April 24, 2017

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National Energy Board
Suite 210, 517 Tenth Avenue SW
Calgary, Alberta
T2R 0A8

Attention: Sheri Young, NEB Secretary

Dear Sirs/Mesdames:

Re: Trans Mountain Pipeline ULC ("Trans Mountain")
Trans Mountain Expansion Project (the "Project")
Statement of Opposition to the Detailed Route (the "Detailed Route") Application

We write on behalf of Chief Ron Ignace and Chief Fred Seymour on their own behalf and on behalf of all other members of the Stk’emlupsemc te Secwepemc of the Secwepemc Nation (the "SSN"), an Aboriginal people living in the area around the confluence of the Fraser and Thomson Rivers. Please consider this letter SSN’s Statement of Opposition to the Detailed Route.

The existing Kinder Morgan Pipeline and the proposed Rights of Way cross through SSN’s Territory for approximately 350 km. Approximately 80 km of the proposed Project pipeline right-of-way and the two pipeline facilities (Black Pines Station and Kamloops Terminal) would be located within SSN’s Territory. For approximately 11 km, the Project would traverse across Pipsell, a cultural keystone place and sacred site, near Jacko Lake. The Project would also traverse in a new right-of-way through Lac du Bois Grasslands Protected Area across SSN Territory. In these two areas, at Pipsell and in the Lac du Bois Grasslands, Trans Mountain’s Project proposes new pipeline to be constructed and new rights-of-way where the land has not previously been disturbed. A copy of the proposed routing through SSN Territory, according to Trans Mountain’s filed Project information in response to SSN’s Information Request No. 2, is attached as Schedule "A". A map of the approximate boundaries of SSN Territory is attached as Schedule “B”.

SSN notes that it was not provided with notice of Trans Mountain’s Detailed Route Application as a land owner, nor was it provided with notice of the 30 day time line to oppose. SSN had to read about the Detailed Route Application in the newspaper notwithstanding that Trans Mountain knows full well about SSN’s Aboriginal rights and title claim. The NEB broadened the
scope to a landowner or person who anticipates that their lands may be adversely affected by the detailed route by email dated April 21, 2017, in which the National Energy Board’s Detailed Route Process Advisory Team inquired whether SSN would like to receive email updates on the next phase of the Project. This does not amount to adequate notice to the SSN. SSN strongly opposes the Project and the Detailed Route, particularly where it is proposed to traverse across Pipsell and where the proposed third party right-of-way (believed to be currently held by Telus) would be vastly expanded to accommodate the new right-of-way within the Lac du Bois Grasslands Protected Area.

Claim to Lands Adversely Affected by the Proposed Detailed Route

The following will describe in more detail SSN’s Statement of Opposition to the Detailed Route, which runs through SSN Territory.

SSN asserts Aboriginal rights and title over its Territory which under s. 35 of the Constitution underlies any grant by the Crown of a fee simple interest to third parties, including any current land owners. Aboriginal title includes the right to make decisions on the use the land is to be put and to preserve the land for future generations of SSN members.

SSN’s strong prima facie claim to Aboriginal title over its Territory near Jacko Lake in the area of the proposed Ajax Mine has been recognized by the Province of British Columbia. The Province has also recognized a “moderate-to strong to strong” prima facie claim for Aboriginal title and a strong claim to Aboriginal rights for SSN in the Lac du Bois Grasslands Protected Area. SSN dispute that its claim to Aboriginal title in the Lac du Bois Grasslands Protected Area is moderate-to-strong and asserts that its claim is strong.

SSN has on-going litigation against the Federal and Provincial Crowns where it asserts a claim of Aboriginal rights and title to SSN Territory before the British Columbia Supreme Court as Action No. 051952. SSN asserts a right to self-govern its Territory. At the very least, SSN’s concerns must not be ignored and must be addressed as persons whose lands will be adversely affected by the proposed Detailed Route. A copy of SSN’s title claim is attached as Schedule “C”.

Reasons for Opposing the Detailed Route

SSN Territory is intimately linked to its identity as a distinct culture. SSN Territory is a substantial land mass encompassing many areas, including the area known as Pipsell surrounding Jacko Lake. This area is of particular cultural significance to the SSN for a variety of reasons including the practice of Aboriginal rights such as fishing, hunting, and gathering plants as well as spiritual significance. Pipsell is significant because of the importance of this place in the seasonal round of the SSN as a source of sustenance in and around Jacko Lake.

In May of 2016, SSN recently undertook its own review panel assessment of the Ajax Mine project at Pipsell. The hearing of SSN’s panel review took place throughout one week, from May 2-6, 2016. The Review was informed by SSN laws and governance and included assessments which respect SSN cultural perspectives, knowledge and history, and which respect SSN rights and title. The SSN Panel received and reviewed a significant amount of written evidence including the Environmental Assessment Certificate Application prepared by KGHM, expert reports prepared by KGHM and by independent experts, and public commentary and submissions. The Panel also heard oral evidence from 76 witnesses during the hearing.
consisting of evidence from traditional SSN knowledge keepers and youth as well as Western experts and representatives of KGHM, the EAO, and the Agency. Provincial and Federal representatives, as well as technical experts who had participated on behalf of KGHM in the Environmental Assessment working groups, were invited to and did attend the hearing.

On February 23, 2017, SSN released its SSN Panel Recommendations Report (the “Recommendations Report”), the Decision of the SSN Joint Council on the Proposed Ajax Mine, and a document entitled: Honouring our Sacred Connection to Pipsell. The Recommendations Report includes amongst other things a review of oral histories presented at the hearing and traditional knowledge and use of Pipsell. This information is relevant to your consideration of SSN’s strong objection to the Detailed Route proposed through Pipsell and we attach a copy of these reports collectively as Schedule “D”.

There are many sacred sites along the Detailed Route, particularly through Pipsell and around Jacko Lake. SSN is concerned that the new pipeline route will destroy, damage, or degrade habitat necessary to exercise its Aboriginal rights and enjoy the benefits of Aboriginal rights and title within Pipsell, a culturally keystone place and sacred site. SSN is deeply concerned that the proposed route will travel along 518 km of the Fraser and Thompson River systems. The Fraser River is designated as a Canadian Heritage River by the federal government Canadian Heritage River System in recognition of its exceptional natural, cultural and recreational values.

The Fraser River and its tributaries are an important part of SSN’s identity, which is linked to SSN’s complex system of bio-cultural heritage. The proposed route poses serious impacts to the waterways in SSN territory, which includes some of the largest sockeye salmon spawning grounds in the world, which provide SSN’s most important food source. SSN depends on the health and integrity of its watersheds for food and livelihood. Any leakage would immediately threaten the pacific salmon who spawn in the Thompson and Fraser River basins. Water is sacred to the SSN. The salmon and rivers within SSN territory have sustained SSN for centuries, and SSN is obligated to protect the water system for future generations.

Pipsell is also a sensitive grasslands area and old growth forest, and provides critical habitat for many wildlife species-at-risk that are already threatened by development, population growth, and industry activity. Both the Project and the proposed copper and gold mine, known as the KGHM Ajax Mine Project (the “Ajax Mine”), are proposed to be constructed through Pipsell.

Trans Mountain has not adequately considered and mitigated the potential cumulative effects of the Project and the proposed Ajax Mine in the area surrounding Jacko Lake or at Lac du Bois Grasslands Protected Area. Additionally, it appears that the Detailed Route shows the new pipeline route around Jacko Lake was designed to avoid the footprint of the proposed Ajax Mine. This was not agreed to by SSN. SSN has not had any meaningful engagement with the Crown(s) or Trans Mountain about the proposed routing of the new line and right of way within Pipsell, despite SSN members repeatedly raising such concerns.

SSN is also concerned that no cultural heritage study has been completed with interviews and input from SSN knowledge keepers along the entire route of the TMP. SSN’s concerns about the specific routing of the new pipeline to be constructed at Pipsell in the Lac du Bois Grassland Protected Area have not been adequately addressed. SSN was not consulted about the appropriateness of the pipeline route or the new right of way for the Project, despite SSN
repeatedly raising these concerns, which is unacceptable to the SSN, as the new pipeline is proposed to go directly through an area of vital cultural importance to SSN.

SSN's repeated requests for accommodation measures in relation to the proposed route have not been appropriately considered, especially as the route around Jacko Lake would involve taking up of new lands over which SSN asserts Aboriginal rights and title. Given the lack of consideration for SSN's interests thus far, including the specific impacts of the Detailed Route on SSN's cultural sites, sacred spaces, and food sources as set out in SSN's seasonal round, SSN's outstanding concerns regarding the Detailed Route must be addressed during the Detailed Route Hearing Process.

SSN's intends to present evidence at the Detailed Route Hearing Process and would like details on how and when it may do so.

Yours truly,

MILLER THOMSON LLP

Per:

Sarah Hansen
SDH/arb

Enclosures