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FIRST NATIONS SAY THEY HAVE THE POWER TO STOP TRANS MOUNTAIN EXPANSION

First Nations say the courts, not the NEB or cabinet, will decide on the controversial pipeline. The Stó:lō collective of First Nations in British Columbia is very familiar with the transport of oil. The existing Trans Mountain pipeline has crossed through their land for more than 50 years. CN Rail also carries oil by rail directly across Stó:lō territory to the B.C. coast. So, the collective of eleven First Nations in B.C.'s Fraser Valley came to consultations with Kinder Morgan for the expansion of Trans Mountain with an open mind. "We have taken time to speak to Kinder Morgan," said Ernie Crey, the chief of the Cheam First Nation, a member of the collective. "We've also weighed and considered a new pipe versus seeing all this bitumen moving along the rail lines straight through many of our communities. Some of the houses in our communities are literally feet from the rail line." But Crey said the nations were also concerned about the pipeline's proximity to the Coquihalla River, which feeds into the Fraser River. "The Fraser River is the most productive salmon-bearing stream on Earth and we depend on the annual runs of salmon." A breach of either the oil or new Trans Mountain pipeline in the summer months would be disastrous for the salmon run. "We weighed and considered a pipe versus all this product being moved by rail and we considered what was the wiser of two difficult choices, bitumen by rail and bitumen by pipe and we thought the safer bet might be bitumen by pipe," said Crey. But the Stó:lō did not sign onto the project, a sign that the consultations done by Kinder Morgan, considered acceptable by the National Energy Board, did not go far enough to convince even those who had an open mind about the pipeline expansion. The Stó:lō are not formally opposed to the project either, as one of the nations most affected by the expansion, they simply remain to be convinced. That does not leave an easy job for three-member panel appointed this week by the federal government to further consult with communities

along the route. Sundance Chief and member of the Tsleil-Waututh nation Rueben George rejected Kinder Morgan's proposed Trans Mountain pipeline expansion, based on a scathing assessment that concluded it would increase the threat of oil spills and damage their culture. Crey said that representatives from Natural Resources Canada have visited the Stó:lō in recent weeks.

"They've made a one-time pass through our community. I've referred to it as a drive-by consultation," said Crey. "I think their responsibility and duty goes much deeper to us than to send a few public officials to [a] meeting with us for an hour or two."

Farther down the pipeline route, the Tsleil Waututh First Nation has little faith that the panel will be able to bring opponents onside. The territory of the Tsleil-Waututh includes the Burrard Inlet, which would see increased tanker traffic if Trans Mountain is approved. The First Nation is steadfastly opposed to the project and plans to challenge it in the courts. "They did that NEB process in 25 months," said Rueben George, a spokesman for the Tsleil Waututh. "And you're going to try to take care of that big mess in four months, that's ridiculous." George said that the legal landscape has changed for First Nations and resources development. "First Nations are winning 97 per cent of our court cases around resource extraction. That's 170 legal cases in the last couple years. That's a lot of veto power right there." The most significant case fought by First Nations was decided in June, 2014, by the Supreme Court of Canada, which ruled that provincial and federal governments must win consent of Aboriginal groups when regulating economic activity on titled lands, unless it can show a pressing public need for that activity.

That case was brought forward by the Tsilhqot'in nation in response to clear-cutting of trees on its territory. Since the decision, there has been a shift in which First Nations now feel that the duty to consult means corporations and government really need to seek consent. "We've been doing the traditional 'duty to consult' types of processes for 10 or 15 years," said Bruce McIvor, a lawyer



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with First Peoples Law. "But since the Tsilhqot'in decision in 2014 and the full adoption of UNDRIP [The United Nations Declaration on the Rights of Indigenous Peoples] by the federal government, we're moving out of that need-to-consult type of process and we're moving toward consent-based consultation. That's where we're going." McIvor said the National Energy Board decision yesterday, or the final decision by cabinet in

December, will not be the last word on Trans Mountain. "The process that the NEB went through will be reviewed by the courts and if the courts find that it doesn't live up to the government's obligations under Section 35 of the constitution, it has a wide latitude to null the decision to tell them to go back and do it again."

NEB PIPELINE PROCESS A 'SHAM,' NEW LIBERAL PLAN NOT MUCH BETTER, VANCOUVER MAYOR SAYS

Trans Mountain pipeline could put tens of thousands of jobs in

jeopardy, Gregor Robertson says Vancouver Mayor Gregor Robertson says the National Energy Board's Trans Mountain pipeline review process is a "sham," and its move to green-light the major infrastructure project threatens tens of thousands of jobs in his city. The federal energy regulator recommended — after a three-year investigation — that the controversial Kinder Morgan pipeline expansion project should be built, as long as 157 conditions are met, including 49 environmental requirements. "The NEB process was a sham, basically, it was advanced with gusto by the Harper government, who were obviously

strong proponents of this pipeline process," Robertson said in an interview with Chris Hall on CBC Radio's The House. "We put up a solid fight against it, but many of the interveners, many voices were shut out of that process and First Nations weren't consulted appropriately," he said, noting the board did not review the project's downstream climate change impact. The NEB said the \$6.8-billion project will be a boon for Canada's economy, boosting exports, employing thousands of construction workers and lining government coffers with a great deal more tax revenue. But Robertson said he will fight tooth and nail to stop the project, and he has a simple message for Prime Minister Justin Trudeau and Natural Resources Minister Jim Carr: "The answer is no. This pipeline proposal should not be approved. "They've got the rest of this year, they've got this ministerial panel, but there is no business case for it when you put the economics on the table and when you put the Paris agreement and our climate commitments on the table and the sensitive environment we're dealing with here on the West Coast — it's an absolute no," he said. The former NDP member of the legislature turned mayor said a "catastrophic" oil spill would cost the Vancouver area some 400,000 jobs. There are more than 30,000 direct tourism jobs in his city alone — and double that number in the Metro Vancouver area — all of which could be on the line if the area's picturesque ocean environment is put in jeopardy, he said. The pipeline will run largely alongside an existing pipeline from outside Edmonton to Burnaby, B.C., and will more than double capacity

from 300,000 barrels per day to at least 890,000 barrels. Most of the new pipeline capacity will carry unrefined bitumen for export to Asian markets. This expansion would sabotage the city's "clean and green" brand, he said, an image Robertson has worked hard to cultivate since his election in 2008. "That is all at risk if we're an oil spill city, and the images of seals and whales, swimming through oil in our harbour is unthinkable in terms of what impact it would have," he said. Carr and Environment Minister Catherine McKenna announced a new interim review process in January that will impose more steps on pipeline projects such as Trans Mountain. The process will analyze greenhouse gas emissions in more detail, and include greater public and Indigenous consultation, something that's not currently part of the NEB regulatory regime. The results from the review would then be presented to cabinet, which will make the final decision on whether to approve the project by year's end. Despite the federal government's move to placate critics like Robertson, he's not exactly buying what they're selling. "It's an acknowledgement, at least, that that process was flawed. But there needs to be more work done. It's too little too late to actually gather the appropriate evidence and consultation. "The question is whether the three-person panel will be able to ... actually do the due diligence that's necessary to inform the decision that is going to be made later this year [by cabinet]," Robertson said. "I don't think it's a substitute for proper consultation with First Nations." But Carr is confident that the new panel will be

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able to adequately study the project and produce recommendations for the cabinet to consider by the panel's Nov. 1, 2016, deadline. "What we want to know from the panellists is: What are they hearing that the NEB didn't hear, or couldn't hear, because of the nature of the regulatory review? And then we will take all of that — there's not duplication here, there's complementary work — and then ultimately we'll be held accountable for a decision," he said in an interview with The House. The natural resources minister acknowledged that not all groups will be happy with the cabinet's final decision. "Will there be a consensus or unanimity? No, absolutely not," he said, noting it

will be "easy" for him to disappoint people. But the process will at least be transparent, and the panellists will more meaningfully engage with Indigenous communities along the pipeline's route, he said, something that he conceded is not adequately done by the NEB in its current form. Some Indigenous groups along the route have already dismissed Carr's added layer of review. "It's hard to unscramble an egg," Sundance Chief and Tsleil-Waututh member Rueben George said Tuesday. "What you have is 24 months of the NEB and their processing, and now you have this new group coming in that is going to try to do what they couldn't do in 24 months, and they're going to do it in four months."



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NEB APPROVES TRANS MOUNTAIN PIPELINE WITH 157 CONDITIONS

Federal government has 7 months to make decision on controversial project

The federal government now has seven months to make a decision on the controversial Kinder Morgan Trans Mountain pipeline, after the national regulator gave its support to the proposed project. The National Energy Board is recommending the multi-billion dollar pipeline be constructed if 157 conditions are met, including 49 environmental requirements. The NEB described the requirements as achievable for the company.

Kinder Morgan must meet the conditions in order for the company to construct and operate the pipeline. The NEB concluded the Trans Mountain expansion will provide several economic advantages for Canada such as access to more export markets, thousands of construction jobs and increased government revenue. At this point, the exact route of the pipeline is still not determined. The federal government will take the NEB's decision into account in addition to considerations about upstream greenhouse gases and views of First Nations and other communities along the route. Alberta's oil patch welcomed the decision, although the excitement was measured.

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"It's beneficial in 2019 when there is actual oil flowing," said Robert Cooper, with the institutional sales and trading team at Acumen Capital Partners in Calgary. "Right now the immediate concern in the energy business is keeping the business alive." Coastal communities in B.C. have raised serious concerns about spill risk and the potential damage it could cause to the environment. "The board found the likelihood of a major oil spill was very low. However the potential significance was very high," said Robert Steedman, the NEB's chief environment officer. The impact of a possible earthquake was a major consideration, according to the NEB, although the risk is considered low. Conditions also include consulting with a number of Indigenous groups about environmental protection and emergency response plans. "The board considered the concerns expressed by Indigenous groups, how the project and related tanker traffic could impact Indigenous interests, and the appropriate means of mitigating such impacts," Steedman said.

Steedman added the NEB tried to provide as much access and advanced information as possible for Indigenous groups. Some of the groups who oppose the project have warned they will take court action to try to stop the pipeline from being built. Environmental regulations include developing grasslands and wetlands mitigation plans, marine protection plans and reports about how the company will construct the Burnaby Mountain tunnel. The NEB is requiring Kinder Morgan to file an updated greenhouse gas assessment two months after the pipeline is built. The analysis would include the total direct emissions generated from construction. For

the first time, the NEB is requiring the company to offset those emissions. The NEB went outside of its usual jurisdiction to make recommendations about how the oil will be transported on tankers. Officials considered possible environmental effects of marine shipping because of public interest.

Trans Mountain must enhance its marine oil spill response to be capable of delivering 20,000 tonnes of capacity in the event of a spill within 36 hours of notification.

Other marine conditions include developing a mammal protection program.

"The board found that marine traffic in the Salish Sea is high and is increasing and, in fact, will increase regardless whether or not the project proceeds. And it found in the case of the southern resident killer whales, they are already impacted by the levels of traffic and any additional traffic that might be introduced by the Trans Mountain expansion project would likely be significant," said Steedman.

While the NEB's announcement is significant, some say the regulator's role is diminishing over time.

"It's not as if anyone is saying we don't need board approval, it's just that a board report, in and of itself, no longer seems to be enough," said Nigel Bankes, chair of natural resources law at the University of Calgary.

"It used to be the 'be all and end all' and, quite clearly, now there are other important inputs, which make it a much more complicated world with many more moving parts," he said.

If approved, the twin lines could carry nearly 900,000 barrels of crude a day, starting in 2018.



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"The NEB has completely disregarded the urgency that climate science demands. We can't build more pipelines and meet the international climate commitments that Canada agreed to in Paris" — Mike Hudema, Greenpeace.

"This decision is a milestone for the future of Canada. The NEB is sending a clear message to Canada: building the infrastructure to get our resources to market is in the best interest of our country" — Tim McMillan, Canadian Association of Petroleum Producers

"I'm happy we are going to the next step and there still are some steps to go" — Marg McCuaig-Boyd, Alberta's Energy Minister.

"We need the federal Liberal

government, along with other provincial and municipal politicians, to stop delaying and undermining the confidence in this independent process and back these critical projects that will grow our economy" — Brian Jean, Wildrose leader

"The Liberals promised to fix the environmental review process, but have so far only put in a temporary fix, a three-member panel to review the NEB's Trans Mountain report. We must return to an independent, robust environmental assessment process for all industry projects. Anything less sets a dangerous precedent" — Elizabeth May, Green Party leader

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