does it represent the best use of lands and resources for the present and for the future? (iii) What impact does it have on the natural and cultural resource base within which it is proposed? and (iv) What does it contribute to the cumulative effects of past land use decisions and what implications does it have for future developments to which it may be linked or that it may enable? The assessment under the second lens focuses on whether the Project will provide benefits to the Tsleil-Waututh commensurate with the impacts that it will have.

TWN is now proceeding with an assessment of the Project under the first lens of its two-lens process. TWN's assessment will focus on impacts in TWN's Consultation Area (as shown in the Stewardship Policy) and, in particular, on impacts in eastern Burrard Inlet.

Consistent with the Stewardship Policy, TWN is addressing the first lens as a "screening" lens. TWN Council must conclude that the Project satisfies the first lens before it proceeds to review the Project under the second lens.

By way of an update, TWN has taken the following steps in its assessment of the Project:

1. Invited Trans Mountain to apply for an assessment under the Stewardship Policy;
2. Reviewed Trans Mountain's application;
3. Coordinated TWN's assessment with the City of Vancouver and the City of Burnaby;
4. Attempted to coordinate TWN's assessment with the NEB;
5. Identified information required for the assessment;
6. Requested additional information from Trans Mountain through information requests and a motion in the NEB Hearing for the Project; and
7. Commissioned expert reports for the first lens of assessment.

We pause here to provide an example of how the NEB's failure to offer to consult and cooperate with TWN is (i) causing an inefficient, duplicative, and uncoordinated assessment of the Project, (ii) preventing, rather than enhancing, information exchanges, and (iii) delaying, rather than speeding up, assessment of the Project.

In response to TWN's motion to compel full and adequate responses to its first round of information requests, the NEB unilaterally (i.e. without consulting or cooperating with TWN) refused to compel Trans Mountain to answer all of TWN's outstanding information requests. The information requested by TWN is relevant and significant to both NEB and TWN assessments of the Project. Rather than recognizing and

respecting TWN status as a jurisdiction and using the information request process to increase the efficiency and enhance both assessments, the NEB again acted unilaterally. TWN will now need to request that same information from Trans Mountain in its assessment process, causing duplication, delays, and further uncoordinated assessment of the Project.

Simply put, the NEB is inappropriately, and unlawfully, failing to treat TWN as a jurisdiction with its own powers, duties, and functions to assess the effects of, and make decisions in relation to, the Project.

### **Future steps**

TWN's assessment will result in a draft assessment report. TWN will be soliciting comments on this report from Trans Mountain, the Crown, and the NEB. Following review of comments on the draft report, the report will be finalized and provided to TWN Council for a decision.

Looking forward, TWN is committed to providing the NEB with periodic updates on the status of its assessment under the first lens, next steps to be taken in the assessment process, and opportunities to participate in TWN's assessment process.

Pursuant to these commitments, TWN is now providing you with information on its future steps and schedule for this assessment. They are summarized in the table below.

**Table 1: Summary of Future Steps in TWN Assessment Process**

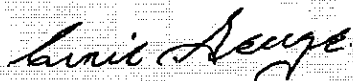
Step	Proposed Timeline
Preparation of draft report on whether Project satisfies the first lens of assessment	January 2015
Solicitation of comments on draft report	February 2015
Draft report finalized for TWN Council	March 2015
TWN Council meeting and decision on assessment and whether Project satisfies first lens of assessment	April 2015
If Project satisfies first lens, commence assessment under second lens	May 2015

Pursuant to TWN's plan to solicit comment on the draft assessment report once it is prepared, we expect to invite the NEB to participate in TWN's technical assessment of the Project in early 2015.

You may expect to receive more information from us as this process advances towards the release of the draft assessment report. Please feel free to contact John

Konovsky, Program Lead, at 604-924-4190 or [konovsky@twnation.ca](mailto:konovsky@twnation.ca) if you have any questions about TWN's assessment of the Project or if you would like to set up a meeting in TWN territory to consult and cooperate with us with respect to the assessment of the Project.

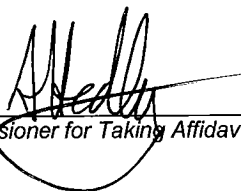
Sincerely,



**Ernie George**  
Director, Treaty, Lands and Resources Department

VAN\_LAW\1588077\3

This is Exhibit "O" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)

National Energy  
Board



Office national  
de l'énergie

File OF-Fac-Oil-T260-2013-03 02  
16 December 2014

Mr. Ernie George  
Director  
Treaty, Lands and Resources Department  
Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, BC V7H 3A8  
Email [egeorge@twnation.ca](mailto:egeorge@twnation.ca)

Mr. Scott A. Smith  
Gowling Lafleur Henderson LLP  
Representative for Tsleil-Waututh Nation  
550 Burrard Street, Suite 2300  
Vancouver, BC V6C 2B5  
Email [scott.smith@gowlings.com](mailto:scott.smith@gowlings.com)

Dear Mr. George and Mr. Smith:

**Trans Mountain Pipeline ULC (Trans Mountain)  
Application for the Trans Mountain Expansion Project (Project)  
Letter from Tsleil-Waututh Nation (TWN), dated 14 November 2014 – update on  
TWN's assessment of the Project**

Thank you for your letter, dated 14 November 2014, in which you provide an update on the status of TWN's assessment of the Project in accordance with the TWN Stewardship Policy.

In your letter, you explain that TWN is proceeding with its environmental assessment, applying the two-lens approach described in the Stewardship Policy. You further set out a number of timelines for the assessment.

The National Energy Board (Board) understands, based on your various letters to the Board, that TWN has not yet developed an environmental assessment process or laws in accordance with section 21 of the *First Nations Land Management Act* and section 25 of the *Framework Agreement on First Nation Land Management*. However, your most recent letter does provide some additional information about the assessment that you will be undertaking.

The Board also notes that the Tsleil-Waututh Lands, over which TWN's Land Code (and any laws made thereunder) would generally apply, are not directly intersected by the Project. Rather, it appears TWN's environmental assessment covers the more expansive Tsleil-Waututh Consultation Area, as described in the Stewardship Policy.

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<http://www.nab-one.gc.ca>  
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Facsimile/Télocopieur : 1-877-288-8803

Despite these facts, in consideration of the broad objectives of section 18 of the *Canadian Environmental Assessment Act, 2012*, the Board remains willing to consider any specific requests for cooperation that TWN wishes to explore with the Board.

As you know, an extensive body of information on the Project is available on the NEB's public registry for the Project. This includes the Project application, information requests (IRs), and responses to IRs. As new information is filed, it will also appear on this registry.

Through equivalency agreements or less formal means, some other jurisdictions that may conduct environmental assessments, such as the Province of British Columbia and Port Metro Vancouver, have opted to rely on the Board's environmental assessment process to the extent possible. Similarly, the Board encourages TWN to use the opportunities afforded to it as an intervenor in the Board's hearing. TWN is also encouraged to rely on the Board's process, or aspects of it, to the extent it would be useful or desirable for TWN to do so in order to avoid duplication of process.

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Lastly, the Board understands from your most recent letter that TWN's assessment will ultimately result in a draft report, which will be circulated for comments. Please be advised that, as a quasi-judicial tribunal engaged in its own assessment of the Project, the Board cannot provide comments on this draft report. However, the Board encourages TWN to file on the hearing record copies of this or any other reports or information generated through TWN's assessment to be considered by the Board. This information would have to be filed with the Board by the 27 May 2015 deadline for filing written evidence.

If you have any process questions with respect to these matters, please contact Shirley Dawe, Aboriginal Engagement Specialist, at 403-299-3605 or 1-800-899-1265 (toll-free), or by email at [shirley.dawe@neb-one.gc.ca](mailto:shirley.dawe@neb-one.gc.ca).


Yours truly,

*Original signed by L. George for*

Sheri Young  
Secretary of the Board

c.c. Trans Mountain  
Mr. John Konovsky, Program Lead, TWN, Email [jkonovsky@twnation.ca](mailto:jkonovsky@twnation.ca)

This is Exhibit "P" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



April 23, 2015

*Sent by Courier*

Sheri Young  
Secretary of the Board  
National Energy Board  
517 Tenth Avenue SW  
Calgary, Alberta T2R 0A8

Dear Ms. Young:

**Re: Trans Mountain Pipeline ULC  
Application for the Trans Mountain Expansion Project ("Project")**

**Update on Tsleil-Waututh Nation Assessment of the Project and Invitation to  
Comment on Draft TWN Assessment Report**

The purpose of this letter is to: (i) provide the National Energy Board ("NEB") with a further update on the Tsleil-Waututh Nation ("TWN") assessment of the Project being carried out pursuant to our Stewardship Policy; (ii) invite the NEB to review and comment on the Draft TWN Assessment Report; and (iii) respond to your December 16, 2014 letter.

In your December 16 letter you state that "the Board remains willing to consider any specific requests for cooperation that TWN wishes to explore with the Board." Respectfully, it is the NEB's duty as the responsible authority for the Project, not TWN's, to offer to consult and cooperate with respect to the environmental assessment of the Project with TWN and other jurisdictions.

Despite our numerous requests, the NEB has still failed to satisfy its legal obligations under s. 18 of the *Canadian Environmental Assessment Act, 2012* ("CEAA") to offer to consult and cooperate with TWN. We reiterate our request to meet with the NEB to discuss remaining opportunities for jurisdictional consultation and cooperation. However, to be clear, TWN will not be relying on the NEB's environmental assessment process to assess the impacts of the Project on TWN, our territory, title, rights, and interests. We are conducting our own assessment of the Project under our Stewardship Policy.

In your December 16 letter you state that the NEB cannot provide comments on the Draft TWN Assessment Report. Yet jurisdictional consultation and cooperation often involves one jurisdiction (such as a province) commenting on the environmental assessment conducted by



another jurisdiction (such as Canada).

The NEB's position, if correct in law, only further highlights the legal deficiencies with the new CEAA regime in that the NEB, because it is a "quasi-judicial tribunal", cannot perform the legal requirements of a responsible authority under CEAA. Those requirements include consulting and cooperating with other jurisdictions under s. 18 of CEAA, and consulting with Aboriginal communities pursuant to the Crown's obligations under s. 35 of the *Constitution Act, 1982* – requirements that were routinely performed by responsible authorities such as Environment Canada or the Department of Fisheries and Oceans under old CEAA.

**Update on steps taken to date and invitation to comment on Draft TWN Assessment Report**

By way of an update, TWN has taken the following steps in our assessment of the Project since our November 14, 2014 letter to you:

1. TWN technical staff has received and reviewed expert reports for the first lens of the assessment;
2. TWN has written to Trans Mountain to provide it with an update on TWN's assessment of the Project and requested that it provide additional information; and
3. TWN is in the process of completing the Draft TWN Assessment Report for the Project.

We anticipate that the Draft TWN Assessment Report will be available for the NEB, federal Crown, and Trans Mountain to review from May 4-18, 2015. We will need to receive any comments that the NEB wishes to provide on the Draft TWN Assessment Report by the close of business on May 18, 2015. We may be unable to incorporate any comments received after that time in the final TWN Assessment Report.

Remaining steps in the TWN Assessment process include finalizing the TWN Assessment Report for Council, TWN Council holding a meeting to decide whether the Project satisfies the first lens of assessment, and, if it does, TWN Council instructing its technical staff to commence an assessment under the second lens of our Stewardship Policy.

**Closing**

Please contact John Konovsky, Program Lead, at 604-924-4190 or [jkonovsky@twnation.ca](mailto:jkonovsky@twnation.ca) if you would like to obtain a copy of the Draft TWN Assessment Report.

Sincerely,



Ernie George  
Director, Treaty, Lands and Resources Department

This is Exhibit "Q" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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*Commissioner for Taking Affidavits (or as may be)*

National Energy  
Board



Office national  
de l'énergie

File OF-Fac-Oil-T260-2013-03 02  
8 May 2015

Mr. Ernie George  
Director  
Treaty, Lands and Resources Department  
Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, BC V7H 3A8  
Email [egeorge@twnation.ca](mailto:egeorge@twnation.ca)

Mr. Scott A. Smith  
Gowling Lafleur Henderson LLP  
Representative for Tsleil-Waututh Nation  
550 Burrard Street, Suite 2300  
Vancouver BC V6C 2B5  
Email [scott.smith@gowlings.com](mailto:scott.smith@gowlings.com)

Dear Mr. George and Mr. Smith:

**Hearing Order OH-001-2014  
Trans Mountain Pipeline ULC  
Application for the Trans Mountain Expansion Project (Project)  
Tsleil-Waututh Nation (TWN) letter, filed 27 April 2015 – Update on TWN's  
assessment of the Project and invitation to comment on the Draft TWN Assessment  
Report (Draft Report)**

Thank you for your letter in which you provide a further status update on TWN's assessment of the Project.

In your letter, you say that TWN is in the process of completing its Draft Report, and that you anticipate it will be ready for review from 4 to 18 May 2015. You invite the National Energy Board (Board) to review and comment on the Draft Report, and also state that any comments must be received by TWN on or before 18 May 2015. You also re-iterate your request to meet with the Board to discuss opportunities for jurisdictional consultation and cooperation.

As the Board indicated in its 16 December 2014 letter, as a quasi-judicial tribunal engaged in its own assessment of the Project, it cannot provide comments on the report. However, the Board recognizes that the Draft Report may contain valuable information or evidence related to this hearing's List of Issues, and such material could be helpful to the Board's assessment of the Project.

With respect to your meeting request, the Board respectfully declines, as it did in its 20 June 2014 letter to TWN. While the hearing is underway, any communications with TWN regarding potential consultation and cooperation must take place transparently on the hearing record.

.../2

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Calgary, Alberta T2R 0A8

517, Dixième Avenue S.-O.  
Calgary (Alberta) T2R 0A8

Canada

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Facsimile/Télécopieur : 403-292-5503  
<http://www.neb-one.gc.ca>  
Telephone/Téléphone : 1-800-899-1265  
Facsimile/Télécopieur : 1-877-288-8803

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The Board again encourages TWN to file a copy of the Draft Report, or any other reports or information generated through TWN's assessment of the Project, on the Board's hearing record as part of TWN's written evidence on or before the 27 May 2015 deadline. In making its recommendation on the Project and determining the terms and conditions to which the Project would be subject if approved, the Board will consider all available information on the hearing record.

For further guidance regarding intervenor written evidence, please see Procedural Direction No. 7 – Guidance for intervenor written evidence, or contact the Process Advisor Team for this Project by phone at 403-292-4800 or 1-800-899-1265 (toll-free), or by email at [transmountainpipeline.hearing@neb-one.gc.ca](mailto:transmountainpipeline.hearing@neb-one.gc.ca).

Yours truly,

*Original signed by L. George for*

Sheri Young  
Secretary of the Board

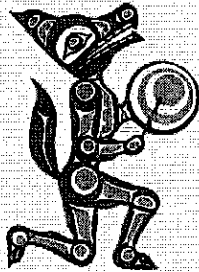
c.c. Trans Mountain Pipeline ULC

This is Exhibit "R" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



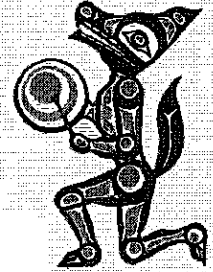
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Commissioner for Taking Affidavits (or as may be)



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



November 12, 2014

Hon. Greg Rickford  
Minister of Natural Resources  
580 Booth Street, 21<sup>st</sup> Floor, Room C7-1  
Ottawa, Ontario K1A 0E4  
EMAIL: [minister.ministre@nrcan-nrcan.gc.ca](mailto:minister.ministre@nrcan-nrcan.gc.ca)

Dear Minister Rickford,

**Re: Further Request for Immediate Government-to-Government  
Consultation with Tseil-Waututh Nation and Funding for the Trans  
Mountain Expansion Project**

Thank you for your August 15, 2014 letter and a companion letter sent by Tim Gardiner to Ernie George on July 21, 2014 in relation to the Trans Mountain Expansion Project ("Project").

For the reasons I stated in my March 5, 2014 letter to then Minister of Natural Resources Oliver, Tseil-Waututh does not agree with the Crown's position on consultation as reiterated in your August 15 letter. Meaningful consultation requires a dialogue between the Crown and Tseil-Waututh in which each government has sufficient time and information to offer and consider perspectives and respond accordingly. Government-to-government discussions are the hallmark of this process, something that is wholly absent from the NEB process and, more generally, from the Crown's approach to consultation to date.

Tseil-Waututh is carrying out its own assessment of the Project pursuant to our Stewardship Policy. Tseil-Waututh's assessment will result in a draft report that will be available for your review. Tseil-Waututh will be soliciting comments on this report from the Crown, the NEB, and Trans Mountain. We expect to provide a copy of the draft assessment report to you for your comments in February, 2015.

Tseil-Waututh's assessment under the Stewardship Policy is the process by which we will assess the impacts of the Project on our community, territory, title, rights, and interests and thereafter make a decision about whether the Project can proceed in our territory.

There is a distinct possibility that Tseil-Waututh may decide that the Project cannot proceed whereas the NEB may recommend that (i) the Crown issue a Certificate of Public Convenience and Necessity for the Project, and (ii) the Project is not likely to cause adverse environmental effects or is likely to cause adverse environmental effects that can be justified in the circumstances.

As a result of the potential for these conflicting outcomes as well as the reasons set out in my March 5 letter, there is a need for Tsleil-Waututh and the Crown to jointly establish a government-to-government consultation process in relation to all aspects of the Project that respects and accommodates the respective authorities of the Tsleil-Waututh Nation and the Government of Canada.

In your August 15 letter you stated that officials from your department "would welcome the opportunity to meet with the Tsleil-Waututh Nation to further discuss the Government's approach to consultation" for the Project.

Tsleil-Waututh welcomes a meeting with you and your officials to discuss how we can work together to jointly establish a government-to-government process, not to hear about the Government's current approach to consultation that it unilaterally developed without Tsleil-Waututh's input.

In that meeting we would also like to discuss the urgent need for the Crown to provide Tsleil-Waututh with funding to assist us in participating in the NEB hearing for the Project.

Your August 15 letter reiterates the Crown's position that it will rely on the Hearing, to the extent possible, to discharge its duty to consult Tsleil-Waututh. We maintain our position that the Crown's approach to consultation is legally deficient, fails to uphold the honour of the Crown, and that participating in the Hearing and the Hearing itself are not substitutes for direct consultation. However, given the Crown's refusal to date to work with Tsleil-Waututh to create a government-to-government consultation process, the Hearing is currently the only process for us to make the Crown aware of our concerns.

It is incumbent on the Crown, given its intention to rely on the Hearing to satisfy its consultation duties, to provide Tsleil-Waututh with adequate funding to assist us in participating in the Hearing. Participating in the Hearing is placing an enormous financial burden on our community, a burden that is inconsistent with the honour of the Crown and entirely inequitable. It is not our project and our community should not be shouldered with the costs of consulting the Crown about a project being proposed by a very large energy company in our territory.

I am looking forward to discussing these important issues with you and your representatives. Please have your officials contact Ernie George, Director of Treaty, Lands and Resources at Tsleil-Waututh, to make meeting arrangements. Ernie can be reached at 604-924-4183 or [egeorge@twnation.ca](mailto:egeorge@twnation.ca).

Sincerely,



Chief Maureen Thomas

c: Tim Gardiner, Joseph Whiteside, Michael Henderson, Ernie George, Scott A. Smith

This is Exhibit "S" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)





# TSLEIL-WAUTUTH NATION

*People of the Inlet*



April 27, 2015

*Sent by Courier and E-mail*

Hon. Greg Rickford  
Minister of Natural Resources  
580 Booth Street, 21<sup>st</sup> Floor, Room C7-1  
Ottawa, Ontario K1A 0E4

E-mail: [minister.ministre@nrcan-nrcan.gc.ca](mailto:minister.ministre@nrcan-nrcan.gc.ca)

Dear Minister Rickford,

**Re: Update on Tsleil-Waututh Nation Assessment of the Trans Mountain Expansion Project ("Project") and Invitation to Comment on Draft TWN Assessment Report**

I am writing to follow-up on my November 12, 2014 letter to you. In that letter, I informed you that: (i) Tsleil-Waututh Nation ("TWN") is carrying out its own assessment of the Project pursuant to our Stewardship Policy; (ii) TWN's assessment would result in a draft report that would be available for your review; and (iii) we would be soliciting comments on the report from the federal Crown, the NEB, and Trans Mountain.

I am happy to inform you that TWN's technical staff is in the process of completing the Draft TWN Assessment Report. I anticipate that it will be available for you to review from May 4-18, 2015. We will need to receive any comments that you wish to provide on the Draft TWN Assessment Report by the close of business on May 18, 2015. We may be unable to incorporate any comments received after that time in the final TWN Assessment Report.

Remaining steps in the TWN Assessment process include finalizing the TWN Assessment Report for Council, TWN Council holding a meeting to decide whether the Project satisfies the first lens of assessment, and, if it does, TWN Council instructing its technical staff to commence an assessment under the second lens of our Stewardship Policy.

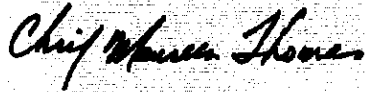
Closing

For the reasons I described in my November 12 letter and previous correspondence, there is a need for us to jointly establish a government-to-government consultation process for the Project.

I reiterated my request to meet directly with you to discuss how we can move forward on jointly establishing such a process in my February 25, 2015 letter to you. I have not heard back from you and I am concerned that we are running out of time to establish a meaningful government-to-government consultation process for the Project.

Please have your staff contact John Konovsky, Program Lead, at 604-924-4190 or [jkonovsky@twnation.ca](mailto:jkonovsky@twnation.ca) if you would like to obtain a copy of the Draft TWN Assessment Report or set up a meeting with me.

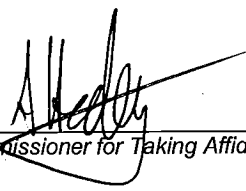
Sincerely,



Chief Maureen Thomas

cc: Ernie George, Director, Treaty, Lands, and Resources, TWN

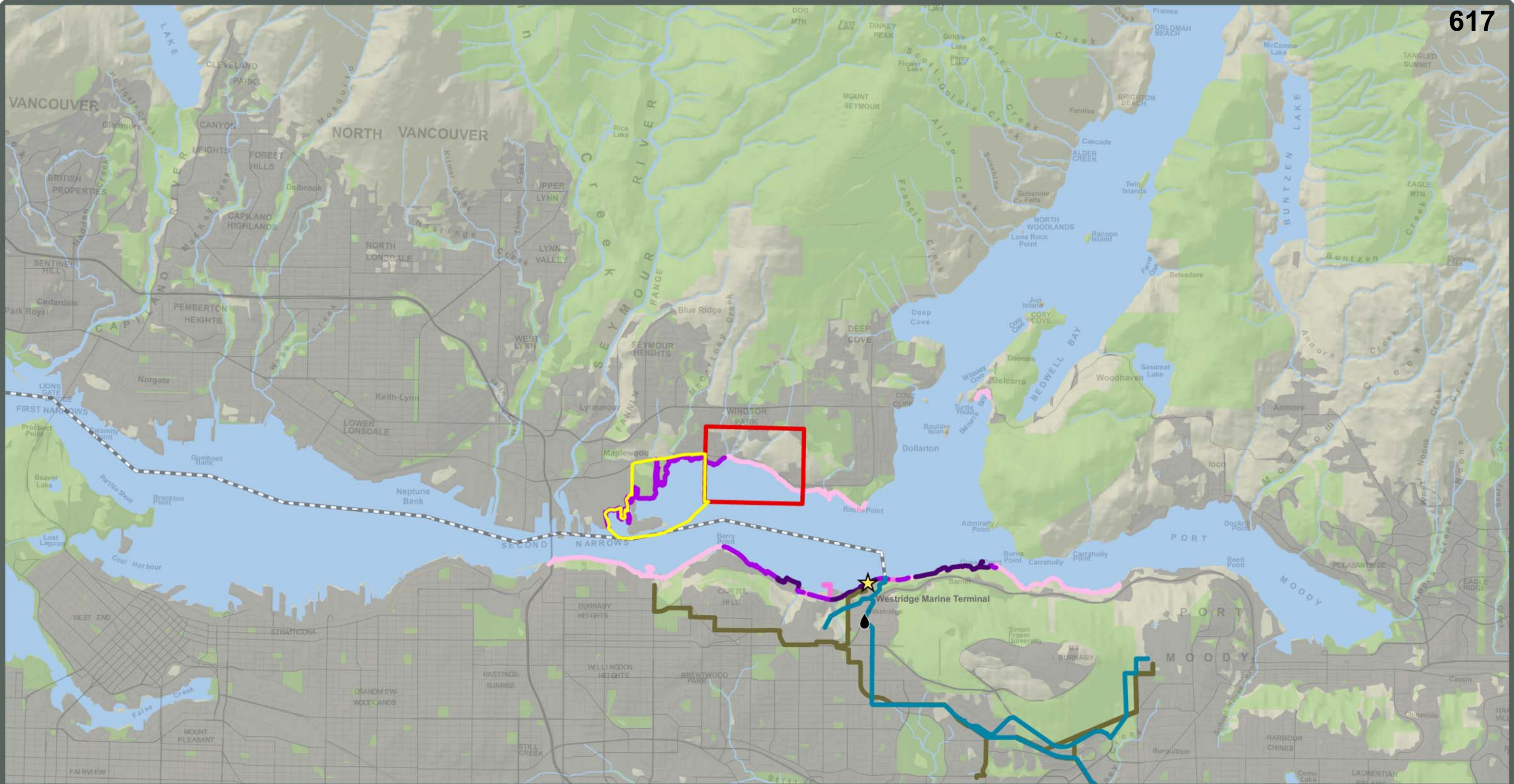
This is Exhibit "T" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)





**TSLEIL-WAUTUTH NATION**  
**BURRARD INLET**  
**MAP 28: 2007 WESTRIDGE**  
**OIL SPILL IN BURNABY**

**Legend**

- ★ Westridge Marine Terminal
- 2007 Westridge Oil Spill Location
- Tanker Route

**KMC Existing Infrastructure**

- Trans Mountain System
- Jet Fuel System

**Stranded Oil Location\***

- Heavy
- Moderate
- Light
- Very Light
- Tsleil-Waututh Nation Reserve

- Maplewood Flats
- Greenspace
- Developed Area

\* Digitized from Kinder Morgan's Trans Mountain NEB Facilities Application.

Map Scale: 1:30,000

Projection: UTM, NAD 83, Zone 10

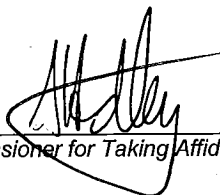
0 0.75 1.5 3 Kilometers



This map is a living document and is intended to be amended and refined over time. It is not an expression of the location of Tsleil-Waututh aboriginal title, rights, or interests. The data used to produce this map originate from many sources and are presented without prejudice. This map is the property of the Tsleil-Waututh Nation and may not be reproduced without written permission. Sources of spatial data for this map include Tsleil-Waututh Nation, Kinder Morgan Canada, BC Government, Government of Canada, Integrated Cadastral Information Society, Metro Vancouver. Map produced May 2015 by the Tsleil-Waututh Nation.



This is Exhibit "U" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015

A handwritten signature in black ink, appearing to be "M. J. Kelly", is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

**BAND COUNCIL RESOLUTION  
RESOLUTION DE CONSEIL DE BANDE**

Chronological no. – N° consecutive  
2015-05-21  
File reference no. – N° de référence du dossier  
BCR 15-16-013

NOTE: The words "from our band funds" "capital" or "revenue" whichever is the case, must appear in all resolutions requesting expenditures from band funds.  
NOTA: Les mots "des fonds de notre bande" "capital" ou "revenue" selon les cas doivent paraître dans tous les résolutions portant sur des dépenses à même les fonds des bandes.  
Cash free balance

The council of the **TSLEIL-WAUTUTH NATION**  
Le conseil de

Date of duly convened meeting **21 / 05 / 2015** Province  
Date de l'assemblée dûment convoquée **B.C.**

Capital account \$ \_\_\_\_\_  
Compte capital  
Revenue account \$ \_\_\_\_\_  
Compte revenu

**DO HEREBY RESOLVE:  
DÉCIDE PAR LES PRÉSENTES:**

Resolution in respect of Tsleil-Waututh Nation's Stewardship Policy decision about the Trans Mountain Pipeline and Tanker Expansion Proposal

**Whereas:**

- We are the People of Burrard Inlet and we have occupied, governed, and acted as stewards of our territory since time out of mind;
- We have a sacred, legal obligation to protect, defend, and steward the water, land, air, and resources in our territory;
- Our stewardship obligation includes the responsibility to maintain and restore conditions to provide and allow for the environmental, cultural, spiritual, and economic foundation for our Nation and community to continue to thrive;
- The Tsleil-Waututh Nation, along with other Coast Salish Nations, signed the International Treaty to Protect the Salish Sea which, among other things, affirms that our ancestral laws place upon us the sacred responsibility to protect the Salish Sea and requires us to take all lawful actions necessary to protect the Salish Sea;
- Cumulative effects of development around Burrard Inlet have, for many years, caused adverse impacts to the area which far exceed what is permissible under our laws;
- We cannot consent to any new development that will significantly contribute to cumulative effects, threaten our Marine Stewardship Program, and deny or further delay re-establishment of our subsistence economy;
- Kinder Morgan Canada has proposed to build and operate the Trans Mountain Pipeline and Tanker Expansion project (TMEX proposal). The TMEX proposal contemplates a tripling of the volume of crude oil which is currently transported on the existing pipeline route. It also contemplates approximately 70% of the oil transported later being shipped from the Westridge Marine Terminal in Burrard Inlet;
- The elements of the TMEX proposal include:
  - (i) 987 km of new pipeline from Edmonton to Burnaby;
  - (ii) an expanded petroleum storage facility in Burnaby;
  - (iii) a new and expanded dock complex at the Terminal;
  - (iv) two new pipelines from the storage facility to the Terminal, and
  - (v) a roughly seven-fold increase in the frequency of tanker departures from Burrard Inlet, from about once a week to once or more each day;
- In BCR 014-01, Chief and Council directed Tsleil-Waututh's Treaty, Lands and Resources Department (TLR) to carry out a technical assessment of the TMEX proposal under our Stewardship Policy;
- TLR hired 6 independent experts to assist it in assessing the potential impacts of the TMEX proposal on Burrard Inlet and Tsleil-Waututh's title, rights, and interests, as well as other risks associated with the TMEX proposal which are relevant to the Tsleil-Waututh Nation;

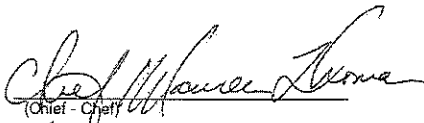
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Quorum: Three

  
(Councillor - Conseiller)

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(Councillor - Conseiller)

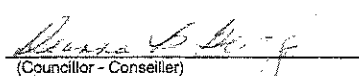
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(Councillor - Conseiller)

  
(Chief - Chef)

  
(Councillor - Conseiller)

  
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(Councillor - Conseiller)

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(Councillor - Conseiller)

FOR DEPARTMENTAL USE ONLY – RÉSERVÉ AU MINISTRE					
Expenditure - Depenses	Authority (Indian Act section) – Autorité (Article sur la loi des Indiens)	Source of Funds Sources des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue - Revenu	Expenditure - Depenses	Authority (Indian Act section) – Autorité (Article sur la loi des Indiens)	Source of Funds Sources des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue - Revenu
Recommending officer – Recommandé par			Recommending officer – Recommandé par		
Signature		Date	Signature		Date
Approving Officer – Approuvé par			Approving Officer – Approuvé par		
Signature		Date	Signature		Date

**BAND COUNCIL RESOLUTION  
RESOLUTION DE CONSEIL DE BANDE**

Chronological no. – N° consecutive  
2015-05-21  
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NOTA: Les mots "des fonds de notre bande" "capital" ou "revenue" selon les cas doivent paraître dans tous les résolutions portant sur des dépenses à même les fonds des bandes.

The council of the **TSLEIL-WAUTUTH NATION**  
Le conseil de  
Date of duly convened meeting **21 / 05 / 2015** Province  
Date de l'assemblée dûment convoquée **B.C.**  
Capital account \$ \_\_\_\_\_  
Compte capital  
Revenue account \$ \_\_\_\_\_  
Compte revenu

**DO HEREBY RESOLVE:  
DÉCIDE PAR LES PRÉSENTES:**


Resolution in respect of Tsleil-Waututh Nation's Stewardship Policy decision about the Trans Mountain Pipeline and Tanker Expansion Proposal

Whereas:

- TLR has since completed its assessment of the TMEX proposal and provided its report to Chief and Council;
- Some of the potential effects and other risks associated with the TMEX proposal identified in the report include the following:
  - o The likelihood of oil spills in Burrard Inlet will increase if the TMEX proposal is implemented, and because spilled oil cannot be cleaned up completely, the consequences in such circumstances will be dire for sensitive sites, habitat, and species, and in turn for the Tsleil-Waututh subsistence economy, cultural activities, and contemporary economy;
  - o Any delay in spilled oil cleanup response will decrease the total volume of oil which may be cleaned up significantly, and in turn increase the negative effects and consequences;
  - o The direct effects of marine shipping are likely to add to the effects and consequences of spilled oil, which in turn will further amplify the negative effects of the TMEX proposal on Tsleil-Waututh's title, rights, and interests;
  - o The effect of the TMEX proposal on Tsleil-Waututh cultural activities is as large as if not larger than its effect on natural resources;
  - o The Tsleil-Waututh Nation cannot accept the increased risks, effects, and consequences of even another small incident like the 2007 Westridge or 2015 MV Marathassa oil spills, let alone a worst-case spill;
  - o Implementation of the TMEX proposal will 1) slow or deny achievement of the objectives of our Marine Stewardship Program and 2) violate Tsleil-Waututh law because it will undermine our stewardship obligations;
  - TLR also concludes in its report that the TMEX proposal:
    - o has the potential to deprive past, current, and future generations of Tsleil-Waututh peoples of control and benefit of the water, land, air, and resources in our territory;
    - o does not represent the best use of our territory and its water, land, air, and resources to satisfy the needs of our ancestors, and the needs of present and future generations; and
    - o fails the first lens test of the Stewardship Policy;
  - TLR has recommended that Chief and Council continue to withhold Tsleil-Waututh Nation's support for the TMEX proposal;

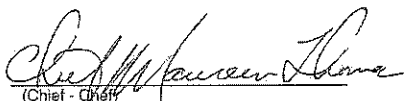
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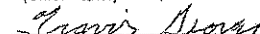
Quorum: Three

  
(Councillor - Conseiller)

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(Councillor - Conseiller)


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(Councillor - Conseiller)

  
(Chief - Chef)

  
(Councillor - Conseiller)

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(Councillor - Conseiller)

FOR DEPARTMENTAL USE ONLY – RÉSERVÉ AU MINISTRE					
Expenditure - Dépenses	Authority (Indian Act section) – Autorité (Article sur la loi des Indiens)	Source of Funds Sources des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue - Revenu	Expenditure - Dépenses	Authority (Indian Act section) – Autorité (Article sur la loi des Indiens)	Source of Funds Sources des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue - Revenu
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Signature _____ Date _____			Signature _____ Date _____		
Approving Officer – Approuvé par			Approving Officer – Approuvé par		
Signature _____ Date _____			Signature _____ Date _____		

**BAND COUNCIL RESOLUTION  
RÉSOLUTION DE CONSEIL DE BANDE**

Chronological no. – N° consecutive  
2015-05-21  
File reference no. – N° de référence du dossier  
BCR 15-16-013

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NOTA: Les mots "des fonds de notre bande" "capital" ou "revenue" selon les cas doivent paraître dans tous les résolutions portant sur des dépenses à même les fonds des bandes.

The council of the TSLEIL-WAUTUTH NATION  
Le conseil de

Date of duly convened meeting 21 / 05 / 2015  
Date de l'assemblée dument convoquée

Province  
B.C.

Capital account  
Compte capital \$ \_\_\_\_\_

Revenue account  
Compte revenu \$ \_\_\_\_\_

**DO HEREBY RESOLVE:  
DÉCIDE PAR LES PRÉSENTES:**

Resolution in respect of Tsleil-Waututh Nation's Stewardship Policy decision about the Trans Mountain Pipeline and Tanker Expansion Proposal

NOW THEREFORE TSLEIL-WAUTUTH NATION, AT A DULY CONVENED BAND COUNCIL MEETING AT WHICH QUORUM IS PRESENT, HEREBY RESOLVES THAT:

1. The conclusions reached by TLR in the report about the potential for the TMEX proposal to cause adverse impacts in Burrard Inlet and on Tsleil-Waututh's title, rights, and interests are hereby accepted and adopted.
2. Because the TMEX proposal fails the first lens test of the Stewardship Policy:
  - (a) Kinder Morgan Canada shall not be granted the legal authority under Tsleil-Waututh law for the TMEX proposal to proceed in Tsleil-Waututh territory; and
  - (b) Tsleil-Waututh Nation does not consent or authorize the TMEX proposal to proceed in Tsleil-Waututh territory.
3. TLR is directed to inform Kinder Morgan Canada, British Columbia, and Canada of items 1-2 above, and to request a meeting with Canada to (i) advise of Tsleil-Waututh's decision in relation to the TMEX proposal, and (ii) offer to engage in good faith discussions and/or consultation regarding our decision.
4. TLR is directed to take all lawful means necessary to ensure that Tsleil-Waututh's decision in relation to the TMEX proposal is recognized, respected, and enforced

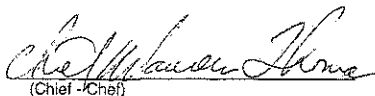
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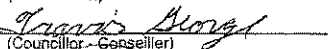
Quorum:  
Three

  
(Councillor - Conseiller)

(Councillor - Conseiller)

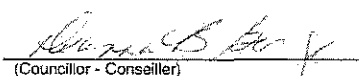
(Councillor - Conseiller)

  
(Chief - Chef)

  
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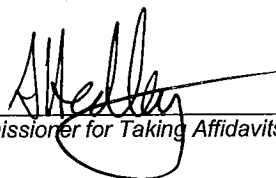
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(Councillor - Conseiller)

FOR DEPARTMENTAL USE ONLY – RÉSERVÉ AU MINISTRE					
Expenditure - Dépenses	Authority (Indian Act section) – Autorité (Article sur la loi des Indiens)	Source of Funds Sources des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue - Revenu	Expenditure - Dépenses	Authority (Indian Act section) – Autorité (Article sur la loi des Indiens)	Source of Funds Sources des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue - Revenu
Recommending officer – Recommandé par			Recommending officer – Recommandé par		
Signature		Date	Signature		Date
Approving Officer – Approuvé par			Approving Officer – Approuvé par		
Signature		Date	Signature		Date



This is Exhibit "V" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015

A handwritten signature in black ink, appearing to be "M. Kelly", is written over a horizontal line. The signature is stylized with a large, circular flourish at the bottom.

Commissioner for Taking Affidavits (or as may be)



## TSLEIL-WAUTUTH NATION

*People of the Inlet*



November 5, 2012

Honourable Joe Oliver,  
Minister of Natural Resources and  
Minister Responsible for the National Energy Board,  
House of Commons  
Ottawa, Ontario  
K1A 0A6

Dear Minister Oliver;

**Re: National Energy Board and the proposed Kinder Morgan Tolling Application**

Tsleil-Waututh Nation holds Aboriginal rights and title to our traditional territory, including the Burrard Inlet, Vancouver, the location of the Kinder Morgan Westridge Terminal.

Kinder Morgan proposes to twin their existing Trans Mountain Pipeline to expand the export of crude oil from its present level of approximately 350,000 barrels per day to 750,000 barrels per day.

The National Energy Board (NEB) has agreed to conduct a Tolling Application hearing on Kinder Morgan's proposal in February 2013, in advance of any application by Kinder Morgan for facilities expansion. It is clear that Kinder Morgan's intent is to build a financial and commercial justification for its Trans Mountain Expansion Project by using a regulated open season and toll. The NEB's complacency in agreeing to this irregular application process allows fundamental economic aspects of the facilities expansion to be considered in isolation of the overall project.

We disagree with the scheduling of this hearing and believe that it may be prejudicial to the consideration of the actual construction and operation of an expanded project. Despite our disagreement with the process, we applied for Intervenor status to make our case within the process parameters set out by the NEB. Unfortunately, the NEB denied our request to be heard.

We strongly disagree with the NEB decision to not grant our Nation Intervenor status. As the Aboriginal Government at the terminus of the Trans Mountain pipeline system, Tsleil-Waututh Nation has a direct interest in the production, transportation and marketing of petroleum products to be carried on the Trans Mountain pipeline system and stand to be impacted by the Board's decision.

Tsleil-Waututh Nation is a directly-affected Government and our exclusion from this decision-making process is contrary to Aboriginal interests. Our Nation cannot and should not be treated as a mere stakeholder.

The National Energy Board alleges that they cannot maintain quasi-judicial objectivity and engage with First Nations in a bilateral process of consultation. In their July 2008 publication "Consideration of Aboriginal Concerns in National Energy Board Decisions" they state that they rely upon project proponents to carry out the Crown's responsibility to share information, identify impacts and propose mitigation. This policy is totally inconsistent with what we understand is the obligation of the Crown and Crown agencies.

The NEB cannot delegate the Crown's responsibility for consultation to a project proponent. This is contrary to the application of relevant judicial decisions and in effect relegates First Nations to the status of stakeholders, as opposed to self-governing entities holding constitutionally protected rights and titles.

If, as the NEB alleges, it cannot engage First Nations on a government-to-government basis and maintain its quasi-judicial objectivity, then it is incumbent upon them to establish a parallel process that will ensure that direct input from First Nations is considered throughout the NEB decision-making process.

If establishing a parallel NEB process for Aboriginal consultation is deemed to be inconsistent with their quasi-judicial status then it is incumbent upon you in your capacity as Minister of Natural Resources to establish such a process.

I urge you, Minister Oliver, to take action on this important process issue for the protection of our constitutionally guaranteed rights. This Kinder Morgan project is only one of a number of energy projects in British Columbia that have the potential to impact Aboriginal rights and titles. We need to get the process of engagement right or each project will encounter the same challenges.

Should you have any questions, please contact Evan Stewart at 778-231-7680 or via email at [estewart@twnation.ca](mailto:estewart@twnation.ca).

Sincerely,

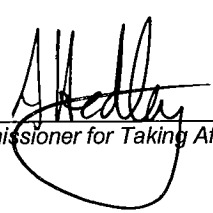


Out-same

Chief Justin George

cc: National Chief Shawn Atleo, Assembly of First Nations  
Grand Chief Stewart Phillip, Union of BC Indian Chiefs  
Regional Chief Jody Wilson-Raybould, BC Assembly of First Nations  
Honourable Shirley Bond, M.L.A., Attorney General of BC  
Honourable Rich Coleman, M.L.A., Minister of Energy, Mines and Natural Gas  
Kennedy Stewart, M.P. Burnaby-Douglas  
Mayor Derek Corrigan, Burnaby  
Mayor Gregor Robertson, Vancouver

This is Exhibit "W" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)

Minister  
of Natural Resources



Ministre  
des Ressources naturelles

Ottawa, Canada K1A 0E4

RECEIVED

JAN 24 2013

JAN 18 2013

Chief Justin George (Qut-same)  
Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, British Columbia V7H 3A8

Dear Chief George:

Thank you for your letter of November 5, 2012, regarding the decision of the National Energy Board (the Board) not to grant intervenor status to the Tsleil-Waututh Nation in Kinder Morgan's Trans Mountain Pipeline toll hearing.

The Board is an independent, arms-length, quasi-judicial regulator, and it would be inappropriate for me to intervene in this decision.

I understand, also, that Kinder Morgan has launched a broad-based engagement process that includes more than 80 Aboriginal groups. I strongly encourage you to participate in any opportunity to discuss the project with Kinder Morgan.

As for the Crown's duty to consult, the Crown would rely, to the extent possible, on the Board's review of the facilities application in fulfilling any Crown duty to consult Aboriginal groups. The Board, in line with its obligations under the *National Energy Board Act*, would consider any issues and concerns raised by Aboriginal groups. The Crown would monitor the adequacy or sufficiency of Aboriginal consultation efforts throughout the Board's process. I urge the Tsleil-Waututh Nation to participate in any eventual facilities review process by providing information and by bringing concerns or unresolved issues to the attention of Kinder Morgan and the Board.

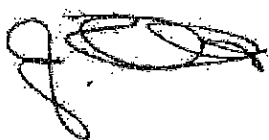
Ultimately, a recommendation of the Board on a facilities expansion will be based on evidence filed by the proponent and by interested parties. The Board cannot engage in one-on-one discussions outside of its process, but takes steps to ensure that it has sufficient

- 2 -

evidence prior to making its decision, including evidence of the impact that the proposed project could have on Aboriginal peoples. In this regard, the Board expects companies to engage in consultations as early as possible when planning a project.

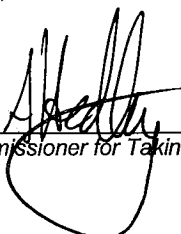
Again, thank you for writing.

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'Joe Oliver', written in a cursive style.

The Honourable Joe Oliver, P.C., M.P.

This is Exhibit "X" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)

National Energy  
BoardOffice national  
de l'énergie

File OF-Fac-Oil-T260-2013-03 01  
12 August 2013

Chief Maureen Thomas  
Tseil-Waututh Nation (Burrard)  
3075 Takaya Drive  
North Vancouver, BC V7H 2V6  
Facsimile 604-929-4714

Dear Chief Thomas:

### **Trans Mountain Expansion Project (the Project)**

The National Energy Board (Board) is a federal regulator that regulates pipelines across Canada, specifically pipelines that cross provincial boundaries and the border into the United States. The Board is contacting you since your community may be impacted by a pipeline project for which the Board has received preliminary filings.

On 23 May 2013, Trans Mountain Pipeline ULC (Trans Mountain) filed a Project Description with the Board regarding a proposed expansion of its oil pipeline system in Alberta and British Columbia. Attached to this letter you will find a summary of the Project, Trans Mountain contact information, a project map, the Participant Funding notice, and a letter from Natural Resources Canada (NRCan) explaining the federal Crown's process and approach to Aboriginal consultation with respect to the proposed Project.

After receipt of an application and ensuring it is complete, the Board will schedule a public hearing on this Project. One purpose of the hearing process will be to test the Project information (referred to as evidence in the hearing), which will have been filed with the Board. The information will be publicly available on our website at <http://www.neb-one.gc.ca> and can be accessed by clicking on "View" under the heading "Regulatory Documents". This information will include details of Trans Mountain's Aboriginal consultation program and the outcomes of that program. It will also include information from Trans Mountain regarding the impacts the Project may have on Aboriginal interests and any proposed mitigation measures.

Another purpose of the hearing process will be to allow persons who are directly affected by the Project, or have relevant information or expertise relating to the Project, to express their views. These could include views in favour or against the Project or views on how the Project may impact Aboriginal communities, the use of traditional territory and any potential or established Treaty or Aboriginal rights.

.../2

<sup>1</sup> To see the Project Description filed by Trans Mountain, enter the Document ID number Filing A51996 in the yellow "Looking for filing?" box and click on "Go".

444 Seventh Avenue SW  
Calgary, Alberta T2P 0X8

444, Septième Avenue S.-O.  
Calgary (Alberta) T2P 0X8

**Canada**

Telephone/Téléphone : 403-292-4800  
Facsimile/Télécopieur : 403-292-5503  
<http://www.neb-one.gc.ca>  
Telephone/Téléphone : 1-800-899-1265  
Facsimile/Télécopieur : 1-877-288-8803



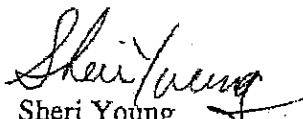
-2-

The Board will make a decision of whether to approve the Project by weighing both the positive and negative impacts of the Project. Should the Board approve the Project, it may impose conditions to ensure any negative impacts will be mitigated or minimized.

The Board has established a Participant Funding Program to facilitate participation in the Board's regulatory process for oral facility hearings. For your information, we have attached a copy of the Participant Funding Program Notice. You can also find the Participant Funding Program Guide online at <http://www.neb-one.gc.ca>.

If you have any questions about the process, the Participant Funding Program, or how to participate in the hearing, staff at the Board would be pleased to provide such information over the phone or at a meeting in your community. Lisa Staub, a Board Aboriginal Engagement Specialist, will contact you in the next week or so to see if you are interested in such information. Alternatively, you may contact her directly through the Board's toll free number at 1-800-899-1265 or by e-mail at [lisa.staub@neb-one.gc.ca](mailto:lisa.staub@neb-one.gc.ca).

Yours truly,

  
 Sheri Young  
 Secretary of the Board

Attachments: Project Summary, Map, Participant Funding Notice, NRCan letter

c.c. Mr. Terence Hubbard, Director General, Major Projects Management Office, Natural Resources Canada, Facsimile 613-995-7555, E-mail [terence.hubbard@nrcan-rncan.gc.ca](mailto:terence.hubbard@nrcan-rncan.gc.ca)

Mr. Shane Morris, Director, Major Projects Management Office, Natural Resources Canada, Facsimile 613-995-7555, E-mail [Shane.Morris@nrcan-rncan.gc.ca](mailto:Shane.Morris@nrcan-rncan.gc.ca)

Mr. Howard Heffler, Project Lead, Trans Mountain Expansion Project, Kinder Morgan, Facsimile 403-514-6622, E-mail [Howard\\_Heffler@kindermorgan.com](mailto:Howard_Heffler@kindermorgan.com)

Attachment 1 to Board Letter  
dated 12 August 2013  
File OF-Fac-Oil-T260-2013-03 01  
Page 1 of 1

## **Trans Mountain Expansion Project Project Summary**

The Trans Mountain Expansion Project (Project) would expand the existing Trans Mountain pipeline system in Alberta and British Columbia and include approximately 981 km of new pipeline; new and modified facilities, such as pump stations and tanks, and the reactivation of 193 km of existing pipeline between Edmonton and Burnaby. There would also be an expansion of the Westridge Marine Terminal.

If you would like to discuss details or require additional information about the Project, the National Energy Board (Board) encourages you to contact the applicant, directly at:

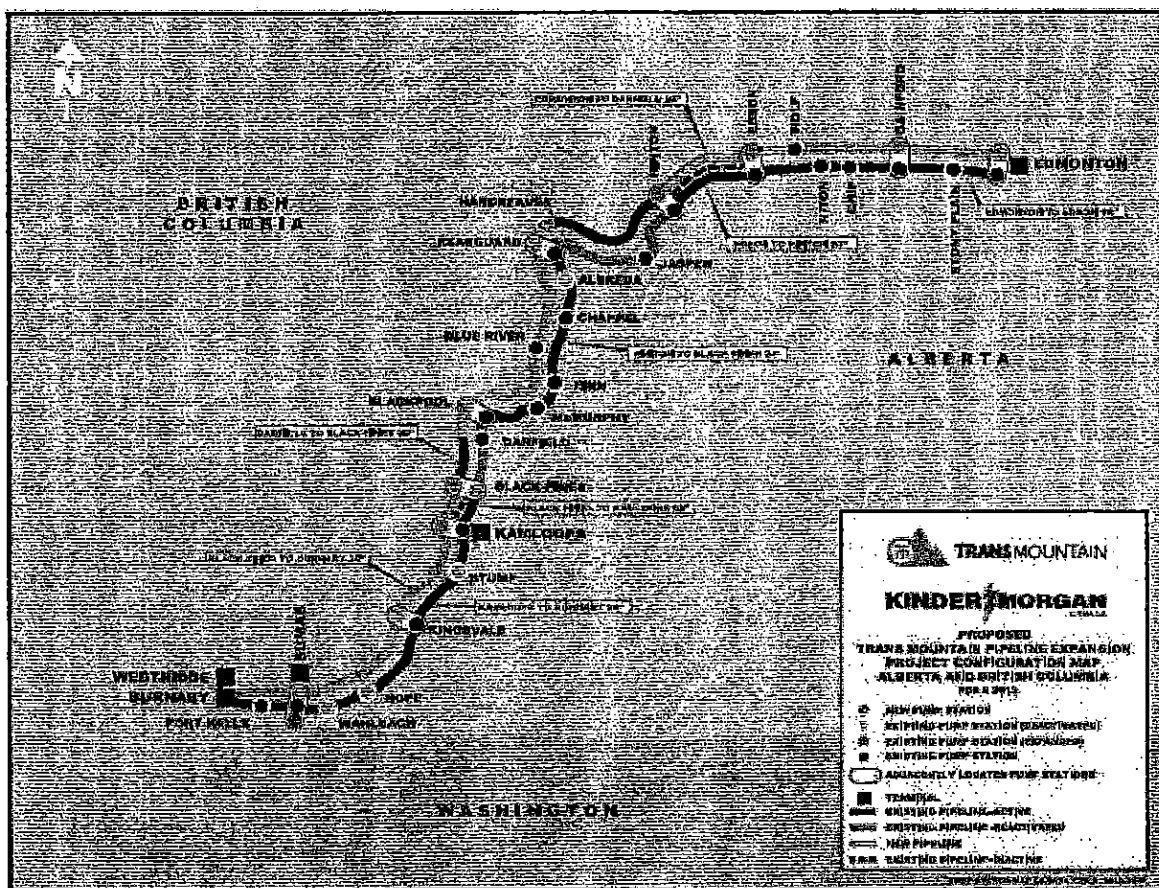
Mr. Howard Heffler  
Project Lead Regulatory and Land  
Phone (403) 514-6448

E-mail [Howard\\_Heffler@kindermorgan.com](mailto:Howard_Heffler@kindermorgan.com)

If you would like a copy of the Project Description, it can be obtained from Howard Heffler. It can also be found on the Board website (<http://www.neb-one.gc.ca>) by clicking on "View" under the heading "Regulatory Documents", entering the Document ID number Filing A51996 in the yellow "Looking for filing?" box, and clicking on "Go".

Attachment 2 to Board Letter  
dated 12 August 2013  
File OF-Fac-Oil-T260-2013-03 01  
Page 1 of 1

## Trans Mountain Expansion Project Map



Attachment 3 to Board Letter  
dated 12 August 2013  
File OF-Fac-Oil-T260-2013-03 01  
Page 1 of 2

## Trans Mountain Expansion Project Participant Funding Notice



National Energy Board  
Conseil national  
de l'énergie

# NewsRelease

444 Seventh Avenue SW, Calgary, Alberta T2P 0K0

For immediate release  
22 July 2013

### Funding Available to Participate in the NEB's Regulatory Process Regarding the Trans Mountain Expansion Project

**CALGARY** - The National Energy Board (NEB, or the Board) is making funding available under its Participant Funding Program to assist landowners, Aboriginal groups, incorporated non-industry, not-for-profit organizations, and other interested persons to participate in the regulatory process of the proposed Trans Mountain Expansion Project.

The project would expand the existing Trans Mountain pipeline system in Alberta and British Columbia and include approximately 981 km of new pipeline, new and modified facilities, such as pump stations and tanks, and the reactivation of 193 km of existing pipeline between Edmonton and Burnaby. There would also be an expansion of the Westridge Marine Terminal. The current project description can be found on the NEB website at [www.neb-one.gc.ca](http://www.neb-one.gc.ca).

Funding is being made available to help those interested review and comment on a project application to be submitted by Trans Mountain Pipeline ULC. To receive funding, interested persons will have to apply for and be accepted as an intervenor in the NEB's regulatory process for this project. Funding must be used to prepare for and participate in the hearing process, which will be announced by the Board at a later date.

A funding review committee, Independent of the regulatory process, will consider all applications for funding and make recommendations on the allocation of funds.

**Funding applications should be submitted as soon as possible. Funding will only be awarded for hearing related activities conducted after your application has been approved. Please review the *Participant Funding Program Guide* to determine when and how to apply for funding and what funding will cover.**

A List of Issues Identifying the topics the Board will consider during the review process will soon be available on the NEB website and a funding envelope will also be announced. Those who are interested in applying for Participant Funding are encouraged to review information on the proposed project.

Interested persons should also review the Application for Funding Form and the Contribution Agreement available on the Board's website ([www.neb-one.gc.ca](http://www.neb-one.gc.ca)) under Participant Funding Program.

Attachment 3 to Board Letter  
dated 12 August 2013  
File OF-Fac-Oil-T260-2013-03 01  
Page 2 of 2

**Trans Mountain Expansion Project  
Participant Funding Notice (continued)**

Please visit the NEB website for general information about the hearing process and how you can participate effectively. To access the information, go to [www.neb-one.gc.ca](http://www.neb-one.gc.ca), select Hearings and Information Sessions, and then click on Participate in a Public Hearing.

*The National Energy Board is an independent federal regulator of several parts of Canada's energy industry with the safety of Canadians and protection of the environment as its top priority. Its purpose is to regulate pipelines, energy development and trade in the Canadian public interest. For more information on the NEB and its mandate, please visit [www.neb-one.gc.ca](http://www.neb-one.gc.ca).*

Trans Mountain Expansion Project  
Federal Crown Letter

Attachment 4 to Board Letter  
dated 12 August 2013

File OF-Fac-Oil-T260-2013-03 01



Natural Resources    Ressources naturelles  
Canada                    Canada

Page 1 of 2

Dear Chief, Council, or Aboriginal representative:

The purpose of this letter is to provide you with information on the federal Crown's process for Aboriginal Crown consultation with respect to Trans Mountain Pipeline ULC's proposed Trans Mountain Expansion Project (the Project). The proposed Project is subject to a review under the *National Energy Board Act* (NEB Act) and the *Canadian Environmental Assessment Act, 2012* (if applicable). Following receipt of an Application, the federal regulatory review process for the project will be managed through the Government's Major Projects Management Office (MPMO) Initiative.

The Crown will rely on the National Energy Board's (NEB) public hearing process, to the extent possible, to fulfil any Crown duty to consult Aboriginal groups for the proposed Project. Through the NEB process, the NEB will consider issues and concerns raised by Aboriginal groups. The Crown will utilise the NEB process to identify, consider and address the potential adverse impacts of the proposed Project on established or potential Aboriginal and treaty rights through the following steps:

- 1) As part of its enhanced Aboriginal engagement process initiated after receiving the Project Description, the NEB contacts potentially affected Aboriginal groups by letter as well as by telephone, to introduce the federal review process for the proposed Project. In addition, the NEB offers to meet Aboriginal groups to provide further information on the process and how to participate.
- 2) Aboriginal groups that have project-related concerns are encouraged to discuss them with Trans Mountain Pipeline ULC. Unresolved concerns should be conveyed to the NEB, either orally or in writing, through the NEB public hearing process. To learn more about the proposed Project, Trans Mountain Pipeline ULC's Project Description may be accessed by going to the NEB website ([www.neb-one.gc.ca](http://www.neb-one.gc.ca)) and clicking on Regulatory Documents "View" on the right-hand side. On the next screen, enter A51996 in the yellow box situated at the bottom on the left-hand side.
- 3) Following receipt of the Application from the proponent, and subject to its determination that the Application is complete, the NEB will schedule a hearing for the project review. The NEB will provide information about the public hearing process, including options for those wishing to participate. To facilitate participation in the NEB process, all regulatory documents pertaining to the proposed project will be publicly available on the NEB website.
- 4) Other federal departments that determine that they have a regulatory responsibility for the proposed Project will also participate in the NEB process to further understand the concerns Aboriginal groups may have regarding the possible effects of their federal regulatory decisions on potential or established Aboriginal or treaty rights.

Trans Mountain Expansion Project  
Federal Crown Letter

Attachment 4 to Board Letter  
dated 12 August 2013  
File OF-Fac-Oil-T260-2013-03 01  
Page 2 of 2

- 5) Federal authorizations for the proposed project will only be issued once the Crown determines that its consultation obligations with respect to each of these authorizations have been discharged.


If you wish to obtain more information regarding the MPMO Initiative in general or on the overall Crown approach to consultation for projects subject to NEB reviews, please refer to the MPMO's website at [www.mpmo.gc.ca](http://www.mpmo.gc.ca) and/or contact me at 613-947-9265 or [terence.hubbard@nrcan-mcan.gc.ca](mailto:terence.hubbard@nrcan-mcan.gc.ca) or Scott Clausen, Senior Policy Advisor with the MPMO, at 613-995-7506 or [scott.clausen@nrcan-mcan.gc.ca](mailto:scott.clausen@nrcan-mcan.gc.ca). Should you have any questions related to the NEB hearing process, please contact Lisa Staub at 1-800-899-1285 (NEB toll-free) or email [Lisa.Staub@neb-one.gc.ca](mailto:Lisa.Staub@neb-one.gc.ca).

Sincerely,



Terence Hubbard  
Director General, Policy  
Major Projects Management Office

This is Exhibit "Y" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)





# TSLEIL-WAUTUTH NATION

*Children of TAKaya – Wolf Clan*

**BURRARD INDIAN BAND**



Hon. Leona Aglukkaq  
Minister, Environment Canada  
10, rue Wellington  
Gatineau, Quebec K1A 0H3  
Fax : 819-953-0279

Hon. Joe Oliver  
Minister, Natural Resources Canada  
580 Booth Street, 21st Floor, Room: C7-1  
Ottawa, Ontario K1A 0E4  
Fax : 613-996-4516

March 5, 2014

Dear Ministers:

**Re: Request for Immediate Government-to-Government Consultation with Tsleil-Waututh Nation regarding the Trans Mountain Expansion Project**

The proposed Kinder Morgan Trans Mountain Expansion Project (the "Project") terminates in the heart of Tsleil-Waututh territory and presents the potential for significant, negative effects on our constitutionally protected Aboriginal title and rights. I am writing to you as the ministers responsible for the *Canadian Environmental Assessment Act, 2012* ("CEAA, 2012") and the *National Energy Board Act* ("NEBA") to request a meeting with you in the next three weeks in Tsleil-Waututh territory to initiate government-to-government consultation in relation to the Project.

**1.0 The Crown has a deep duty of consultation with respect to the Project**

The Tsleil-Waututh Nation ("TWN") holds unextinguished Aboriginal title to, and Aboriginal rights and other interests associated with, the land, water, and foreshore that will be directly impacted by the Project. If approved, the Project will result in: (i) construction and operation of a new pipeline that crosses through and ends in Eastern Burrard Inlet in the heart of our traditional territory; (ii) a tripling, from 300,000 to 890,000 bpd, of the volume of oil being shipped on pipelines through our territory; (iii) an increase in the number of very large ships, from 60 to 408 vessels per year, travelling into and away from the Westridge Terminal in Eastern Burrard Inlet; and (iv) an increased risk of more frequent and larger oil spills in our territory, as well as coastal erosion and other impacts resulting from routine operations of the Project, all of which have the potential to adversely impact marine and terrestrial ecosystems that are the source of TWN natural and cultural resources, archaeological and sacred sites, human health, and our title, rights and interests.

In our traditional dialect of Halkomelem, the name Tsleil-Waututh means "People of the Inlet." For millennia, our ancestors exclusively occupied Eastern Burrard Inlet. They cared for the land and harvested resources as part of our distinct culture. Our oral history establishes and archaeological and other documentary evidence confirms that our ancestors lived in and harvested resources from Burrard Inlet and the watersheds flowing into it from the time of the "First Ancestors" through to the present day. Past and present, the Inlet has given us sustenance—economically, socially and spiritually. We have experienced first hand the demise of our food and our economy due to the impacts of oil on our lands and waters. Members of TWN continue to live in, care for, and harvest resources in Burrard Inlet and throughout our traditional territory. Much of our population of

approximately 500 people today lives in our primary community of Sleil-Waututh (IR #3) on the north shore of Eastern Burrard Inlet. Our community is a short paddle across the water from the Westridge Marine Terminal. A map showing our traditional territory, the location of our community, the right-of-way for the proposed Project and the Westridge Marine Terminal is attached as Appendix A.

The Crown has had notice since at least 1994, when the nation was accepted into the BC Treaty process, of the lands and waters over which TWN's asserts Aboriginal title. The strength of TWN's title and rights evidence and the significant, specific negative impacts potentially arising from the Project on TWN title and rights trigger the Crown's deepest duty of consultation.

## **2.0 The federal Crown's position on consultation is legally deficient and fails to uphold the honour of the Crown**

In Minister Oliver's January 18, 2013 letter to TWN, he states that the Crown intends to rely, to the extent possible, on the National Energy Board's (the "NEB") review of Kinder Morgan's facilities application to satisfy its duty to consult TWN. I am informed by TWN's lawyers that the approach that he suggests is legally deficient and fails to uphold the honour of the Crown for the following reasons:

1. The duty to honourably consult TWN arose from the very earliest point that the Crown became aware that Kinder Morgan intended to apply for a certificate under section 52 of the *NEBA* and contemplated the process for regulatory review and environmental assessment of the Project. The Crown has a duty to consult with TWN in designing the overall framework for consultation and environmental assessment of the Project that is upstream of the NEB's role, and to accommodate our traditional laws and decision-making rights in doing so. To date this has not occurred.
2. The NEB cannot consult with TWN or delegate procedural aspects of the Crown's duty to Kinder Morgan in relation to its facilities application because the *NEBA* does not empower the NEB to consult with Aboriginal peoples. The NEB has described itself as a "quasi-judicial tribunal [which] operates much like a court", and has explained that the rules of natural justice prevent it from engaging in one-on-one discussions with Aboriginal communities, which are a hallmark of meaningful consultation. Minister Oliver expressly recognized this fundamental constraint in his January 18, 2013 letter.
3. The NEB cannot address many of TWN's concerns because it does not have the authority to:
  - (a) design and implement a decision-making process for the Project that accommodates TWN decision-making and governance rights;
  - (b) alter timelines for environmental assessment, regulatory review, and decision-making to accommodate TWN's rights and interests;

This is prejudicial to our rights and interests because the rigid regulatory and environmental assessment timelines imposed under the *NEBA* and *CEAA, 2012* and a lack of process flexibility will not provide TWN with sufficient time to:

- (i) evaluate how the Project will adversely impact our title, rights and interests;
- (ii) gather and provide our traditional ecological knowledge to the NEB and the Crown to inform the decision-making process in relation to the Project in a way that respects our customs, practices, and traditions;

- (iii) have meaningful dialogue with the Crown about how our rights can be accommodated;
  - (iv) meaningfully participate in the decision-making process in relation to the Project;
  - (c) ensure that Crown decisions/authorizations/approvals for the Project do not prejudice ongoing treaty negotiations with the provincial and federal Crowns;
  - (d) impose conditions on parties other than the proponent to address the potential impacts of the Project, in conjunction with other past, present, and reasonably foreseeable development that may adversely affect TWN's rights and interests; and,
  - (e) grant remedies for the historic and ongoing infringement of TWN's Aboriginal title and rights associated with construction and operation of the existing Trans Mountain pipeline, facilities, and tankers.
4. A public hearing such as an NEB hearing is not a substitute for formal First Nations consultation; direct engagement with First Nations, including TWN is required. More specifically, a public hearing in which the NEB must weigh the benefits and impacts of the Project to the public generally is not well designed to ensure that: (i) TWN's rights and interests are minimally impaired; and (ii) the benefits that TWN will share in if the Project is approved outweigh potential adverse impacts on TWN's specific rights and interests.

The Crown's current approach leaves TWN without a process for meaningful consultation with the Crown. Moreover, our rights are already being prejudiced by decisions that have been made without any consultation:

- the NEB has issued its tolling decision for the Project. TWN was denied intervenor status, and should have been consulted prior to that decision being made. We are concerned that the NEB making a decision about the tolling application before hearing the facilities application has prejudiced our rights and interests;
- the NEB has published a list of issues that will be examined in the hearing, and provided guidance about how Kinder Morgan needs to assess the potential environmental and socio-economic effects of increased marine shipping activities. In particular, we are concerned that the NEB's list excludes consideration of potential effects on TWN's rights and interests arising from upstream and downstream development that will occur as a result of, or be facilitated by, the Project. TWN was not consulted about how excluding these issues may prevent the NEB, and subsequently the Crown, from considering critical issues that will adversely impact TWN's rights and interests;
- Kinder Morgan has already filed its application with the NEB, including environmental studies that may be relied on by the NEB to conduct the *CEAA, 2012* environmental assessment of the Project. We are concerned that decisions may have been made in the absence of consultation with TWN, about the definition of the Project, the scope of factors that must be assessed under s. 19 of *CEAA, 2012*, and other key environmental assessment issues. If these decisions have already been taken without the involvement of TWN, they may result in the NEB, and subsequently the Crown, failing to assess all of the Project's potential environmental effects and the corresponding adverse impacts they will have on our title, rights and interests; and,

- a panel has already been selected to review the Project, without consultation with TWN about the nature, composition and qualifications required to conduct an environmental assessment that appropriately accommodates our knowledge, laws and traditions.

Beyond Minister Oliver's stated intent to rely on the proponent and the NEB facilities review to the extent possible, to date the Crown has provided no information or proposal regarding Crown consultation on the Project. However, we note that to the extent that the Crown may be contemplating such an approach, it would be prejudicial to our rights for the federal Crown to rely solely on the NEB's review of the facilities application and CEAA, 2012 environmental assessment, and then attempt to initiate consultation after the NEB has provided you with a report setting out its recommendations. Our rights will be prejudiced because the NEB will already have made critical decisions that will impact the scope and content of evidence that it considers and which forms the basis of its recommendations about the Project. It would also be very late to begin consultations at that time about issues that the NEB was unable or decided not to consider.

**3.0 We are respectfully requesting that you act now to immediately start government-to-government consultation**

We are seeking to immediately start discussions with you to jointly establish and implement a government-to-government consultation process in relation to all aspects of the Project that respects and accommodates the respective authorities of the Tsleil-Waututh Nation and the Government of Canada. I am therefore requesting a meeting with you in the next three weeks in TWN territory to begin to discuss how we can work together to jointly establish this process.

Finally, we submit that the Crown would be acting unconstitutionally should further procedural or substantive decisions about the Project be made until these government-to-government discussions to jointly establish a framework for consultation and environmental assessment of the project have occurred.

I look forward to hearing back from you by Wednesday, March 26, 2014.

Sincerely,



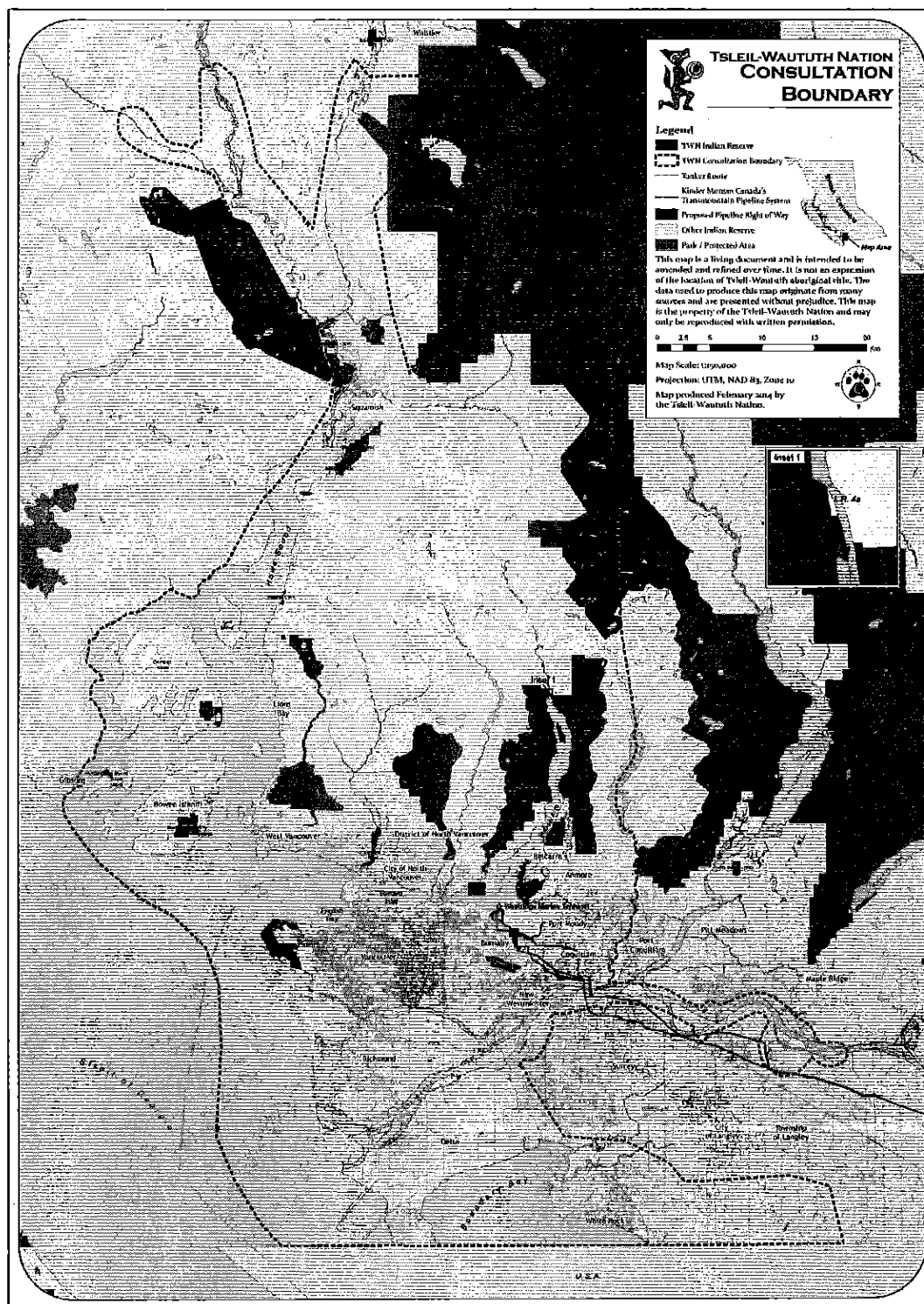
Chief Maureen Thomas,  
Tsleil-Waututh Nation

CC:

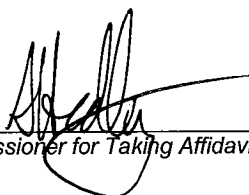
The Rt. Hon. Stephen Harper  
Prime Minister of Canada  
Office of the Prime Minister  
80 Wellington Street  
Ottawa, ON K1A 0A2

Hon. Bernard Valcourt  
Minister, Aboriginal Affairs and Northern Development Canada  
10 Wellington Street  
Gatineau, Quebec K1A 0H4

## Appendix A



This is Exhibit "Z" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015

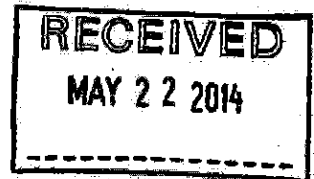
A handwritten signature in black ink, appearing to be "M. J. Smith", is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



Natural Resources  
Canada

Ressources naturelles  
Canada



20 May 2014

Chief Maureen Thomas  
Tseil-Waututh Nation (Burrard)  
3075 Takaya Drive  
North Vancouver, BC V7H 2V6

13-690

CHR

Dear Chief Thomas:

As follow-up to our correspondence of August 12, 2013, the purpose of this additional letter is to clarify how the Crown's duty to consult Aboriginal groups will be exercised for Trans Mountain Pipeline ULC's proposed Trans Mountain Expansion Project that is subject to a regulatory review under the *Canadian Environmental Assessment Act* and the *National Energy Board Act*.

The Government of Canada is committed to meeting its legal duty to consult whenever it contemplates conduct that could adversely affect established or potential Aboriginal or treaty rights. The Government takes its consultation responsibilities very seriously and will take the steps necessary to ensure that its consultations are meaningful and the Crown's legal obligations are discharged honourably.

As noted in the correspondence of August 12, 2013, the Crown will rely on the National Energy Board's (NEB) public hearing process to the extent possible to identify, consider and address the potential adverse impacts of the proposed project on Aboriginal and treaty rights and to fulfil the legal duty to consult. The NEB public hearing process is where the vast majority of Canada's jurisdiction on pipeline projects is administered. The process provides an open, comprehensive and participatory venue for Aboriginal groups and other affected parties to express their concerns and interests related to a proposed project. The NEB is mandated to address such impacts to Aboriginal or treaty rights through the assessment of potential environmental effects and the identification of mitigation and avoidance measures.

As you are likely aware, the NEB recently issued the Hearing Order for the proposed project, which provides a detailed overview of the various steps in the review process, and outlines the various opportunities to participate in the hearing process ([https://docs.neb-one.gc.ca/fetch\\_e.asp?Id=A59503](https://docs.neb-one.gc.ca/fetch_e.asp?Id=A59503)). To further facilitate participation in the NEB process, all regulatory documents pertaining to the proposed project will be publicly available on the NEB website. Aboriginal groups are encouraged to participate in the oral hearings on Aboriginal traditional evidence that will commence in August 2014 and to apply to the dedicated participant funding program that has been put in place to support participation in the NEB process, if you have not already done so.

During the NEB hearing process, the Crown will be tracking issues raised by Aboriginal groups. Matters brought forward will be assessed to determine whether additional consultation obligations may exist. The Crown will be conducting additional consultations, as appropriate,

after the close of the NEB hearing record to ensure that all Aboriginal concerns have been appropriately addressed and the Crown has the necessary information on potential effects on Aboriginal or treaty rights to inform a decision on the project.

Federal departments with regulatory responsibilities for the proposed project will also participate in the NEB process to further understand the concerns Aboriginal groups may have about the possible effects of their regulatory decisions on Aboriginal or treaty rights. Federal authorizations for the proposed project will only be issued once the Crown determines that its consultation obligations with respect to each of these authorizations have been discharged, and that all regulatory requirements have been met.

The Government of Canada also encourages potentially-impacted Aboriginal groups to engage directly with Trans Mountain Pipeline ULC as the project proponent has the ability to make changes to the project to address any specific concerns raised. The proponent is required by the NEB to engage and consult with potentially affected Aboriginal groups to explain the proposed project, and provide an opportunity to discuss any concerns that may need to be addressed before decisions are made. The proponent will submit information on the nature of concerns raised by Aboriginal groups and its efforts to address them through its project design and mitigation measures. Any unresolved concerns should be brought forward through the NEB's hearing process.

NRCAN officials would welcome the opportunity to meet with you in person to discuss the review and consultation process in greater detail, respond to any questions or concerns that you may have at this time, and provide further information on how you can participate in the project review process. An official will be in touch with you in the coming weeks to offer such a meeting. In the meantime, should you have any questions, please contact Joseph Whiteside at 604-666-5141 or [joseph.whiteside@nrcan-rncan.gc.ca](mailto:joseph.whiteside@nrcan-rncan.gc.ca).

Sincerely,

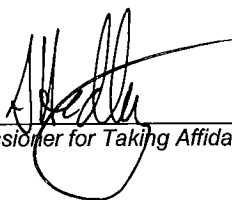


Jim Clarke  
Director General, Operations  
Major Projects Management Office

cc. Joseph Whiteside



This is Exhibit "AA" referred to in the Affidavit of Ernie George affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



May 23, 2014

Hon. Greg Rickford  
Minister, Natural Resources Canada  
580 Booth Street, 21<sup>st</sup> Floor, Room: C7-1  
Ottawa, Ontario K1A 0E4  
EMAIL: [Minister.Ministre@NRCan-RNCan.gc.ca](mailto:Minister.Ministre@NRCan-RNCan.gc.ca)

Dear Minister Rickford,

I want to thank you for the opportunity to meet Thursday, May 15 and talk about issues that concern the Tsleil-Waututh Nation. I appreciate your candor and interest in exploring ways to move forward.

I especially appreciated your recognition that our May 15 conversation and any future dialogue between us is outside the formal consultation process. Without that continued acknowledgement, I will not be able to meet with you in the future.

As I said at our meeting, ongoing dialogue is important, and I have had several discussions with your predecessor. What I am looking for now are indications that the federal government is taking Tsleil-Waututh's concerns seriously. I want to see the federal government move from discussion to action.

While my conversation with you on general topics of concern is outside the formal consultation process, Tsleil-Waututh is on record requesting that the federal government work with the Nation to establish and implement a specific government-to-government consultation process related to Kinder Morgan's Trans Mountain Expansion proposal (see attached letter of March 5, 2014). To date, we have not received a response to this letter from Natural Resources Canada.

We await a response from the federal government on the March 5 letter. Thank you for your time and attention to this matter.

Sincerely,

Chief Maureen Thomas

This is Exhibit "BB" referred to in the Affidavit of Ernie George affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



June 26, 2014

**Sent via E-mail and Courier**

Jim Clarke  
Director General, Operations  
Major Projects Management Office  
Natural Resources Canada  
155 Queen Street  
Ottawa, ON K1A 0E4

Dear Mr. Clarke,

**Re: Further Request for Immediate Government-to-Government Consultation  
with Tsleil-Waututh Nation and Funding for the Trans Mountain  
Expansion Project**

---

I am writing to respond to your May 20, 2014 letter to Chief Thomas and to follow-up on a telephone message that Joseph Whiteside, Natural Resources Canada ("NRCan"), left me on June 9, 2014.

Your May 20 letter appears to be a standard form letter that completely ignores and fails to acknowledge Chief Thomas' March 5, 2014 letter to then Minister of Natural Resources Oliver and Environment Minister Aglukkaq. In her March 5 letter, Chief Thomas asked the federal Crown ("Crown") to work with Tsleil-Waututh Nation ("TWN") to establish and implement a government-to-government consultation process for the Trans Mountain Expansion Project ("Project"). Chief Thomas reiterated her request on behalf of TWN in a subsequent May 23, 2014 letter to Minister Rickford. Both letters are attached as **Schedule "A"**.

To date, the Crown, including NRCan, has not responded directly to TWN's request.

You conclude your May 20 letter by stating that "NRCan officials would welcome the opportunity to meet with you in person to discuss the review and consultation process in greater detail..."

TWN would also welcome the opportunity to discuss the consultation process for the Project with Minister Rickford. In particular, Chief Thomas would like to discuss with Minister Rickford how TWN and the Crown can work together to jointly establish a government-to-government consultation process for the Project that respects and accommodates both of our rights and interests.

I also want to raise the issue of funding with you.

Your letter reiterates the Crown's position that it will rely on the NEB hearing process for the Project ("Hearing"), to the extent possible, to discharge its duty to consult TWN. The effect of that decision, coupled with the Crown's refusal to date to work with TWN to create a meaningful government-to-government consultation process, is that the Hearing is currently the only opportunity for TWN to bring its concerns about the Project to the Crown's attention.

TWN is therefore participating as an intervenor in the Hearing despite its position that the Crown's position on consultation is legally deficient, fails to uphold the honour of the Crown, and that participating in the Hearing and the Hearing itself are not substitutes for direct consultation.

Participating in the Hearing is placing an enormous financial burden on TWN. The Hearing involves Trans Mountain's application for a Certificate of Public Convenience and Necessity, other required approvals, and the NEB's environmental assessment of the Project under the *Canadian Environmental Assessment Act, 2012*. Approximately 400 intervenors are participating in the Hearing. Moreover, the Project is very large and the proponent's application is technically complex, opaque, and extremely long.

In December 2013, Trans Mountain submitted its 25 volume, 15,000 page Application to the NEB. The capital cost of the Project is approximately \$5.4 billion. The Project includes: (i) approximately 994 km of new pipeline; (ii) reactivation of 193 km of existing pipeline; (iii) construction of 12 new pump stations; (iv) construction and operation of 20 new tanks, including 14 in Burnaby; and (v) construction and operation of three new Aframax-capable berths at Westridge Marine Terminal in Burnaby. The Burnaby petroleum storage facility and the Marine Terminal are located in the heart of TWN's Territory within a few kilometers of its reserve.

For the reasons set out in Chief Thomas' March 5 letter, the Project has the potential to cause highly significant impacts on TWN's Aboriginal title, rights, and interests.

On March 12, 2014, TWN submitted a 66-page, detailed funding application to the NEB's Participant Funding Program ("PFP"). In its application, TWN asked for funding to help TWN *offset some of its costs of participating in the Hearing*, including \$581,591 for legal fees, \$131,200 for expert fees, and \$53,256 for travel costs. TWN identified that it would need the help of specialized lawyers and no fewer than 7 experts to identify potential impacts of the Project on TWN's title, rights, and interests, and to prepare evidence and make argument to assist the NEB in carrying out the environmental assessment of the Project and in preparing its recommendations to the Governor-in-Council about whether a Certificate of Public Convenience and Necessity should be issued for the Project. TWN's PFP application is attached as **Schedule "B"**.

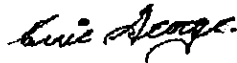
The PFP informed TWN on April 9, 2014 that it would only provide TWN with \$40,000 in participant funding. No reasons were provided in the PFP's April 9 letter, which is attached as **Schedule "C"**. On June 19, 2014, the Acting Chief Operating

Officer of the NEB denied TWN's request that the PFP reconsider its decision and provide the full amount that TWN requested in its PFP application. That letter is attached as Schedule "D".

The amount being provided by the PFP to TWN is grossly insufficient to ensure that TWN is able to meaningfully participate in the Hearing and is dishonourable given the Crown's intent to largely, if not exclusively, rely on the Hearing to satisfy its constitutional duty to consult TWN. At minimum, the Crown must take immediate steps now to provide TWN, or to ensure that TWN is provided, with sufficient funding to meaningfully participate in the Hearing.

We look forward to meeting with Minister Rickford to discuss the issues raised in this letter. Please contact me to set up a meeting with him in our Territory in the next few weeks.

Yours sincerely,



Ernie George  
Director, TWN Treaty, Lands and Resources

cc: Minister Rickford  
Joseph Whiteside

## SCHEDULE A

**TSLEIL-WAUTUTH NATION***People of the Inlet*

May 23, 2014

Hon. Greg Rickford  
Minister, Natural Resources Canada  
580 Booth Street, 21<sup>st</sup> Floor, Room: C7-1  
Ottawa, Ontario K1A 0E4  
EMAIL: [Minister.Ministre@NRCan-RNCan.gc.ca](mailto:Minister.Ministre@NRCan-RNCan.gc.ca)

Dear Minister Rickford,

I want to thank you for the opportunity to meet Thursday, May 15 and talk about issues that concern the Tseil-Waututh Nation. I appreciate your candor and interest in exploring ways to move forward.

I especially appreciated your recognition that our May 15 conversation and any future dialogue between us is outside the formal consultation process. Without that continued acknowledgement, I will not be able to meet with you in the future.

As I said at our meeting, ongoing dialogue is important, and I have had several discussions with your predecessor. What I am looking for now are indications that the federal government is taking Tseil-Waututh's concerns seriously. I want to see the federal government move from discussion to action.

While my conversation with you on general topics of concern is outside the formal consultation process, Tseil-Waututh is on record requesting that the federal government work with the Nation to establish and implement a specific government-to-government consultation process related to Kinder Morgan's Trans Mountain Expansion proposal (see attached letter of March 5, 2014). To date, we have not received a response to this letter from Natural Resources Canada.

We await a response from the federal government on the March 5 letter. Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Chief Maureen Thomas". The signature is written in a cursive, flowing style.

Chief Maureen Thomas



# TSLEIL-WAUTUTH NATION

*Children of TAKaya – Wolf Clan*

**BURRARD INDIAN BAND**



Hon. Leona Aglukkaq  
Minister, Environment Canada  
10, rue Wellington  
Gatineau, Quebec K1A 0H3  
Fax : 819-953-0279

Hon. Joe Oliver  
Minister, Natural Resources Canada  
580 Booth Street, 21st Floor, Room: C7-1  
Ottawa, Ontario K1A 0E4  
Fax : 613-996-4516

March 5, 2014

Dear Ministers:

**Re: Request for Immediate Government-to-Government Consultation with Tsilil-Waututh Nation regarding the Trans Mountain Expansion Project**

The proposed Kinder Morgan Trans Mountain Expansion Project (the "Project") terminates in the heart of Tsilil-Waututh territory and presents the potential for significant, negative effects on our constitutionally protected Aboriginal title and rights. I am writing to you as the ministers responsible for the *Canadian Environmental Assessment Act, 2012* ("CEAA, 2012") and the *National Energy Board Act* ("NEBA") to request a meeting with you in the next three weeks in Tsilil-Waututh territory to initiate government-to-government consultation in relation to the Project.

**1.0 The Crown has a deep duty of consultation with respect to the Project**

The Tsilil-Waututh Nation ("TWN") holds unextinguished Aboriginal title to, and Aboriginal rights and other interests associated with, the land, water, and foreshore that will be directly impacted by the Project. If approved, the Project will result in: (i) construction and operation of a new pipeline that crosses through and ends in Eastern Burrard Inlet in the heart of our traditional territory; (ii) a tripling, from 300,000 to 890,000 bpd, of the volume of oil being shipped on pipelines through our territory; (iii) an increase in the number of very large ships, from 60 to 408 vessels per year, travelling into and away from the Westridge Terminal in Eastern Burrard Inlet; and (iv) an increased risk of more frequent and larger oil spills in our territory, as well as coastal erosion and other impacts resulting from routine operations of the Project, all of which have the potential to adversely impact marine and terrestrial ecosystems that are the source of TWN natural and cultural resources, archaeological and sacred sites, human health, and our title, rights and interests.

In our traditional dialect of Halkomelem, the name Tsilil-Waututh means "People of the Inlet." For millennia, our ancestors exclusively occupied Eastern Burrard Inlet. They cared for the land and harvested resources as part of our distinct culture. Our oral history establishes and archaeological and other documentary evidence confirms that our ancestors lived in and harvested resources from Burrard Inlet and the watersheds flowing into it from the time of the "First Ancestors" through to the present day. Past and present, the Inlet has given us sustenance—economically, socially and spiritually. We have experienced first hand the demise of our food and our economy due to the impacts of oil on our lands and waters. Members of TWN continue to live in, care for, and harvest resources in Burrard Inlet and throughout our traditional territory. Much of our population of



approximately 500 people today lives in our primary community of Stell-Waututh (IR #3) on the north shore of Eastern Burrard Inlet. Our community is a short paddle across the water from the Westridge Marine Terminal. A map showing our traditional territory, the location of our community, the right-of-way for the proposed Project and the Westridge Marine Terminal is attached as Appendix A.

The Crown has had notice since at least 1994, when the nation was accepted into the BC Treaty process, of the lands and waters over which TWN's asserts Aboriginal title. The strength of TWN's title and rights evidence and the significant, specific negative impacts potentially arising from the Project on TWN title and rights trigger the Crown's deepest duty of consultation.

**2.0 The federal Crown's position on consultation is legally deficient and fails to uphold the honour of the Crown**

In Minister Oliver's January 18, 2013 letter to TWN, he states that the Crown intends to rely, to the extent possible, on the National Energy Board's (the "NEB") review of Kinder Morgan's facilities application to satisfy its duty to consult TWN. I am informed by TWN's lawyers that the approach that he suggests is legally deficient and fails to uphold the honour of the Crown for the following reasons:

1. The duty to honourably consult TWN arose from the very earliest point that the Crown became aware that Kinder Morgan intended to apply for a certificate under section 52 of the *NEBA* and contemplated the process for regulatory review and environmental assessment of the Project. The Crown has a duty to consult with TWN in designing the overall framework for consultation and environmental assessment of the Project that is upstream of the NEB's role, and to accommodate our traditional laws and decision-making rights in doing so. To date this has not occurred.
2. The NEB cannot consult with TWN or delegate procedural aspects of the Crown's duty to Kinder Morgan in relation to its facilities application because the *NEBA* does not empower the NEB to consult with Aboriginal peoples. The NEB has described itself as a "quasi-judicial tribunal [which] operates much like a court", and has explained that the rules of natural justice prevent it from engaging in one-on-one discussions with Aboriginal communities, which are a hallmark of meaningful consultation. Minister Oliver expressly recognized this fundamental constraint in his January 18, 2013 letter.
3. The NEB cannot address many of TWN's concerns because it does not have the authority to:
  - (a) design and implement a decision-making process for the Project that accommodates TWN decision-making and governance rights;
  - (b) alter timelines for environmental assessment, regulatory review, and decision-making to accommodate TWN's rights and interests;

This is prejudicial to our rights and interests because the rigid regulatory and environmental assessment timelines imposed under the *NEBA* and *CEAA, 2012* and a lack of process flexibility will not provide TWN with sufficient time to:

- (i) evaluate how the Project will adversely impact our title, rights and interests;
- (ii) gather and provide our traditional ecological knowledge to the NEB and the Crown to inform the decision-making process in relation to the Project in a way that respects our customs, practices, and traditions;

- (iii) have meaningful dialogue with the Crown about how our rights can be accommodated;
  - (iv) meaningfully participate in the decision-making process in relation to the Project;
  - (c) ensure that Crown decisions/authorizations/approvals for the Project do not prejudice ongoing treaty negotiations with the provincial and federal Crowns;
  - (d) impose conditions on parties other than the proponent to address the potential impacts of the Project, in conjunction with other past, present, and reasonably foreseeable development that may adversely affect TWN's rights and interests; and,
  - (e) grant remedies for the historic and ongoing infringement of TWN's Aboriginal title and rights associated with construction and operation of the existing Trans Mountain pipeline, facilities, and tankers.
4. A public hearing such as an NEB hearing is not a substitute for formal First Nations consultation; direct engagement with First Nations, including TWN is required. More specifically, a public hearing in which the NEB must weigh the benefits and impacts of the Project to the public generally is not well designed to ensure that: (i) TWN's rights and interests are minimally impaired; and (ii) the benefits that TWN will share in if the Project is approved outweigh potential adverse impacts on TWN's specific rights and interests.

The Crown's current approach leaves TWN without a process for meaningful consultation with the Crown. Moreover, our rights are already being prejudiced by decisions that have been made without any consultation:

- the NEB has issued its tolling decision for the Project. TWN was denied intervenor status, and should have been consulted prior to that decision being made. We are concerned that the NEB making a decision about the tolling application before hearing the facilities application has prejudiced our rights and interests;
- the NEB has published a list of issues that will be examined in the hearing, and provided guidance about how Kinder Morgan needs to assess the potential environmental and socio-economic effects of increased marine shipping activities. In particular, we are concerned that the NEB's list excludes consideration of potential effects on TWN's rights and interests arising from upstream and downstream development that will occur as a result of, or be facilitated by, the Project. TWN was not consulted about how excluding these issues may prevent the NEB, and subsequently the Crown, from considering critical issues that will adversely impact TWN's rights and interests;
- Kinder Morgan has already filed its application with the NEB, including environmental studies that may be relied on by the NEB to conduct the CEAA, 2012 environmental assessment of the Project. We are concerned that decisions may have been made in the absence of consultation with TWN, about the definition of the Project, the scope of factors that must be assessed under s. 19 of CEAA, 2012, and other key environmental assessment issues. If these decisions have already been taken without the involvement of TWN, they may result in the NEB, and subsequently the Crown, failing to assess all of the Project's potential environmental effects and the corresponding adverse impacts they will have on our title, rights and interests; and,

- a panel has already been selected to review the Project, without consultation with TWN about the nature, composition and qualifications required to conduct an environmental assessment that appropriately accommodates our knowledge, laws and traditions.

Beyond Minister Oliver's stated intent to rely on the proponent and the NEB facilities review to the extent possible, to date the Crown has provided no information or proposal regarding Crown consultation on the Project. However, we note that to the extent that the Crown may be contemplating such an approach, it would be prejudicial to our rights for the federal Crown to rely solely on the NEB's review of the facilities application and CEAA, 2012 environmental assessment, and then attempt to initiate consultation after the NEB has provided you with a report setting out its recommendations. Our rights will be prejudiced because the NEB will already have made critical decisions that will impact the scope and content of evidence that it considers and which forms the basis of its recommendations about the Project. It would also be very late to begin consultations at that time about issues that the NEB was unable or decided not to consider.

**3.0 We are respectfully requesting that you act now to immediately start government-to-government consultation**

We are seeking to immediately start discussions with you to jointly establish and implement a government-to-government consultation process in relation to all aspects of the Project that respects and accommodates the respective authorities of the Tseil-Waututh Nation and the Government of Canada. I am therefore requesting a meeting with you in the next three weeks in TWN territory to begin to discuss how we can work together to jointly establish this process.

Finally, we submit that the Crown would be acting unconstitutionally should further procedural or substantive decisions about the Project be made until these government-to-government discussions to jointly establish a framework for consultation and environmental assessment of the project have occurred.

I look forward to hearing back from you by Wednesday, March 26, 2014.

Sincerely,



Chief Maureen Thomas,  
Tseil-Waututh Nation

CC:

The Rt. Hon. Stephen Harper  
Prime Minister of Canada  
Office of the Prime Minister  
80 Wellington Street  
Ottawa, ON K1A 0A2

Hon. Bernard Valcourt  
Minister, Aboriginal Affairs and Northern Development Canada  
10 Wellington Street  
Gatineau, Quebec K1A 0H4

## Appendix A



National Energy  
BoardOffice national  
de l'énergie

## Participant Funding Program

### Application for Funding



Read the Participant Funding Program Guide.



Complete the application form. Fill in all the sections that apply to you or your organization. Sign the Certification and Consent.



On separate pages, answer the questions in Sections 2.2 and 2.3 of the guide. Clip your answers to your application form.

**Project**

Name of project

Trans Mountain Expansion (TMX) Project

Location

British Columbia

**Language of choice**☒ English☐ French**Applicant Information**

Your name / name of your group

Tsleil-Waututh Nation/Burrard Indian Band

Type of application:

☐

Individual

☒

Unincorporated group or organization

☐

Not-for-profit Corporation

Please complete the following information section which applies to you/your type of application.

**Official use only**

Date received

File number

**Applying as an unincorporated group or organization**

Name of group or organization <b>Tsleil-Waututh Nation</b>	
Group or organization's legal name (if different) <b>Burrard Indian Band</b>	
Previous names of the group or organization	
Mailing address <b>3075 Takaya Drive</b>	
City / town <b>North Vancouver</b>	Business number (Canada Revenue Agency) <b>133551465</b>
Province <b>BC</b>	Band number (Aboriginal applicants) <b>549</b>
Postal code <b>V7H 3A8</b>	GST / HST number <b>133551465RT0001</b>
Area code / telephone number <b>604-929-3454</b>	GST / HST rebate percentage <b>100%</b>
Area code / fax number <b>604-929-4714</b>	Group or organization's goals and mandate <b>Aboriginal community</b>
Email address <b>egeorge@twnation.ca; ehanson@twnation.ca; jkonovsky@twnation.ca</b>	
Website address (optional) <b>www.twnation.ca</b>	
Name and title of person representing the group or organization (Include document showing your authority to represent the group or organization) <b>Ernie George, Tsleil-Waututh Treaty, Lands and Resources Department Director</b>	

### Your interest in the project

Describe in detail your interest in the project.

Section 1.2 of the guide explains the type of interest you must have.

The proposed project is in Tsleil-Waututh traditional territory. Tsleil-Waututh has an interest in how the project will affect our Aboriginal rights, title and interests.

### Your plan of action and costs

With your application, tell us what you would do with the funding and explain the proposed expenses using separate pages.

**Sections 2.2 and 2.3 of the guide explain how to do this.**

Once you have finished, please fill out the summary below and provide details as described in section 2.2 and 2.3 of the guide.

Priority (refer to section 1.3 of the guide for details)	Costs	Amount you are requesting
High	Legal fees	\$ 581,591
	Expert fees	\$ 131,200
	Travel costs	\$ 53,256
Medium	Small payments to attend meetings	\$
	Renting office space or equipment	\$
	Collecting information	\$
Low	Buying information	\$
	Translating evidence	\$
	Other needed costs (please specify)	\$
<b>Total</b>		<b>\$766,047</b>

**Other information**

Have you received program funds from us before?

- ☐ Yes  
☒ No

If yes, tell us how much and for which project:

---



---

Have you applied or will you apply for funds from other sources for the hearing?

- ☐ Yes  
☒ No

If yes, tell us how much and the source:

---



---

Have you made an effort to cooperate with other people or groups in preparing your application?

- ☒ Yes  
☐ No

If yes, name the other individuals or groups:

~~Other neighbouring First Nations, Local Governments, and Environmental Organizations~~

---

Have any former public servants who are under the Conflict of Interest and Post-employment Guidelines helped you apply?

- ☐ Yes  
☒ No

If yes, describe their role:

---



---

How did you learn about the program?  
 (please check all that apply)

- ☒ NEB Information sessions  
☒ NEB Staff  
☐ Company Information Sessions  
☐ Government of Canada notice in newspaper  
☐ Newspaper articles or editorials  
☐ Our website  
☐ Consulting Canadians website  
☐ Other websites  
☐ Email from us to your group  
☐ Direct mail to your group  
☐ Radio broadcast  
☐ Word of mouth  
☐ Other (please specify):

---



### **Certification and consent**

I certify to the National Energy Board that the information in this application (including the answers to the questions in Sections 2.2 and 2.3 of the guide) is accurate to the best of my knowledge.

If you approve the application, I agree that I will sign a contribution agreement before any funding is provided.

I understand that the information you collect from me will be subject to the *Access to Information Act*.

The personal information collected on this form will be used to determine your eligibility to receive funding under the Participant Funding Program and is collected under the authority of the National Energy Board Act, subsection 16.3. Your personal information may also be used for program evaluation and reporting to senior management. The personal information will be protected in accordance with the *Privacy Act* and described in Personal Information Bank NEB PPU 025. Individuals have the right to access their personal information and to request changes to incorrect personal information by contacting the NEB Access to Information and Privacy Coordinator at [DLATIPCoordinator@neb-one.gc.ca](mailto:DLATIPCoordinator@neb-one.gc.ca)

I consent to you:

- making public and giving a copy of this Application for Funding and the Contribution Agreement once it is executed to anyone you consider appropriate in the circumstances
- making copies of any written submissions of, or the corporation or group I represent, might make during the hearing
- using those copies in administering the *National Energy Board Act*

**Maureen Thomas**

Name

**Chief**

Title



Authorized signature

**2014-Mar-11**

Date

# DECLARATION OF THE APPLICANT REGARDING THE NATIONAL ENERGY BOARD

**Note:** Completion of this Declaration Form is required only if the amount of funding requested from the National Energy Board is \$20,000 or more.

## Instructions:

The information provided below is collected in accordance with the Treasury Board Policy on Transfer Payments (pursuant to section 7 of the Financial Administration Act). Failure to complete this section may result in denial of funding.

Does the Applicant owe any amounts that are in default to the Government of Canada under legislation or contribution agreements?

☐ Yes

☒ No

If yes, please complete the following chart:

Amounts in default owing	Nature of the amount in default owed (taxes, penalties, overpayments)	Name of government department or agency
\$		
\$		
\$		
\$		

I hereby certify that the information I have provided in this Declaration Form is accurate to the best of my knowledge.

**Dave Ko/CFO**

Name / Title

Authorized signature

Date

## 2.2 Explain how you plan to participate

### *Tsleil-Waututh Nation—the People of Burrard Inlet*

Members of the Tsleil-Waututh Nation have occupied Burrard Inlet since time out of mind. In our traditional dialect of Halkomelem, the name “Tsleil-Waututh” means “People of the Inlet.” The name of our people reflects our deep physical, cultural and spiritual connection to the Inlet. We are the people of Burrard Inlet.

Since time immemorial, our people have hunted, fished, gathered, travelled and raised families on the land and in the water in our traditional territory, which is an area that extends approximately from the vicinity of Mount Garibaldi to the North, the 49th parallel and beyond to the south, east to Gibsons, and west to Coquitlam Lake. The marine water and foreshore environments have always been, and continue to be, of particular importance as a means of sustenance, spirituality, economy and transportation to our people. Tsleil-Waututh elders teach us that when “the tide went out, the table was set.”

Tsleil-Waututh Nation first entered into the treaty process in February 1994, and since 1997 has been in Stage 4 of the six-stage process, negotiating an agreement in principle.

### *Why does Tsleil-Waututh want to intervene in the TMX Hearing?*

For millennia, our ancestors exclusively occupied Eastern Burrard Inlet. They cared for the land and harvested resources as part of our distinct culture. Our oral history establishes and archaeological and other documentary evidence confirms that our ancestors lived in and harvested resources from Eastern Burrard Inlet, the watersheds flowing into it, and beyond from the time of the “First Ancestors” through to the present day.

Members of Tsleil-Waututh continue to live in, care for, and harvest resources in Eastern Burrard Inlet and beyond. Much of our population of approximately 500 people today lives in our primary community of Sleil-Waututh (IR #3) on the north shore of Eastern Burrard Inlet. Our community is a short paddle across the water from the Westridge Marine Terminal.

A map showing our traditional territory, the location of our community, the right-of-way for the proposed Trans Mountain Pipeline Expansion Project (“TMX”), and the Westridge Marine Terminal is attached as Appendix A. A picture showing the view of the Westridge Marine Terminal from our community is attached as Appendix B.

Tsleil-Waututh Nation is a band under the *Indian Act* and we are Aboriginal peoples within the meaning of s.35 of the *Constitution Act, 1982*. Tsleil-Waututh has Aboriginal title to the land, water and foreshore in Eastern Burrard Inlet and beyond. We also have Aboriginal fishing, hunting and gathering rights and interests that we continue to exercise today. For example, Tsleil-Waututh has a right to harvest:

- Shellfish, such as crabs, clams, oysters, shrimp, mussels and sea urchins;
- Birds such as ducks, grebes, grouse and their eggs;

- Mammals such as deer, bear, rabbits, squirrels and seals;
- Fish including salmonids, cod, flounder, sole, rockfish, herring and their eggs; and,
- Berries, kelp, and a variety of other plants and seaweeds for food, specialty or medicinal use.

To protect, enhance and in some places restore these rights and interests, the Tsleil-Waututh Nation adopted a *Marine Stewardship Program Plan* in 2005. The plan outlined several key goals including:

- To eat healthy, wild foods harvested in traditional waters;
- To practice cultural and ceremonial activities in a clean and healthy marine ecosystem;
- To reduce ongoing environmental impacts in traditional waters; and,
- To review the issue of compensation for past environmental degradation.

Implementation of the plan has included numerous Tsleil-Waututh-led initiatives to improve the environment including:

- Monitoring marine water, sediment, habitat, shellfish and salmonids;
- Adopting a *Stewardship Policy* outlining consultation obligations to accommodate Tsleil-Waututh title, rights and interests;
- Signing stewardship or co-management agreements with the Province of British Columbia for the Indian River Watershed and Say Nuth Khaw Yum Provincial Park, both located adjacent to Indian Arm, and with the District of North Vancouver for Whey-ah-Wichen Park, directly across the inlet from the Westridge Marine Terminal;
- Coordinating with Western Canada Marine Response Corporation for spill response;
- Planning for nearshore and foreshore habitat restoration in an area known as Maplewood Flats just west of the community of Sleil-Waututh through our program called "Bringing it Back;" and,
- Restoring instream habitat for salmonids in the Indian River.

Tsleil-Waututh has a sacred duty to take measures such as these to manage, protect and enhance our Aboriginal rights and interests. We continue to uphold a sacred trust to protect and care for our lands and waters. It is our responsibility and duty to uphold this sacred trust by protecting our territory from the potential impacts of the TMX Project, including by intervening in the TMX Hearing.

Tsleil-Waututh is seeking to intervene in the TMX Hearing to present evidence that will assist the NEB in: 1) assessing the potential environmental effects of the proposed TMX Project and corresponding impacts on our Aboriginal title, rights and interests and 2) making recommendations to the federal cabinet about whether a Certificate of Public Convenience and Necessity should be issued for the project.

Tsleil-Waututh is very concerned that the proposed TMX Project will cause serious and potentially irreparable adverse impacts to the ecosystems in our traditional territory and correspondingly infringe our title, rights and interests. We are concerned that the proposed TMX Project will impact our title, rights and interests in the following ways:

1. Approval of the project would represent a direct interference with our right to determine the uses to which the land is put, which is an integral component of our Aboriginal title;

2. Construction and operation of a new pipeline will further disturb both ecosystems and sacred sites in our traditional territory;
3. The amount of heavy crude and condensate being shipped in pipelines from Edmonton to Burnaby through our territory will nearly triple from 300,000 to 890,000 bpd. Larger and more frequent spills of crude oil resulting from the simultaneous operation of the existing and proposed TMX pipelines will adversely affect ecosystems, our lands and resources, our ability to exercise our Aboriginal harvesting rights, and ultimately, our way of life; and,
4. Heavy crude will be loaded onto very large PANAMAX and AFROMAX ships docked at the Westridge Marine Terminal. Those ships will then travel in the Salish Sea through Burrard Inlet in areas where we hold lands pursuant to Aboriginal title, where we actively harvest marine resources or where we are actively carrying out projects to rehabilitate marine resources so that we can continue to exercise our rights there.

The TMX Project will increase the number of very large ships travelling into the Westridge Marine Terminal from 60 to 408 vessels per year. Increased marine shipping of heavy oil in Burrard Inlet raises the spectre of increased marine spills, coastal erosion and air pollution, all of which will adversely impact marine ecosystems, organisms, human health, and our title, rights and interests.

More generally, Tsleil-Waututh is concerned that if the proposed TMX Project is approved, that it will:

- Harm Tsleil-Waututh natural and cultural resources, thereby diminishing Tsleil-Waututh Aboriginal title, rights and interests;
- Result in social, cultural, economic and environmental effects that adversely impact Tsleil-Waututh's use of land, water and resources for traditional, Aboriginal purposes;
- Cause adverse health effects on Tsleil-Waututh members;
- Negatively impact archaeological and sacred sites including through increased coastal erosion or contamination by oil; and,
- Set back or wipe out progress made by the Tsleil-Waututh Nation to restore previously impacted natural and cultural resources for the future exercise of Aboriginal rights and interests.

Material provided to date in the TMX Project application does not satisfy the Tsleil-Waututh Nation that mitigation measures proposed are sufficient to avoid potentially significant, negative impacts on our Aboriginal title, rights and interests. Our concerns are exacerbated by historical and current impacts and risks that the existing Trans Mountain pipeline, Westridge Marine Terminal and tanker traffic are causing to our title, rights and interests.

*What will Tsleil-Waututh do with the money it is requesting? Why do you want to do it and what do you hope to achieve?*

Tsleil-Waututh is requesting participant funding to pay for some of the costs that it will incur to Intervene in the NEB hearing for the proposed TMX Project.

Tsleil-Waututh is seeking intervenor status and participant funding to present evidence and argument to the NEB about five issues that the Board will be assessing in the TMX Hearing:

1. The potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project;
2. The potential environmental and socio-economic effects of marine shipping activities that would result from the proposed project, including the potential effects of accidents or malfunctions that may occur;
3. Potential impacts of the project on Aboriginal interests;
4. Contingency planning for spills, accidents or malfunctions, during construction and operation of the project; and,
5. Safety and security during construction and operation of the proposed project, including emergency response planning and third-party damage prevention.

If Tsleil-Waututh is granted intervenor status and awarded sufficient participant funding, Tsleil-Waututh will participate in all aspects of NEB review of the proposed project. We anticipate that Tsleil-Waututh will:

- Review the TMX Project application and written evidence;
- Retain and Instruct experts to assist us and the NEB in understanding the potential impacts of the proposed TMX Project on Tsleil-Waututh territory and members;
- Prepare Information Requests (IRs) for Kinder Morgan and other intervenors;
- Review Kinder Morgan's response to IRs;
- Prepare and submit written evidence;
- Respond to any Kinder Morgan IR to Tsleil-Waututh;
- Review Kinder Morgan's reply evidence;
- Cross-examine witnesses;
- Attend oral hearings; and,
- Make written and oral submissions to NEB.

Tsleil-Waututh will retain a legal team to assist it in all aspects of intervening in the hearing, including preparing information requests and written evidence, cross-examining witnesses, attending the oral hearing, and making written and oral submissions to NEB on Tsleil-Waututh's behalf.

We anticipate that Tsleil-Waututh will provide oral evidence or affidavits from TWN leadership and Elders that will describe:

- Tsleil-Waututh's Aboriginal title, rights and interests that may be adversely impacted by the proposed project;
- The location of Tsleil-Waututh's traditional territory;
- The potential for the proposed project to cause adverse impacts, including health impacts on Tsleil-Waututh community members; and,
- The extent to which the federal Crown has consulted and accommodated Tsleil-Waututh about the potential for the proposed project to adversely impact Tsleil-Waututh title, rights and interests.

Tsleil-Waututh's evidence will be buttressed by an anthropological expert report reviewing documented oral history, traditional use studies, archaeological, anthropological, historical, documentary and ethnographic sources regarding Tsleil-Waututh's title, rights and interests that may be adversely impacted by the proposed project.

Tsleil-Waututh also intends to retain technical experts to:

1. Assess whether the TMX's proposed oil spill prevention and response measures specifically for Burrard Inlet will protect Tsleil-Waututh title, rights and interests;
2. Peer review TMX's oil spill risk assessment specifically for Burrard Inlet and provide an expert opinion on the size and frequency of oil spills in the Inlet which have the potential to adversely impact Tsleil-Waututh title, rights and interests;
3. Assess potential acceleration of coastal erosion in Eastern Burrard Inlet from increased tanker traffic and corresponding adverse impacts to Tsleil-Waututh title, rights and interests;
4. Describe how Kinder Morgan's 2007 oil spill adversely impacted Tsleil-Waututh to better understand how the proposed TMX Project could cause new and further adverse impacts on Tsleil-Waututh's rights and interests;
5. Develop an oil spill model specifically for Burrard Inlet using U.S. N.O.A.A. GNOME software and evaluate alternative oil spill scenarios from the proposed TMX Project; and,
6. Based on alternative oil spill scenarios developed in #5, assess the proposed TMX Project's potential environmental effects specifically in Burrard Inlet, including negative impacts on marine habitat, fish, birds and mammals, and corresponding impacts on Tsleil-Waututh title, rights and interests.

This work is fundamentally necessary to fully describe the potential for the proposed TMX Project to cause adverse impacts on Tsleil-Waututh's title, rights and interests.

Tsleil-Waututh is a community of limited means. It is unlikely that it would be able to fully participate in the NEB process unless the NEB provides it with participant funding that will cover a large portion of our costs to participate in the hearing, including all of the costs outlined in this application.

*How will Tsleil-Waututh's intervention help NEB understand the proposed project and make its recommendation? Why is Tsleil-Waututh evidence different from the evidence of other people or groups?*

Tsleil-Waututh has a unique perspective and has detailed knowledge of the ecosystems in Burrard Inlet (including how land and resources are used to sustain traditional purposes). We have accumulated that traditional knowledge by living and harvesting resources from this area since time immemorial. Sharing this knowledge with the Board will inform the NEB's assessment of the proposed TMX Project. We are also uniquely situated to 1) delineate our title, rights and interests for the Board, 2) explain how the proposed TMX Project could adversely affect us, 3) inform the Board about efforts to consult us, and 4) describe the appropriate way in which Tsleil-Waututh title, rights and interests can be accommodated. No other party or intervenor is able to provide this information and perspective to the NEB to assist it in assessing the TMX Project.

Moreover, Natural Resources Canada has taken the position that the Crown will rely, to the extent possible, on the NEB TMX Hearing process to identify, consider and address the potential adverse impacts of the proposed TMX Project on Aboriginal and treaty rights. The TMX Hearing therefore represents an important forum for Tsleil-Waututh to inform the Crown of how the project will adversely impact our title, rights and interests. To the extent that the Crown relies on the NEB to gather information about the constitutionally protected title and rights of Tsleil-Waututh and impacts thereto, Tsleil-Waututh's evidence will be indispensable.

Evidence from Tsleil-Waututh leadership and Elders, as well as our proposed anthropological and technical expert reports will be highly relevant and valuable to the NEB in assessing the environmental and cultural effects of the proposed project as well as potential impacts on Tsleil-Waututh's title, rights and interests.

The expert evidence that Tsleil-Waututh is proposing to put before the Board is fundamentally different from other evidence that will be provided by other interveners in that it focuses exclusively on how the proposed TMX Project will impact our traditional territory, our title, rights and interests, and, more generally, the people in Eastern Burrard Inlet.

*How are Tsleil-Waututh's proposed activities connected to its usual business?*

Tsleil-Waututh Nation's Chief and Council and its Treaty, Lands and Resources Department form part of the modern government structure of the Tsleil-Waututh territories and people. Together leadership and staff are responsible for asserting and protecting Tsleil-Waututh's Aboriginal title, rights and interests in all relevant forums, and taking steps to preserve and enhance the health of Tsleil-Waututh community members and the natural and cultural resources upon which they depend.

Tsleil-Waututh's proposed intervention in this hearing is directly related to discharging these responsibilities.

*Why you can do what you are proposing?*

The Treaty, Lands and Resources Department inside the Tsleil-Waututh government has a small professional staff that has proven their capability and capacity to manage Tsleil-Waututh's involvement in complex natural resource files. The team includes a director, a cultural liaison, a consultation and accommodation coordinator, a technical advisor, a financial manager and GIS support. Tsleil-Waututh also has legal counsel on ongoing retainer to advise in-house professional staff and coordinate Tsleil-Waututh legal strategy on the TMX Project proposal.

Tsleil-Waututh will be relying on its internal staff and their expertise to help it intervene in the hearing. We are also proposing to put together a team of world class experts to assist us in providing the NEB with information and evidence about how the TMX Project could adversely impact our rights and interests.





[illegible]

Figure 1. Schematic representation of the experimental design. The subjects were divided into two groups: the control group (n = 10) and the experimental group (n = 10). The control group received a standard diet (SD) and the experimental group received a high-fat diet (HFD). The subjects were divided into two groups: the control group (n = 10) and the experimental group (n = 10). The control group received a standard diet (SD) and the experimental group received a high-fat diet (HFD). The subjects were divided into two groups: the control group (n = 10) and the experimental group (n = 10). The control group received a standard diet (SD) and the experimental group received a high-fat diet (HFD).

[REDACTED]

[REDACTED]

[REDACTED] is being retained to provide an expert opinion on [REDACTED]  
[REDACTED] and corresponding adverse impacts to Tsleil-  
Waututh title, rights and interests.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED] is being retained to provide an expert opinion on how [REDACTED]  
[REDACTED] to better understand how proposed TMX Project might cause  
new and further adverse impacts on Tsleil-Waututh's rights and interests.

[REDACTED]  
[REDACTED] has worked as a  
consultant representing a broad range of federal, provincial and private sector clients. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED] is being retained to [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Scott A. Smith, Aboriginal and Environmental Lawyer, Gowling Lafleur Henderson LLP**

Mr. Smith practices exclusively in the areas of environmental, Aboriginal, and constitutional law.

Mr. Smith regularly advises Aboriginal peoples and businesses on projects and transactions that impact Aboriginal and treaty rights. Mr. Smith has significant experience advising on the Crown's duty to consult and accommodate Aboriginal peoples in regulatory hearings for pipelines, provincial and federal environmental assessments, as well as in other regulatory approvals processes.

Mr. Smith's environmental advocacy practice includes complex civil litigation in respect of contaminated sites, judicial reviews of administrative decisions (such as the Crown's failure to consult Aboriginal communities), representing clients in regulatory hearings for energy infrastructure projects, and complex tort litigation.

Mr. Smith has appeared before the Ontario Court of Justice, Ontario Superior Court, Ontario Divisional Court, Tax Court of Canada, National Energy Board, and the Ontario Energy Board.

**Rodney V. Northey, Partner and Environmental Law Specialist, Gowling Lafleur Henderson LLP**

Mr. Northey is a partner in our Toronto office, with over 20 years of experience in environmental law. Mr. Northey is a litigator who has written a book on the *Canadian Environmental Assessment Act* and acted as counsel in four CEAA court cases and two CEAA appeals. He has appeared as counsel in more than 40 important environmental litigation disputes. He is also very familiar with the NEB through major work and advice for past pipeline clients. His litigation experience covers a wide range of environmental approval regimes and includes multiple hearings involving environmental assessments, land use planning, hydrogeology, hydrology, wetlands, endangered species, noise, air quality, human health, agriculture, conservation biology and fisheries.

Table 2: Legal Budget for NEB Intervention

Step	Time required to complete step	Cost
<b>Phase I: Review of Application</b>		
1. Obtain complete copy of application	20 hours (Law clerk)	\$4,000 (\$200/hr)
2. Detailed review of application (including supplementary documents filed by applicant)	50 hours (SS) 50 hours (RN)	\$17,500 (\$350/hr) \$24,750 (\$495/hr)
<b>Total for Phase I</b>		<b>\$46,250</b>
<b>Phase II: Preliminary correspondence and/or motions re: jurisdiction, consultation, project definition and scope of assessment under CEEA 2012.</b>	30 hours (SS) 60 hours (RN) 40 hours (Law clerk)	\$10,500 \$29,700 \$8,000
<b>Total for Phase II:</b>		<b>\$48,200</b>
<b>Phase III: Provide feedback to NEB on list of issues</b>	8 hours (SS)	<b>\$2,800</b>
<b>Phase IV: Work with TWN staff to describe and substantiate TWN's Aboriginal rights and title that could be adversely impacted by TMX</b>	75 hours (SS)	<b>\$26,250</b>
<b>Phase V: Commission and complete expert reports</b>		
1. Retain experts (x6)	20 hours/expert X 3 experts=60 hours (SS)	\$21,000
(A) Define scope of expert report	20 hours/expert X 3 experts=60 hours (RN)	\$29,700
(B) Draft retainer letter providing instructions to expert	10 hours to review (RN)	\$4,950
(C) Review expert's proposal for report		

Step	Time required to complete step	Cost
2. Locate and provide documents to experts (x6)	5 hours/expert X 6 experts=30 hours (Law Clerk)	\$6,000
3. Review and comment on expert reports (x6)	40 hours/report X 3 experts=120 hours (SS)	\$42,000
	40 hours/report X 3 experts=120 hours (RN)	\$59,400
4. Finalize expert reports (x6)	10 hours/report X 6 reports=60 hours (Law Clerk)	\$12,000
<b>Total for Phase V:</b>		<b>\$175,050</b>
<b>Phase VI: Draft Affidavit from Elders/Chief</b>	5 hours (Law Clerk)	\$1,000
	15 hours (SS)	\$5,250
<b>Total for Phase VI:</b>		<b>\$6,250</b>
<b>Phase VII: Written Interrogatories</b>		
1. Draft written interrogatories	16 hours (SS)	\$5,600
2. Review proponent and interveners' response to written interrogatories	40 hours (Law Clerk)	\$8,000
	16 hours (SS)	\$5,600
3. Respond to written interrogatories to TWN	30 hours (SS)	\$10,500
<b>Total Phase VII:</b>		<b>\$29,700</b>
<b>Phase VIII: Prepare and file written evidence</b>	<b>60 hours (Law Clerk)</b>	<b>\$12,000</b>
<b>Phase IX: Review written evidence of other parties</b>	100 hours (Law Clerk)	\$20,000
	50 hours (SS)	\$17,500
	25 hours (RN)	\$12,375
<b>Total for Phase IX:</b>		<b>\$49,875</b>
<b>Phase X: Motion(s)</b>	20 hours (Law Clerk)	\$4,000
	20 hours (SS)	\$7,000
	20 hours (RN)	\$9,900

Step	Time required to complete step	Cost
<b>Total for Phase X:</b>		<b>\$20,900</b>
<b>Phase XI: Oral evidence and argument</b>		
1. Prepare opening statement	15 hours (SS) 15 hours (RN)	\$5,250 \$7,425
2. Prepare oral evidence (1 day/expert)	8 hours/expert * 7 experts=56 hours 8 hours/expert * 4 experts=32 hours (SS) 8 hours/expert * 3 experts=24 hours (RN)	\$19,600 \$11,200 \$11,880
3. Attend oral hearing and conduct cross-examination	(assume 15 days* 8 hours/day) (SS) (assume 8 days * 8 hours/day) (RN)	\$42,000 \$31,680
4. Prepare oral argument, including reviewing case law, drafting argument, compendium, book of authorities, etc.	40 hours (Law Clerk) 40 hours (SS) 20 hours (RN)	\$8,000 \$14,000 \$9,900
<b>Total for Phase XI:</b>		<b>\$160,936</b>
<b>Phase XII: Review NEB's report and report to client</b>	4 hours (SS) 4 hours (RN)	\$1,400 \$1,980
<b>Total for Phase XII</b>		<b>\$3,380</b>
<b>Total Legal Budget</b>		<b>\$581,591</b>



Table 3: Travel and Related Costs associated with TWN NEB Intervention.

<i>Item</i>	<i>Rate</i>	<i>Quantity</i>	<i>Total</i>
Flight	\$800.00	2	\$1,600.00
Hotel/night	\$200.00	10	\$2,000.00
<u>Per diem</u>			
Breakfast	\$15.75	10	\$157.50
Lunch	\$15.10	10	\$151.00
Dinner	\$42.00	10	\$420.00
Taxi fare	\$30.00	10	\$300.00
<b>Total</b>			<b>\$4,628.50</b>

<b>TBD</b>		<b>Oil spill risk assessment</b>	
<i>Item</i>	<i>Rate</i>	<i>Quantity</i>	<i>Total</i>
Flight (Vancouver to Calgary)	\$600.00	2	\$1,200.00
Hotel/night	\$200.00	10	\$2,000.00
<u>Per diem</u>			
Breakfast	\$15.75	10	\$157.50
Lunch	\$15.10	10	\$151.00
Dinner	\$42.00	10	\$420.00
Taxi fare	\$30.00	10	\$300.00
<b>Total</b>			<b>\$4,228.50</b>

<i>Item</i>	<i>Rate</i>	<i>Quantity</i>	<i>Total</i>
Flight (Vancouver to Calgary)	\$600.00	1	\$600.00
Hotel/night	\$200.00	5	\$1,000.00
<u>Per diem</u>			
Breakfast	\$15.75	5	\$78.75
Lunch	\$15.10	5	\$75.50
Dinner	\$42.00	5	\$210.00
Taxi fare	\$30.00	5	\$150.00
<b>Total</b>			<b>\$2,114.25</b>

<i>Item</i>	<i>Rate</i>	<i>Quantity</i>	<i>Total</i>
Flight ( to Calgary)	\$600.00	1	\$600.00
Hotel/night	\$200.00	5	\$1,000.00
<u>Per diem</u>			
Breakfast	\$15.75	5	\$78.75
Lunch	\$15.10	5	\$75.50
Dinner	\$42.00	5	\$210.00
Taxi fare	\$30.00	5	\$150.00
<b>Total</b>			<b>\$2,114.25</b>

<i>Item</i>	<i>Rate</i>	<i>Quantity</i>	<i>Total</i>
Flight ( to Calgary)	\$600.00	1	\$600.00
Hotel/night	\$200.00	5	\$1,000.00
<u>Per diem</u>			
Breakfast	\$15.75	5	\$78.75
Lunch	\$15.10	5	\$75.50
Dinner	\$42.00	5	\$210.00
Taxi fare	\$30.00	5	\$150.00
<b>Total</b>			<b>\$2,114.25</b>

<i>Item</i>	<i>Rate</i>	<i>Quantity</i>	<i>Total</i>
Flight (Vancouver to Calgary)	\$600.00	2	\$1,200.00
Hotel/night	\$200.00	10	\$2,000.00
<u>Per diem</u>			
Breakfast	\$15.75	10	\$157.50
Lunch	\$15.10	10	\$151.00
Dinner	\$42.00	10	\$420.00
Taxi fare	\$30.00	10	\$300.00
<b>Total</b>			<b>\$4,228.50</b>

<i>Item</i>	<i>Rate</i>	<i>Quantity</i>	<i>Total</i>
Flight ( to Calgary)	\$600.00	1	\$600.00
Hotel/night	\$200.00	5	\$1,000.00
<u>Per diem</u>			
Breakfast	\$15.75	5	\$78.75
Lunch	\$15.10	5	\$75.50
Dinner	\$42.00	5	\$210.00
Taxi fare	\$30.00	5	\$150.00
<b>Total</b>			<b>\$2,114.25</b>

<b>Rod Northey</b>	<b>Gowlings</b>	<b>Legal</b>	
<i>Item</i>	<i>Rate</i>	<i>Quantity</i>	<i>Total</i>
Flight (Toronto to Calgary)	\$600.00	2	\$1,200.00
Hotel/night	\$200.00	10	\$2,000.00
<u>Per diem</u>			
Breakfast	\$15.75	10	\$157.50
Lunch	\$15.10	10	\$151.00
Dinner	\$42.00	10	\$420.00
Taxi fare	\$30.00	10	\$300.00
<b>Total</b>			<b>\$4,228.50</b>

<b>Scott Smith</b>	<b>Gowlings</b>	<b>Legal</b>	
<i>Item</i>	<i>Rate</i>	<i>Quantity</i>	<i>Total</i>
Flight (Toronto to Calgary)	\$600.00	3	\$1,800.00
Hotel/night	\$200.00	15	\$3,000.00
<u>Per diem</u>			
Breakfast	\$15.75	15	\$236.25
Lunch	\$15.10	15	\$226.50
Dinner	\$42.00	15	\$630.00
Taxi fare	\$30.00	15	\$450.00
<b>Total</b>			<b>\$6,342.75</b>

<b>10 Leaders &amp; Elders</b>	<b>Tsilell-Waututh Elder</b>	<b>Local knowledge</b>	
<i>Item</i>	<i>Rate</i>	<i>Quantity</i>	<i>Total</i>
Flight (Vancouver to Calgary)	\$600.00	1	\$600.00
Hotel/night	\$200.00	5	\$1,000.00
<u>Per diem</u>			
Breakfast	\$15.75	5	\$78.75
Lunch	\$15.10	5	\$75.50
Dinner	\$42.00	5	\$210.00
Taxi fare	\$30.00	5	\$150.00
Total each			\$2,114.25
<b>Total 10</b>			<b>\$21,142.50</b>

**Total Travel Budget**

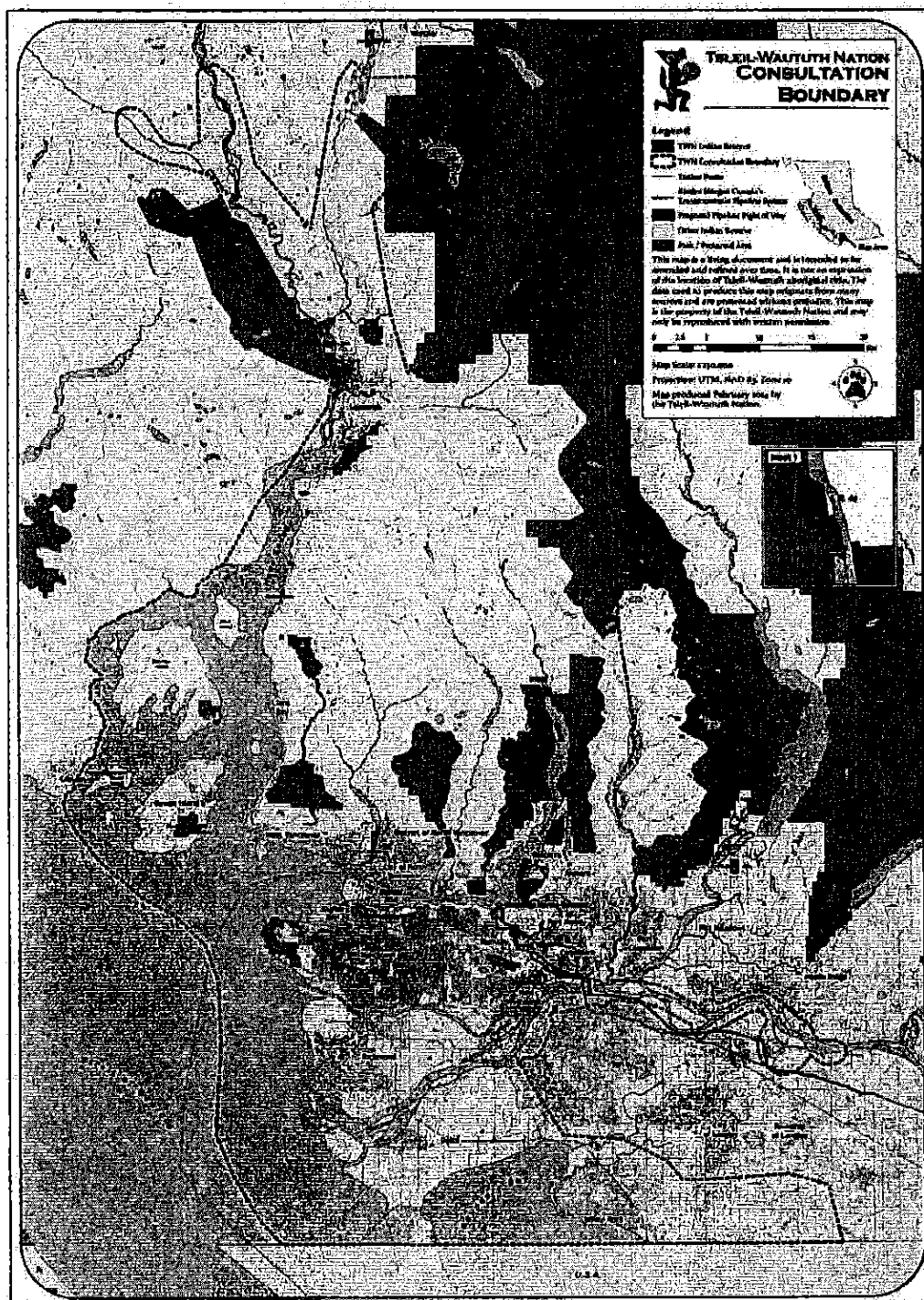
**\$53,256.25**

**Right to Amend Funding Application**

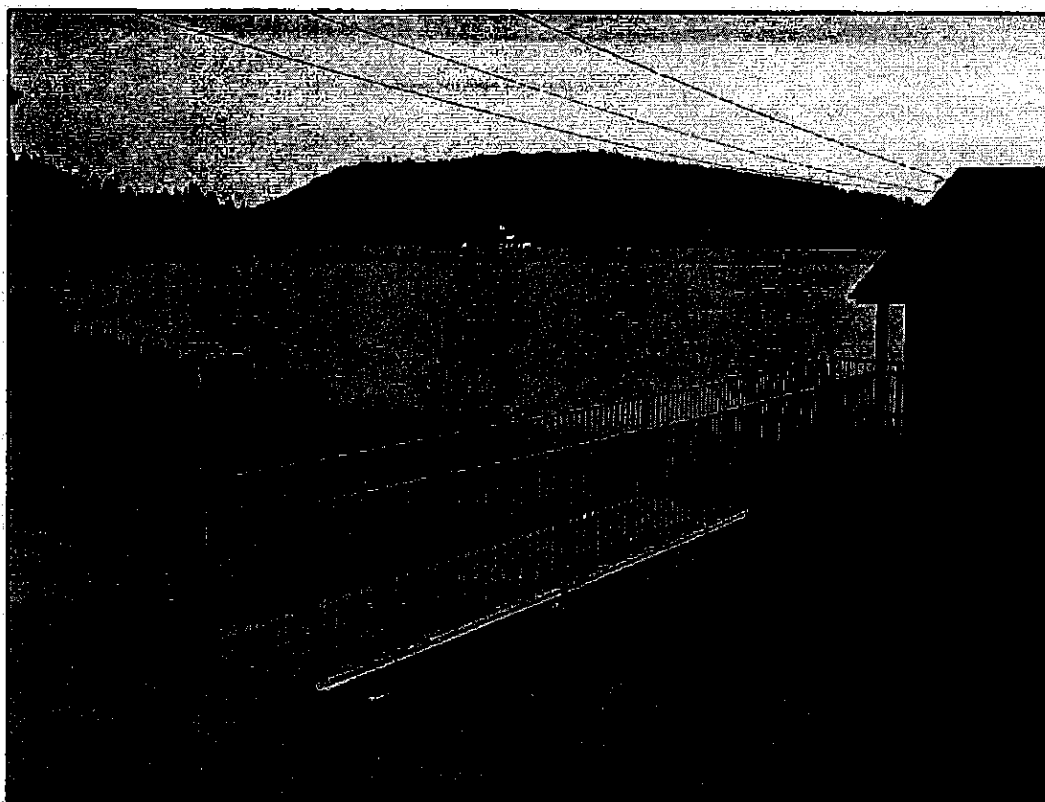
This funding application is being submitted prior to the issuance of a Hearing Order detailing the proposed procedure for NEB review of Kinder Morgan's facilities application for the TMX. Tsleil-Waututh Nation reserves the right to change or amend the activities detailed in this funding application in response to the Hearing Order, once it has been issued.

We have conservatively budgeted based on attendance at hearings in Calgary; however, we strongly urge the NEB to hold hearings in impacted communities along the pipeline and tanker route, including Tsleil-Waututh territory/Vancouver, BC in order to facilitate participation by our community and others and to reduce costs.

# Appendix A—Tsleil-Waututh Traditional Territory



**Appendix B—Photo of Westridge Marine Terminal from IR #3**



*View from IR #3 (Dollarton Hwy) southeast toward Westridge Marine Terminal  
(large green tanks in foreground which are about 3 kilometres away by canoe)*

**Appendix C—Resumes**



**Resumes available upon request**

## SCHEDULE C

National Energy  
BoardOffice national  
de l'énergie

RECEIVED APR 17 2014

Ernie George  
Lands Director  
Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, BC V7H 3A8

Wednesday April 9, 2014

Dear Sir,

**Confirmation between the Tsleil-Waututh Nation & National Energy Board (NEB) – Trans Mountain Expansion Project – Maximum Contribution \$40,000.00 plus travel costs for up to two (2) representatives to attend the hearing**

I am writing to inform you that a decision has been made to make \$40,000.00, with additional funding as per the National Joint Council guidelines for up to two (2) representatives to attend the hearing in person, available to your organization under the National Energy Board's Participant Funding Program in respect of the Trans Mountain Expansion Project (the Project).

In coming to this decision, consideration has been given to the recommendations of the independent Funding Review Committee.

Funding must be used to prepare for and participate in the hearing process for the Project.

Recipients must sign a Contribution Agreement, three copies of which are attached. The agreement sets out the terms and conditions for payment of funds and the respective obligations of the National Energy Board and your organization. If you agree with the terms and conditions of the agreement, please sign and return all three copies of the agreement to the Board within 30 days. Once the Board signs the agreements, one signed copy will be sent back to you for your files. As specified in section 4.2 of that agreement, no payments will be made for any costs incurred by recipients prior to the agreement being signed by both parties.

Further information on the Project is available on the Board's website ([www.neb-one.gc.ca](http://www.neb-one.gc.ca)) under Public Registries / Anticipated Applications, by selecting the Trans Mountain Expansion Project. To access general information about the hearing process and how you can participate, go to [www.neb-one.gc.ca](http://www.neb-one.gc.ca), select Hearings and Information Sessions, and then Participate in a Public Hearing.

If you have any questions, please contact Ms. Melissa Trono, Participant Funding Program Coordinator, at (403) 299-3130 or by e-mail at [PEP.PAFP@neb-one.gc.ca](mailto:PEP.PAFP@neb-one.gc.ca).

.../2

444 Bowditch Avenue SW  
Calgary, Alberta T2P 0N8

444, Bowditch Avenue S.-O.  
Calgary (Alberta) T2P 0N8

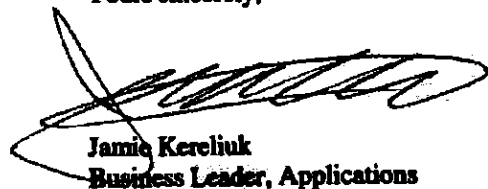
Canada

Telephone/Téléphone : 403-299-4800  
Facsimile/Télécopieur : 403-299-6908  
<http://www.neb-one.gc.ca>  
Telephone/Téléphone : 1-800-889-1266  
Facsimile/Télécopieur : 1-877-889-6808

-2-

Should you wish to decline this offer of funding, please contact Ms. Trono at the earliest opportunity.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jamie Kereliuk", is written over a horizontal line. The signature is stylized with a large, sweeping initial "J" and "K".

**Jamie Kereliuk**  
**Business Leader, Applications**

**Attachments**

## SCHEDULE D

National Energy  
BoardOffice national  
de l'énergie

RECEIVED JUN 23 2014

19 June 2014

Tsleil-Waututh Nation  
C/o Ernie George  
Director, Treaty, Lands & Resource Development  
3075 Takaya Drive  
North Vancouver, BC V7H 3A8

Dear Mr. George,

**Response to letter dated 26 May 2014**

Thank you for your letter dated 26 May 2014, sent to the Chief Operating Officer's (COO) attention.

The Tsleil-Waututh Nation (TWN) has asked the National Energy Board Participant Funding Program (PFP) to reconsider its decision regarding the participant funding award and to agree to provide the full amount requested, which was \$766,047. TWN also requested a meeting with the Board's COO and the Funding Review Committee (FRC) in TWN territory.

On 22 July 2013, the NEB announced that funding was being made available under the PFP to assist landowners, Aboriginal groups, incorporated non-industry not-for profit organizations, and other interested parties to participate in the Trans Mountain Expansion Project (TMX Project) regulatory process. On 29 July 2013, the NEB stated that the financial assistance available for the PFP was \$1,500,000.00, and further that a higher amount may be considered once applications for funding were received. Based on the awards of financial assistance made to date, that financial assistance amount has been exceeded.

On 12 March 2014, TWN submitted an application for funding to take part in the TMX Project Hearing. On 9 April 2014, you were notified that TWN was awarded \$40,000.00 for participation in the TMX Project process.

The FRC, an independent committee established by the National Energy Board, reviews all applications for participant funding, and provides recommendations of funding awards to the COO. I review the FRC's recommendation report in making my decision as to funding awards.

In relation to your funding application, the FRC recommendation report took into consideration the PFP budget for the TMX Project; the nature and scope of the right, interest, or concern described in the TWN's application; the potential impact of the proposed TMX Project on the rights or interests as described in TWN's application; the anticipated usefulness of the proposed

Canada

activities to the regulatory process; and the reasonableness of the proposal, work plan, and costs. In making my decision, I considered the FRC's recommendation report and accepted the recommendation. The complete FRC Allocation of Funds for Participation in the Public Hearing Recommendation Report for the TMX project will be posted to our website soon.

Participant funding is limited. It is not meant to cover all expenses incurred by all participants throughout the hearing process, and must be apportioned amongst a large number of eligible recipients. Based upon the information outlined above and your letter of 26 May 2014, I am not persuaded to reconsider my decision.

Thank you for the invitation to meet in TWN territory, but I will not be able to meet on this matter. Further, the PFP does not provide for meetings between applicants and the FRC.

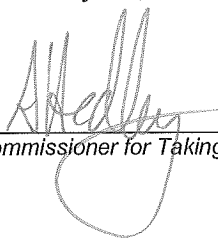
Should you have any questions, please contact Mr. Jamie Kereliuk at (403) 299-2793 or via email at [Jamie.kereliuk@neb-one.gc.ca](mailto:Jamie.kereliuk@neb-one.gc.ca).

Yours sincerely,



Sandy Lapointe  
Acting Chief Operating Officer

This is Exhibit "CC" referred to in the Affidavit of Ernie George affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)



Natural Resources  
Canada

Ressources naturelles  
Canada

RECEIVED JUL 29 2014

13-090

2014-07-21

Ernie George, Director  
TWN Treaty, Lands and Resources  
Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, British Columbia V7H 3A8

Dear Mr. George,

Thank you for your correspondence of June 26, 2014 concerning Canada's consultation process and available participant funding for the proposed Trans Mountain Pipeline Expansion Project (project).

Your correspondence was addressed to my colleague, Jim Clark, who has since transferred his responsibilities for the project to me. I am therefore responding in his place.


As was noted in previous correspondence, we are very interested in meeting with you to further discuss the Crown's approach to consultation for the project. Joseph Whiteside from my office has attempted to contact your community to set up such a meeting. Mr. Whiteside is a representative of the Crown, and so I would encourage you to meet with him to discuss the Crown consultation process and any questions or concerns you might have. A representative of the National Energy Board (NEB) would also accompany Mr. Whiteside to answer questions regarding the NEB hearing process, including their Participant Funding Program.

While the Crown will rely on the NEB hearing process to the extent possible to discharge the duty to consult, this does not mean the Crown will rely exclusively on the hearing process. Meetings such as the one solicited by Mr. Whiteside provide an early opportunity to outline the Crown's approach to consultations, how potentially impacted groups can provide and comment on evidence through the NEB hearing process, and how to secure participant funding. Furthermore, once the NEB releases its draft terms and conditions for the project, federal officials will consult potentially impacted groups to determine if the draft terms and conditions or proponent commitments satisfy concerns raised by these groups, and to solicit proposed additional accommodations measures as appropriate. Consultations following the release of

draft terms and conditions will form an integral part of the consultation record and will inform the final decision of the Governor in Council on whether the project is approved. With respect to your letter dated March 5, 2014 I understand that Minister Rickford has responded to you, and that you and he had the opportunity to meet in May.

Again, thank you for writing on these important matters.

Kind regards,

A handwritten signature in black ink, appearing to be 'Tim Gardiner', with a long horizontal stroke extending to the right.

Tim Gardiner  
Director General, Strategic Projects Secretariat  
Major Projects Management Office  
Natural Resources Canada

cc Joseph Whiteside, Major Projects Management Office, Natural Resources Canada



This is Exhibit "DD" referred to in the Affidavit of Ernie George affirmed May 21, 2015



---

*Commissioner for Taking Affidavits (or as may be)*

Minister  
of Natural Resources



Ministre  
des Ressources naturelles

Ottawa, Canada K1A 0E4

13-090

RECEIVED AUG 21 2014

AUG 15 2014

Chief Maureen Thomas  
Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, British Columbia V7H 3A8

Dear Chief Thomas:

Thank you for your letter of March 5, 2014, sent to my predecessor, the Honourable Joe Oliver, and for your letter of May 23, 2014, addressed to me, concerning the proposed Trans Mountain Expansion project. I appreciated the opportunity to meet with you on May 15, 2014, and I agree that we must continue the dialogue on ways to move forward with west coast energy infrastructure development, both outside and within the formal consultation process.

I can assure you that the Government of Canada is committed to ensuring the responsible development of west coast energy infrastructure. In addition, the Government recently announced new measures to further enhance Canada's world-class pipeline safety and tanker safety systems. These initiatives are national in scope and will apply to existing tanker and pipeline operations, as well as any new activities. If the Trans Mountain project were to be approved and proceed, these initiatives would contribute to overall efforts to mitigate the concerns that your community has raised.

In terms of pipeline safety, the Government of Canada has taken important steps by: 1) introducing absolute or "no fault" liability for all federally regulated pipelines, and require companies to have the financial capacity to cover their liability; 2) developing a strategy with industry and Aboriginal communities to enhance participation in pipeline safety operations, including related employment and business opportunities; and, 3) enhancing the National Energy Board's authorities, including the ability to take over spill response and order reimbursement for clean-up costs. Additional details on these new measures can be found at <http://news.gc.ca/web/article-en.do?nid=848059>.

With respect to marine transportation of oil, the Government of Canada is implementing a world-class tanker safety system. To strengthen an already robust tanker safety system, the Government recently announced new measures to prevent marine oil spills, quickly respond and clean up spills if these do occur, and ensure that polluters pay. This includes measures to support the participation of local Aboriginal communities in the marine safety system. Additional details on these new measures can be found at <http://news.gc.ca/web/article-en.do?nid=847489>.

Canada

- 2 -

The Government has recently announced the initial steps in its response to the recent report by Mr. Douglas Eyford, which include two new measures to strengthen engagement with Aboriginal Peoples and enhance environmental protection related to west coast energy infrastructure development. The first is the creation of the Major Projects Management Office-West, which will serve as a single window for the Government of Canada to coordinate activities on energy infrastructure development. A key function of this office will be to facilitate meaningful engagement and ongoing dialogue with Aboriginal groups, the Government of British Columbia and industry on issues related to energy projects in British Columbia. The Office will work to better understand key issues of Aboriginal groups and identify concrete actions that will help support Aboriginal group's involvement in west coast energy projects in areas such as employment, business opportunities, and tanker and pipeline safety systems.

I have asked Mr. Michael Henderson, Regional Director General, to contact you to further discuss the role of this new Office, as well as opportunities for participation in marine and pipeline safety systems. The second is the establishment of a tripartite forum, which would provide an opportunity for the Government of Canada, the Government of British Columbia and Aboriginal leaders to share information, identify common interests, and align efforts on issues directly affecting Aboriginal participation in the development of energy projects and natural resources on Canada's West Coast.

In terms of the consultation process for the proposed Trans Mountain Pipeline Expansion, the Government of Canada is committed to meeting its legal duty to consult whenever it contemplates conduct that could adversely affect established or potential Aboriginal or treaty rights. To date, we have held meetings and have exchanged correspondence with the Tsleil-Waututh Nation and other Aboriginal groups that are potentially impacted by the project, to ensure that they are fully informed about the review and consultation processes.

As mentioned in previous correspondence, the Government will rely on the National Energy Board's (NEB) public hearing process to the extent possible to fulfill the legal duty to consult. The Government of Canada believes that the NEB process is an effective means of gathering, distributing, and assessing information regarding the potential adverse impacts of the project on asserted or established Aboriginal or treaty rights.

The Tsleil-Waututh Nation is also encouraged to engage directly with Kinder Morgan, as the proponent has the ability to make changes to the project to address any specific concerns raised. The proponent is required by the NEB to engage and consult with potentially affected Aboriginal groups to explain the project and provide an opportunity to discuss any concerns that may need to be addressed before decisions are made. The proponent will submit information on the nature of concerns raised by Aboriginal groups and its efforts to address these concerns through its project design and mitigation measures. Any unresolved concerns should be brought forward through the NEB's hearing process.

- 3 -

In your letter you expressed your views on the timelines currently in place for conducting the review and requested that these be altered to accommodate the Tsleil-Waututh Nation's rights and interests. Legislated timelines were put in place to achieve more predictable and timely project reviews. The Government of Canada is confident that the timelines allow sufficient time for meaningful consultation. You also raised concerns with the process for making a decision on pipeline tolling and determining the list of issues to be examined during the hearing. These determinations are the responsibility of the NEB and do not presuppose or fetter the Government's discretion when making a decision on the project.

I look forward to our continued discussions and I would be pleased to have a follow-up meeting with you in the near future to continue our informal discussions on west coast energy infrastructure development. In the meantime, officials in my department would welcome the opportunity to meet with the Tsleil-Waututh Nation to further discuss the Government's approach to consultation for the Trans Mountain pipeline project and respond to any questions or concerns. I understand that Mr. Joseph Whiteside (604-666-5141), an official from the Major Projects Management Office, has already contacted your office for such a meeting and is available at any time.

Again, thank you for writing on these important matters.

Kind regards,

**Original Signed by  
HON. GREG RICKFORD  
à signé l'original**

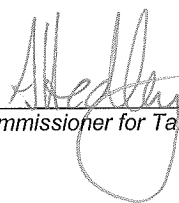
The Honourable Greg Rickford, P.C., M.P.  
Minister of Natural Resources and Minister  
for the Federal Economic Development  
Initiative for Northern Ontario

c.c.: The Honourable Bernard Valcourt, P.C., Q.C., M.P.  
Minister of Aboriginal Affairs and Northern Development

The Honourable Leona Aglukkaq, P.C., M.P.  
Minister of the Environment

Mr. Ernie George  
Director, Treaty, Lands and Resources  
Tsleil-Waututh Nation

This is Exhibit "EE" referred to in the Affidavit of Ernie George affirmed May 21, 2015



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*Commissioner for Taking Affidavits (or as may be)*

**To: Hon. Greg Rickford**  
**Minister of Natural Resources**  
 21st Floor, 580 Booth Street, Room C7-1  
 Ottawa, Ontario K1A 0E4

**cc.: Prime Minister Stephen Harper, NEB Chair Peter Watson**

28 November, 2014

We are the original stewards of this land and we continue to have a sacred obligation to protect our waters, lands and people. We are united in expressing our grave concerns about how the regulatory review of the Trans Mountain Expansion Project is unfolding. We call for vast improvements to that review process and to how First Nations will be consulted regarding the Project.

We are highly concerned that the Crown has failed to implement a process to meaningfully consult First Nations even though the National Energy Board (NEB) review is well underway. Rather than working with First Nations, the Crown has acted unilaterally and stated it will rely, to the extent possible, on the NEB Hearing for the Project to identify, consider and address impacts on Aboriginal rights, including Treaty rights and fulfill its legal duty to consult. This approach is inadequate for a number of reasons.

First, the Crown failed to consult First Nations about the design of the overall framework for the review. As a result, the environmental assessment being carried out by the NEB will fail to fully consider or assess potential adverse impacts on Aboriginal title, rights, including Treaty rights or interests and will not, therefore, provide the Crown with the information it requires.

Second, as a quasi-judicial tribunal that operates much like a court, the NEB cannot consult with First Nations and accommodate our concerns, as the honour of the Crown requires. But while it has the powers of a court, in this proceeding the NEB has determined that no Trans Mountain witnesses will be cross-examined. Instead, Trans Mountain must answer written "information requests", which have proven to be a wholly inadequate substitute. The result will be a fatally flawed and superficial review.

Third, the federal Crown is providing a woefully insufficient amount of capacity funding relative to the complexity of the Project and the magnitude of its impacts. We are being required to spend hundreds of thousands of dollars from our limited budgets so that the Crown can seek to rely on this process to fulfill its constitutional duty to consult us. This is not honourable.

Fourth, the Crown has failed to provide any guidance as to if or how consultation will occur after the NEB makes a recommendation to Cabinet about the Proposal. In any event, it will be too late at that point to consult us about the Proposal and attempt to accommodate our concerns.

The bottom line is that the undersigned First Nations are wholly dissatisfied with the Crown's approach to consultation in relation to the Project. We do not believe that the Crown's approach is consistent with its constitutional duties to First Nations.

We call on the Crown to work with us to develop a meaningful consultation process for review of the Project. To begin the discussion, we request a meeting with you on an urgent basis to map out a constructive and pragmatic path forward.

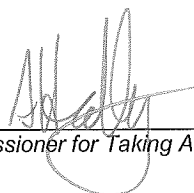
Sincerely,

Chief Nelson Leon, Adams Lake Indian Band  
 Chief Susan Miller, Katzie First Nation  
 Chief Marilyn Gabriel, Kwantlen First Nation  
 Chief Wayne Sparrow, Musqueam Indian Band  
 Chief Norma Webb, Peters Band  
 Chief Percy Joe, Shackan Indian Band

Chief Ian Campbell, Squamish Nation  
 Jesse James, Shxw'ōwhámel First Nation  
 Chief Gordon Planes, T'Sou-ke Nation  
 Chief Harvey Underwood, Tsawout First Nation  
 Chief Maureen Thomas, Tsleil-Waututh Nation  
 Chief Harvey McLeod, Upper Nicola Indian Band

Cc.  
 Thomas Mulcair, NDP  
 Justin Trudeau, Liberal Party of Canada  
 Elizabeth May, Green Party of Canada

This is Exhibit "FF" referred to in the Affidavit of Ernie George affirmed May 21, 2015



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*Commissioner for Taking Affidavits (or as may be)*

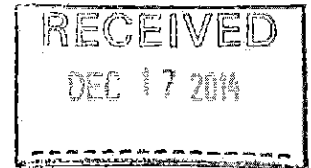
Minister  
of Natural Resources



Ministre  
des Ressources naturelles

Ottawa, Canada K1A 0E4

DEC 11 2014



Chief Maureen Thomas  
Tsleil-Waututh Nation  
3075 Takaya Drive  
North Vancouver, British Columbia V7H 3A8

Dear Chief Thomas:

Thank you for your letter of November 12, 2014, concerning the Trans Mountain Expansion Project (the Project). I appreciated the opportunity to meet with you on November 27, 2014, to have a frank discussion on the issues raised in your letter and to discuss opportunities related to the development of West Coast energy infrastructure. As well, I would like to acknowledge receipt of the open letter, to which you were a signatory, sent to me by twelve British Columbia First Nation Chiefs on November 28, 2014. I will be responding to that correspondence separately.

As you have mentioned, it is important to continue our dialogue on West Coast energy infrastructure development, both within and outside formal consultation processes. Such a meeting could include discussion on the Project and other related topics as raised in our meeting last month.

To this end, I believe that it would be beneficial, as you have suggested, for representatives of the Government of Canada and the Tsleil-Waututh Nation to meet. I propose that this meeting take place early in 2015 and be coordinated by Mr. Mike Henderson, Senior Executive Director, Major Projects Management Office West (604-666-0315), and Mr. Tim Gardiner, Director General, Strategic Projects Secretariat, Major Projects Management Office (613-943-0544). They will be in touch with your office on preparations for this meeting.

I look forward to continuing our dialogue and would be pleased to have another follow-up meeting with you in the near future.

Again, thank you for writing on these important matters.

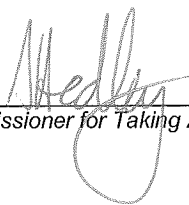
Sincerely,

The Honourable Greg Rickford, P.C., M.P.  
Minister of Natural Resources and Minister for the  
Federal Economic Development Initiative for Northern Ontario

Canada



This is Exhibit "GG" referred to in the Affidavit of Ernie George affirmed May 21, 2015



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Commissioner for Taking Affidavits (or as may be)



Natural Resources  
Canada

Ottawa, Ontario K1A 0E4

Ressources Naturelles  
Canada

Ottawa (Ontario) K1A 0E4

**Facsimile Cover Page**  
**Page couverture du document télécopié**

**Date:** \_\_\_\_\_

**February 6, 2015**

**From/De :**

**Timothy Gardiner**  
**Director General, Strategic Projects Secretariat**  
**Major Projects Management Office**

**Telephone/Téléphone :** \_\_\_\_\_

**(613) 943 0544**

**Subject: Approach to Crown Consultations for the Trans Mountain Pipeline Expansion Project**

**Number of pages, including cover page/ 6**

**Nombre de pages, incluant la page couverture : 6**

---

**Good Afternoon:**

**Please see the attached letter outlining the federal Approach to Crown Consultations for the Trans Mountain Pipeline Expansion Project.**

**Regards.**

13-090

CHA



Natural Resources  
Canada

Ressources naturelles  
Canada

Major Projects Management Office  
Bureau de gestion des grands projets  
Ottawa, Ontario  
K1A 0B4

February 6, 2015

Mr. Ernie George  
Director, Treaty, Lands & Resources Department  
Tsil'it-Waututh Nation  
3075 Takaya Drive  
North Vancouver, BC V7H 3A8  
Facsimile: (604) 929-4158

**Subject: Approach to Crown Consultations for the Trans Mountain Expansion Project**

Dear Mr. Ernie George:

The purpose of this letter is to formally communicate the federal government's (the Government's) approach to Crown consultations for Kinder Morgan's proposed Trans Mountain Expansion Project (the Project), including roles and responsibilities, relevant steps, and general approach to assessing the depth and adequacy of consultations for potentially impacted Aboriginal groups.

The Project is a proposed expansion of an existing pipeline system, largely along an existing route through Alberta and British Columbia, and a proposed expansion of the pre-existing Westridge Marine Terminal located in Burnaby, British Columbia on the south shore of Burrard Inlet.

An August 12, 2013 letter from the National Energy Board (NEB) informed you of the Project which is subject to a review by the NEB under the *Canadian Environmental Assessment Act, 2012* and the *National Energy Board Act*. Your group will be consulted in accordance with the requirements of the respective Acts. The NEB review process began in April 2014 and is expected to conclude by January 2016, at which time the Government will have three months to decide whether the Project should be given approval to proceed.

Natural Resources Canada (NRCan) also wrote to you on May 20, 2014 to summarize the proposed approach to Crown consultations.

#### ***Approach to Crown Consultations***

The Government is responsible for ensuring the adequacy of consultations with Aboriginal groups potentially impacted by the Project. NRCan's Major Projects Management Office (MPMO) is serving as the Crown Consultation Coordinator (CCC) for the Project and will coordinate the consultation requirements of federal departments and agencies with relevant regulatory mandates throughout the review, decision-making and regulatory phases of the Project. The MPMO is the Government's primary

**Canada**

- 2 -

point of contact for Aboriginal groups. The approach to Crown consultations will be coordinated in four phases, as outlined below:

- **Phase I - Early engagement:** from the submission of the project description to the start of the NEB review process.
- **Phase II - NEB hearings:** from the start of the NEB review process to the close of the hearing record.
- **Phase III - Government decision:** from the close of the hearing record to a Governor in Council decision on the project. Note, the MPMO will communicate with you this spring to provide further information regarding the process for these post-hearing consultations, details on the government decision-making process, availability of participant funding, and relevant departmental mandates.
- **Phase IV - Regulatory authorizations should the Project be approved:** from the Governor in Council's decision on the Project to the issuance of any required departmental regulatory authorizations.

An attachment to this letter, entitled *Approach to Crown Consultation for the Trans Mountain Expansion Project*, provides additional detail on the Crown consultation process for the Project.

#### ***The NEB Review Process***

The NEB review process provides an open, transparent and comprehensive mechanism for Aboriginal groups to express their concerns regarding potential adverse impacts of the proposed Project on their potential or established Aboriginal or treaty rights, and related avoidance, mitigation and other accommodation measures. During the review period, Aboriginal groups registered as intervenors have an opportunity to engage directly with the proponent, review the Project application, submit information requests (to the proponent and other intervenors), and submit oral and/or written evidence and final arguments to the NEB for its consideration as provided for in the NEB hearing order.

The NEB has full authority and relevant expertise to ensure an adequate evidentiary record is generated through the review process and to make recommendations to the Government on whether it is in the public interest for the Government to approve the Project and, if so, what conditions should apply.

Consequently, the Government will rely on the NEB review process, to the extent possible, to identify, consider and address potential adverse impacts of the Project on asserted or established Aboriginal and treaty rights. The Government of Canada believes the process outlined in the *Approach to Crown Consultation for the Trans Mountain Expansion Project* provides for a deep level of meaningful consultation with Aboriginal groups, and encourages Aboriginal groups who are intervenors to participate fully in this process.

Aboriginal groups that have opted not to apply to participate in the NEB review process are encouraged to follow the proceedings on the NEB website. As the NEB review process advances, the Government will ensure the draft conditions and final report for the project (determined by the NEB) are shared with all Aboriginal groups, including non-participants. In addition, should a non-participating Aboriginal group identify potential impacts related to the project, the group is encouraged share this information with the MPMO. This information could be considered as part of the NEB review process, as well as the Phase III and IV consultations noted above.

- 3 -

***Impacts of the Project on Potential or Established Aboriginal or Treaty Rights***

Following Phase III consultations with Aboriginal groups, an adequacy of consultation assessment will be developed by the Crown. The adequacy of consultation assessment is based on an assessment of the depth of consultation owed to each group, which in turn is based on potential project impacts and strength of claim to potential or established Aboriginal or treaty rights.

The MPMO is currently conducting a strength of claim assessment for all Aboriginal groups close to the proposed pipeline right of way. The Crown will consider certain criteria, as evidence is brought forward, to develop the adequacy of consultation assessment. Key criteria may include 1) Extent: whether an adverse impact on a right may be localized or experienced to a broader extent, and how the geographic extent of the adverse impact on the right relates to the geographic extent of the right as practised; 2) Certainty: the likelihood that an adverse impact on a right will occur; 3) Magnitude: the nature and degree of the impact on a right; 4) Duration and Frequency: how often the impact on a right occurs and whether these occurrences are short-term or long-term; and 5) Reversibility: whether the adverse impact on a right is reversible, and what the recovery period would be.

At this early stage in the review process, Aboriginal groups have not yet submitted all their evidence on potential impacts. Consequently, only a very preliminary assessment of which groups could potentially be impacted by the Project and the extent of these impacts has been carried out. The assessment of the impacts of the Project on potential or established Aboriginal or treaty rights of these groups will evolve as the NEB review process unfolds and Aboriginal groups submit their evidence to the NEB.

***Additional Information***

If you wish to obtain more information regarding the overall Crown approach to consultations, please contact me at 613-943-0544 or [timothy.gardiner@nrcan-rncan.gc.ca](mailto:timothy.gardiner@nrcan-rncan.gc.ca). Should you have any questions related to the NEB review process, please contact Shirley Dawe, Socio-Economic Specialist, who can be reached at 403-299-3605, 1-800-899-1265 or [shirley.dawe@neb-one.gc.ca](mailto:shirley.dawe@neb-one.gc.ca).

To ensure transparency in the public review process, this letter will form part of the Government of Canada's evidence to the NEB.

Sincerely,



Timothy Gardiner  
Director General, Strategic Projects Secretariat  
Major Projects Management Office

06-Feb-2015 18:09 NRCan - RNCan 613-992-8738

5/7

- 4 -

**Attachment: (1)**

**cc:**

**Chief Maureen Thomas, Tsleil-Waututh Nation;**

**Mr. Eugene Kung, West Coast Environmental Law, Authorized Representative**

**Mr. Scott Smith, Gowling Lafleur Henderson LLP, Authorized Representative;**

**Mr. John A. Wilson, Gowling Lafleur Henderson LLP, Authorized**

## Approach to Crown Consultation for the Trans Mountain Expansion Project

The Government of Canada has adopted a whole-of-government approach to Crown consultation. This means that federal authorities will work together to ensure the legal duty to consult Aboriginal groups is fulfilled and performed in a coordinated manner that is integrated with the regulatory and environmental assessment process for the project. This approach is consistent with jurisprudence and relevant federal policies, notably the "Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfill the Legal Duty to Consult" (2011) and the Cabinet Directive on Improving the Performance of the Regulatory System for Major Resource Projects (2007).

The National Energy Board (NEB) is mandated to carry out an environmental assessment and a regulatory review (review process) for the Trans Mountain Expansion Project (the Project), under the *National Energy Board Act* and *Canadian Environmental Assessment Act, 2012*.

The NEB review process is an open and transparent venue for Aboriginal groups to bring concerns, comments and/or evidence forward. Aboriginal groups are strongly encouraged to bring information to the NEB related to the nature and scope of their potential or established Aboriginal and treaty rights and the potential adverse impacts that the Project may have on these rights. Aboriginal groups are also invited to propose appropriate measures to avoid, mitigate or accommodate such impacts on potential or established Aboriginal and treaty rights.

The NEB has jurisdiction to establish conditions for the Project in relation to those matters that are under the NEB's mandate through the assessment of potential environmental effects and the identification of mitigation and avoidance measures.

The NEB also requires the proponent to provide evidence regarding its consultations with Aboriginal groups potentially impacted by the project, including the concerns of Aboriginal groups and how these concerns have been taken into consideration in the project design and planning. The Government of Canada will rely on the NEB review process, to the extent possible, to meet the Crown's duty to consult.

The responsibility for ensuring the legal duty to consult is appropriately discharged ultimately rests with the Crown, not the NEB or the proponent. Natural Resources Canada's Major Projects Management Office (MPMO) is serving as the Crown Consultation Coordinator for the project, and is charged with implementing a whole-of-government approach to Crown consultations.

Crown consultations will be coordinated by the MPMO and will occur in four phases:

- **Phase I – Early engagement:** from the submission of project description to the start of the NEB review process.

In advance of the NEB review process (Phase I), the MPMO and NEB will develop a Crown list of potentially impacted Aboriginal groups, and offer to meet with groups on the Crown list to outline the NEB review process and anticipated timelines, availability of participant funding (for intervenors), and Canada's approach to Crown consultations. The Crown list includes Aboriginal groups whose asserted or established Aboriginal or treaty rights could potentially be impacted by the Crown's conduct in relation to the project, based primarily on proximity to the pipeline right of way. The list was initially developed based on the proponent's list of Aboriginal groups,

and subsequently reviewed by the NEB and Aboriginal Affairs and Northern Development Canada (AANDC) using traditional territory and other Aboriginal group identification criteria. The resulting draft Crown list was reviewed by implicated federal authorities (Fisheries and Oceans (DFO), Environment Canada (EC), Parks Canada (PC) and Transport Canada (TC)) before being finalized. The final Crown list was shared with the proponent.

- **Phase II – NEB Hearings<sup>1</sup>:** from the start of the NEB review process to the close of the hearing record.

During the review process (Phase II), Aboriginal groups who are commenters or intervenors in the hearing process will have an opportunity to express their concerns regarding potential adverse impacts of the proposed Project on their potential or established Aboriginal and Treaty rights. The NEB will consider adverse impacts the project could have on potential or established Aboriginal or treaty rights based evidence filed by commenters, intervenors and the proponent. Based on this evidence the NEB will submit a Final Report to the Government on whether the Project is in the public interest and recommend project conditions to avoid, mitigate, or accommodate those potential impacts. The MPMO will track concerns raised by Aboriginal groups and proposed avoidance, mitigation and accommodation measures proposed by the proponent and the NEB. The MPMO was present during all Oral Traditional Evidence Hearings.

- **Phase III – Government decision:** from the close of the hearing record to a Governor in Council decision on the project.

The MPMO will lead whole-of-government consultations with Aboriginal groups on outstanding issues at the close of the hearing record, based on the NEB's draft conditions. The MPMO and relevant federal departments and agencies will correspond and meet with potentially impacted Aboriginal groups to determine if the proponent's commitments and NEB conditions address their concerns and whether any additional avoidance, mitigation or accommodation measures should be considered by the Crown. Note that outstanding issues are issues that Aboriginal groups identify as not having been fully addressed by the NEB conditions or proponent commitments. Aboriginal groups will be asked to identify these issues as well as incremental measures that could be considered by the Crown. The Crown will then need to determine what additional accommodation measures might be reasonable under the circumstances. The results of the early engagement, NEB hearings and post-hearing consultations are consolidated and support the Governor in Council's decision on the Project.

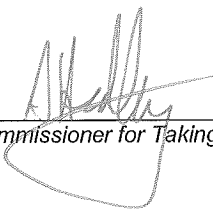
- **Phase IV – Regulatory permitting:** from the Governor in Council decision on the Project to the issuance of departmental regulatory approvals (if required)

Additional consultations could also be required in relation to permitting activities of federal departments and agencies following the review process (Phase IV), should the project be approved by the Governor in Council. This determination will be made by the permitting authority, based on their regulatory mandate, on a case-by-case basis.

<sup>1</sup> In the case of the Project, there was some overlap between Phase I and Phase II, as MPMO held meetings with Aboriginal groups after the beginning of the NEB review process. The review period for the Project was 36 months; however this time frame was interrupted by a 7-month "time out" implemented by the NEB on August 12, 2004 pursuant to Section 52.5 of the National Energy Board Act.



This is Exhibit "HH" referred to in the Affidavit of Ernie George affirmed May 21, 2015



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*Commissioner for Taking Affidavits (or as may be)*



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



February 25, 2015

Hon. Greg Rickford  
Minister, Natural Resources Canada  
580 Booth Street, 21<sup>st</sup> Floor, Room C7-1  
Ottawa, Ontario K1A 0E4  
EMAIL: [Minister.Ministre@NRCan-RNCan.gc.ca](mailto:Minister.Ministre@NRCan-RNCan.gc.ca)

Dear Minister Rickford,

Thank you for your letter dated December 11, 2014 and a companion email from David Murray dated January 6<sup>th</sup>, 2015, a February 6<sup>th</sup>, 2015 letter from Timothy Gardiner, and a phone call and February 16<sup>th</sup>, 2015 email from Sean Wouters. All followed up on various issues raised at our meeting on November 27, 2014 and suggested we meet again in the near future.

Consistent with my previous correspondence, I agree with your assertion that it is important to dialogue on West Coast energy development, both within and outside formal consultation. My view is that these two lines of dialogue should not be intermingled. I think that their objectives and outcomes are very distinct. If they get mixed up or confused, we will fail to advance either.

To that end, Tsleil-Waututh requires that these two lines of discussion be kept separate. Whenever a meeting is called, we would need to agree in advance on the agenda and type of discussion to occur and not deviate from that agreement during the meeting. In this way, Tsleil-Waututh can foresee moving forward.

The two lines of dialogue we propose are: 1) informal discussion of the federal government's Strategic Partnership Initiative and 2) formal consultation on the Trans Mountain Expansion Proposal.

## **Strategic Partnership Initiative**

We have signed an agreement with Fisheries and Oceans Canada to fund fish habitat activities this fiscal year and have submitted a proposal for the next fiscal year. This portion of the initiative has been very well received by Tsleil-Waututh and we look forward to working together to benefit the environmental health of Burrard Inlet.

We look forward to discussion of other elements of the initiative, particularly on topics like environmental stewardship, economic development and governance. To that end, I have directed Ernie George, Director of Treaty, Lands and Resources, and his staff to engage your staff in further discussion of the Strategic Partnership Initiative and how Tsleil-Waututh might participate and benefit.

### **Government-to-Government Consultation on the Trans Mountain Expansion Proposal**

As I set out in my March 5, 2014 and subsequent letters, Tsleil-Waututh's interest in meeting with you on the topic of consultation is to discuss how we can jointly establish and implement a government-to-government consultation process in relation to all aspects of the Trans Mountain Expansion Proposal including marine transport and safety. We want to work with the federal government to jointly develop a process that respects and accommodates the respective authorities of the Tsleil-Waututh Nation and the Government of Canada.

I am concerned, however, that the tenor of the February 6<sup>th</sup>, 2015 letter suggests little openness to such a discussion. It reiterates a view of how consultation will work that was put together without any Tsleil-Waututh input as to how to best accommodate our rights, title or authority. Importantly, that process does not acknowledge, respect or accommodate Tsleil-Waututh's authority in relation to the proposal. Rather, the letter continues to state that the federal government intends to rely on the National Energy Board hearing as the primary mechanism for consultation with Tsleil-Waututh.

There is still an opportunity to change course and craft a process of consultation that is meaningful to both our governments. I would like to meet with you again to discuss how we can move forward.


One other point in the February 6<sup>th</sup>, 2015 letter concerns me. On the last page, it makes reference to strength of claim assessments. If one is being prepared for Tsleil-Waututh, it surprises me that no one at Natural Resources Canada has talked to me or my staff about it. It is highly inappropriate to conduct such a study without Tsleil-Waututh input.

Tsleil-Waututh has commissioned an expert report on this issue. We will provide it to you and your staff in the coming months. At that point it would be appropriate for us to convene a meeting to discuss the federal government's assessment of Tsleil-Waututh's strength of claim.

In closing, since these two lines of discussion are independent, one need not wait for the other. I take it from David Murray's email that your staff is prepared to move ahead on discussion of the Strategic Partnership Initiative. I will ask Ernie to contact David immediately.

On the issue of formal consultation, I look forward to meeting with you at your earliest convenience.

Sincerely,



Chief Maureen Thomas

CC: Mike Henderson (Mike.Henderson@NRCan-RNCan.gc.ca), Tim Gardiner (Timothy.Gardiner@NRCan-RNCan.gc.ca), David Murray (David.Murray@NRCan-RNCan.gc.ca), Sean Wouters (Sean.Wouters@NRCan-RNCan.gc.ca), Ernie George

This is Exhibit "II" referred to in the Affidavit of Ernie George  
affirmed May 21, 2015



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*Commissioner for Taking Affidavits (or as may be)*



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



March 23, 2015

Hon. Greg Rickford  
Minister, Natural Resources Canada  
580 Booth Street, 21<sup>st</sup> Floor, Room C7-1  
Ottawa, Ontario K1A 0E4  
EMAIL: [Minister.Ministre@NRCan-RNCan.gc.ca](mailto:Minister.Ministre@NRCan-RNCan.gc.ca)

Dear Minister Rickford,

We write in reply to your letter of February 2, 2015, in which you responded to our letter of November 28, 2014. The ultimate purpose of our letter was to request a meeting with you in order that together we may forge a path forward that would constitute true consultation with respect to the Trans Mountain Expansion Project. As we set out in that letter, it is our view that the Crown's apparent approach to consultation in respect of the TMEP is deeply flawed and that it will not be adequate to discharging the Crown's duty to consult us.

In your letter of February 2, 2015 you accepted our invitation to meet, proposed that we do so early in 2015, and indicated that Major Projects Management Office (West) would contact us to arrange the meeting. MPMO-West has not yet contacted us and so we are writing you again to press for a meeting. The National Energy Board process continues to march toward its conclusion and it is essential that certain flaws in your consultation process are corrected before it does.

Indeed, the urgency is increased because, as you foreshadow in your letter, the MPMO has subsequently sent its "Approach to Crown Consultations for the Trans Mountain Expansion Project" (the "Crown's Approach") to all First Nations you regard as potentially impacted by the TMEP.

We are highly disappointed that the Crown developed its approach to consultation prior to meeting with us. As with the determination of the NEB's mandate and process, we have not been consulted in any way with respect to the Crown's approach to consultation on the TMEP. This is despite our letter identifying fundamental flaws in the review process and how we are being consulted and our request for an urgent meeting to find pragmatic solutions.

Sadly, the Crown's unilateral approach has had the result that critical flaws we identified in our letter have not been corrected. The Crown's Approach does not address: the inability of the NEB's environmental assessment to fully assess potential impacts on Aboriginal title and rights; the superficiality of the review process, including the absence of any cross-examination of key witnesses; and the wholly inadequate funding the Crown is providing First Nations, such that they either must spend their own funds, if they are able, or forego meaningful participation in the NEB review.

The issuance of the Crown's Approach does attempt to address one of the concerns set out in our November 28 letter: the lack of guidance on how the Crown will consult after the NEB issues its report. Unfortunately, the process set out in your letters is seriously deficient and we do not view

this to be consistent with your constitutional duty to consult, as we will discuss further at our meeting. For now, we set out two of our concerns.

First, the Crown's Approach indicates that the MPMO is currently conducting strength of claim assessments for all Aboriginal groups close to the proposed pipeline right of way. We are very disturbed that the Crown is conducting such assessments without speaking directly with the relevant First Nations about their claims. The Crown's near-total reliance on the NEB process is, with respect, not consistent with the honour of the Crown. That process is legalistic and adversarial and based almost entirely on written evidence (we were allowed all of three hours to speak orally to our communities' histories, practices and traditions, and concerns about this project). It is also extremely expensive for us to meaningfully participate in, and we have not been granted anything like the funding necessary to do so. But most fundamentally, the NEB's review bears no relation to a real process of consultation, which centres on direct, nation-to-nation communication. Indeed, as we have been advised many times, as a quasi-judicial tribunal, the NEB is *incapable* of consulting us.

Second, we are very concerned about the timing and purpose of the Crown's strength of claim assessments. Rather than conducting them early in order to determine the depth and format of the consultation required, the Crown appears to be developing them as part of an attempted after-the-fact justification of the sufficiency of the consultation. Such assessments could and should have been conducted much earlier in order to determine how much and what kind of consultation and capacity funding is required. You had available a great deal of information with respect to our claims prior to the NEB proceeding, and we could provide you with much more had you asked. We are very disappointed in the timing of your consideration of our claims, particularly in light of the concerns about the deficiencies in the consultation on the TMEP, which we have repeatedly raised for many months.

We therefore again ask you to meet with us on an urgent basis – this month, if at all possible. It is essential that the flaws in the Crown's consultation process be corrected before the NEB process is substantially concluded.

Sincerely,



Chief Maureen Thomas

cc: The Right Honourable Stephen Harper, Prime Minister  
 The Honourable Thomas Mulcair, Official Opposition Leader  
 The Honourable Justice Trudeau, Leader of the Liberal Party of Canada  
 The Honourable Elizabeth May, Leader of the Green Party of Canada  
 Peter Watson, Chair, National Energy Board  
 Timothy Gardiner, Director General, Strategic Projects Secretariat, Major Projects Management Office, Natural Resources Canada  
 Mike Henderson, Senior Executive Director, Major Projects Management Office (West), Natural Resources Canada