

To: Hon. Greg Rickford
Minister of Natural Resources
21st Floor, 580 Booth Street, Room C7-1
Ottawa, Ontario K1A 0E4

cc.: Prime Minister Stephen Harper, NEB Chair Peter Watson

28 November, 2014

We are the original stewards of this land and we continue to have a sacred obligation to protect our waters, lands and people. We are united in expressing our grave concerns about how the regulatory review of the Trans Mountain Expansion Project is unfolding. We call for vast improvements to that review process and to how First Nations will be consulted regarding the Project.

We are highly concerned that the Crown has failed to implement a process to meaningfully consult First Nations even though the National Energy Board (NEB) review is well underway. Rather than working with First Nations, the Crown has acted unilaterally and stated it will rely, to the extent possible, on the NEB Hearing for the Project to identify, consider and address impacts on Aboriginal rights, including Treaty rights and fulfill its legal duty to consult. This approach is inadequate for a number of reasons.

First, the Crown failed to consult First Nations about the design of the overall framework for the review. As a result, the environmental assessment being carried out by the NEB will fail to fully consider or assess potential adverse impacts on Aboriginal title, rights, including Treaty rights or interests and will not, therefore, provide the Crown with the information it requires.

Second, as a quasi-judicial tribunal that operates much like a court, the NEB cannot consult with First Nations and accommodate our concerns, as the honour of the Crown requires. But while it has the powers of a court, in this proceeding the NEB has determined that no Trans Mountain witnesses will be cross-examined. Instead, Trans Mountain must answer written "information requests", which have proven to be a wholly inadequate substitute. The result will be a fatally flawed and superficial review.

Third, the federal Crown is providing a woefully insufficient amount of capacity funding relative to the complexity of the Project and the magnitude of its impacts. We are being required to spend hundreds of thousands of dollars from our limited budgets so that the Crown can seek to rely on this process to fulfill its constitutional duty to consult us. This is not honourable.

Fourth, the Crown has failed to provide any guidance as to if or how consultation will occur after the NEB makes a recommendation to Cabinet about the Proposal. In any event, it will be too late at that point to consult us about the Proposal and attempt to accommodate our concerns.

The bottom line is that the undersigned First Nations are wholly dissatisfied with the Crown's approach to consultation in relation to the Project. We do not believe that the Crown's approach is consistent with its constitutional duties to First Nations.

We call on the Crown to work with us to develop a meaningful consultation process for review of the Project. To begin the discussion, we request a meeting with you on an urgent basis to map out a constructive and pragmatic path forward.

Sincerely,

Chief Nelson Leon, Adams Lake Indian Band
Chief Susan Miller, Katzie First Nation
Chief Marilyn Gabriel, Kwantlen First Nation
Chief Wayne Sparrow, Musqueam Indian Band
Chief Norma Webb, Peters Band
Chief Percy Joe, Shackan Indian Band

Chief Ian Campbell, Squamish Nation
Jesse James, Shxw'ōwhámél First Nation
Chief Gordon Planes, T'Sou-ke Nation
Chief Harvey Underwood, Tsawout First Nation
Chief Maureen Thomas, Tsleil-Waututh Nation
Chief Harvey McLeod, Upper Nicola Indian Band

Cc.
Thomas Mulcair, NDP
Justin Trudeau, Liberal Party of Canada
Elizabeth May, Green Party of Canada