

Filed Electronically

March 13, 2020

Canada Energy Regulator
Suite 210, 517 Tenth Avenue SW
Calgary, AB T2R 0A8

Attention: Ms. Louise George, Secretary of the Commission

Dear Ms. George:

**Re: Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project (TMEP or Project)
Update on filing of Condition 39 - Hydrogeological Study Report (Report)
regarding the Coldwater Indian Band's (Coldwater) aquifer that supplies drinking
water to Coldwater Indian Reserve No. 1 (Reserve)**

We write further to the Commission of the Canada Energy Regulator's (Commission) letter of February 3, 2020 ([A7D1Q1](#)) and Trans Mountain's updated Commitment #4166, which states that, among other things: "Trans Mountain commits to filing, by March 31, 2020, the hydrogeological report referred to in NEB Condition 39, or if it cannot provide the report by that date, provide a date when the report will be filed."

Specifically, we write to advise the Commission that the Report will not be filed by March 31, 2020 (for reasons that we describe below), and that Trans Mountain now intends to file the Report on or before May 15, 2020.

Background: Trans Mountain's Attempts to Initiate an On-Reserve Drilling Program

Trans Mountain strives to build strong and mutually beneficial relationships with all stakeholders on or near the proposed TMEP route. Among its most important relationships are those with Indigenous groups whose reserve lands and traditional territory may be impacted by the TMEP, including Coldwater. It is through this lens that Trans Mountain has approached the implementation of Condition 39, which requires that Trans Mountain file a Report that, among other things, summarizes consultations with Coldwater, including a description and justification for how Trans Mountain incorporated the results of its consultation with Coldwater into the assessment.

Trans Mountain has been working with Coldwater for roughly three years to design and develop a hydrogeological study to satisfy Condition 39. Based on engagement with Coldwater, Trans Mountain agreed to obtain additional information about the geology and hydrogeology beneath the Reserve through a hydrogeological program (Program) which includes the drilling of several boreholes on the Reserve, installation of monitoring wells, a groundwater monitoring, sampling and testing program, and a geophysical program.

After more than 18 months of engagement on the hydrogeological study, the Program was scheduled to commence in September 2018. However, following the Federal Court of Appeal decision in *Tsleil-Waututh* (issued August 30, 2018), Coldwater put the Program “on hold” and denied Trans Mountain access to the Reserve for this purpose. Trans Mountain urged Coldwater to reconsider but Coldwater refused to do so until March 2019.

At Coldwater’s request, Trans Mountain and Coldwater negotiated a Memorandum of Understanding (MOU), which was finalized in June 2019, for the Program. Around that same time period, Trans Mountain and Coldwater exchanged draft schedules that provided for the on-reserve drilling component of the Program to commence in August 2019 and conclude in October 2019.

Despite Trans Mountain dedicating significant financial resources and personnel to proceeding expediently with the Program, and completing the Report in 2019, the calendar year ended without Coldwater granting Trans Mountain permission to commence on-reserve drilling.

Trans Mountain wrote to Coldwater on December 30, 2019 to advise that if Coldwater did not permit Trans Mountain to commence on-reserve drilling by early February 2020, Trans Mountain would proceed to complete the Report based on other sources of reliable data. This was necessary because the delays to the Program would soon cause delays to the planned in-service date for the TMEP. Such delays would not only be unfair to Trans Mountain, but would also be harmful to the millions of Canadians that will benefit from the timely construction and operation of the TMEP.

Coldwater did not respond to Trans Mountain’s December 30th letter until February 14, 2020. Further, as of today’s date, Trans Mountain still lacks the necessary consents to commence on-reserve drilling. There are several outstanding items that require resolution before access is confirmed.

Coldwater has expressed the view that the Program may commence in mid-March with the issuance of a permit under s. 28 of the *Indian Act* (which Trans Mountain and Coldwater have been discussing with Canada since summer 2019). However, Trans Mountain cannot simply begin on-reserve drilling immediately following the receipt of a s. 28 permit. Indeed, there is significant work that must be completed before on-reserve drilling can begin, including site safety planning, execution team onboarding and orientations, final contracts with vendors, remobilizing contractors, tree felling, equipment transport and set-up, gravel hauling and drilling pad construction. Indeed, a draft schedule for the Program provided by Coldwater’s consultant in February 2020 suggested that on-reserve drilling would not begin until mid-May 2020 (which Trans Mountain views to be an aggressive, best case scenario, based on an unlikely tree felling commencement date of March 23). In that scenario, data would not be available from drilling at the six agreed drill locations until sometime in late August or September and data from the geophysics work would not be available until October. As further discussed below, there is significant work (and time) required to incorporate such data into the appropriate models and to prepare a report.

Trans Mountain has advised Coldwater that the time has passed for the Program to be incorporated into the Report without impacting the planned in-service date for the Project. Nevertheless, as a good faith offer to continue the parties’ relationship and collaboration on an issue of significant importance to Coldwater, Trans Mountain has committed to participate in and provide reasonable funds for the Program as a legacy matter, outside the context of the Report.

Trans Mountain's Alternative Approach to the Hydrogeological Study

As the Commission noted in its February 3, 2020 letter, the onus is on Trans Mountain to submit the Report when it is of the view that the requirements of Condition 39 have been met, notwithstanding any degree of consensus between Trans Mountain and Coldwater on the Report. The Commission also noted in that letter that Condition 39 “does not specify whether or where any monitoring wells should be installed, nor does it stipulate that monitoring wells are to be installed on the Reserve.”

Given the delays to the Program, Trans Mountain has no reasonable choice but to proceed to complete its Report without the data from that Program. Trans Mountain has been working diligently to complete the Report based on other sources of reliable data, including off-reserve drilling and geophysics along the approved corridor, and groundwater and surface water sampling near or within the Reserve. Trans Mountain's consultant, Golder Associates (Golder), is currently processing and incorporating the data into its conceptual site model, attenuation and risk models. Trans Mountain and Golder are working to prepare the Report as soon as possible. However, there is still work to be done, including processing the data, running the necessary models and generating a final Report.

Planned Filing Date and Comment Process

Pursuant to Commitment #4166 and the Commission's decision approving revisions to same ([A7D1Q1](#)), Trans Mountain hereby notifies the Commission that it anticipates filing the Report on or before May 15, 2020. Trans Mountain has communicated this anticipated timing and the above approach to completing the Report to Coldwater, Natural Resources Canada, and the Ministry of Forestry, Lands, Natural Resource Operations and Rural Development of British Columbia.

Based on previous correspondence from the Commission, Trans Mountain understands that after filing the Report the Commission will issue a process direction establishing next steps to determine whether the Report is sufficiently complete to proceed with the detailed route hearing (Coldwater Phase 2). Trans Mountain believes, consistent with the Commission's prior statements, that the process to determine completeness can run parallel to Trans Mountain's three-month routing negotiation timeline under Commitment #4167, such that a detailed route hearing for the Coldwater Valley may proceed on or about September 2020.

Should you have any questions or wish to discuss these matters further, please contact the undersigned at regulatory@transmountain.com or (403) 514-6400.

Yours truly,



Scott Stoness
Vice President, Regulatory and Compliance
Trans Mountain Corporation

cc: Dale August (Coldwater)
Councillors Garcia and Manuel (Coldwater)
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