

# Kinder Morgan–Trans Mountain Pipeline Expansion Canada

IPs Impacted: Various

No Risk	Low Risk	Medium Risk	High Risk	Critical Risk
			3.8	

**Mineral:** Oil (pipeline)  
**Region:** Alberta, British Columbia  
**Stage:** Construction  
**Ownership:** 100%

The project—which involves the twinning of an existing pipeline from Strathcona County, Alberta to Burnaby, BC—received approval from the Canadian government in November 2016.

Kinder Morgan has consulted more than 120 impacted First Nations, and has mutual benefits agreements (MBAs) with 52. This leaves 2/3 of impacted First Nations without an MBA, and many express strong opposition. Additionally, there is evidence to suggest that some of the MBAs were negotiated under coercive circumstances.

A major hurdle for the project appears to be Legal Risk. The project is the target of 18 separate lawsuits (11 from First Nations, 4 from cities, and 3 from environmental NGOs). Many of the lawsuits use the same arguments that led to the cancellation of the Northern Gateway Pipeline in 2016.

Risk	Score	Comments
<b>Country Risk (20%)</b>	2.9	<i>See Country Risk Appendix</i>
<b>Reputation Risk (20%)</b>	4.7	<p><b><u>Presence of negative attention (30%)</u></b>                      (5) There is negative attention to the project.</p> <p><b><u>Scope of negative attention (30%)</u></b>                      (4) Negative attention comes from media outlets with broad national reach, or large NGOs.</p> <p><b><u>Timeliness of negative attention (40%)</u></b>                      (5) Negative attention is dated 2017 or earlier.</p>
<b>Community Risk (25%)</b>	4	<p><b><u>Identification (10%)</u></b>                      (2) Impacted Indigenous communities are clearly identified by the company.<sup>1</sup></p> <p><b><u>Status and tenure (15%)</u></b>                      (4) There are unresolved land disputes in or near the project area. Most of BC is unceded Aboriginal territory—meaning the land was never the subject of treaties between First Nations and the Crown. Unceded Aboriginal territory is not covered by treaty laws that apply to most of Canada, and is subject to greater legal uncertainty. In 2014, the Supreme Court of Canada awarded the Tsilhqot'in First Nation Aboriginal title to 1,700 square kilometers of unceded Aboriginal territory. The ruling set a precedent for other First Nations to secure Aboriginal title to unceded Aboriginal territory and determine "the uses to which the land is put."<sup>2</sup> Land within the project area may be subject to future Aboriginal title claims.</p> <p><b><u>Self-governance (15%)</u></b>                      (5) There is an extremely complex political landscape due to the project's large footprint, unresolved land disputes, and the diverseness of impacted communities; there are no forums for coordinated decision-making between communities in the project area.</p> <p><b><u>Community development (15%)</u></b>                      (3) There is varying community development capacity amongst communities along the pipeline's route.</p> <p><b><u>External influence (15%)</u></b>                      (5) There are large NGOs opposing the project.<sup>3</sup></p> <p><b><u>Community opposition (30%)</u></b>                      (4) There are reports of community opposition. The project is opposed by nearly two-thirds of affected First Nations and there are 18 separate legal challenges. (see Legal Risk for details). In January 2017, the Coldwater Indian Band, the Tseil Waututh Nation, and the Squamish Nation appeared at an event to "showcase the</p>

<sup>1</sup>Environmental and Socioeconomic Assessment for the Trans Mountain Expansion Project, page 3-47

<sup>2</sup> <http://www.cbc.ca/news/aboriginal/supreme-court-s-tsilhqot-in-first-nation-ruling-a-game-changer-for-all-1.2689140>

<sup>3</sup> <http://www.greenpeace.org/canada/en/campaigns/Energy/tarsands/Pipelines-in-Canada/>

	<p>collaboration amongst the various First Nations, who are filing judicial reviews to challenge the federal Crown in their decision to approve this project. It's really saying we're not going to be passive in this process, that we're not going to accept that this is a done deal, that we're going to challenge it through legal remedies and take any means necessary to challenge the Crown's decision."<sup>4</sup></p> <p>There have been consistent actions against the project before and after federal approval. In November 2016, a rally in Vancouver was one of several across the country, and in April 2017, there was another rally under the People's Climate March banner. More are likely to be planned. Kanesatake Grand Chief Serge Simon, Co-Founder of the Treaty Alliance against Tar Sands, says "If the government insists on ignoring its commitments to First Nations, we're looking at unrest in many areas of the country...I don't care what [Natural Resources Minister] Jim Carr says that no consent is necessary...Consent, it's what we are demanding and he will never get our consent, not for something like this...What if we gave Canada 20 Standing Rocks? I wonder if his position will change then?"<sup>5</sup></p> <p>As of January 2017, the project had formal agreements with 51 First Nations.<sup>6</sup> The agreements give the First Nations compensation for the risk they take on, having the pipeline go through traditional land."<sup>7</sup> Although the agreements require First Nations to submit formal statements of support, there is evidence to suggest that they were negotiated under coercive circumstances. "We came to the determination, as a group, that (the project) was going to go ahead anyway. So it's not really support. If we opposed it, we would have no way of addressing spills, because we would be disqualified from funding from Trans Mountain," said the Chief of the Ditidaht First Nation.<sup>8</sup> Additionally, the timing of the agreements raises question. According to an article in CBC, "there is a fear among First Nations that if they do not sign a deal by the time a decision is reached in Ottawa, they risk being left out, even though the pipeline will travel through their territory."<sup>9</sup></p>
<p><b>Legal Risk (5%)</b></p>	<p><b>Presence of legal actions (50%)</b> (5) There have been legal actions against the project.</p> <p><b>Status of legal actions (50%)</b> (5) Legal actions are pending in court. According to West Coast Environmental Law, there are 18 separate legal challenges. "The federal decision [to approve the project] faces nine separate legal challenges—seven of them by First Nations, one from the City of Burnaby, and one from Raincoast Conservation Foundation &amp; Living Oceans Society. These challenges were in addition to the seven lawsuits (four by First Nations, one from the City of Vancouver, one from the City of Burnaby, and one from Raincoast and Living Oceans) filed against the National Energy Board's (NEB) controversial recommendation from May of 2016. In late February 2017, the Federal Court of Appeal granted leave (permission) for all of these cases to be heard together...[Additionally] BC's decision to approve [the project] was appealed by Democracy Watch and the PIPE UP network, who allege that conflict of interest and bias tainted BC's decision. This argument is based in part on the \$560,000 in political donations made to the BC Liberal party by Kinder Morgan and the oil companies affiliated with the pipeline. Finally, the City of Vancouver passed a motion to judicially review BC's decision."<sup>10</sup></p>
<p><b>Risk Management (30%)</b></p>	<p><b>Policy (20%)</b> (3) Company policies reference Indigenous Peoples with an emphasis on community engagement and human rights.<sup>11</sup></p> <p><b>Governance (20%)</b> (5) The company does not address community relations or human rights at the board level.</p> <p><b>Reporting (10%)</b> (5) The company does not report on Indigenous Peoples or human rights.</p> <p><b>Consultation and agreement (20%)</b></p>

<sup>4</sup> <http://www.theglobeandmail.com/news/british-columbia/bc-first-nations-unite-in-fight-against-trans-mountain-pipeline/article33653315/>

<sup>5</sup> [http://www.huffingtonpost.ca/2016/12/04/trans-mountain-pipeline\\_n\\_13415340.html](http://www.huffingtonpost.ca/2016/12/04/trans-mountain-pipeline_n_13415340.html)

<sup>6</sup> <http://www.jwnenergy.com/article/2016/12/all-first-nations-crossed-trans-mountain-pipeline-route-support-project-kinder-morgan/>

<sup>7</sup> <http://www.cbc.ca/news/business/transmountain-first-nations-support-1.3866324>

<sup>8</sup> <http://vancouver.sun.com/news/local-news/better-in-than-out-why-nine-vancouver-island-first-nations-signed-on-with-kinder-morgan>

<sup>9</sup> <http://www.cbc.ca/news/business/transmountain-first-nations-support-1.3866324>

<sup>10</sup> <http://wcel.org/resources/environmental-law-alert/kinder-morgan-snapshot>

<sup>11</sup> <https://www.kindermorgan.com/community/CanadaAboriginalPolicy.aspx>

(3) There are formal agreements with some impacted communities, but others remain without (see Community Risk for details). There is evidence of extensive, ongoing public consultation. "Since April 2012, Trans Mountain has engaged with Aboriginal communities that may be affected by the Project or that may have an interest in the Project based on the proximity of their community, and their assertion of Aboriginal rights and title governing the traditional and cultural use of the land along the proposed pipeline corridor to maintain a traditional lifestyle. A number of methods have been used to inform Aboriginal communities, obtain feedback and identify issues about the Project including: community gatherings; face-to-face meetings; targeted interviews; formal and informal discussions; and distribution of Project letters, newsletters, GIS data, maps and fact sheets as well as through the collection of Traditional Ecological Knowledge (TEK) with participating Aboriginal communities during biophysical field studies for the Project, Traditional Land Use (TLU) and socio-economic studies...Trans Mountain has met with essentially all landowners along the proposed pipeline corridor. Meetings comprised discussions about the Project in general as well as requests for consent for Project-specific surveys. The meetings also provided an opportunity for landowners to ask questions and identify concerns regarding the Project. The questions, issues, or concerns raised by landowners were categorized most frequently related to compensation issues, land impacts, land values, site-specific pipeline location and issues related to the existing TMPL line."<sup>12</sup>

**Social investments (20%)**

(4) There are formal agreements with some impacted communities, but others remain without (see Community Risk for details). Additionally, there is no evidence of local control over design and implementation. "Trans Mountain is committed to supporting the sustainability of Aboriginal communities through the creation of employment opportunities over the life of the proposed Project and is committed to the development of an Aboriginal workforce through effective and accessible training programs to maximize participation in available employment opportunities."<sup>13</sup>

**Social impact assessments (10%)**

(1) There is a publicly-available SIA that assesses social and cultural impacts to Indigenous Peoples; there is evidence of consultation during the assessment process.<sup>14</sup>

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<sup>12</sup>Environmental and Socioeconomic Assessment for the Trans Mountain Expansion Project, page 3-47

<sup>13</sup>Environmental and Socioeconomic Assessment for the Trans Mountain Expansion Project, page 3-47

<sup>14</sup>Environmental and Socioeconomic Assessment for the Trans Mountain Expansion Project, page 3-47