

**In the matter of the
Environmental Assessment Act
S.B.C. 2002, c. 43
(Act)**

and

**in the matter of an
Application
for an
Environmental Assessment Certificate
(Application)**

by

**Trans Mountain Pipeline ULC
(Trans Mountain)**

for the

**Trans Mountain Expansion Project
(Project)**

Reasons for Ministers' Decision

On January 9, 2017 pursuant to Section 17(3)(c) of the *Act*, we, the Minister of Environment and the Minister of Natural Gas Development (Ministers), issued an Environmental Assessment Certificate for the Project. This document sets out the reasons for that decision.

1 NATURE AND SCOPE OF THE DECISION

Section 17(3) of the *Act* sets out the parameters for our decision. We considered the Environmental Assessment Office's (EAO) assessment and recommendations, including whether the Province had met its duty to consult and, as appropriate, accommodate Aboriginal groups with respect to potential impacts of the Project on asserted or established Aboriginal rights including title ("Aboriginal Interests"). We considered other matters we thought relevant to the public interest in making our decision.

2 MINISTERS' CONSIDERATIONS

2.1 EAO's Assessment

We have considered that the Project is a primarily federally-regulated undertaking and as an interprovincial pipeline, therefore comes within federal regulatory jurisdiction pursuant to s. 92(10)(a) of the *Constitution Act*, which gives the federal government jurisdiction over interprovincial works and undertakings. We have undertaken our considerations aware that any EA Certificate condition cannot conflict with federal law or federal legally imposed requirements, or frustrate their purpose. The British Columbia (BC) Supreme Court decision, in *Coastal First Nations v. British Columbia*, however, makes it clear that we retain the power to attach conditions to the EA Certificate in addition to those imposed by the federal government.

On June 21, 2010, the EAO and the National Energy Board (NEB) entered into an equivalency agreement (NEB-EAO Agreement) for Environment Assessments (EA) of projects that trigger both a provincial and NEB review. The NEB-EAO Agreement states that BC would accept the NEB's EA of a project that would otherwise have to be reviewed under BC's *Environmental Assessment Act* as an equivalent assessment, and that the proposed project may proceed without a provincial EA Certificate.

In January 2016, the BC Supreme Court, in *Coastal First Nations v. British Columbia* upheld the majority of the NEB-EAO Agreement, but ruled that projects subject to this agreement still require a decision regarding the issuance of a provincial EA Certificate under the *Environmental Assessment Act*. Therefore, as per the terms of the NEB-EAO Agreement, the NEB Report for this Project has been substituted for the provincial EA technical assessment report required under s. 17(2) of the *Environmental Assessment Act*.

We have considered the material provided to us by the EAO in making our decision regarding the issuance of a provincial EA Certificate. The NEB Report is the assessment report that we have considered for the Project. In addition, EAO conducted Aboriginal consultation in coordination with the federal Crown and produced a joint federal-provincial

Consultation and Accommodation Report. The EAO also produced a Summary Assessment Report, which summarized the project, the assessment process, the results of Aboriginal consultation, and impacts, as identified by the NEB, to areas of provincial interest and jurisdiction.

The EAO has proposed 37 conditions for our consideration in relation to areas of provincial jurisdiction. These proposed conditions respond to concerns that have been raised by communities and Aboriginal groups during consultation, and to the key areas of provincial interest and jurisdiction. The conditions endeavour to ensure that the Project would be developed and operated in a manner that is consistent with provincial policies and programs, in consideration the existing regulatory regime.

2.2 Recommendations of the Executive Director

The EAO's Executive Director considered the NEB Report, the Consultation and Accommodation Report, the EAO's Summary Assessment Report as well as the proposed conditions and Project design requirements. He recommended that an EA Certificate be issued for the Project.

The EAO's Executive Director advised us that, in consideration of the NEB Conditions and the associated regulatory regime, he was satisfied that with the addition of the proposed EA conditions the potential adverse impacts on areas of provincial interest and jurisdiction would be avoided, minimized or otherwise accommodated to an acceptable level. We concur with this conclusion.

The EAO's Executive Director further advised that he was satisfied that the Crown's duty to appropriately consult and accommodate Aboriginal groups had been discharged for the Project. We concur with this conclusion.

2.3 Key Considerations

As discussed in the EAO's Summary Assessment Report (based on the assessment completed by the NEB), the Project and related shipping activities have the potential to adversely impact areas of provincial interest and jurisdiction, including impacts to vegetation, wildlife, aquatic species, parks and protected areas, and greenhouse gas emissions. The potential for spills in the terrestrial or marine environment was a key issue of concern raised by parties, including the Province of BC, during the NEB review, as well as by communities and Aboriginal groups during subsequent consultation.

Vegetation, Wildlife and Protected Areas

The NEB found that Project would have adverse effects to native vegetation, including loss of old growth forest, and to wildlife and wildlife habitat, including the southern mountain

population of woodland caribou and grizzly bear. The Project would also pass through several BC Parks and protected areas.

Most of the pipeline route (85%) would parallel existing disturbance, including Trans Mountain's existing pipeline, which would help minimize the Project impacts.

The NEB proposed a wide range of important conditions that would ensure that adverse effects to vegetation and wildlife would be adequately avoided, mitigated and offset. We have imposed several conditions that strengthen the Province's role in ensuring that BC's natural resources are appropriately protected, including conditions requiring offsetting of impacts to BC Parks and protected areas and offsetting of impacts to species at risk. We recognize that the NEB's assessment concluded that the Project is not likely to cause significant adverse effects on wildlife, vegetation, or protected areas.

We are satisfied that, in addition to the conditions already imposed by the federal government, the provincial EA Certificate conditions, Certified Project Description, along with other regulatory requirements, will effectively manage the Project impacts on wildlife and vegetation.

Impacts on Southern Resident Killer Whale

Project-related tankers would increase from 5 per month to 34 per month sailings from Westridge Marine Terminal, which would represent approximately 6.6% of total marine traffic volume in the Juan de Fuca Strait, as compared to the current 1.1%. The NEB found that the operation of Project-related marine vessels is likely to result in significant adverse effects to southern resident killer whale, and to Aboriginal cultural use associated with southern resident killer whale. In light of the NEB findings and subsequent consultation, the Crown concluded that Aboriginal groups that identified cultural use of southern resident killer whale would be moderately impacted.

We note that the federal government has committed to taking actions to implement the Recovery Plan for the southern resident killer whale including, reducing the impacts of marine vessel noise, ensuring sufficient food supplies, and reducing pressure from persistent contaminants, before Project-related shipping begins.

Greenhouse Gas

The Project would have direct greenhouse gas (GHG) emissions during construction and operations and result in GHG emissions from Project-related marine shipping.

The NEB required Trans Mountain to develop an offset plan for the Project's entire direct construction-related GHG emissions. GHG emissions from construction are expected to be fully offset and therefore of low magnitude and not significant. The NEB noted that emissions anticipated during operations would be below national reporting thresholds and

therefore would not be significant. The NEB found that as there are no regulatory reporting thresholds or specific requirements for marine shipping related GHG emissions in Canada, and as emissions would result in measurable increases, GHG emissions from Project-related marine vessels are likely to be significant.

We have imposed conditions that would require Trans Mountain to offset GHGs from the Project construction in BC with offsets created in BC and would require reporting of all the project's GHG emissions.

We are satisfied that the EA Certificate conditions and regulatory requirements will effectively manage the Project's contributions to GHG emissions in BC.

Terrestrial or Marine Spills

Concerns about the risks of accidental spills on land or in the marine environment were a priority issue for many participants in the NEB process, including the Province of BC.

The NEB concluded that, should the Project be designed, constructed and operated according to the fulfillment of its conditions and Trans Mountain's commitments, there would be a very low probability of a Project spill that may result in a significant effect (high consequence) and that the level of risk is acceptable. The NEB also concluded that there is a very low probability of a marine spill from a Project-related tanker that may result in a significant effect (high consequence) and that this level of risk is acceptable. However, the NEB also found that over the life of the Project the probability of small spills is high.

We acknowledge that many Aboriginal groups raised concerns about the potential serious impacts on their Aboriginal Interests if a spill occurred. We note that the NEB concluded that the effects of a credible worst-case spill on the current use of lands, waters and resources for traditional purposes by Aboriginal people would likely be adverse and significant and that the Crown's Consultation and Accommodation Report noted that Aboriginal peoples who rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill regardless of its size. The seriousness of impact on Aboriginal Interests will depend on the size, location and conditions of a spill and the effectiveness of response measures, and the Crown is of the view that spills have the potential to seriously impact Aboriginal Interests.

The NEB concluded that an effective emergency response would not guarantee recovery of all spilled oil, and that the oil spill preparedness and response commitments made by Trans Mountain could not ensure recovery of the majority of oil from a large spill. Recovery success of the majority of spilled oil may be impacted due to factors such as weather conditions, difficult access, and sub-optimal response time, particularly for large marine spills. There has been and continues to be research into the fate and behaviour of oil products in the environment to develop a better understanding of how to mitigate the risks

of heavy oil in the event of a spill. We recognize that this remains an area of evolving understanding and, as such, we are imposing a condition to require Trans Mountain to develop a plan to lead, jointly lead, or support, with other government and industry participants, a research program regarding the behaviour and clean-up of heavy oils spilled in freshwater and marine aquatic environments, with the objective of providing Trans Mountain and spill responders with improved information on how to effectively respond to spills.

Pipeline safety is primarily managed and regulated through the NEB. In June 2016 the federal *Pipeline Safety Act* came into effect, which introduced an additional level of accountability on companies, including absolute liability for all costs and damages irrespective of fault, and additional authority for the NEB, including the ability to order reimbursement of clean-up costs and take control of company incident response. BC has also passed legislation that will allow for the implementation of a world-leading preparedness, response and recovery regime for hazardous substance spills. The key elements of this new spill regime, including an initial set of detailed regulations, which are planned to come into effect in 2017.

Marine spill response remains a responsibility of the federal government and the certified response organization. During the NEB process Trans Mountain committed to a \$100 million investment in new equipment by the certified response organization for increased capacity to respond including five new spill-response bases.

On November 7, 2016 the federal government announced the \$1.5 billion national Oceans Protection Plan, described as a marine safety plan that meets, or exceeds, international standards and is supported by commitments to Indigenous co-management, environmental protections, and science-based standards.

BC continues to work with federal partners to align regulatory processes for a consistent spill response framework across BC. We have imposed a condition that, if requested, Trans Mountain must participate in coastal geographic response planning undertaken by the provincial government, federal government or a certified response organization.

As described in the NEB Report and in the EAO's Summary Assessment Report, there are several NEB conditions with respect to accidents, malfunctions, emergency preparedness and response. We have also imposed a number of conditions related to Trans Mountain's emergency and spill preparedness and to support provincial agencies' emergency and spill preparedness. This includes a condition that would require Trans Mountain to develop emergency response plans that would describe how Trans Mountain would coordinate participation of first responders, agencies, municipalities and regional districts, and Aboriginal Groups that may be involved in an emergency response related to the Project. Another condition would require Trans Mountain to complete full scale exercises or

deployments of emergency equipment in advance of the commencement of operations for various scenarios including full-scale full-bore rupture under ice and snow conditions in BC, deployment of emergency equipment for a full-bore rupture into major river in BC under peak flow conditions, and deployment of emergency equipment for a tank fire at the Burnaby Terminal.

We are satisfied that the conditions in the EA Certificate, the NEB's conditions, as well as existing regulatory requirements, will mitigate potential risks of a terrestrial or marine spill and we are satisfied with the level of risk.

Aboriginal Consultation

Within BC, 96 Aboriginal groups were identified by the EAO to be consulted on the Project, including Aboriginal groups located along the pipeline route, in the vicinity of the Westridge Marine Terminal, and along the marine shipping route. EAO assessed the potential impacts of the Project and related shipping activities on each Aboriginal Group's Aboriginal Interests, and considered issues raised by Aboriginal groups, and proposed accommodations. The EAO reported on the nature of the impacts on Aboriginal Interests from the Project itself (that is, the pipeline, terminals and supporting infrastructure) would differ from impacts associated with Project-related marine shipping activities. In general, the Crown is of the view that the Project's routine construction and operation would result in a minor level of impacts on Aboriginal groups' Aboriginal Interests. This assessment is provided in the joint federal-provincial Consultation and Accommodation Report.

We are aware from the Consultation and Accommodation Report and EAO's Summary Assessment Report that many Aboriginal groups raised serious concerns about the Project during consultation. We also received separate submissions from 29 Aboriginal groups,¹ and have reviewed and considered these submissions. Many of these submissions echo Aboriginal groups' key concerns. We note that while Aboriginal groups had a wide range of concerns, some specific to the individual circumstances of a group, there were some common themes of concerns, particularly: risks and impacts of terrestrial and marine oil spills; disturbance of activities and areas due to the pipeline right of way; disturbance of activities due to shipping activities; the risk and impacts associated with the existing pipeline; capacity to participate in the regulatory process; timelines of consultation and the NEB process; and, the structure and approach of the NEB process.

¹ Adams Lake Indian Band, Beecher Bay (Scia'new) First Nation, Chawathil First Nation, Cheam First Nation, Coldwater Indian Band, Cook's Ferry Indian Band, Ditidaht First Nation, Esquimalt Nation, Katzie First Nation, Kwantlen First Nation, Kwikwetlem First Nation, Lower Nicola Indian Band, Lyackson First Nation, Maa-nulth Treaty Society, Matsqui First Nation, Musqueam Nation, Nlaka'pamux Nation Tribal Council, Pacheedaht First Nation, Pauquachin First Nation, Shxw'ow'hamel First Nation, Simpcw First Nation, Squamish Nation, Stó:lō Collective, Tsawout First Nation, T'sou-ke First Nation, and Yale First Nation.

EAO noted that as of December 7, 2016, 37 Aboriginal groups in BC had signed mutual benefits agreements with Trans Mountain. We are aware the Trans Mountain has continued to enter into mutual benefit agreements with additional Aboriginal groups since that time.

We are of the view that the EAO meaningfully and reasonably considered and sought to address concerns raised by all Aboriginal groups in the assessment of the Project and development of proposed conditions, including requiring further consultation by Trans Mountain with Aboriginal groups in many of the proposed conditions and several conditions specific to Aboriginal groups. We note that Trans Mountain has committed to an on-going relationship with Aboriginal groups and that the conditions for the Project, particularly provincial EA Certificate conditions 10-13, help ensure an on-going deep relationship between Aboriginal groups and Trans Mountain throughout the life of the Project. In addition, governments will also have an on-going relationship with Aboriginal groups on this project, including the federal commitment of \$64.7 million to establish an Indigenous advisory and monitoring committee.

We have concluded that for the EA, the provincial Crown's duty to consult and accommodate has been met, and recognize that there are on-going Aboriginal consultation requirements for Trans Mountain and that the Crown further commits to working with Aboriginal groups through implementing the conditions of the Certificate and through subsequent permitting processes.

Public Consultation

The EAO's Summary Assessment Report provided a summary of the public engagement as a result of the NEB process and as reported in Trans Mountain's Stakeholder Engagement Report. In addition, we have reviewed the report from the federal government's three-member Ministerial panel charged with seeking the views of Canadians and local communities and Aboriginal groups along the pipeline right of way and shipping route that may not have been considered as part of the NEB review.

2.4 Provincial and Community Benefits

The NEB concluded that taken as a whole the benefits associated with the Project would be considerable. In particular, there would be considerable benefits as a result of the direct jobs created; the local and regional spending on pipeline materials, in providing Canadian shippers greater access to international markets, and through greater choice and efficiencies gained through competition among pipelines. The NEB also noted that there would be modest benefits to local communities and the environment along the Project route from the establishment of a Community Benefit Program, from enhanced marine spill response planning, and from local capacity development.

The NEB reports that the capital cost of the Project is expected to be approximately \$5.5 billion (2012 dollars), with the expenditures taking place over a seven-year period. The NEB also found that direct Project expenditures would likely result in considerable revenues to various levels of government.

The NEB reports that the construction phase would support over 58,000 person-years of direct and indirect employment generated across Canada, with approximately 36,000 person-years in BC. The NEB reports that the Project would directly support 443 jobs per year during operations, including 313 positions in BC.

3 CONCLUSION

After consideration of the NEB Report, the joint federal-provincial Consultation and Accommodation Report, the EAO's Summary Assessment Report, the proposed Project design and recommended conditions of the proposed EA Certificate, the Recommendations of the Executive Director, and having regard to our responsibilities under the Act and Crown obligations to consult and accommodate Aboriginal groups, we have issued an EA Certificate for the Project. The EA Certificate includes enforceable conditions and specifies the Project design parameters.



Honourable Mary Polak
Minister of Environment



Honourable Rich Coleman
Minister of Natural Gas Development

Signed this January 10, 2017