



TSLEIL-WAUTUTH NATION

Children of TAKaya – Wolf Clan

BURRARD INDIAN BAND



November 25, 2016

Via e-mail

Federal Cabinet
c/o Hon. Jim Carr
Minister of Natural Resources
580 Booth Street, 21st Floor
Ottawa, Ontario K1A 0E4
Email: NRCan.Minister-Ministre.RNCan@Canada.ca

Dear Federal Cabinet:

Re: Pending decision regarding Federal Cabinet approval of Trans Mountain Expansion Project

We write to provide the Federal Cabinet with Tsleil-Waututh Nation's ("**TWN**") position on the Trans Mountain Expansion Project ("**Project**"). We are sending this letter in advance of the December 19 statutory deadline to allow sufficient time for you to consider our submissions and evidence.

At this time, TWN requests that the Federal Cabinet either:

- Extend the time limit to make its ultimate decision and reconsider the NEB report and recommendations, allowing Canada the opportunity to accommodate the adverse effects TWN has identified to Canada, and other developments, particularly the Ministerial Panel Report, that have occurred since the issuance of the NEB's report; or in the alternative,
- Direct the NEB to dismiss the application for a certificate for the Project, and decide the Project is likely to cause significant adverse environmental effects that cannot be justified in the circumstances.

In our view, there are five reasons for the Federal Cabinet to grant one of our requests:

First, circumstances have materially changed since the NEB issued its report regarding the Project. As the Ministerial Panel commented on the first page of its report "*[t]he political, economic, and environmental conditions that prevailed in 2013, when Trans Mountain asked permission to build the pipeline, were much different than in May 2016, when the NEB recommended that the federal government approve the project...*" TWN could not agree more with this conclusion. With the magnitude, duration, and

nature of the risks associated with the Project, it is inappropriate for the Federal Cabinet to rely on recommendations based on a stale set of facts and circumstances.

Second, in addition to noting that the circumstances before the NEB have materially changed, the Ministerial Panel also confirmed five other issues with the NEB review process, and posed relevant questions for the Federal Cabinet to consider before directing that the Project be approved:

1. Can construction of a new Trans Mountain Pipeline be reconciled with Canada's climate change commitments?
2. In the absence of a comprehensive national energy strategy, how can policy-makers effectively assess projects such as the Trans Mountain Pipeline?
3. How might Cabinet square approval of the Trans Mountain Pipeline with its commitment to reconciliation with First Nations and to the UNDRIP principles of free, prior, and informed consent?
4. Given the changed economic and political circumstances, the perceived flaws in the NEB process, and also the criticism of the Ministerial Panel's own review, how can Canada be confident in its assessment of the project's economic rewards and risks?
5. If approved, what route would best serve aquifer, municipal, aquatic, and marine safety?

TWN states that the uncertainty that is highlighted by the presence of these serious issues, coupled with the material change in circumstances, leads to the conclusion that the Federal Cabinet should not direct the Project to proceed as proposed. Either the Project must be rejected, or at minimum the Federal Cabinet must direct that all of these issues be reconsidered by your respective ministries or the NEB, and new reports and recommendations be issued. The serious issues raised before and confirmed by the Ministerial Panel must first be comprehensively addressed to an appropriately high degree of satisfaction.

Third, for the reasons which are explained in greater detail in the attached additional evidence, the NEB based its report and recommendations upon several procedural deficiencies and erroneous substantive conclusions. For this reason the report and recommendations cannot, in their current state, be relied on by the Federal Cabinet to make a properly reasoned decision in the matter.

Fourth, since the issuance of the NEB's report and recommendations, a consultation process has been ongoing between representatives of Canada and Tsleil-Waututh. Unfortunately, that process has not yet been meaningful to us for several reasons. We entered into the process to reconcile our carefully considered decision to reject the Project and withhold our consent from it proceeding on our title lands with the NEB's decision to recommend that it be approved. Ultimately, our attempts at meaningful engagement were significantly hampered by a myriad of issues well beyond our control. Clearly, in our view, more time and a more fulsome mandate are required for the Crown to meaningfully engage with us on the important issues we have raised.

Fifth, the Project, if approved, would constitute a serious, unjustified infringement of our Aboriginal title and rights in Eastern Burrard Inlet for generations to come. It would expose our people and our territory to serious risks associated with oil spills and other concerns related to marine shipping, all of which we have communicated to your representatives and substantiated with scientific studies. It is certain, on

the basis of the materially changed circumstances highlighted by the Ministerial Panel, that there is no clear, compelling, or substantial public interest objective associated with the Project that can be relied on to justify an infringement of the magnitude being proposed. Additionally, to disregard TWN's carefully considered decision to withhold consent in view of our stewardship obligation to future generations would also be wholly inconsistent with the Crown's fiduciary obligation to ensure that our title lands can be enjoyed by our future generations.

As noted above, we are of the view that the above five points provide an appropriate basis for the Federal Cabinet to either (i) extend the timeline for its decision and order the NEB to reconsider its report and recommendations, or in the alternative (ii) direct the NEB to dismiss the application for a certificate for the Project and decide that the Project is likely to cause significant adverse environmental effects that cannot be justified in the circumstances.

Finally, I wish to highlight to the Federal Cabinet that the goal of reconciliation and constitutional harmony, recognized in s. 35 of the *Constitution Act, 1982* unfortunately remains unachieved between Canada and TWN in relation to the Project. We continue to see our title lands subject to further encroachment and pollution. If the Federal Cabinet directs that the Project be approved, against our informed withholding of consent and without taking the steps we have outlined in this letter, it would reopen the many wounds we have suffered as a result of the Crown's historic disregard for our Aboriginal title and rights, including in relation to the Project's predecessor facility. Quite frankly, such action would risk jeopardizing and irreparably harming our nation-to-nation relationship for some time to come, possibly for generations.

I look forward to hearing from you as soon as possible.

Sincerely,

A handwritten signature in black ink that reads "Chief Maureen Thomas". The signature is written in a cursive, flowing style.

Chief Maureen Thomas