
Trans Mountain Expansion Project

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October 27, 2017

SENT VIA EMAIL

Nathan Braun
Executive Project Director
British Columbia Environmental Assessment Office (BC EAO)
PO Box 9426, Station Prov Govt
Victoria, BC V8W 9V1
Nathan.braun@gov.bc.ca

Dear Mr. Braun:

Trans Mountain Pipeline ULC (Trans Mountain) is in receipt of your letter dated October 12, 2017 regarding the installation of spawning deterrents on the Trans Mountain Expansion Project (the Project, TMEP).

In accordance with its plan communicated in National Energy Board ("NEB") Condition 43 ([A82366](#)), NEB Information Request 15 ([A74547](#)) and NEB Information Request 35 ([A85064](#)), Trans Mountain commenced the installation of fish spawning deterrent mats in August 2017, during the pre-construction phase of the Project. Trans Mountain continued this work until the NEB issued the findings of the Inspection Report CV1718-322 and directed Trans Mountain to cease work on the installation of the mats. At the time of installation, Trans Mountain considered the spawning deterrents to be an appropriate environmental mitigation measure to prevent the deleterious effects of construction and did not consider the installation of spawning deterrents to be a construction activity. The NEB has since clarified their definition of construction activity and through Inspection Report CV1718-322 informed Trans Mountain that the installation of spawning deterrents constitutes a construction activity. As a result, Trans Mountain ceased installation of spawning deterrents.

Fish spawning deterrent mats are used as a mitigation method to enable instream construction to occur within fish bearing watercourses, but outside least risk windows. The use of spawning deterrents has proven to be an effective tool to avoid potential serious harm to fish as it prevents fish from spawning in the area of construction and thus minimizes mortality to incubating eggs and larvae that may be present during construction. This mitigation has been accepted by Fisheries and Oceans Canada (DFO) where it has been used elsewhere on other projects.

Appendix A: TMEP Spawning Deterrent Installation Locations and Schedule includes a list of all locations in British Columbia where the spawning deterrents were installed as well as their planned date for removal.

Regulatory Context

Trans Mountain understands that authorizations or permits from either federal, provincial or municipal levels of government with respect to the installation of fish spawning deterrents are not required, as long as the installation itself is carried out in a manner that avoids serious harm (e.g. prior to the arrival of migrating fishes).

National Energy Board

Trans Mountain identified the intent to use spawning deterrents as a method of mitigation and provided a list of watercourses and timing of installation in Appendices C and D of NEB Condition 43: Watercourse Crossing Inventory ([A82366](#)). On September 6, 2017, the NEB concluded that Trans Mountain had fulfilled the requirements of NEB Condition 43 for all Project phases (excluding Westridge Marine Terminal).

Fisheries and Oceans Canada

As per the intent of the DFO self-assessment process completed to determine the need for potential Authorization under paragraph 35(2)(b) of the *Fisheries Act*, it is the responsibility of the proponent to determine if there is a potential for serious harm to fish and fish habitat. If so, then a “request for review” can be made to DFO. Given past project experience and liaison with DFO on the use of spawning deterrents, and given the fundamental objective of the use of spawning deterrents is that of avoiding serious harm, no further approval was considered necessary. Trans Mountain will continue to comply with the requirements of the *Fisheries Act*.

Provincial Agencies

Communications with Forest, Lands, Natural Resource Operations and Rural Development (FLNRORD) with respect to fish collection permits during fish salvages included general discussions on the use of this site-specific mitigation measure. In discussions with FLNRORD about the use of spawning deterrents, the need for provincial permits was not identified, as this activity does not require excavations or modifications to the bed or banks of a stream (i.e. the trigger for Section 11 under the BC *Water Sustainability Act*) during installation, maintenance or removal. In previous discussions with FLNRORD on the use of spawning deterrents for operational and maintenance activities, permits were not required.

Compliance Measures

Trans Mountain has ceased installation of spawning deterrents for the Project and will not install further spawning deterrents until all pre-construction related NEB and EAO Conditions have been satisfied for the relevant construction areas.

In their final Inspection Report CV1718-332, the National Energy Board determined that there is potential for greater environmental harm should Trans Mountain be required to remove the spawning deterrents while target fish remain actively spawning within the relevant systems. As such, Trans Mountain is required to monitor, maintain and remove the previously installed spawning deterrents in accordance with its Compliance Plan and notify the NEB as soon as practical when spawning deterrents have been removed from each of the 8 locations. Trans Mountain is also required to provide the NEB with a summary of any monitoring and maintenance activities performed as well as to provide a report on the results of the 2017 effectiveness monitoring no later than March 2018.

Pre-Construction Condition Compliance

Trans Mountain considered the spawning deterrents to be an appropriate environmental mitigation measure to prevent the deleterious effects of construction and did not consider the installation of spawning deterrents to be a construction activity. Trans Mountain will only initiate construction on phased approval of BC EAO Conditions.

In keeping with the phased approval approach to construction start, on September 9, 2017 Trans Mountain notified the BC EAO of its intent to begin construction at Westridge Marine Terminal (Westridge) in September 2017, subject to completion of all Westridge related pre-construction conditions. On September 22, 2017, Trans Mountain received an email from the BC EAO confirming acceptance of the

final outstanding conditions related to Westridge Marine Terminal. Following the confirmation of acceptance of these conditions, construction activities began at Westridge in September 2017.

With respect to the commencement of construction for Project phases other than the Westridge Marine Terminal, paragraph 2 of your letter states:

“Conditions 17, 19 and 27 must be completed before commencement of construction on those components of the Project that are related to the plans. I would note that these management plans have not yet been submitted to or accepted by the EAO.”

Trans Mountain would like to clarify that Condition 17 was accepted by the EAO on September 19, 2017. Condition 27 was filed with the EAO on June 15, 2017 and revisions were provided at the request of the EAO on September 15, 2017. Condition 19 was filed with the EAO on May 2, 2017. Revisions were requested by the EAO on August 9, 2017. Trans Mountain filed updates to Condition 19 on October 19, 2017.

Should you have any questions regarding the above, please do not hesitate to contact the undersigned at regulatory@transmountain.com.

Yours truly,



Scott Stoness
Vice President, Regulatory and Finance
Kinder Morgan Canada Inc.

Enclosures:

Appendix A: TMEP Spawning Deterrent Locations and Schedule

Appendix A: TMEP Spawning Deterrent Installation Locations in British Columbia

Table 1 lists the seven (7) locations where installations were installed in British Columbia as well as the dates of installation and the proposed dates of removal.

Table 1: Installations in Fall 2017 to Facilitate Construction in 2018

Site ID	KP	Watercourse Name	Current Install Status	Estimated Removal Date
BC-32	518.15	Swift Creek	Installed August 1, 2017	Prior to freeze up, 2017
BC-38	529.96	Camp Creek	Installed August 2, 2017	Prior to freeze-up, 2017
BC-65a	548.02	Albreda River	Installed August 4, 2017	Prior to freeze up, 2017
BC-82a	557.47	Albreda River	Installed August 3, 2017	Prior to freeze up, 2017
BC-85	559.67	Albreda River	Installed August 2, 2017	Prior to freeze up, 2017
BC-110	576.36	Serpentine Creek	Installed August 28, 2017	Prior to freeze-up 2017
BC-112	578.03	Chappel Creek	Installed August 28-29, 2017	Prior to freeze-up 2017