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Ms. Sheri Young
Secretary of the Board
National Energy Board
Suite 210, 517 Tenth Avenue SW
Calgary, AB T2R 0A8

VIA ELECTRONIC SUBMISSION

Dear Ms. Young,

Re:

Trans Mountain Pipeline ULC (Trans Mountain) Application for the Trans Mountain Expansion Project (Project)

National Energy Board (Board) reconsideration of aspects of its Recommendation Report as directed by Order in Council P.C. 2018-1177 (Reconsideration) MH-052-2018

Procedural Direction No. 4 – Affidavits and written argument-in-chief, including comments on draft conditions and recommendation

I wish to comment on a subsection of the proposed Condition 133 [Page 9 of Procedural Direction #4].¹
The proposed Condition 133 in its entirety reads as follows:

“Confirmation of marine spill prevention and response commitments

Trans Mountain must file with the NEB, at least 3 months prior to loading the first tanker at the Westridge Marine Terminal with oil transported by the Project, confirmation, signed by an officer of the company that:

- a) Trans Mountain has included in its Vessel Acceptance Standard and Westridge Marine Terminal Regulations and Operations Guide a requirement for tankers nominated to load at the Westridge Marine Terminal to have a suitable arrangement for the proposed enhanced tug escort between the Westridge Marine Terminal and Bouy J prior to departure. The tug escort should be suitable for foreseeable meteorological and ocean conditions and be based on tanker and cargo size.

¹ [A9236-1](#), P. 9 PDF.

b) An enhanced marine oil spill response regime capable of delivering 20,000 tonnes of capacity within 36 hours of notification, with dedicated resources staged within the study area is in place.”

The subsection of Condition I wish to comment on is subsection ‘b)’. In my opinion, this requirement does not go far enough in protecting Southern Resident Killer Whales from potential Project-related tanker oil spills. It should, for starters, be revised to take into account Recommendation 1 of the 2013 Tanker Safety Expert Panel (TSEP) Report entitled “A Review of Canada’s Ship-Source Oil Spill Preparedness and Response Regime, which said the following:

“Transport Canada should require Response Organizations to have in place the arrangements for cascading resources and mutual assistance agreements necessary to address a worst-case discharge in their area of response”.²

For the record, this 2014 TSEP recommendation is summarised in the current Trans Mountain Reconsideration Hearing process on Page 18 of a December 17, 2018 Information Request to the Department of Justice which was filed by the District of North Vancouver³ The 2014 TSEP report defines ‘worst-case discharge’ as “...the complete discharge of a tanker’s oil cargo along with its bunker fuel...”⁴

This ‘worst case discharge’ or ‘full cargo of a tanker ’scenario appears on the public record, in the previous NEB Trans Mountain Panel’s deliberations, in the form of Trans Mountain’s June 18, 2014 Response to the City of Vancouver’s Information Request No. 1 .⁵ Thus, reference in yours truly’s argument-in-chief to the Tanker Safety Panel’s worst case scenario recommendation cannot be challenged on the grounds that it constitutes new Evidence.

Part of the rationale for suggesting this enhanced commitment, over and above what the NEB is considering, is that under Canadian laws and regulations *there is no numerical limit to the amount of oil a Responsible Party (RP), aka ‘the polluter’, is required to clean up. On the contrary, the RP is required to clean up the entire amount of oil spilled, and not just 20,000 tonnes of it, as the NEB Trans Mountain Reconsideration Hearing Panel would appear to require it to do.* The requirement for the RP to clean up the entire amount of product spilled and not just a portion of it should be expressly mentioned in the current Panel’s Final Report, should the Panel’s recommendation be that the Project proceed.

A total loss of cargo is also the so-called ‘credible worst case scenario’ for a tanker spill, rather than, say, a partial loss of cargo, as advanced by Trans Mountain in its Reply Evidence of Feb. 17, 2016⁶. The reason for this redefinition of the term ‘credible worst case scenario’ is as follows. In that same 2014 Reply Evidence Trans Mountain argued that “To date, not a single total loss of cargo accident involving a double hull tanker is on record internationally.”⁷ However accurate this statement might have been in

²https://www.tc.gc.ca/media/documents/mosprr/transport_canada_tanker_report_accessible_eng.pdf, P. 20 PDF.

³ [A96779](#), P. 18 PDF.

⁴https://www.tc.gc.ca/media/documents/mosprr/transport_canada_tanker_report_accessible_eng.pdf, P. 20 PDF.

⁵ [A3Y2G6](#), P. 123 PDF.

⁶ [A4Y1Z0](#), P. 130 PDF.

⁷ Ibid.

2014, it has been superseded by an incident which occurred on January 6, 2018, when the double-hulled oil tanker MV Sanchi sank in the East China Sea with a total loss of cargo (plus the death of all thirty two crew members).⁸

In the context of the current NEB Trans Mountain Reconsideration Hearing process, the MV Sanchi incident is mentioned several times in the public record. The first reference was on September 29, 2018, in a document filed by Robyn Allan.⁹ The incident was also alluded to in a document filed with the NEB Trans Mountain Reconsideration Hearing Panel by yours truly on October 2, 2018.¹⁰ The same incident was next summarised in a November 18, 2018 filing by Michael Priaro, in a document entitled “Twelve Fatal Flaws of the Proposed Trans Mountain Oil Pipeline”.¹¹ Finally, and perhaps most importantly, the MV Sanchi incident is mentioned in Evidence placed on the public record by the Department of Justice, in the form of an August 2018 report from Health Canada entitled “Guidance for the Environmental Public Health Management of Crude Oil Incidents”¹².

In short, in raising the issue of total loss of cargo from the double-hulled tanker MV Sanchi, this Intervenor is not introducing any new Evidence. The MV Sanchi incident did occur after the previous Panel issued its Final Report, and in that sense it is new Evidence. But it is not new Evidence in the context of the current NEB Trans Mountain Reconsideration Hearing process, as it has already appeared several times on the public record, as illustrated above. And yet, for some reason unbeknownst to this Intervenor, this highly significant incident, which is directly relevant to the NEB Reconsideration Hearing Panel’s mandate, is never mentioned in any of the documents filed by the Proponent itself.

It is the contention of this Intervenor that the 2018 MV Sanchi casualty now makes the possibility of a Project-related, double-hulled Trans Mountain tanker total loss of cargo spill eminently credible, on the grounds that a spill of this magnitude has already happened to another double-hulled tanker. It is thus not all inconceivable that an MV Sanchi-like incident would occur over the fifty year lifespan of the project, with over 22,000 fully-laden tanker transits envisaged out of the Westridge Marine Terminal in Burnaby.

The 2014 NEB Trans Mountain Panel concluded on Page 398 of its Final Report that “...while the probability of either Northern or Southern resident killer whales being exposed to an oil spill is low, THE IMPACT OF SUCH AN EVENT IS POTENTIALLY CATASTROPHIC” (emphasis added).¹³ In a June 18, 2015 article by Larry Pynn entitled “Increasing oil transport threatens orcas with extinction, Vancouver conference told”, published in the Vancouver Sun and entered in to the previous NEB Trans Mountain Panel official record on June 30, 2015 by Commenter Roberta Olenick as a complement to her Letter of

⁸ <http://www.wikizeroo.net/index.php?q=aHR0cHM6Ly9lbi53aWtpcGVkaWEub3JnL3dpa2kvTVZfU2FuY2hp>

⁹ [A94257](#), P. 5 PDF.

¹⁰ [A9407-1](#), P. 2 PDF.

¹¹ [A95841-1](#), P. 8 PDF.

¹² [A95299-25](#), P. 158 PDF.

¹³ [A77045](#), P. 398 PDF.

Comment¹⁴, Mr. Don Noviello, a Washington State Department of Ecology biologist, is quoted as saying that:

“Increased transport of oil in the Salish Sea- including from the planned expansion of Kinder Morgan’s Trans Mountain pipeline- is putting endangered southern resident killer whales at risk of extinction from a spill...”¹⁵

In the same article, Mr. Noviello is quoted as saying that these same whales are ...”on the brink and need all the support they can get”. He is also quoted as saying: “One ill-timed oil spill could be the event that pushes this population over the brink to extinction.” The article goes on to say that “After the Exxon Valdez oil spill in 1989, Noviello noted, one group of killer whales in Alaska has failed to successfully reproduce and is likely to go extinct.”

In light of all the above- the new, enhanced definition of ‘credible worst case scenario’, the very real possibility of a total loss of cargo occurring from a Project-related tanker oil spill incident, and the existential threat that one or more accidents from one of these same tankers poses to the remaining 75 endangered, SARA-protected Southern Resident Killer Whales, it is suggested that subsection b) of Condition 133, which, as stated above, currently reads:

“... An enhanced marine oil spill response regime capable of delivering 20,000 tonnes of capacity within 36 hours of notification, with dedicated resources staged within the study area, is in place.”

Be reworded as follows:

“An enhanced marine oil spill response regime that combines significant local Response Organisation capacity augmented by resources available under mutual aid agreements with other response organizations and agencies in Canada and abroad. The cascading of resources provided for in these arrangements must be sufficient to clean up a marine oil spill involving a total loss of cargo (plus bunker fuel), from a Project-related tanker anywhere within the Area of Response, up to the outer edge of the 12 nautical mile Territorial Sea.

The rationale for such a proposal is that a single, certified Response Organisation on Canada’s west coast cannot be expected to effectively respond to a ‘catastrophic’ marine oil spill on its own. The public interest would be best served if adequate regional and international support and collaboration is in place to assure a credible, sustained and effective response. While such mutual aid arrangements- some formal and some informal, already exist, they should be a formal, legally-binding requirement, should this project ever proceed.

Sincerely,

Gerald Graham

¹⁴ [A4R112](#).

¹⁵ [A4R117](#).