



File: 30050-25/TMEX-18

Reference: 357473

May 1, 2020

SENT VIA EMAIL

Scott Stoness
Vice President, Regulatory and Compliance
Trans Mountain Corporation
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Dear Scott Stoness:

I am writing to you regarding the process in response to the August 2019 BC Court of Appeal (BCCA) decisions regarding the Trans Mountain Expansion Project's (TMX) British Columbia (B.C.) Environmental Assessment Certificate (EAC) (*Squamish Nation v. British Columbia (Environment)*, 2019 BCCA 321 and *Vancouver (City) v. British Columbia (Environment)*, 2019 BCCA 322).

As you are aware, on January 10, 2017, British Columbia's (B.C.) Minister of Environment and Minister of Natural Gas Development issued EAC #E17-01 to Trans Mountain. On August 30, 2018, the federal Certificate of Public Convenience and Necessity (CPCN) OC-64 was quashed by the Federal Court of Appeal (FCA). In response to the FCA decision, the federal Governor-in-Council directed the NEB to undertake a 155-day process to reconsider the following factors:

- The environmental effects of project-related marine shipping in view of the requirements of the *Canadian Environmental Assessment Act, 2012*; and
- The adverse effects of project-related maritime shipping on species at risk, including the Northeast Pacific southern resident killer whale population and their critical habitat, in view of any requirements of section 79 of the *Species at Risk Act* that may apply to TMX.

On June 21, 2019, the NEB issued a new CPCN, OC-065, for TMX. CPCN OC-065 includes the conditions from the 2019 Reconsideration Report, as well as conditions in response to additional federal consultation with Indigenous nations.

The BCCA decisions upheld most aspects of the provincial process and decision but noted that the Ministers' 2017 decision relied on the initial NEB Panel Report as the assessment report to inform the EAC decision. The initial NEB Panel Report was amended, following the federal reconsideration process, in 2019, resulting in the Reconsideration Report. The BCCA held that it should be this 2019 report that should be considered to be the assessment report for the provincial decision. The BCCA therefore concluded that provincial Ministers should have the opportunity to consider the portions of the Reconsideration Report that differ from the initial NEB Panel Report so that they may adjust the provincial conditions as they see appropriate, within the limits of provincial jurisdiction.

The Ministers of Environment and Climate Change Strategy and of Energy, Mines and Petroleum Resources (Ministers) have considered the direction of the BCCA and have provided direction to the EAO to undertake the provincial reconsideration process. Consistent with the direction of the BCCA, the scope of the Ministers' direction to the EAO is to:

1. Identify and consider the portions of the NEB's Reconsideration Report that differ from the initial NEB Panel Report; and
2. Provide recommendations regarding any new or amended EAC conditions in response to those portions, within the limits of provincial jurisdiction.

In this regard, Ministers directed that the EAO provide a report, including any recommendations for new or amended conditions, for their consideration by the end of October 2020. In developing this report and any recommendations, Ministers directed that the EAO should:

- Engage directly and closely with Squamish Nation, Tsleil-Waututh Nation and the City of Vancouver;
- Engage Trans Mountain Pipeline ULC to ensure it is fully consulted and its procedural rights are upheld;
- Consult all marine Indigenous nations identified in the EAC; and
- Provide an opportunity for public comment and stakeholder engagement on the draft report of no less than 30 days.

The EAO will seek to engage with you throughout this process. I anticipate that in June 2020, the EAO will be in a position to begin to consult you on the initial results of the EAO work in response to the Ministers' direction. If you have any initial considerations or views that the EAO should consider at this stage, I request that you provide it in writing by May 29, 2020. The EAO will consult you during the development of the draft report, including any recommendations. Trans Mountain will also have an opportunity to provide formal comment on the complete draft report during the public comment period, which we anticipate occurring in September. Finally, the EAO will consult you on changes made to the report, including recommendations, prior to referral to Ministers.

It is worth noting that this reconsideration process will not require new assessment or reassessment. The assessment component of the reconsideration process was undertaken by the NEB. The engagement process described above will help inform the EAO's review and reconsideration of the work already undertaken by the NEB, in order to appropriately advise provincial Ministers.

I look forward to working with Trans Mountain on next steps of this provincial reconsideration process. If you have any questions, please contact me at Nathan.Braun@gov.bc.ca, or Beth-Anne Salzer, Project Assessment Officer at BethAnne.Salzer@gov.bc.ca.

Yours truly,

A handwritten signature in blue ink, consisting of the letters 'NB' followed by a long horizontal flourish.

Nathan Braun
Executive Project Director

cc: Katie McKinnon, Regulatory Advisor
Trans Mountain Corporation
Katie_Mckinnon@transmountain.com