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B.C. GOVERNMENT FAILED TO PROPERLY CONSULT FIRST NATIONS ON NORTHERN GATEWAY PIPELINE, COURT RULES

Gitga'at celebrating 'huge victory' after court rules province failed in duty to consult

The B.C. Supreme court has ruled that the province "has breached the honour of the Crown by failing to consult" with the Gitga'at and other Coastal First Nations on the Enbridge Northern Gateway pipeline.

The court challenge — one of many on the controversial proposed pipeline — stemmed from the B.C. government's agreement with Ottawa to hold a single environmental assessment process, under the National Energy Board, rather than parallel federal and provincial reviews.

In 2014, the federal government approved the controversial pipeline that would bring heavy Alberta oil to B.C.'s north coast, for international shipment by tanker.

But First Nations opponents of the pipeline argued the province wasn't living up to its own duty to consult with them, and today, the court found in their favour.

"This is a huge victory that affirms the provincial government's duty to consult with and accommodate First Nations and to exercise its decision-making power on major projects," said Arnold Clifton, Chief Councillor of the Gitga'at First Nation, in a statement.

Though the governing B.C. Liberals had agreed to the streamlined process — and even trumpeted it as something that would reduce "byzantine bureaucratic practices" and help create jobs, the province had also formally opposed the pipeline.

The B.C. government was an intervener in the National Energy Board's joint review process, speaking against the proposal, because it didn't meet the five conditions set out by B.C. for any heavy oil pipeline.

The chief problem, said the government, was there wouldn't be "world-class spill response capability" in place, despite the company's claims, according to the judgment.

Art Sterritt, a Gitga'at member and vocal opponent of the pipeline, said the B.C. government was "playing a bit of politics" by handing over its power at the environmental assessment stage, then opposing the project.

"They were saying [to the federal government] yeah, we're opposed, but you go ahead and make your decision, we'll live with it," said Sterritt.

Sterritt said the court ruling means the B.C. government would have to start from scratch on consulting with affected First Nations for its own review.

"You're talking about a whole new review process here," said Sterritt. "I'm not sure that Northern Gateway or anyone else would have the appetite for that."

But B.C. Attorney General Suzanne Anton said the judgment won't require restarting the pipeline approval process.

"What the court has said is we can rely on the process that was in front of the National Energy Board, but we do need to make our own independent provincial decision based on our own provincial legislation," she said.

Anton said the province hasn't yet decided on whether to appeal, and she is committed to fully consulting with First Nations.

However, Northern Gateway says the federal decision stands, and it's still working to meet the 209 conditions set out by the NEB, along with the B.C. government's conditions.

"Approval of the project falls within federal jurisdiction and this decision from the B.C. Supreme Court does not change that approval or the project's environmental assessment," said Ivan Giesbrecht, communication manager for Northern Gateway, in a statement.

"Northern Gateway and the project proponents, including Aboriginal Equity Partners, remain committed to this essential Canadian infrastructure."

Ottawa's role in the fate of the project has also been in question following Justin Trudeau's Liberal win in October.

Trudeau has called for a moratorium on crude oil tanker traffic on B.C.'s north coast, which would block the main reason for the pipeline — to ship oil via tanker from Kitimat to

Asian markets and elsewhere.

Northern Gateway has been undeterred by that plan, however.

B.C. Justice Minister Suzanne Anton has not yet commented on the court ruling.

ALBERTA CARBON CAP THREATENS CANADIAN CRUDE OUTPUT

Canada's efforts to curb greenhouse gas emissions are calling into question oil majors' ability to tap the world's third-largest oil reserves.

The new left-leaning government of the Canadian province of Alberta, which came to power in May after 44 years of conservative rule, has announced it would cap carbon emissions from its oil-sands industry, a move that threatens to strand billions of barrels of crude from supplies so vast that only Saudi Arabia and Venezuela control more.

Nine of the world's top oil companies, including Exxon Mobil, BP, Chevron, ConocoPhillips and Royal Dutch Shell, have invested tens of billions

of dollars into megaprojects in the province's boreal forests. Combined, those operations account for 23 per cent of these companies' proven crude reserves, according to data from investment bank Peters & Co — up from only 5 per cent in 2006.

Marathon Oil, China's CNOOC, Total of France and Norway's Statoil round out the group of global players exploiting Canada's oil sands.

Most of these producers have taken a wait-and-see approach toward the cap, details of which remain to be worked out. Privately, executives at some oil multinationals with oil-sands assets express dismay about the sudden policy shift, and the heads of some smaller companies have voiced their concerns publicly.

"The cap is a long-term issue for province and the country," said Glen Schmidt, chief executive of Laricina Energy, an oil-sands lease owner. "How will it be allocated to companies who in good faith have purchased rights to produce and invested in technology as we have?" he said.

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Canada's federal government defers to its provinces to come up with policy prescriptions to curb overall emissions. Alberta's new climate plan, announced in November, would cap its oil-sands industry's greenhouse gas emissions at 100 million tonnes a year. The industry currently emits 70 million tonnes of greenhouse gas a year — about a quarter of the province's overall emissions.

Based on growth projections at the time, Canada's environment ministry said in December 2014 — the latest projection available — that the oil-sands industry was likely to cross that 100 million tonne level as soon as 2020.

Shell, which welcomed the policy along with three local Canadian oil-sands producers, said it didn't expect the cap would have a negative impact on its existing operations or force it to take impairments related to its undeveloped reserves.

The company said it was confident the advent of new technologies and other policy initiatives would mitigate the impact of a carbon cap.

POLITICAL PROMISES SQUEEZE CANADIAN OIL INDUSTRY

The oil industry had eight years of an energy friendly government in Canada and couldn't get a single new export pipeline built.

Now, with newly elected Prime Minister Justin Trudeau keeping his campaign promise of banning tanker traffic off parts of Canada's west coast, it put the already

reeling industry further on its heels and could eventually force more production shut-ins and cuts in investment due to a lack of access to global crude markets.

The previous government, led by Prime Minister Stephen Harper, and industry put its eggs in the Keystone XL basket and in the end got sideswiped by the US government not approving Keystone XL while giving the nod to US crude exports. Apparently US shale development is less an environmental concern than Canadian oil sands.

Now the industry is pushing several new Canadian export pipelines, but has a new government to deal with that is seemingly tone-deaf to Canada's oil industry challenges.

In mid-November, when Trudeau said an oil tanker ban would be implemented on the North Coast of British Columbia, it posed a major impediment to Enbridge's proposed Northern Gateway pipeline. While the line already received regulatory approval from the National Energy Board, if a crude tanker ban is in place there would be no point in bringing crude oil to the coast, and no need for the pipeline. There are no solid plans for a refinery in the area.

The dual pipeline is aimed at exporting 525,000 b/d of Western Canadian crude from Alberta to a deep water port at Kitimat, British Columbia, and was targeted for start in late 2017/early 2018. The pipeline will also import 193,000 b/d of condensate to flow in a reverse direction from the coast to Alberta's oil sands producers. The ban was

an election promise the Liberal Party made before elections last fall to save ecologically-sensitive areas, Canada's Natural Resources Minister James Carr told reporters in Calgary in late November.

Work is already underway to develop a strategy to implement the ban, a Transport Canada spokesperson Natasha Gauthier said without indicating a timeline or the road map ahead.

She did not respond to pointed queries whether the ban would include condensate and LPG tankers and the LNG carriers that are expected to set sail from the ports of Kitimat and Prince Rupert from 2020 onward to navigate along the northern coast on their way to Asian markets.

If those products were included in the tanker ban, billions of dollars in projects would be at risk.

There is now talk of extending the ban farther south along the province's coast and the transport minister has been asked to look into it, Carr said in November without elaborating.

A southern extension of the moratorium along the British Columbian coast would impact another major export pipeline project: the 890,000 b/d Kinder Morgan-backed Trans Mountain Expansion, for which an NEB ruling is due by May 20, 2016.

The expansion — which is already facing a two-year delay with a planned start-up now in fall 2019 — would allow an additional 29 Aframax crude tankers to load at Westridge in British Columbia and

use existing shipping lanes from Port Metro Vancouver in the south coast to the Pacific Ocean, Kinder Morgan legal counsel Shawn Denstedt said recently at an NEB hearing in Calgary.

"It is pretty early to speculate what will happen [with the tanker ban]," Enbridge CEO Al Monaco said last month on a webcast. "We have heard the Prime Minister and federal Natural Resources Minister and we have also been told securing new markets is also an issue they will support."

It will be difficult to secure new markets without new pipelines.

Another set of hurdles will soon emerge for Alberta's oil producers with the federal government due to start a review of its regulatory process for approving crude oil pipelines, seek greater involvement of Aboriginal peoples and aim to reduce carbon emissions.

"A review of the approval process is in line with another election promise we made and will now be getting into a transition process with the NEB to take a close look at the existing procedures," Carr said in late November.

"We are in the business of transparency, rather than guaranteeing approvals for pipelines. Our focus will be on a more robust oversight of the regulatory process and a thorough assessment and there will be a transition phase," Carr said then.

If those changes were not enough for an industry on the ropes, the government is to soon unveil changes to its existing royalty structure.



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Just as US politics doomed the Keystone XL pipeline, Canadian politics threatens more than that as election promises become reality.

DONALD TRUMP DEMANDS 'BIG CHUNK' OF KEYSTONE XL PROFITS FOR THE U.S.

The Republican presidential front-runner declared that he is "not in love with the idea of taking Canadian oil."

Republican presidential front-runner Donald Trump says he would reject the Keystone XL pipeline if TransCanada Corp. didn't give the U.S. a "big, big chunk of the profits, or even ownership rights."

All of Trump's Republican rivals say they would immediately approve the pipeline from the Alberta oil sands, which President Barack Obama rejected in November. Trump, who bills himself as a master negotiator, now says he would require TransCanada to fork over billions.

"I want 25 per cent of the deal for the United States. They're going to make a fortune," he declared in Muscatine, Iowa on Sunday. On Saturday, he said he would ask for "25 per cent of the profits forever."

Trump, campaigning as an economic nationalist, said he wants the pipeline approved. But he said TransCanada should not be allowed to send Canadian oil through American land—"through farmland and through cities and wherever the hell they're going"—without paying a hefty price.

"When they do this pipeline, it's going to be a very profitable thing and it's really Canada oil coming down — so it's not — I like Canada, I want these people to be happy, but I want the developers of the pipeline to give the United States a big, big chunk of the profits or even ownership rights, like I do in

business. That's what I do," he said. "I want a big piece of the deal. Otherwise I'm not going to approve it. They will give us a lot."

Trump also declared that he is "not in love with the idea of taking Canadian oil." He added, "I love Canada, by the way."

Trump once favoured rapid Keystone approval. He appears to be launching an effort to use the project as fuel for his attempt to challenge the patriotism and the eligibility of top competitor Ted Cruz, the Texas senator who was born in Calgary and held dual citizenship until 2014.

"Ted Cruz will approve the Keystone pipeline because it benefits Canada!" he said.

Trump did not explain how a profit-sharing deal might work. A TransCanada spokesman could not be reached on Sunday.

Trump's Keystone remarks capped another weekend of bizarre and outlandish statements. On Saturday, he declared, "I could stand in the middle of 5th Ave. and shoot somebody and I wouldn't lose any voters."

On Sunday, he asked if a protester in a red turban was wearing "one of those hats." It wasn't clear if he thought the man might have been wearing a red Trump baseball cap.

NATIONS UNITE AGAINST LNG

Lelu Island and Flora Bank, critical habitat for wild salmon at the mouth of the Skeena River in northwestern B.C., have been declared permanently protected from industrial development by an unprecedented coalition of First Nations leaders, local residents and federal and provincial politicians.

The signing of The Lelu Island Declaration presents a major

obstacle to plans by Malaysian-owned oil and gas giant, Petronas, to develop a liquefied natural gas (LNG) plant near Prince Rupert. The declaration also deals a huge blow to the provincial government's stated aim to get major LNG plants under construction before next year's provincial election.

"The Lelu Declaration sends a powerful message to Premier Clark and Prime Minister Trudeau," said Hereditary Chief Yahaan of the Gitwilgyoofs Tribe of the Lax Kw'alaams. "The support to stop this LNG project is overwhelming. Nations are united from the headwaters of the Skeena River to the ocean. Together, we will fight this to the end."

The declaration was the culmination of a two-day Salmon Nation Summit, where more than 300 hereditary and elected First Nations leaders, scientists, politicians, commercial and sport fishermen, and other northern residents came together to defend wild salmon from the proposed Pacific North West LNG project.

Signatories to the declaration included hereditary leaders from the Nine Allied Tribes of the Lax Kw'alaams First Nation, and hereditary leaders of the Gitksan, Wet'suwet'en, Lake Babine, and Haisla First Nations. Grand Chief Stewart Phillip of the Union of B.C. Indian Chiefs also signed the declaration.

The Petronas project was also emphatically rejected by NDP MP Nathan Cullen and three northern NDP MLAs: Jennifer Rice, Doug Donaldson and Robin Austin. All four of the region's elected representatives signed the declaration.

"This project isn't going to happen. This project can't happen," Cullen said. The three MLAs released a letter that said, in part, "the proposed PNW LNG facility poses an unacceptable risk to the Flora Bank habitat

that is an irreplaceable link in the Skeena River salmon ecosystem."

Gerald Amos, chairperson of Friends of Wild Salmon said, "We honour the support of our elected representatives. Unlike the Clark government, they are prepared to stand up for an economy that recognizes our Aboriginal title, plays a part in the fight against climate change, and favours long-term prosperity for all the people of the Skeena, over short-term gain for foreign investors."

The Lelu Island Declaration states: "The undersigned First Nation leaders and citizens of the Nine Allied Tribes of Lax Kw'alaams hereby declare that Lelu Island, and Flora and Agnew Banks, are hereby protected for all time, as a refuge for wild salmon and marine resources, and are to be held in trust for all future generations."

The declaration extends an invitation to all First Nations, the governments of Canada and British Columbia, and all communities and citizens that depend on the health of Lelu Island, Flora and Agnew Banks and the Skeena River estuary, to join in defending this sacred and unique place and to protect it for all time.

Grand Chief Stewart Phillip said, "Contrary to the false assertions of the B.C. Liberal government and Petronas' public relations machine, there is formidable opposition to the LNG project proposed for Lelu Island. What binds people together throughout northwest B.C. is the undeniable fact that wild salmon are at the centre of our livelihoods and existence. It is essential that the Trudeau government immediately intervene in the fundamentally flawed Canadian Environmental Assessment process to ensure that the Indigenous rights of the nations of the Skeena watershed are upheld."

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