

National Energy  
Board



Office national  
de l'énergie

**Trans Mountain Pipeline ULC  
Trans Mountain Expansion Project**

**National Energy Board reconsideration of aspects  
of its Recommendation Report as directed by  
Order in Council P.C. 2018-1177**

**File OF-Fac-Oil-T260-2013-03 59**

**Hearing Order MH-052-2018**

**12 October 2018**

**Canada**

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## 1 HEARING OVERVIEW

### 1.1 Introduction

On 20 September 2018, through [Order in Council \(OIC\) P.C. 2018-1177](#), the Governor in Council (GIC) referred aspects of the National Energy Board's (Board or NEB) [Recommendation Report](#) for the Trans Mountain Expansion Project (Project) back to the Board for reconsideration (Reconsideration). The GIC's direction follows a 30 August 2018 [decision](#)<sup>1</sup> of the Federal Court of Appeal that quashed the GIC's approval of the Project.

The Board will hold a public hearing for this Reconsideration. During the hearing, the Board will receive written evidence and other filings, which will be available in the Board's online [public registry](#). The hearing may also include oral portions. The Board will use various ways to gather and test evidence and will review and consider all of the evidence on the record in completing its Reconsideration Report. The Board will rely only on the evidence on the record. This includes relevant evidence previously submitted and any new relevant evidence filed.

The steps and deadlines in the hearing, as outlined in this Hearing Order, are important to make the hearing fair, transparent, and efficient, and they provide certainty to all those involved.

The Board's Reconsideration Report will be submitted to the GIC for a decision.

### 1.2 Time limit

The OIC requires that the Board complete the Reconsideration within 155 calendar days from the date of the OIC. Therefore, the Board must complete the Reconsideration hearing and submit its Reconsideration Report to the GIC no later than **22 February 2019**. This represents the maximum time to complete the review.

In accordance with subsection 11(4) of the *National Energy Board Act* (NEB Act), this hearing will be carried out as expeditiously as the circumstances and considerations of fairness permit, but, in any case, within the time limit imposed by the GIC. The deadlines in this Hearing Order are important to allow this hearing to be completed within that time limit.

### 1.3 What issues will the Board consider?

The issues that the Board will consider in this Reconsideration hearing are found in the List of Issues attached to this Hearing Order as **Appendix 1**. An Amended Factors and Scope of the Factors for the Environmental Assessment under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) is found as **Appendix 2**.

Both of these documents were finalized following a public [comment period](#) held between 26 September and 3 October 2018.

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<sup>1</sup> *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153.

## 1.4 Where can I get help or more information about the hearing process?

The Board has many staff members that can answer questions throughout the hearing process. This includes dedicated Process Advisors to provide you with information and assistance on how to effectively participate. The Process Advisors' role is fully described on the Board's [website](#). See Section 5 of this Hearing Order for contact information.

The Board has set up a dedicated [Reconsideration webpage](#) where you can access valuable information about the Reconsideration hearing.

The Board has developed a [Hearing Process Handbook and related video](#) that provide an overview of its hearing processes, in general. You can request copies of Board publications [online](#) or by calling 1-800-899-1265 (toll-free).

The [National Energy Board Rules of Practice and Procedure, 1995](#) (Rules) provide detailed information about the Board's hearing processes. In the event of an inconsistency between the Rules and this Hearing Order, this Hearing Order should be followed.

## 2 PARTICIPATION IN THE HEARING

In addition to Trans Mountain's participation, the Board's Reconsideration hearing will involve:

- the **participation of intervenors**; and
- gathering **letters of comment from the public**.

Intervenors in the OH-001-2014 Certificate hearing at the time that the Board issued its Recommendation Report were guaranteed intervenor status in this Reconsideration hearing, if they chose to participate and register.

Any other member of the public was able to apply to participate as an intervenor through an [application process](#) held between 26 September and 3 October 2018. The confirmed intervenors in this hearing are named in the [List of Parties](#). The Board's reasons for its decisions in this regard are found [here](#).

The "**Parties**" consist of Trans Mountain and all intervenors (including Federal Departments and Agencies<sup>2</sup>).

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<sup>2</sup> "Federal Departments and Agencies" include those federal departments and agencies that have registered as intervenors in this hearing, as well as those from which the Board has requested information under paragraph 20(a) of the CEAA 2012. Federal Departments and Agencies are denoted on the List of Parties with the prefix "AA".

## **2.1 Letters of comment**

As noted above, any member of the public – including those that applied to participate as intervenors, but were not granted that status – may file a letter of comment with the Board by **20 November 2018**. Letters of comment will be placed on the online public registry, will form part of the hearing record, and the Board will read and consider them.

A letter of comment should be in one of Canada’s official languages (English or French). It should describe your views pertaining to the Board’s Reconsideration and include:

- your name, mailing address, and phone number;
- the name of your organization, if you represent one;
- comments on how you would be impacted positively or negatively by Project-related marine shipping, or any relevant information or expertise that you can offer to assist in the Board’s Reconsideration (considering the List of Issues); and
- any information that explains or supports your comments.

There is no page limit to your letter, although clear, succinct and well-organized letters are encouraged. Generally, the Board does not find mass form letters to be helpful in its deliberations in any hearing.

## **2.2 Intervenors**

In this Reconsideration hearing, an intervenor will have the opportunity and may choose to, among other things:

- file an opening statement;
- file written evidence;
- ask written questions about Trans Mountain’s and other intervenors’ evidence;
- file, and potentially respond to, notices of motion; and
- present written argument and, if deemed necessary by the Board, oral argument.

If you file evidence, or information in response to the Board’s request under paragraph 20(a) of the CEEA 2012, you must, in writing, answer any written questions (i.e., information requests) asked about it by the Board or the other Parties.

Intervenors will be notified of, or receive, all documents that are filed or placed on the hearing record. This includes evidence, notices of motion, and all related materials.

Depending on how active you are as an intervenor, you may face a significant time commitment during the hearing. You have a number of responsibilities. You also have various privileges and participation opportunities afforded to you. Detailed information on intervenor deadlines and responsibilities is found in the table in Section 3.

### 2.3 Can I withdraw?

If you have been allowed to participate as an intervenor, you can withdraw from the hearing at any time by telling the Board in writing, although you are not required to formally withdraw if you no longer wish to participate. You may choose to still retain your participation status, take no action, and simply monitor the hearing’s progress.

As an intervenor, unless you formally withdraw, you will continue to regularly receive regular email notifications and/or hard copies of documents.

## 3 HEARING EVENTS, STEPS, AND DEADLINES

Throughout the Reconsideration hearing, the Board may issue procedural directions that will fully describe certain identified events and steps so that all participants understand what is expected and how to fulfil their responsibilities. Cover letters to documents and information that the Board releases may also contain valuable information about hearing procedures.

Hearing events and steps (responsible person[s] in bold, guidance in italics) <sup>3</sup>	Date or deadline (3:00 pm Pacific time [4:00 pm Mountain time])
Order in Council P.C. 2018-1177 received by the Board	20 September 2018
<b>Board</b> announces hearing time limit, establishes comment process for scope and process for the Reconsideration hearing, and initiates Application to Participate process	26 September 2018
<b>All interested persons and groups</b> file Applications to Participate and comments on scope and process for the Reconsideration hearing	3 October 2018
<b>Board</b> releases the List of Parties to the hearing	5 October 2018
<b>Board:</b> <ul style="list-style-type: none"> <li>• releases Hearing Order MH-052-2018 with the List of Issues and the Amended Factors and Scope of the Factors for the Environmental Assessment pursuant to the CEAA 2012</li> <li>• sends Filing Requirements to Trans Mountain</li> <li>• sends requests to Federal Departments and Agencies pursuant to paragraph 20(a) of the CEAA 2012</li> </ul>	12 October 2018
<b>Board</b> releases procedural direction asking Indigenous <sup>4</sup> intervenors if they wish to provide oral traditional evidence	12 October 2018

<sup>3</sup> All produced documents must be filed with the Board so they can be placed on the hearing record and considered.

<sup>4</sup> The Board’s use of the term “Indigenous” or “Indigenous peoples” in this hearing has the meaning assigned by the definition of “aboriginal peoples of Canada” in subsection 35(2) of the *Constitution Act, 1982*.

<b>Hearing events and steps</b> <b>(responsible person[s] in bold, guidance in italics)<sup>3</sup></b>	<b>Date or deadline</b> <b>(3:00 pm Pacific</b> <b>time [4:00 pm</b> <b>Mountain time])</b>
<b>Indigenous intervenors</b> notify the Board of their intent to provide new or supplemental oral traditional evidence	23 October 2018
<b>Trans Mountain</b> files opening statement and direct evidence <i>Evidence must be relevant to one or more of the issues identified in Appendix 1.</i> <i>Evidence must be served on all intervenors</i>	31 October 2018
<b>Federal Departments and Agencies</b> file opening statements, direct evidence, and information requested by the Board under paragraph 20(a) of the CEEA 2012 <i>Evidence must be relevant to one or more of the issues identified in Appendix 1.</i> <i>Evidence must be served on all other Parties</i>	31 October 2018
<b>Intervenors (other than Federal Departments and Agencies)</b> file opening statement and direct evidence <i>Evidence must be relevant to one or more of the issues identified in Appendix 1.</i> <i>Evidence must be served on all other Parties</i>	20 November 2018
<b>Members of the public</b> file letters of comment <i>Letters of comment must be served on Trans Mountain</i>	20 November 2018
<b>Trans Mountain</b> files reply evidence <i>Reply evidence must be served on all intervenors</i>	26 November 2018
<b>All Parties</b> file information requests regarding other Parties' evidence <i>Information requests must be relevant to one or more of the issues identified in Appendix 1, and also to the evidence of the Party to which the questions are asked</i> <i>Information requests must be served on all other Parties</i>	3 December 2018
<b>Oral hearing session: to collect, and allow questioning of, oral Indigenous traditional evidence</b>	late-November or early-December 2018
<b>All Parties</b> respond to information requests asked of them <i>Responses to information requests must be served on all other Parties</i>	13 December 2018
Motion Day – As considered necessary, Parties file notices of motion on the adequacy of other Parties' responses to their own information requests (“motions to compel”) <i>Motions to compel must be served on all other Parties</i>	17 December 2018
<b>All Parties</b> file affidavits adopting their written evidence	9 January 2019

<b>Hearing events and steps</b> <b>(responsible person[s] in bold, guidance in italics)<sup>3</sup></b>	<b>Date or deadline</b> <b>(3:00 pm Pacific</b> <b>time [4:00 pm</b> <b>Mountain time])</b>
<p><b>Trans Mountain and Federal Departments and Agencies</b> file written argument-in-chief, including comments on draft conditions (which the Board will release for comment)</p> <p><i>Comments on conditions must be included in written argument-in-chief; they cannot be raised for the first time during oral argument. No new evidence can be provided in written argument-in-chief</i></p> <p><i>Written argument-in-chief must be served on all intervenors</i></p>	<p>9 January 2019</p>
<p><b>Intervenors (other than Federal Departments and Agencies)</b> file written argument-in-chief, including comments on draft conditions and any reply argument to Trans Mountain and Federal Departments and Agencies.</p> <p><i>Comments on conditions must be included in written argument-in-chief; they cannot be raised for the first time during oral argument. No new evidence can be provided in written argument-in-chief</i></p> <p><i>Written argument-in-chief must be served on all other Parties</i></p>	<p>14 January 2019</p>
<p><b>Optional oral hearing session: to hear all Parties' oral summary argument and/or reply argument</b></p> <p><i>Oral summary argument or summary argument on specific issues only may be held if needed and time permits</i></p> <p><i>Parties should include all pertinent argument in their written argument-in-chief, as this step may not be held</i></p> <p><i>Should oral summary argument take place, Trans Mountain can provide reply argument during this period; otherwise a date for filing written reply argument will be announced by the Board</i></p>	<p>mid-January 2019</p>
<p>Hearing record closes</p>	<p>Immediately after finishing argument</p>
<p><b>Board</b> releases its Reconsideration Report to the Governor in Council, and provides it to the Minister of Natural Resources</p>	<p>22 February 2019 or earlier (time limit end)</p>

### 3.1 More information about written steps

#### 3.1.1 What is evidence?

Evidence is what the Board will consider in the Reconsideration hearing. Evidence is comprised of the reports, statements, oral Indigenous traditional evidence, photographs, letters, and other material that hearing participants file during the hearing. Evidence is used to support one's position in relation to the List of Issues.



The entirety of the evidence filed in the OH-001-2014 Certificate hearing will be included as part of its record for this Reconsideration hearing, and will be considered by the Board to the extent it is relevant to the List of Issues for the Reconsideration hearing. **Parties are not required to re-file or re-test evidence that was filed during the OH-001-2014 Certificate hearing.**

### **3.1.2 What is an opening statement?**

Opening statements are neither argument, nor evidence. A Party's written opening statement should contain a summary of their opening position on the Reconsideration, an executive summary or "road-map" to their evidence (which is due on the same day as the opening statement), and an explanation of how their evidence is new or different than what was filed, tested, and considered during the OH-001-2014 Certificate hearing.

The Board is providing the Parties with the opportunity to file a written opening statement. The Board considers that, in the unique circumstances of this Reconsideration hearing, opening statements will support efficiency, and will assist the Board and all participants in focusing on key matters of importance to them as the hearing proceeds.

**Opening statements must be concise, and no longer than five pages in length.**

### **3.2 More information about the oral hearing sessions**

Board staff will be available in the hearing room prior to any oral hearing session(s) to explain the layout of the hearing room and answer any process questions.

#### **3.2.1 Oral Indigenous traditional evidence**

The Board understands that Indigenous peoples have an oral tradition for sharing knowledge from generation to generation. This information cannot always be shared adequately or appropriately in writing.

**In late-November or early-December 2018**, Indigenous intervenors may choose to provide traditional evidence orally. This would be in addition to their written evidence, if any. This oral traditional evidence may be questioned orally by other intervenors, Trans Mountain, or the Board. Indigenous intervenors may choose to provide responses to questions orally or in writing, or a combination of both.

Additional details about how the Board will gather oral traditional evidence from those Indigenous intervenors who wish to provide it will be provided in a Procedural Direction in the near future.

#### **3.2.2 Oral argument**

If deemed necessary by the Board and the time permits, the Board may hold an oral hearing session in **mid-January 2019** to hear oral summary argument and/or reply argument from all Parties.

If the Board decides to proceed with this oral hearing session, it will issue a procedural direction requiring all Parties to notify the Board of their intent to present oral summary argument and/or reply argument. Full details on oral argument (including procedures, time limits, dates, location[s]) will be provided at a later time, if required. The Parties should include all pertinent argument in their written argument-in-chief, as this step may not be held.

### **3.3 Oral hearing broadcasts and transcripts**

The Board will live-stream the oral hearing sessions via its [website](#). Media files of each day's broadcast will also be available for download.

Daily written transcripts will be found on the online public registry by the following morning. Anyone can order paper copies of the transcripts directly from International Reporting Inc. This can be done in the hearing room, by emailing [bprouse@irri.net](mailto:bprouse@irri.net), or by calling 613-748-6043. There may be a fee for this service.

## **4 PROCEDURES AND GUIDANCE**

### **4.1 How do I prepare documents?**

Every document you file with the Board must refer to **Hearing Order MH-052-2018** and **File OF-Fac-Oil-T260-2013-03 59**.

Address all documents to the proper recipient. For example, anything intended for the Board should be addressed to the Secretary of the Board (see Section 4.2.4 for contact information). Documents directed at others (e.g., responses to a specific Party's information requests) should be addressed to them using the List of Parties as a guide.

All documents must be in PDF format. Number document pages consecutively, including blank pages, so that the electronic page numbers match the page numbers showing in your document.

Do not provide references to websites. Instead, provide the actual information you want to refer to. **If using information sourced from a website, it must be filed in PDF format with an indication of the date the information was taken from the website.**

### **4.2 How do I file documents with the Board?**

The Board **requires** you to file your documents online if you are able to do so. This can be done through the Participation Portal once logging into your [NEB Account](#) (if you have one already), or through the Board's [e-filing system](#) (**no** login necessary).

**The Board does not accept filings by email.** Documents received by email will not form part of the hearing record and will not be considered by the Board.

#### **4.2.1 Participation Portal**

If you have an NEB Account through which you applied to participate in this hearing, you may use the Participation Portal to file your future documents with the Board.

After logging into your NEB Account, in the list of hearings, choose this Reconsideration hearing (MH-052-2018) and follow the online steps to make your filing.

The Participation Portal will also email you a filing receipt where you can verify your attachments, as well as instructions about providing a hard copy to the Board.

#### **4.2.2 E-filing**

If you do not have an NEB Account, you may use the Board's e-filing system for filing documents. No login is required. While this system provides step-by-step instructions, you may refer to the [\*Filer's Guide to Electronic Submission\*](#) for more information.

When you complete a filing by e-filing, you will be emailed a filing receipt, which you must print and sign. You must send the Board that signed filing receipt – as well as one signed hard copy of the e-filed document(s) – by mail/courier, fax, or hand delivery (see Section 4.2.4 for contact information).

#### **4.2.3 What if I do not have Internet access?**

Electronic filings are efficient, and allow all Parties to view documents immediately once filed. For this reason, and as noted in Section 4.2, the Board requires the use of the online filing methods described in Sections 4.2.1 and 4.2.2, if the filer has Internet access.

**If an intervenor cannot file documents online** using the methods described in Sections 4.2.1 or 4.2.2, they **must** advise the Board in writing of the reasons for this. If the Board accepts your reasons, it will inform you in writing that you can file documents in person, by mail/courier, or by fax. An exception to this requirement is when a document cannot be scanned and made into an electronic copy (e.g., if it is physically too large to scan). In these cases, an electronic placeholder will be placed in the online public registry indicating that the document is available in the Board's library, but cannot be viewed online.

Physical documents that are received after a filing deadline, but are date-stamped by the post office or courier on or before the deadline, will be considered as filed on time. If filing hard copies, you must sign each document you file.

#### **4.2.4 Who do I send or address documents to at the Board?**

Use the following information when sending correspondence and documents to the Board.

Ms. Sheri Young  
Secretary of the Board  
National Energy Board  
Suite 210, 517 Tenth Avenue SW  
Calgary, AB T2R 0A8  
Fax: 403-292-5503 (toll-free: 1-877-288-8803)

#### **4.3 How do I serve documents on others?**

Serving a document on someone means to provide them with a filing or with a notification that a filing was made.

**Intervenors** are required to serve their filings on Trans Mountain and its counsel, and on all other intervenors.

**Members of the public that are filing letters of comment** must serve their letters on Trans Mountain and its counsel only.

Trans Mountain is required to serve its filings on each intervenor.

##### **4.3.1 Participation Portal users**

The Participation Portal can send an email notification on your behalf to all those requiring service and who have provided a valid email address. To use this service, when prompted, click on “Yes, I want to use the Participation Portal’s Automated Service Notification option for all Participants who have provided an email address.” The Board will accept this as equivalent to the service of documents required under the Rules.

If you do not choose the automated service option, you must serve the required Parties yourself, using any of the methods allowed under section 8 of the Rules. For **intervenors**, this would also apply in the case of any Party that has not provided a valid email address. This will be indicated in the List of Parties and in one of the emails that the Participation Portal will send you when your filing is completed.

##### **4.3.2 E-filing users**

Unless otherwise specified in the List of Parties, the listed intervenors have indicated that they are able to access documents online. The easiest way to serve the required Parties is to forward them the filing receipt you receive by email when you make your filing (see Section 4.2.2). Since you will need to send an email to multiple intervenors, you may want to consider creating an email group/list so that you can send one email to several addresses, as opposed to separate emails to individual addresses. **As a courtesy, please place all email addresses in the blind copy (i.e., BCC) line of your emails.**

Where the List of Parties indicates that an intervenor requires a hard copy, you must provide them with one (e.g., by mail/courier or fax).

#### **4.3.3 Those without Internet access**

If you cannot serve documents electronically (e.g., by email, as described in Section 4.3.2), you must serve each of the required Parties with a hard copy (e.g., by mail/courier or fax).

#### **4.4 How do I raise a question of procedure or substance that requires a Board decision?**

If you want to ask the Board to do something, such as to extend a particular deadline, you must file a request. This is called a notice of motion. A notice of motion must include:

- a concise statement of the facts;
- the grounds for the request;
- the decision or relief requested;
- the impact of granting the request on other hearing participants; and
- any other information which supports the request.

Your notice of motion must be:

- in writing;
- signed by the person making the request, or by an authorized representative;
- served on, as applicable, Trans Mountain and all intervenors; and
- filed separately from any other correspondence.

If you are relying on case law or other authorities to support your position, you must include these authorities and highlight the specific passages you are relying on.

The Board may provide an opportunity for the Parties to comment on a notice of motion. This decision would be based on the nature of the request, and the circumstances surrounding it.

Given the expedited nature of this hearing, Parties must raise any question of procedure or substance with the Board **at the earliest opportunity possible**. Delay in filing a notice of motion may result in the Board declining to consider it.

The Board will not consider a question of procedure or substance unless it is clearly marked as a “notice of motion” and filed separately from any other materials that the Party is filing.

#### **4.5 Will you keep my evidence confidential?**

All evidence in this hearing will be available on the online public registry, unless you file a notice of motion to keep your evidence confidential under sections 16.1 or 16.2 of the NEB Act, and the Board grants your request for confidentiality. If you plan to file a document under these sections, please read Section 1.5 (Confidential Filing) of the Board’s [Filing Manual](#), which explains the steps you need to take to ensure that evidence does not appear publically.

If the Board grants your request for confidentiality, there are specific and important procedures to follow when filing that evidence. Please contact a Process Advisor to discuss these steps (see Section 5 of this Hearing Order for contact information).

## **5 WHO CAN I CONTACT FOR HELP?**

You are encouraged to contact a Process Advisor with any questions you may have during the hearing process. A Process Advisor can be reached by calling 403-292-4800 or 1-800-899-1265 (toll-free), or by emailing [TMX.ProcessHelp@neb-one.gc.ca](mailto:TMX.ProcessHelp@neb-one.gc.ca). Any call-back numbers left will be followed-up on as soon as possible.

NATIONAL ENERGY BOARD

*Original signed by*

Sheri Young  
Secretary of the Board

## Appendix 1

### List of Issues for the Reconsideration Hearing

The National Energy Board's (Board) Reconsideration hearing will consider any necessary changes or additions to its May 2016 [Recommendation Report](#) (Report), in light of the inclusion of Project-related marine shipping between the Westridge Marine Terminal and the 12-nautical-mile territorial sea limit in the "designated project" under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). This includes issues related to factors described in paragraphs 19(1)(a) through (h) and subsection 19(3) of the CEAA 2012, and to section 79 of the *Species at Risk Act* (SARA).

1. The environmental<sup>1</sup> effects of Project-related marine shipping, and the significance of these effects.

*This includes adverse effects on species at risk, the environmental effects of malfunctions or accidents that may occur, and any cumulative environmental effects.*

2. Measures that are technically and economically feasible, and that would mitigate any significant adverse environmental effects of Project-related marine shipping.

*Given that the Board found four significant adverse effects related to Project-related marine shipping in its previous assessment<sup>2</sup> (i.e., greenhouse gas emissions, Southern resident killer whale, traditional Indigenous use associated with Southern resident killer whale, and the potential effects of a large or credible worst-case spill), the consideration of mitigation measures will include these four matters. This issue will also include consideration of whether the mitigation measures will change the Board's previous significance findings.*

3. Alternative means of carrying out Project-related marine shipping that are technically and economically feasible, and the environmental effects of such alternative means.
4. Requirements of any follow-up program in respect of Project-related marine shipping.
5. Measures to avoid or lessen the adverse effects of Project-related marine shipping on SARA-listed wildlife species and their critical habitat, monitoring of the measures, and consideration of how to ensure the measures and monitoring are undertaken.

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<sup>1</sup> All references to environmental effects in this List of Issues include health and socio-economic matters as described in section 5 of the CEAA 2012.

<sup>2</sup> See the Board's Report at pages 337, 350-351, 363, 378, and 397-398.

*The Board's previous assessment identified the SARA-listed marine fish, marine mammal, and marine bird species that could be found in the area of, or affected by, Project-related marine shipping.<sup>3</sup> Consideration will also be given to any species that have been newly listed or have seen a change to their designation since the issuance of the Board's Report and that could be affected by Project-related marine shipping.*

6. The potential impacts of Project-related marine shipping on Indigenous<sup>4</sup> interests.
7. Whether there should be any changes or additions to the Board's recommendations set out in its Report, or to the recommended terms or conditions, including Conditions 91, 131 to 134, 144, and 151.

Parties are expected to limit their evidence filings to **new or updated** evidence (including comments from the public, community knowledge, and Indigenous traditional knowledge) relevant to the above issues. Parties are not required to re-file or re-test evidence on the record of the OH-001-2014 Certificate hearing. It is recommended that Parties focus their evidence on aspects of the above issues that were not fully canvassed in the OH-001-2014 Certificate hearing. The Board's Filing Requirements for Trans Mountain, and its requests for specialist or expert information or knowledge in the possession of Federal Authorities pursuant to paragraph 20(a) of the CEAA 2012, reflect this.

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<sup>3</sup> See the Board's Report at pages 338, 341, and 352.

<sup>4</sup> The Board's use of the term "Indigenous" or "Indigenous peoples" in this hearing has the meaning assigned by the definition of "aboriginal peoples of Canada" in subsection 35(2) of the *Constitution Act, 1982*.



## Appendix 2

### **Amended Factors and Scope of the Factors for the Environmental Assessment pursuant to the *Canadian Environmental Assessment Act, 2012***

#### **1.0 INTRODUCTION**

On 16 December 2013, Trans Mountain Pipeline ULC (Trans Mountain) filed an application with the National Energy Board (Board or NEB) proposing to construct and operate the Trans Mountain Expansion Project (Project). As the Project would require more than 40 kilometres of new pipeline and would be regulated under the *National Energy Board Act* (NEB Act), it is a designated project under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) and requires a CEAA 2012 environmental assessment for which the NEB is the Responsible Authority. On 20 September 2018, through [OIC P.C. 2018-1177](#), the Governor in Council (GIC) referred aspects of the Board's [Report](#) for the Project back to the Board for reconsideration.

For the purposes of the environmental assessment under the CEAA 2012, the designated project includes the various components and physical activities as described by Trans Mountain in its 16 December 2013 application submitted to the NEB. On 12 October 2018, the Board determined that Project-related marine shipping between the Westridge Marine Terminal and the 12-nautical-mile territorial sea limit is also part of the “designated project” under the CEAA 2012.

As noted in the List of Issues (attached to Hearing Order [OH-001-2014](#)), the Board does not intend to consider the environmental and socio-economic effects associated with upstream activities, the development of oil sands, or the downstream use of the oil transported by the pipeline.

In accordance with paragraph 79(2)(b) of the CEAA 2012, the following provides a description of the factors to be taken into account in the environmental assessment under the CEAA 2012 and of the scope of those factors.

#### **2.0 FACTORS AND SCOPE OF THE FACTORS**

##### **2.1 Factors to be considered**

The CEAA 2012 environmental assessment for the designated project will take into account the factors described in paragraphs 19(1)(a) through (h) of the CEAA 2012:

- (a) the environmental effects<sup>1</sup> of the designated project, including the environmental effects of malfunctions or accidents that may occur in connection with the designated project and

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<sup>1</sup> Section 5 of the CEAA 2012 further describes the environmental effects that are to be taken into account.

any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out;

- (b) the significance of the effects referred to in paragraph (a);
- (c) comments from the public or any interested party received in accordance with the CEAA 2012;
- (d) mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the designated project;
- (e) the requirements of the follow-up program in respect of the designated project;
- (f) the purpose of the designated project;
- (g) alternative means of carrying out the designated project that are technically and economically feasible and the environmental effects of any such alternative means; and
- (h) any change to the designated project that may be caused by the environment.

In addition, the environmental assessment will also consider community knowledge and Aboriginal traditional knowledge.

## **2.2 Scope of the factors to be considered**

The environmental assessment will consider the potential effects of the designated project within spatial and temporal boundaries within which the designated project may potentially interact with and have an effect on components of the environment. These boundaries will vary with the issues and factors considered, and will include, but not be limited to:

- construction, operation and maintenance, foreseeable changes, and site reclamation, as well as any other undertakings proposed by the proponent or that are likely to be carried out in relation to the physical works proposed by the proponent, including mitigation and habitat replacement measures;
- seasonal or other natural variations of a population or ecological component;
- any sensitive life cycle phases of species (e.g., wildlife, vegetation) in relation to the timing of Project activities;
- the time required for an effect to become evident;
- the area within which a population or ecological component functions; and
- the area affected by the Project.

Any works and activities associated with additional modifications or associated with the decommissioning or abandonment phase of the Project would be subject to a future application under the NEB Act and assessed in detail at that time. Therefore, at this time, any works or activities associated with these phases of the Project will be examined in a broad context only. As indicated above, the environmental assessment will consider cumulative environmental effects that are likely to result from the designated project in combination with effects from other physical activities that have been or will be carried out.

Subsection 2(1) of the CEAA 2012 provides definitions potentially relevant to the scope of the factors, including:

“environment” which means the components of the Earth, including

- (a) land, water and air, including all layers of the atmosphere;
- (b) all organic and inorganic matter and living organisms; and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b);

and

“mitigation measures” which means measures for the elimination, reduction or control of the adverse environmental effects of a designated project, and includes restitution for any damage to the environment caused by those effects through replacement, restoration, compensation or any other means.