1. Call to Order

Call to Order – *4:34 pm.*

2. Territorial Acknowledgment

We acknowledge that this meeting is being conducted on the unceded territories of the Coast Salish peoples; which, to the current knowledge of the Society include the Squamish, Musqueam, Stó:lo, and Tsleil-Waututh people.

3. Roll Call of Attendance

3.1 Committee Composition

Student Union Representatives

Archeology	Madeleine Lamer
Behavioral Neuroscience	Alysha Damji
Biology	Nikki Dumrique
Biomedical Physiology & Kinesiology	Alam Khera
Business	Emily Ma
Chemistry	Myles Scollon
Cognitive Science	
Communications	Arjan Mundy
Computing Science	Steven Yang
Criminology	Erwin Kwok
Dance	Allison Klassen
Earth Science	Johanna Lindh
Economics	Chris Rose
Education	
Education	
Engineering Science	Shayne Kelly
English	
Environmental Resource	Grayson Barke
Environmental Science	Ayush Joshi
First Nations Studies	Jennifer MacDonald
French	Matin Salsabil
Gender, Sexuality, and Women's Studies	
Geography	Enkhjin Enkhtaivan
Health Science	Aarushi Sharma
History	Paul Choptuik
Humanities	
Interactive Arts and Technology	Zachary Chan
International Studies	Sasha Soden
Labour Studies	Dylan Webb
Linguistics	
Management System Science	Linda Lu
Mathematics	Daniel Bathaei
Mechatronics System Engineering	
Molecular Biology & Biochemistry	Anika Westlund
Operations Research	
Philosophy	Karen Abramson

Physics ***(Chair)*** ..... Jesse Velay Vitow
Political Science ..... Jackson Freedman
Psychology .....
Science Undergraduate Society (SUS) ..... Anson Zhu
Society of Arts and Social Sciences (SASS) .....
Sociology and Anthropology .....
Software Systems ..... Jeffery Leung
Statistics and Actuarial Science ..... Albert Kho
Sustainable Community Development .....
Theaters .....
Visual Arts .....
World Literature ..... Alex Harasymiw

Constituency Group Representatives

First Nations Student Association (FNSA) .....
International Student Group (ISG) .....
Out on Campus Collective (OOC) ..... Irene Sneddon
Residence Hall's Association (RHA) ..... Mohammed Ali
Student Athlete Advisory Committee (SAAC) .....
Students United for Disability Support (SUDS) .....
Women Centre Collective (WCC) .....

Society Staff

SFSS Directors *(non-voting)*

Interim President ..... Vacant
VP Student Services ..... Vacant
VP External Relations ..... Christine Dyson
VP Finance ..... Hangue Kim
VP Student Life ..... Curtis Pooghkay
VP University Relations ..... Arr Farah
At-Large Representative ..... Paul Hans
At-Large Representative ..... Mudi Bwakura
Faculty Representative (Arts & Social Sciences) ..... Blossom Malhan
Faculty Representative (Applied Sciences) ..... Alan Lee
Faculty Representative (Business) ..... Pritesh Pachchigar
Faculty Representative (Communication, Art & Technology) ..... Prab Bassi
Faculty Representative (Education) ..... John Ragone
Faculty Representative (Environment) ..... Vacant
Faculty Representative (Health Sciences) ..... Raajan Garcha
Faculty Representative (Sciences) ..... Jimmy Dhesa

Society Staff

Administrative Assistant ..... Mandeep Aujla
Chief Executive Officer ..... Martin Wyant
Student Union Organiser ..... Anna Reva

3.2 Guests

Campaigns, Research, and Policy Coordinator ..... Pierre Cassidy
Student Union Outreach Worker ..... Virginia Zheng

3.3 Regrets

Behavioral Neuroscience ..... Alysha Damji
Business ..... Emily Ma
Labour Studies ..... Dylan Webb
Software Systems ..... Jeffery Leung
Philosophy ..... Karen Abramson

3.4 Absent

Chemistry ..... Myles Scollon
French ..... Matin Salsabil
Management System Science ..... Linda Lu
Out on Campus Collective (OOC) ..... Irene Sneddon

4. Ratification of Regrets

Excuses or regrets will be kept track of by the chair of council. Missing two meetings in a row without sending excuses (that are approved) will result in the removal from Council.

MOTION COUNCIL 2016-10-26:01
Madeleine/Chris
Be it resolved to ratify regrets from Jeffery Leung, Dylan Webb, Emily Ma, Alysha Damji and Karen Abramson.
CARRIED

5. Adoption of the Agenda

MOTION COUNCIL 2016-10-26:02
Shayne/Daniel
Be it resolved to adopt the agenda as presented.
CARRIED

6. Appointments & Resignations

MOTION COUNCIL 2016-10-26:03
Chris/Daniel
Be it resolved to ratify the appointment of the following Councilors:
Enkhjin Enkhtaivan (Geography)
Paul (History)

- Friendly amendment: Paul Choptuik & add Anson Zhu (Science Undergraduate Society- SUS).

CARRIED

7. Matters Arising From The Minutes

MOTION COUNCIL 2016-10-26:04
Mad/Daniel
Be it resolved to approved the minutes from:

- *Council 2016-10-26*

CARRIED

~~8. Committee Updates from Council Representatives~~

9. UNFINISHED BUSINESS

9.1 Tank Farm/Student Safety

- Letter enclosed.
- Doing a survey with Christine Dyson and the Communications department.
    - Question: Do you believe the tank farm expansion poses a risk to SFU community members?

10. DISCUSSION ITEMS

10.1 Council's role/Community updates

- Council's purpose and role needs to be redefined.
- Would like to have more discussions on issues and events that are affecting constituencies.
- Chair expressed an interest in including a new heading in the agenda pertaining to updates on what is happening in each councillor's faculty.
- Council agreed to have a standing item "DSU events".
- Council members informed the committee of events that are taking place in their faculties.

** *Nikki Dumrique arrived at 4:49 pm.*

10.2 Spring training sessions

- Chair noticed a few new councillors come on mid semester and expressed a desire to have a nuts and bolts style workshop in the Spring semester.
- Attendance will not be mandatory but is highly recommended.
- Pierre and Anna will be hosting the workshop.
- Most likely will be a presentation by Pierre and/or Anna in the second Wednesday of the Spring semester start date
- Council members suggested making the workshop more interactive.
- Councilors suggested providing snacks and beverages at the workshop.

→ Added motion:

MOTION COUNCIL 2016-10-26:04
Madeleine/Sasha
Be it resolved to approve up to $150.00 from the Council Budget for the Spring 2016 Council Nuts and Bolts Workshop.
Discussion:

- **[Action item] Jesse:** Send the workshop logistics once they are finalized to Anna and Pierre.

CARRIED

11. ANNOUNCEMENTS

11.1 Updates from Student Union Organiser

-Stipend Eligibility Forms:

- Councilors reminded to fill out their forms if they have not already done so.

-Cheques

- Councilors reminded to pick up overdue cheques.

11.2 Student Union Banking Accounts

- Some of the old bank accounts are still tied to the previous Student Union Organiser.
- This would be a good opportunity to change SFSS banking to only Scotiabank.
- VP Finance informed Council that switching all bank accounts over to Scotiabank would be a feasible change.
- Some councilors expressed a preference for Vancity.
- Hangue asked council members to ask their memberships for their input as well.

12. ATTACHMENTS

- 2016-11-07 Director Eligibility Report (Council) (1).pdf
- ERSU Council Representative Grayson Barke letter.pdf

13. ADJOURNMENT

MOTION COUNCIL 2016-10-26:05
Madeleine/Chris
Be it resolved to adjourn the meeting at 5:18 pm.
CARRIED

simon fraser student society

Maggie Benston Centre 2250
Simon Fraser University
8888 University Drive
Burnaby, BC V5A 1S6
Unceded Coast Salish Territories
sfss.ca

DIRECTOR ELIGIBILITY STATUS REPORT

To: **Council**
From: **Chief Executive Officer Martin Wyant**
CC: **SFSS Board of Directors**
Date: **November 7, 2016**

To ensure that the members of the SFSS Board of Directors continue to be eligible to hold office as directors (as defined in SFSS Bylaw 5), please find attached the registration status of each director for the current and previous two semesters.

A director's eligibility would cease under either one of the following conditions:

1. Not registered for at least two of the three semesters during which the director holds office
2. Not registered for the current and preceding semester
3. Have outstanding fines with the Society
4. Have not paid the SFSS Activity Fee

Position	Name	Eligibility Status
President	Vacant	
VP Finance	Hangue Kim	Y
VP Student Services	Vacant	
VP Student Life	Curtis Pooghkay	Y
VP External Relations	Christine Dyson	Y
VP University Relations	Arr Farah	Y
Faculty Representative – Communications, Art, and Technology	Prabjit Bassi	Y
Faculty Representative – Applied Sciences	Alan Lee	Y
Faculty Representative – Business	Pritesh Pachchigar	Y
Faculty Representative – Arts and Social Sciences	Blossom Malhan	Y
Faculty Representative – Education	John Ragone	Y
Faculty Representative – Health Sciences	Raajan Garcha	Y
Faculty Representative – Science	Jimpreet Dhesa	Y
Faculty Representative - Environment	Vacant	
At-Large Representative	Mudiwa Newtone Bwakura	Y
At-Large Representative	Prabhpal Hans	Y

ELIGIBILITY ANALYSIS

All Members of the Board of Directors are eligible to hold their offices.

Report from the Ministerial Panel for the **Trans Mountain Expansion Project**

November 1, 2016

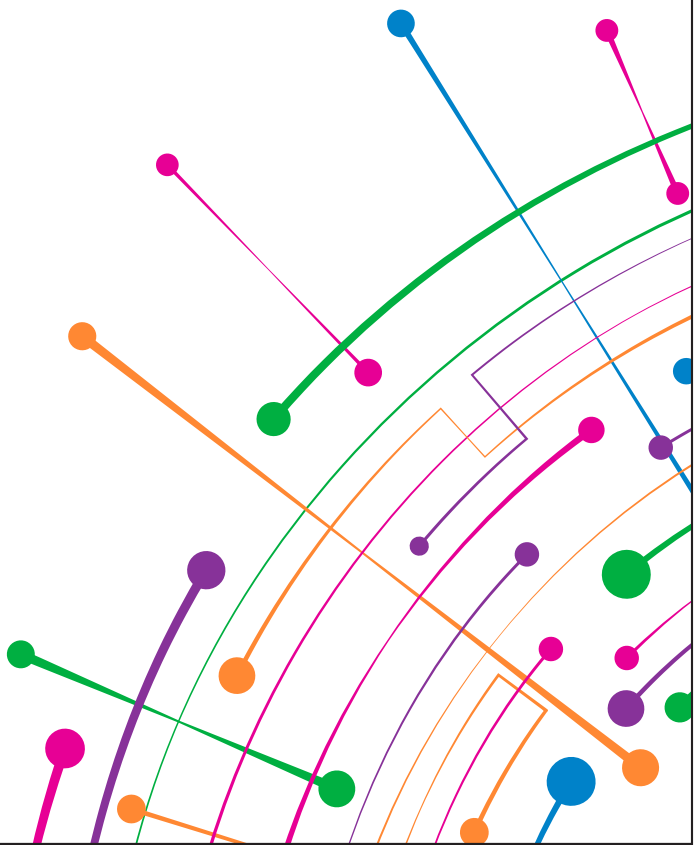

Table of Contents

MESSAGE FROM THE MINISTERIAL PANEL

We have been honoured to serve on the Ministerial Panel on the Trans Mountain Pipeline Expansion, reporting to the federal government on what Canadians said was missed in the National Energy Board (NEB) review of the proposed new pipeline from Edmonton, Alberta, to Burnaby, British Columbia.

We understood that our process would not be a redo of the NEB review, and we expected significant pushback. Even so, we accepted the challenge because we knew a lot had changed since Trans Mountain first sought approval for the new pipeline — from the decline in oil prices to the new government commitments to more ambitious climate action and to the principles of the *United Nations Declaration on the Rights of Indigenous Peoples*. We also knew that many people who wanted to participate in the NEB pipeline review were denied the opportunity.

We are grateful to those people who engaged. It was a privilege to meet with so many Canadians who were prepared to give up their time to prepare for and present to our panel. We wanted to tell your stories in a compelling way, and we hope that you feel heard.

We anticipate that when you read this report, you will be struck even more by the enormity of the decision that is before the federal government.

We would like to thank the Honourable Jim Carr, Canada's Minister of Natural Resources for the opportunity to participate in an important and inspiring dialogue, and we trust that our report will be helpful.

Panel Members
Kim Baird
Tony Penikett
Dr. Annette Trimbee

DECISION-MAKING IN A DYNAMIC TIME

The Government of Canada has announced its intention to decide, before the end of the year, the fate of Kinder Morgan's proposal to build a $6.8-billion pipeline to carry diluted bitumen originating in the oil sands of Alberta to a tidewater export facility in Burnaby, British Columbia. Yet, as is so often the case when governments or businesses must make go/no-go decisions on large complicated and expensive undertakings, the conditions that prevailed when the project was first proposed have changed, and many of the circumstances that may affect the need for — and impact of — the project over time are also uncertain.

Such is certainly the case in this instance. Since Trans Mountain Pipeline ULC submitted its application to the National Energy Board (NEB) in July, 2013, circumstances have changed dramatically. Oil prices have fallen, governments have been replaced and policies (and laws) have evolved on issues ranging from First Nations rights and title to climate change. The political, economic and environmental conditions that prevailed in 2013, when Trans Mountain asked permission to build the pipeline, were much different by May, 2016, when the NEB recommended that the federal government approve the project as being in the national public interest.

At the same time, Canadians have been locked in debate about the processes, policies and staffing of the current NEB. And many, particularly in British Columbia, have asserted that, in its research and deliberations, the NEB left gaps — in knowledge and public confidence — that were so significant that the Board's recommendation could not, of itself, support a government approval of the Trans Mountain Pipeline project.

In light of those two factors — the changing circumstances and public concern about the nature and comprehensiveness of the NEB process — the Government of Canada announced that it would direct three new initiatives before making a decision on the pipeline proposal. First, it commissioned an Environment Canada analysis of upstream greenhouse gas emissions associated with the project, to better understand its climate impacts. Second, the Government of Canada recommitted to ongoing consultation with First Nations whose interests would be affected by the pipeline's construction and operation. And third, on May 17, 2016, the Honourable Jim Carr, Canada's Minister of Natural Resources, announced the appointment of a three-member panel to complement the NEB review and identify gaps and/or issues of concern of which the Government should be aware before deciding the fate of the pipeline proposal.

This report reflects that panel's findings. It is based on 44 public meetings attended by more than 2,400 Canadians, of whom 650 made direct presentations to the panel. This included leaders from business, labour and environmental organizations, representatives (including both staff and politicians) from the municipal, provincial and federal levels, academics and other subject area experts. Although not intended as part of the federal government's concurrent commitment to direct consultation with First Nations, the panel also set aside meetings in each location for direct engagement with Aboriginal peoples, attracting direct input from 22 First Nations, four First Nation organizations and 15 self-identified First Nations presenters.

In preparation for the public meetings, the panel had direct briefings from the proponent, Trans Mountain Pipeline ULC; from the NEB; and from Alberta Premier Rachel Notley. Trans Mountain, whose staff members attended all public sessions, also submitted a series of issue sheets to the panel's online portal, addressing questions that had been raised during public sessions. Finally, the panel also received and considered more than 20,000 email submissions, as well as an online questionnaire that attracted 35,000 responses (see Public Engagement: Meetings, Emails and Questionnaires).

None of these inputs was designed as a statistically significant assessment of public opinion. The panel's mandate was not to test or build social licence for the project. It was to identify what might have been missed in the original review. Appropriate to the panel's mandate, therefore, this report does not contain specific recommendations. Rather, it provides an overview of input, a reflection of public concern about changing circumstances, and a synthesis of major issues (Alberta, British Columbia, Issues Survey and Indigenous Issues) and including six specific questions that Cabinet may wish to address in the process of coming to a final decision on the future of the proposed Trans Mountain Pipeline project.

Changing Times; Changing Influences

OIL PRICES

It is inevitable, in the necessarily long-range planning period for the construction of long-lasting energy infrastructure, that regular swings in the underlying commodity price will make a major project look more or less feasible over the short term. But the drop in oil prices that began late in 2014 went well beyond what might have been anticipated in the normal course of business. Having been hovering between $90 and $100 a barrel when Kinder Morgan first launched its bid to build a new Trans Mountain Pipeline, crude oil prices plunged by more than half, touching a low point of $26 a barrel in February 2016, before recovering to just under $50 a barrel by mid-year. And there it seemed destined to stay — at a rate that is still highly profitable for low-cost producers such as Saudi Arabia and Iran, but barely affordable for higher-cost operations in the Canadian oil sands or in the shale-oil projects that have raised U.S. production to the point that America is once again competing for space in the oil export market. As recently as the second week of September, the Paris-based International Energy Agency predicted, "Supply will continue to outpace demand at least through the first half of next year." Yet, within weeks of that prediction, the members of the Organization of Petroleum Exporting Countries (OPEC) had announced their first production cut in more than eight years, and oil prices began to rebound immediately. At time of writing, it was unclear to what degree, how soon — or if — prices would rise and hold at a level that would make an expanded pipeline competitive.

The drop in oil prices had a devastating impact on the Alberta economy, biting deeply into provincial (and federal) government tax revenues and depressing oil-industry investment, driving the unemployment rate in what had been Canada's most robust provincial economy from 4.4 percent in October, 2014, to 8.6 percent in June, 2016. Accordingly, the Alberta government reported that it was urgently in favour of the Trans Mountain Pipeline project regardless of the fluctuations in oil prices.

If prices were to return to previous levels and if international demand holds, the Notley government argues that Alberta producers will need additional pipeline capacity to absorb increased production, some that is already in development and some that is expected to be approved as prices recover. If prices remain low, Premier Notley says, Albertans need the project to generate jobs and economic activity at a time when their economy is suffering precisely because of the faltering demand for its principal product. And regardless of whether the oil price is low or high, Alberta would like a pipeline to tidewater, where it could sell to the highest international bidder, rather than being forced to accept what Albertans describe as a discounted price from the United States, currently the only destination to which Canada has significant export capacity.

CHANGING CLIMATE — ENVIRONMENTAL AND POLITICAL

Climate change is not a new issue, although the evidence of impact continues to gather and the implications seem increasingly dire: 2015 was the hottest year since humans began keeping record, taking the title away from 2014. And NASA's Goddard Institute for Space Studies has estimated a 99 percent chance that 2016 will be hotter still. Even though the warming influence of a passing El Nino was starting to wane, July and August of 2016 were the two hottest months in recorded history, carrying on a 16-month trend during which every month had been the hottest ever – the hottest June, the hottest May, the hottest April…

As to the question of impact, it is impossible to tie specific weather events to a broader change in climate, but that didn't stop commentators from noting that the fires that swept through northern Alberta in May, 2016, further damaging the Alberta economy, are closely representative of what has been predicted as a likely result of global warming. In light of this devastating fire, and of other dramatic climate events in Canada and around the world, the takeaway appears to be that the state of the climate and the state of the economy are irrevocably interlinked — that while mitigating climate change presents what many consider to be a daunting expense, failing to do so has its own costs.

Another, perhaps more directly relevant change in this regard is the political shift that occurred in 2015, when the New Democratic Party of Premier Rachel Notley was elected in Alberta and the Liberal Party of Prime Minister Justin Trudeau was elected in Ottawa. Both leaders adjusted their government's climate change policies decisively. In Alberta, Premier Notley's administration crafted what was immediately hailed as the most ambitious and comprehensive climate mitigation strategy in the country. Federally, Prime Minister Trudeau went to the international climate conference in Paris and, after a decade during which Canada was frequently denounced as a climate laggard, the Prime Minister and his Environment and Climate Change Minister, Catherine McKenna, earned worldwide praise for committing to an aspirational goal of limiting global warming to 1.5 degrees above pre-industrial levels — a substantial drop from the previous global target of 2 degrees.

But while indicating new enthusiasm for tackling climate change, both Premier Notley and Prime Minister Trudeau stated that, in a period of transition, conventional energy infrastructure still has an important role to play. Pointing to the economic damage Alberta suffered because of the oil price drop — and because Canada functionally has only one buyer for its oil exports — the Premier repeated that

Alberta needs a pipeline to tidewater, in no small part to help stabilize the Alberta economy, while it implements its ambitious climate program.

For his part, Prime Minister Trudeau has said, "The choice between pipelines and wind turbines is a false one." In a speech in March 2016 to the businesspeople, civil society leaders and science innovators at the Globe Leadership Summit in Vancouver, the Prime Minister went on: "We want the low-carbon economy that continues to provide good jobs and great opportunities for all Canadians. To get there, we need to make smart strategic investments in clean growth and new infrastructure, but we must also continue to generate wealth from our abundant natural resources to fund this transition to a low-carbon economy."

As both Premier Notley and Prime Minister Trudeau have said, on this issue at least, the point of debate attaches not to the necessity for change — which their governments now accept absolutely — but the pace of change. Both say now that change will take time, and that oil will be a necessary fuel in the period of transition.

FIRST NATIONS RIGHTS AND TITLE

It would be difficult to imagine a subject area in which there has been more change than in social attitudes — and — government responsibility — toward the recognition and the ultimate reconciliation of First Nations rights and title. Until 1951 — the year that Trans Mountain began planning its first oil pipeline on this route — it was still illegal for First Nation peoples and communities in Canada to hire lawyers or make any effort to state or defend their rights in Canadian courts. As discussed in later chapters, much has changed since, in law and policy. But one of the most relevant signs of that change came in a June 2016 decision by the Federal Court of Appeal to overturn the NEB endorsement of the Enbridge-sponsored Northern Gateway pipeline proposal. In its decision, the Court found that, "It would have taken Canada little time and little organizational effort to engage in meaningful dialogue on these and other subjects of prime importance to Aboriginal peoples. But this did not happen." Rather, the Court said, "We find that Canada offered only a brief, hurried and inadequate opportunity… to exchange and discuss information and to dialogue." Both the Government of Canada and Enbridge have since announced that they will not appeal this decision, thereby indicating their acceptance of government's responsibility to meet this higher standard of consultation.

The level of commitment to full nation-to-nation consultation, accommodation and, ultimately, reconciliation, must also be judged in the context of Canada's newly announced commitment to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). As Aboriginal Affairs Minister Carolyn Bennett said in a news conference on May, 2016, "I am here to announce on behalf of Canada, that we are now a full supporter of the declaration, without qualification. We intend nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution." Given UNDRIP's call that First Nations be accorded "free, prior, and informed consent," with regard to development on their traditional territories, this has the capacity to re-set the conversation about when

and how it is appropriate to consult with First Nations and when those Nations may have something that may be interpreted as a veto over projects on land in which they have an interest.

SOCIAL LICENCE

Just as UNDRIP has changed some people's perception of First Nations' ability to say, "No," to a project, the definition of social licence appears to have evolved in the past three years. Part of that change rests on a comment first spoken by Prime Minister Justin Trudeau and later committed to in the Liberal Party's election campaign platform: In a public address on July 23, 2013, the future prime minister said, "Governments might grant permits, but only communities grant permission." He was speaking at the time about a proposed mine outside the City of Kamloops — it would be five months before Trans Mountain would even submit its application to build the new pipeline — but the quote has been invoked many times since to suggest that communities have an absolute (if still ill-defined) right to withhold permission for resource developments with a significant environmental impact.

THE MINISTERIAL PANEL — A REVIEW, NOT A REPLACEMENT

Against the background of the changes already discussed, and in light of other complaints about the National Energy Board's process of environmental assessment and review, there emerged in some quarters an expectation that the Government of Canada would replace the NEB review of the Trans Mountain proposal with a new process altogether. Indeed, the new administration of Prime Minister Trudeau has indicated an intention to conduct a thorough overhaul of the NEB. But in January, 2016, Environment Minister McKenna announced that this regulatory reorganization is expected to take several years and that the Government did not intend to force proponents that had pursued complex and expensive applications, in good faith, to have to begin again from scratch.

In May, the Government announced a more specific path forward, stipulating five new conditions. These were as follows:

1. No project proponent will be asked to return to the starting line — project reviews will continue within the current legislative framework and in accordance with treaty provisions, under the auspices of relevant responsible authorities and northern regulatory boards;
2. Decisions will be based on science, traditional knowledge of Indigenous peoples and other relevant evidence;
3. The views of the public and affected communities will be sought and considered;
4. Indigenous peoples will be meaningfully consulted, and where appropriate, impacts on their rights and interests will be accommodated; and
5. Direct and upstream greenhouse gas emissions linked to the projects under review will be assessed.

These goals were to be achieved by the three processes described earlier: the Environment Canada review of upstream greenhouse gas emissions, the renewed consultation with First Nations; and

this Ministerial Panel. The overarching goal, according to Natural Resources Minister Carr, was to ensure that, "Canadians will see that the way in which we're going about it makes sense and that, when the decision time comes, that there will be a consensus, at least, on the process that got us to the decision."

To that end, Minister Carr directed this panel to:

- Review and consider input from the public via an online portal;
- Meet with local stakeholder representatives in communities along the pipeline and shipping route;
- Meet with Indigenous groups that wish to share their views with the panel, noting that the panel's work will complement, not substitute, the Crown consultations; and,
- Submit a report to the Minister of Natural Resources no later than November 1.

The tight timeline and the panel's unusual mandate (to "complement" rather than review or redo the NEB process), created significant confusion and, especially in British Columbia, a degree of backlash. Some members of the public, as well as some First Nations, assumed that the panel would facilitate a full-scale consultation. That was never the intent (especially in the case of First Nations, where the responsibility for consultation fell elsewhere). The panel was on a mission of issues identification and engagement. We set out to try to achieve a fuller understanding about what the NEB process might have missed and to sample input from among the more than 460 people and interested parties who had been denied intervenor or commenter status before the NEB.

The necessity to conduct public meetings in major centres along the route and to assemble and synthesize input in time to provide a finished report by November 1 also necessitated a quick start, including a full series of summertime meetings. This, too, became a matter of controversy and objection. From the first meeting, in Calgary on July 7, participants complained of short notice and of the inconvenience of having to meet during the summer vacation season. There were further complaints about the constitution of the panel itself and about its process. On one side, project opponents said they would only have been satisfied with a completely new NEB review, while supporters suggested that the panel's work constituted an unnecessary delay, holding up the approval of a what they felt was a worthy and necessary development.

Yet, even those who registered some form of process complaint often went on to speak passionately about the proposed project — describing their objections to it or their reasons for support. And an overwhelming majority registered their gratitude for having a venue and an opportunity to air their views, to connect with their neighbours — to put on record their issues, complaints, concerns and, in some cases, their impatience. So, having engaged with stakeholders in communities and with First Nations along the route and having reviewed their concerns, we hope that this report will fulfil the panel's mandate. For, as will become evident in the pages that follow, there remains a strong public perception that there were significant gaps in the NEB review and a sincere concern about the social, economic and environmental impacts of the Trans Mountain Pipeline proposal.

ALBERTA

It would be simplistic — and incorrect — to present all of Alberta or all of B.C. as either uniformly supportive or unanimously opposed to the Trans Mountain proposal to triple oil pipeline capacity from Edmonton, Alberta, to the tidewater harbour in Metro Vancouver. As the Ministerial Panel travelled and held meetings from Calgary to Victoria, it heard from supporters and critics in both provinces, and there were consistent threads of optimism and concern in every location. However, it is impossible to ignore the majority public support among those who spoke to the panel in Alberta and the widespread discomfort and, in many cases, flat rejection voiced by presenters in British Columbia. As people pointed out in both provinces, the project is such that its principal benefits flow to Alberta while the environmental and economic risks fall much more heavily on British Columbia. This creates a tension that might only be addressed at a federal level.

If the attitude of Albertans were to be summed up in a single word, it would probably be: impatience. It has been a difficult couple of years in a province that has prided itself on being one of the most productive economies in Canada. The Canadian Association of Petroleum Producers (CAPP) reported in April 2016 that anticipated capital spending in Canada's oil and natural gas sector was down by $50 billion from 2014, the largest two-year decline since CAPP and its predecessor organizations started tracking this data in 1947. Accordingly, as reported by the Conference Board of Canada, Alberta's gross domestic product (GDP) dropped by four percent in 2015 and was expected to drop a further two percent in 2016. Unemployment nearly doubled from 4.4 percent in September 2014 to 8.6 percent in June 2016, and provincial government revenues plunged: combined royalties from oil sands and conventional oil sources fell from $7.7 billion in 2013/2014 to $1.9 billion in 2015/2016.

Against this backdrop, the panel arrived in Alberta for its opening round of meetings, in Calgary on July 7. More than 75 people attended the first Public Town Hall, and all but one spoke in support of the Trans Mountain Pipeline project. Many described themselves as unemployed or underemployed former oil industry workers, people facing diminished opportunity and eager for any investment that might help turn Alberta's economic fortunes back in a positive direction. Most presenters seemed well versed in the project details and many mentioned the total economic impact of a project that Kinder Morgan is now estimating at a total cost of more than $6.8 billion. Noting that the company is reporting that it will create a total of 17,000 jobs during the project's construction phase, one presenter said, "I could use one of those jobs."

> "The project is under pinned by shipper long-term contracts such as those made by Suncor Energy and would be a shovel-ready project if approved. Despite the recent economic downturn, Western Canadian crude oil supply continues to grow with projects that were already under construction.
>
> The project will provide much-needed market access not only for Western Canadian crude oil but for refined products as well. The existing Trans Mountain system has been in chronic apportionment resulting in shippers on the system getting less pipeline capacity than they would like."
>
> – John Van Heyst, Suncor Energy Marketing Inc.

Among points of agreement in the Calgary Town Hall, the first was that these Albertans are deeply proud of their resource industry and convinced of the contribution that it has made to economic prosperity in Alberta and Canada. One presenter after another described the provincial industrial and environmental standards as "the best in the world." They said Alberta's industry is efficient, professionally managed and subject to what they consistently characterized as the highest environmental and regulatory standards. And while no one introduced objective or internationally tested measures by which to document that good performance, many presenters pointed to countries where they said that technological excellence and the protection of environmental values and human rights is plainly below the Canadian standard. In a world where fossil fuels are still crucial to global economic infrastructure, these presenters said they felt strongly that Canada should be proud to produce and sell as much oil as possible, for local and national benefit and, in the process, to displace hydrocarbons originating in countries such as Nigeria, Saudi Arabia or Venezuela.

A second point of agreement, raised most frequently in Calgary, but reinforced in other meetings in Alberta and central British Columbia, was that presenters who are closely linked to the fossil fuel energy industry tend to have a high regard for the expertise and judgment of the National Energy Board. Many said they felt the NEB process had been extensive and thorough and that the national energy regulator is the appropriate arbiter precisely because it has the technological knowledge, the process experience and the legal mandate to assess proposed energy developments. Several of these presenters expressed frustration that the work of the Ministerial Panel might delay a project that had already been thoroughly vetted.

> "Why would we wish to import oil from other countries that aren't subject to the same environmental standards as our country and don't abide by the same basic human rights codes as we do? We are supporting countries that minimize women's rights and don't believe in equality, while stifling production in our own country."
>
> – Harv Davies, Cenovus

Frustration and impatience notwithstanding, from the very first meeting, an overwhelming number of Alberta presenters expressed their gratitude for the opportunity to have their voices heard in an open, public and official forum, such as that provided by the Ministerial Panel. Many had been denied intervenor or commenter status in the NEB's Trans Mountain process, and even among people who were generally in support of the new pipeline, many still wanted to offer specific criticisms or to address perceived gaps in the NEB review.

One of the gaps most frequently mentioned involved the ruling that the NEB would not consider the Trans Mountain Pipeline project's overall impact on climate change. The NEB considered only the greenhouse gas emissions (GHGs) related directly to the construction of the proposed pipeline and recommended the project partly on the basis that Kinder Morgan has undertaken to offset that impact entirely. But the NEB did not take into account the degree to which a new pipeline would facilitate an increase in oil sands development, which in turn might trigger an increase in upstream GHGs (those generated in the production of petroleum products destined for the pipeline) and downstream GHGs (those generated when the oil products are ultimate burned or consumed).

The principal takeaway in the climate conversation in Alberta was that an overwhelming majority of people who spoke to the Ministerial Panel understand the science of climate change and are conscious of the impact that fossil fuel development plays in accelerating this global risk. There was no campaign of denial. At the same time, presenters pointed to domestic and international energy industry projections that show a rising need for hydrocarbon-based sources even during a period of transition to renewable forms of energy. The question, they said, is not whether Canada, and the world, should be shifting to clean energy; rather, it's a matter of how quickly that conversion can occur. The presenters who appeared before us in Calgary suggested a transitional timeline in the order of 30 to 50 years. And if you accept that timeline as realistic, they said that Canada should be prepared in the meantime to compete on fair and even footing for international market share; Canada should not restrain its energy production at the expense of the country's economic potential or living standard, especially when our international competitors can be expected to meet the global appetite for oil, even if Canada's output were to be removed from the mix.

This economic argument in favour of development carried over strongly during panel meetings in Edmonton, which included roundtable discussions involving nearly 50 representatives from labour and business organizations, as well as from local government and other interested individuals. Here again, the panel heard urgent and passionate pleas for economic stimulus, presented, again, against the backdrop of economic strain. For example, the human resources officer from a mid-sized Alberta drilling contractor described losing 75 percent of the company's office staff in the last two years, while employment across the whole company had fallen from 8,000 full-time jobs to just 1,500. For these and others, the proposed pipeline appears to represent not just as an interim job creation opportunity, but a measure by which to unblock the Alberta oil export potential — to stimulate the whole industry. Officials from business (e.g., the Edmonton Chamber of Commerce) and from construction trade unions picked up this theme. And many suggested that it is appropriate, in a cyclical resource industry, to support major infrastructure projects at a time when the oil price is low, the private sector is in retrenchment and the necessary labour is more readily available, and at a more affordable rate.

Presenters also continued to address the perceived environmental risks of a new pipeline, stressing repeatedly that they are eager to play a part in transitioning to a clean energy economy — at a "practical" pace. Robert R. Blakely, Canadian Operating Officer for Canada's Building Trades Unions, said his members understand the risks of climate change, but also recognize the realities and demands of an economy in transition. He said, "We're not going to sacrifice the environment for a cheque."

Another common, and similar, thread — mentioned frequently by pipeline supporters along the whole route and beyond — was that rising world demand might draw resources from Alberta's oil fields regardless of whether the Canadian government approves this or any other new pipeline proposal. Absent additional pipeline capacity, presenters repeatedly raised the spectre of millions more barrels of oil crossing the country instead by train, creating the risk of Lac-Mégantic-style catastrophes in rail-side communities or devastating oil spills into rivers and other waterways along the route. Chris Bloomer, President and CEO of the Canadian Energy Pipeline Association, pointed out that pipelines currently carry in excess of 1.2 billion barrels of oil per year and have maintained a safety rating

of 99.9995 percent between 2002 and 2015, a performance that can't be matched by trucking or rail alternatives.

In Calgary and Edmonton, and in the pre-briefing from Alberta Premier Rachel Notley, one of the most consistent pleas that we heard from pipeline advocates was for access to tidewater. The issue, here, is one of reaching an international market other than the United States. Given historic demand and the existing state of Canada's export infrastructure, NEB statistics show that the U.S. consumes more than 99 percent of all of Canada's oil exports, from conventional light crude to heavy bitumen from the oil sands. Pipeline advocates told the panel that, facing a single buyer — and without infrastructure with which to access competitors who might pay more — Canada is forced to sell its product to the U.S. at a discount. (For example, Western Canada Select was selling for about $14 per barrel less than West Texas Intermediate on the day of panel meetings in Edmonton.) Premier Notley — and many other Alberta presenters — argued that a new pipeline, connected to an ocean-side export terminal, would be in Alberta's and Canada's interests even if oil production and exports did not increase because tidewater access would enable Canadian providers to sell their resource to the highest bidder, rather than remaining trapped as "price-takers," restricted to sell only to the United States (which is currently producing all the oil it requires for domestic consumption).

Notwithstanding the general tenor of support — and excepting First Nations issues, which we will address separately later in this report — there were three areas of concern or opposition raised during the Alberta meetings. One was local impact, an issue much in the fore in Jasper. In a small-group discussion in that community, we heard from presenters who said that the relatively low accident rating from pipelines is meaningless to residents along the Kalamazoo River in Michigan, where they are still dealing with the consequences of a 2010 spill of Canadian-sourced diluted bitumen (dilbit). Given the potential complications from a dilbit spill, presenters said no level of risk is completely acceptable in Jasper National Park, a World Heritage Site worthy of absolute protection.

That objection also flags the two other issues: whether the Trans Mountain Pipeline is an appropriate route (in general and in specific locations along the way); and whether Canada should be shipping and selling dilbit, rather than upgrading and/or refining oil sands bitumen — to keep the refinery jobs in Canada and to limit the risk of spilling this more dangerous commodity. Both questions attracted a great deal more discussion in the panel's later meetings in British Columbia, but it's worth nothing that it was Albertans who first put these issues on the record — out of concern for the environment and for the perceived loss of domestic economic activity.

On the question of whether Trans Mountain has proposed an appropriate route, presenters in Edmonton speculated that a good part of the reported pipeline opposition in B.C. might be attached to the fear of an oil spill in the busy and beautiful Vancouver harbour. One presenter suggested that rather than following the existing Trans Mountain right-of-way to a tank farm in Burnaby, B.C., and the Westridge export terminal in the upper reaches of Burrard Inlet, it would be preferable to run a new pipeline south of the Fraser River to a more open-water port adjacent the coal terminal on Roberts Bank. Another presenter spoke of a completely new pipeline proposal (Eagle Spirit Energy) that would carry upgraded oil and terminate at Prince Rupert. And, later in our process, people also raised the

prospect of diverting the Trans Mountain line south near Sumas, B.C., to the Cherry Point oil export terminal in Washington State. Along with references to the Northern Gateway and Energy East pipeline proposals, all of these options were introduced as hypothetical but, by some arguments, preferable alternative routes.

The other concern — and again one that continued to generate a lot of discussion in the panel's later meetings in British Columbia — involved the question of shipping and selling dilbit. Dilbit is a combination of bitumen, mined from the Athabasca oil sands, and some form of diluent that makes the thick and heavy bitumen suitable for transport by pipeline. The most common diluent is natural gas concentrate, usually mixed in a proprietary combination with other chemicals. The result is a fluid of adequate viscosity and specific density to flow under pressure.

The panel heard two basic objections to dilbit being shipped by Trans Mountain. The first, raised by construction trades representatives and others in Alberta, was that bitumen is the oil industry equivalent of a raw log: it is the resource in its least-refined state. By exporting bitumen, presenters told us that Canada was exporting jobs that might otherwise be created and maintained if the refinery capacity were to be improved closer to the resource extraction site. The second objection is that dilbit is regarded as a more complicated and dangerous product. Presenters reported that the mixture is much more explosive than crude oil and more difficult to clean up when it spills. (We will address this question in greater detail in the next chapter.)

While we opened this chapter by recommending an over-simplification of the positions of those in Alberta versus those in British Columbia, it would be impossible to overlook the sense that there are two solitudes between the provinces. Many who appeared and spoke to the panel in Calgary and Edmonton were completely committed to the positive aspects of this and other pipeline projects and suggested, again and again, that opponents simply don't understand either the global need for fossil fuel products or the high standard of Alberta's technological and environmental performance. Several presenters said they believed that pipeline opposition is rooted in a basic lack of what they called "energy literacy." One said, "In Alberta, there is a clearer picture of reality." And another (in an apparent misunderstanding of the panel's mandate or capacity), urged that we "help de-politicize the process" by explaining, in B.C., both the need for the project and the high standards of the Alberta industry.

It was interesting, therefore, on the first day of the panel's meetings, when one of the youngest presenters — a recent university graduate — stepped up to say that many people in his generation will never be swayed by an argument based on safety statistics alone. Although a supporter himself, the young man pointed out that, for many of his contemporaries, "it's all about the narrative of what kind of country we want for the future." And if Albertans hoped to win support for this or any pipeline project, he advised, "There has to be a bigger conversation of the role of the pipeline in transition from a carbon-based to renewable economy."

BRITISH COLUMBIA

"People say the three best things that happened to Kamloops are the railroad, the highway and the pipeline." With this comment during the Ministerial Panel's opening-day meeting in B.C., former B.C. Member of the Legislative Assembly Kevin Krueger offered a perhaps counter-intuitive introduction to the opinions that British Columbians might harbour about the Trans Mountain Pipeline expansion proposal. Kamloops, a community of almost 90,000 people about halfway between Jasper and Vancouver, was the panel's first stop in B.C. We held five meetings there over two days in July, attracting more than 160 attendees from First Nations, local government, business and industry, environmental groups and independent citizens. In partial contrast to a week of meetings in Alberta, we witnessed a general shift from nearly unanimous support for a new oil sands pipeline to an increasing amount of discomfort about the risks and implications of the pipeline in B.C. But as many Kamloops presenters were quick to point out, just as there is a perceived division between Canada's two western-most provinces, there is also a divergence of opinion within B.C. itself, especially between residents of the Interior and those in the densely populated Lower Mainland around Metro Vancouver.

Away from the major centres, presenters told us that a project of this magnitude has a more obvious and crucial impact on local economies. Canadian Senator Nancy Greene Raine, who grew up in Rossland, southwest of Kamloops, seconded Krueger's analysis, calling the roads, rails and pipelines "the veins of our economy." She said she could still recall the effects, even as far as Rossland, of the economic windfall triggered by construction of Trans Mountain's first pipeline in 1953. Gord Heisterman, a councillor from the District of Clearwater, halfway between Jasper and Kamloops, said, "We're totally for the expansion of the pipeline," adding that "the Trans Mountain safety record is impeccable" and that transportation alternatives such as road or rail would put his community at a much greater risk. John Ranta, Chair of the Thompson–Nicola Regional District (TNRD) and Mayor of Cache Creek, west of Kamloops, pointed out that 36 percent of the proposed pipeline is contained within the TNRD, which stands stoutly in support. "It's going to be the finest pipeline in the world," Ranta said. There were others, as well, in business and industry who talked about anticipated economic benefits or endorsed Trans Mountain's performance in this region as a good industrial neighbour. For example, Tim Foster, the general manager of Mike Wiegele Helicopter Skiing, said 130 kilometres of the current pipeline passes through the area where his company operates and part of the pipeline runs right past his own office. "The existing line has had no impact, and we have excellent communication with Trans Mountain looking at installation techniques and how to minimize impact," Foster said. Finally, Merritt Mayor Neil Menard, said, "We believe that Kinder Morgan has answered all the environmental concerns, and the benefits would be astronomical." He added: "I understand the concerns of people in the Lower Mainland, but they need to support the needs of the Interior."

To be clear, these views were not unanimous — or even in the majority — in the Kamloops meetings. The City of Kamloops itself has taken a neutral position on the fate of the proposed pipeline, and most of the presenters who appeared over two days raised a host of concerns. They questioned the economic case for the pipeline and posted concerns about its impact on fragile ecosystems such as the Lac du Bois Grasslands Protected Area. Many also spoke passionately about the larger environmental risks, ranging from the threat of spills to the implicit promotion of climate change (all issues that will be canvassed at greater length in the pages to come). But it seems important to recognize the wide range of opinion in B.C. and the variation in support, concern or outright opposition, community by community.

> "I do not understand how the pipeline could have been allowed to be built across the [Sardis/Vedder] aquifer in the first place. Perhaps they simply did not have knowledge of the aquifer in the 1950s. Perhaps they chose to believe that pipelines would never spill. In any case, it would be unthinkable to allow that mistake to be repeated now"
>
> — Cary Stephen, Chilliwack BC (submitted online).

As the panel moved west, opposition increased markedly and in two general areas. There were continuing expressions of concern about general environmental impacts, both local and global. But presenters also raised an increasing number of issues arising from the tension of running a major piece of fossil-fuel infrastructure through an ever-more densely populated area. For example, in Chilliwack, where we held two meetings that attracted more than 100 attendees, presenters suggested that the current Trans Mountain pipeline poses a serious risk to regional drinking water, a significant part of which is drawn from the Sardis-Vedder aquifer. As one presenter said, "If there was a spill, it would infiltrate the drinking water and be almost impossible to clean up." This concern was raised again for the Chilliwack and Yarrow aquifers further down the Fraser Valley, and for the Hoppington aquifer, which is a primary water source for 11,000 people in Langley. Many people suggested that whether the new pipeline is approved or not, the current line should be moved away from these aquifers.

In both Chilliwack and Abbotsford, where the panel held two meetings with nearly 80 attendees, we heard complaints about Trans Mountain's performance — about the way it manages the existing pipeline and the actions it has taken to prepare for the new line. Where ranchers from the Interior had praised Trans Mountain staff for being respectful and responsive, farmers in the Fraser Valley — many of whom said they support the pipeline in principle — posted a long list of complaints about the pipeline and the company's general attitude. Members of the Collaborative Group of Landowners Affected by Pipelines (CGLAP) said they had suffered loss of use or loss of value for land because of the impact of the existing pipeline on their property. They said the line creates access and drainage problems, that it is frequently outside the legal right-of-way and is not always buried to the designed 60-centimetre depth, which makes it a hazard to cross with farm equipment. And now that Trans Mountain is working to secure permission to build the second line, CGLAP legal counsel Delwen Stander said that his members had been "threatened and bullied" to accept one-time signing bonuses that will not necessarily indemnify them for all of the disruptions and potential property devaluation that the new line may cause during its lifetime. The farmers also complained that the federal authority of the NEB could overrule the protective elements of British Columbia's Agricultural Land Reserve.

In Langley, where the panel held five meetings over two days, attracting nearly 200 attendees, lawyers representing the Township of Langley and the City of Surrey posted numerous concerns about the unfunded burden of accommodating a pipeline within a densely populated community. Delivering a written submission from the Township of Langley, solicitor Maegen Giltrow said, "The proposed pipeline would leave local communities vulnerable to considerable risk from pipeline failures and emergencies, and even without any pipeline-related accidents, would place a substantial financial burden upon local taxpayers to subsidize the true cost of having the pipeline come through their community." Indeed, Langley joined with the municipalities of Surrey, Coquitlam, Abbotsford and Burnaby to engage the consulting firm Associated Engineering to analyze the pipeline's economic impact. In its report, *Cost Impacts of the TransMountain Expansion on Lower Mainland Municipalities*, the firm stated:

> "While KM has acknowledged that there will be a disruption to municipal infrastructure during construction of the proposed TMX (Trans Mountain Expansion) pipeline, there has not yet been acknowledgement of the long-term cost impacts to municipalities for operation, maintenance and construction of municipal infrastructure around the proposed expansion. There is no question the presence of the TMP (the original Trans Mountain Pipeline), and subsequently the TMX is and will be, the source of additional costs for the municipalities when operating and replacing existing infrastructure and when constructing new infrastructure."

Associated Engineering calculated that cost for all five municipalities combined at $93 million, an amount that Giltrow said is not balanced by taxes or other community benefit payments from Trans Mountain. She said: "It is simply wrong to equate taxes, which are paid by all, to offsets." As to community benefits (for example, Trans Mountain has agreed to invest in Langley's emergency response capacity), "enhancements to emergency response wouldn't be necessary without this pipeline," she said.

This was a consistent position among the municipalities involved in this study. In an online submission, Coquitlam Mayor Richard Stewart said:

> "While all utility corridors have an impact on Coquitlam's municipal operations, Trans Mountain's oil pipelines are fundamentally different because they do not provide a service to our residents (homes are not connected to the pipeline) and, therefore, do not provide a direct benefit to them. Trans Mountain's pipeline is a private venture whose purpose is to move petroleum products through Coquitlam to offshore clients. In fairness, Coquitlam taxpayers should not be required to take on any additional financial burden or negative impacts created by Trans Mountain's pipeline."

The City of Surrey's Assistant Solicitor Anthony Capuccinello agreed saying, "The City does not support any expansion that has negative impacts on the City of Surrey. But after outlining a series of other conflicts and disagreements with Trans Mountain that Surrey had posted during the NEB hearings — including complaints about routing the new pipeline through the Surrey Bend Regional Park — Capuccinello took a step further, urging that, as part of any pipeline expansion, Trans

Mountain should be compelled to decommission and remove any existing pipeline that runs through heavily populated areas of that city.

As the panel moved to Burnaby, where we conducted eight meetings over three days, attracting more than 250 people, the focus shifted sharply to public safety. As Burnaby Mayor Derek Corrigan described in his presentation to the panel, the current Trans Mountain Pipeline is “an historical remnant” in his city. The line was laid in 1953 to supply five oil refineries, all operating and employing people in what was then a small, mostly rural community. As one presenter put it, when Trans Mountain was seeking right-of-way for that first pipeline, “All we had to do was move two cows.” Today, the line runs through the second-largest and third-largest cities in B.C. (Surrey and Burnaby) and terminates at a tank farm at the foot of Burnaby Mountain. Residential neighbourhoods have developed on two sides of that facility and above it are the main campus of Simon Fraser University (SFU) and another residential community called UniverCity. Kinder Morgan now proposes to double the number of oil tanks in that location, from 13 to 26, tripling the tank farm’s storage capacity from 1.7 million barrels to 5.6 million barrels. And given that the new pipeline would carry diluted bitumen, rather than crude oil, the facility would be storing a much more volatile substance. The tanks would be closer together and closer to the fence, which the Burnaby Fire Department says means that “many of the potential tank fire scenarios within the Trans Mountain Tank Farm facility would be inextinguishable due to lack of safe firefighting positions.”

As described by fire officials and by residents, some of those scenarios are severe. The worst would be a “boil-over” event in which the water that inevitably collects at the base of these storage facilities heats up and turns to steam. As described in a report by the U.K.-based ASK Consultants, prepared for the City of Burnaby, “The steam being three orders of magnitude greater than that of originating water, virtually the entire contents of the tank are explosively ejected and immediately ignited by the surface fire, generating a massive fireball supplemented by widely broadcast drops of burning fuel.” Because the tank farm sits at the intersection of the only two access roads to SFU, that creates a scenario in which thousands of students and residents would have to “shelter in place” even in the face of a fire climbing the mountainside through the Burnaby Mountain Conservation Area and toxic fumes pushed by the fire and carried by the prevailing wind.

According to Mark LaLonde, Chief Safety Officer for Simon Fraser University, “There could be in excess of 35,000 people going to or leaving the top of Burnaby Mountain on a regular basis who could be impacted by an emergency event at the tank farm. Trans Mountain has not provided an accurate assessment of the potential risks to SFU and the communities adjacent to the tank farm arising from a significant event, such as a major fire, tank blowout, boil-over or multiple tank fires at the tank farm.”

The NEB had rated the foregoing as a low-probability event, but the ASK Consultants report says: “The incidence of a boil-over is by no means so low as to remove it from consideration as a credible scenario.” Many presenters also described the potential as compelling, given a 2007 event in which an excavator working on a sewage line pierced the Kinder Morgan extension between the tank farm and the company’s Westridge export terminal, releasing more than 250,000 litres of crude oil, much of which sprayed through a residential neighbourhood under pressure, covering homes up to two blocks

away and forcing 250 residents to evacuate. About 70,000 litres flowed into Burrard Inlet, requiring a $15-million cleanup.

> "When the tank farm facility explodes, Kinder Morgan's plan is to call upon the City of Burnaby Fire and Emergency response resources. The City of Burnaby, however, is not equipped to respond to a tank farm disaster... I cannot believe that in Canada and B.C. residents are having to come up with their own ad hoc emergency plans because the provincial and federal governments will not help their own citizens stay safe. Please. Please help us stop this expansion before it ruins us."
>
> - SFU staff member and UniverCity resident Lauren Barke

One of the residents who had to flee the earlier spill is Mary Hatch, now a member of an organization called BROKE — Burnaby Residents Opposed to Kinder Morgan Expansion. Hatch, who appeared before the panel in Burnaby, also submitted a comment through our online portal, in which she said, "At least 20 Burnaby schools are in close proximity to the oil infrastructure of the Kinder Morgan pipeline... The biggest worry for schools is the proposed expansion of the tank farm on Burnaby Mountain... Tanks will be closer together, increasing the risk of fire jumping from tank to tank. There is no emergency response plan to safely evacuate students in the event of a spill and there is no assurance from the Burnaby Fire Department that they can cope with a tank farm fire."

On the contrary, both the Burnaby Fire Department and the New Westminster Fire Department continue to be sharply critical of the Trans Mountain Pipeline expansion proposal. Tim Armstrong, Fire Chief in New Westminster, told us, "We don't have clear disclosure on Trans Mountain's emergency response plan." Armstrong said that the company was insisting that its plans are confidential, but the Fire Chief said other shippers — the railways, for example — are willing to share proprietary information for safety's sake and that the department holds that information in trust. Armstrong also said that, on one occasion, when asked about contingency plans, Kinder Morgan said it would bring an expert response team in from Alberta, to which option Armstrong said: "That's not an emergency response. That's a remediation plan."

> "We believe the NEB process was robust and thorough and that the project should proceed with all due haste."
>
> – Surrey Board of Trade CEO Anita Huberman

The panel's next stop was Vancouver, where we held eight meetings over three days, attracting 504 attendees. And here it bears repeating that this high-level reflection does not come close to representing all of the issues raised or even to suggest that any of these focal points assumed primary importance. In every community we visited, there were presenters — from Chambers of Commerce, construction labour unions, engineering and supply firms — who spoke in favour of the

> "I'm in tourism. I promote 'Super Natural British Columbia' to people around the world. Let me assure you that what is at stake here is the image of British Columbia. If there is ever an oil spill … the story will simply be 'oil spill pollutes B.C. coast' – end of story. And that is how reputations are lost."
>
> – Randy Burke, Bluewater Adventures, Director of the Gwaii Haanas Tour Operators Association and a Director of the Commercial Bear Viewing Association of B.C.

pipeline on the basis that it would provide jobs and economic opportunities for those along the way. That said; the focus in Vancouver was overwhelmingly on both the economy and the environment — and the relationship between the two. The first speaker set the tone. Tarah Stafford, representing a group called Conversations for Responsible Economic Development, made the case for environmental protection *linked* to economic impact, saying that the Trans Mountain Pipeline would create 50 full-time jobs in B.C., but put at risk 200,000 jobs in tourism, film, TV, real estate, high tech and other coastal industries that rely upon the health and beauty of the West Coast environment. Beginning as early as in our first meeting in Calgary, presenters had acknowledged that it is difficult to make an accurate comparison of the pipeline project's economic benefits, which the proponent sets out with a high degree of certainty, to environmental and economic risks. That's partly because some of the risks are hard to tabulate (e.g., cumulative effects on habitat or air pollution) and some are unintended, even if sometimes unavoidable. Presenters said there is always a danger that you count the benefits and understate the costs, often just by hoping that nothing will go badly wrong.

In Vancouver, the economic argument focused most heavily on the risk side of the ledger. Vancouver Mayor Gregor Robertson shared research from the SFU School of Environmental Management that argued Trans Mountain had greatly underestimated the risks and likely costs of oil spills. The report calculated spill risks of 79 percent to 87 percent over the 50-year lifespan of the project. It suggested that terrestrial spills costs could range from $5 million to $1.5 billion, while tanker spills could ultimately cost as much as $4.4 billion. As with Stafford, Robertson also spoke about Vancouver's "clean, green sustainable brand," on which the city has put a value of $31 billion. A major oil spill that marred the beaches and changed the public perception of the city would reduce that brand value, immediately, by $3 billion, Robertson said.

> "In the case of a tanker spill, the numbered foreign companies that own the tanker/vessel would be hard to hold responsible to pay for coastal oil cleanup. Once the bitumen leaves the KM pipeline – it is no longer legally the responsibility of KM. The taxpayers of B.C. would be responsible for costs of cleanup. The tankers liability is limited to $1.3 billion, a major spill could easily cost ten times this amount (over $10B with only 5% of bitumen recovered)."
>
> – Alan James, Vancouver

Just as the Kinder Morgan/Trans Mountain oil spill in Burnaby had reinforced concern about the risks in that community, Vancouverites pointed to the April 2015 fuel oil spill from the bulk grain carrier MV Marathassa as a current example of the risk to Metro Vancouver's waters, coastline and reputation. And here again there was evidence of two starkly different views about the odds and implications of oil spills and about Canada's capacity to respond. On one hand, Michael Lowry of Western Canada Marine Response Corporation (WCMRC) told the panel that the Marathassa spill proved his organization's ability to respond. The WCMRC is an industry-funded cooperative and the only certified oil spill response organization on Canada's West Coast. According to an independent review by the Canadian Coast Guard, the Marathassa spill was first reported at 16:48 on April 8, 2015, and Port Metro Vancouver called WCMRC into action at 17:59. The first WCMRC boat arrived on the scene and began the cleanup at 21:25. This, Lowry said, was a response "well within" the Canadian government's mandated six-hour standard. The Coast Guard

report concluded, “The operational fuel oil spill cleanup was successfully executed by the WCMRC under the direction of the CCG.”

Yet the City of Vancouver — and many other presenters who spoke to the panel in Vancouver and North Vancouver — challenged that view. No one notified the City of Vancouver for 13 hours and by the morning after the spill the WCMRC reported recovering just 1,400 litres of fuel oil, less than half of what was spilled.

As Vancouver City Manager Sadhu Johnston told the panel, this was a small spill (~2,900 litres), the result of human error from a very new freighter. Johnston said: “The worst case scenario for an oil spill from a tanker carrying oil from the Trans Mountain Pipeline is estimated by Kinder Morgan to be ~16,000,000L.” And Johnston, and many other presenters told the panel that they thought both Trans Mountain and the NEB were underestimating the likelihood of a large spill and therefore discounting too heavily the actual risk. The NEB, for example, said in its report that it found “there is a very low probability” of a high-consequence spill from the pipeline, the tank terminals, the pumps station, the Westridge Marine Terminal or from a “Project-related” tanker, and that this level of risk was therefore “acceptable.” Many presenters complained that, because the NEB regarded the probability as so low, it didn’t require Trans Mountain to create models of a cleanup scenario for a spill of that magnitude, leaving a serious gap in public understanding of the risks, costs and implications of such an event. Presenter Brian Gunn, speaking to the panel on behalf of an organization called Concerned Professional Engineers, urged that people look more closely at the math in these calculations. For example, Kinder Morgan’s consultant stated that the “return period” for a spill of at least 8,250 cubic metres (roughly 3,000 times the Marathassa spill) is 473 years. But, Gunn said, “The 473-year return period presented by Kinder Morgan is mathematically equivalent to… a 10 percent probability of a marine spill of at least 8,250 cubic metres within the 50-year operating life of this project.”

> “People always say that this is the best place on Earth, and I don’t know if that’s true. But I know it will be false if we let another pipeline infect the coast.”
>
> – Owen Sigurdsson, 19

Gunn and others also drew attention to the dramatic increase in tanker traffic that would occur if the project is approved: from four or five tankers a month today to 34 a month. These also would be Aframax tankers, with a design capacity of 80,000 to 120,000 metric tonnes, larger than the Panamax tankers (60,000 to 80,000 tonnes) that have been loading at Westridge until now. The scenario is further complicated by the shallow depth under the Iron Workers Memorial Bridge and the train bridge at Second Narrows; even at daytime high tide (the only time tankers of this size are permitted to pass through the narrows), the Aframax can only be loaded to 85 percent capacity for fear of having inadequate clearance. The NEB has ruled that these tankers must have three escort tugs as they pass through this section and the harbour traffic in Burrard Inlet and under the Lion’s Gate Bridge. A single escort tug must then accompany the tanker the full distance through the Salish Sea, clearing Vancouver Island, but these precautions are not sufficient to allay the concerns of many who spoke to the panel, in Vancouver, North Vancouver and on Vancouver Island. As Mayor Robertson concluded, “Vancouver is essentially being asked to ‘take all of the risk.’ But it’s not worth the risk.”

The panel's next stop was in North Vancouver, where more than 80 attendees gathered from the municipalities of West Vancouver District, North Vancouver District and North Vancouver City. As in Vancouver, and as we would later encounter in Victoria, the people of the North Shore said they felt like they had been largely ignored in the NEB process, that they saw little prospective benefit from the pipeline project and significant risk.

In an opening round table meeting with municipal officials, the input concentrated on widespread misgivings about the role of the National Energy Board in recommending approval of the project. Presenting on behalf of the District of West Vancouver and the City of North Vancouver, solicitor Rachel Vallance said: "The NEB process has failed the municipalities on (two) fronts: it has not truly considered or addressed the specific evidence that was put before the Board from professionals and experts about how our communities would be impact by the project, and it has not shown us that we can rely on our regulator in this instance to inquire into, understand and resolve matters that are fundamental to protecting the public interest, before allowing this project to go ahead." By way of example, Vallance said that NEB's decision to disallow oral cross examination of witnesses "really affected the ability of parties to examine and resolve issues." And worse, when municipalities tried to test evidence, or merely to get questions answered, neither the proponent nor the NEB responded as the municipalities would have hoped. Faced with a 15,000-page original proposal from Trans Mountain, Vallance said municipalities struggled, in very short time frames, to come to grips with the information. They had just one month to submit questions, and when they forwarded 168 questions they "got very little in response." (This comment was repeated many times during panel meetings across B.C. and Alberta; many intervenors in the NEB process reported being overwhelmed and said they felt largely ignored in their requests for further information.)

At the municipal level, many on the North Shore reiterated Vancouver presenters' concerns about spill risks, on which count Vallance said the NEB failed again in its regulatory responsibilities. "Excluding the review of spills with low probability but high consequence does not meet the standard," she said. "The Board had an opportunity to put public concern to rest by analysing these risks and failed." A report filed by the two municipalities went on to say this concern was made worse because "The coast of southern British Columbia is already recognized as one of the two most likely areas for a major oil spill in Canada, based on existing shipping levels." The report also questioned whether the NEB had examined "the true potential increase in diluted bitumen transport the municipalities might eventually face along their shorelines. "The Board's regulatory review was restricted to the 'applied for' capacity of 540,000 barrels a day, despite the fact that the new pipeline is designed to carry 780,000." That is to say, while Trans Mountain has applied to triple current capacity from about 300,000 barrels per day to 890,000, if this project was approved, it would actually have capacity to almost quadruple current shipping levels. Vallance characterized this as direct regulatory omission, as with the decision that the NEB would not consider upstream or downstream greenhouse gas emissions or exercise direct responsibility for the impact of shipping. "In light of the outstanding issues," she concluded, "the project cannot be determined to be in the public interest or safely approved."

Janice Edmonds, founder of a group called North Shore NOPE (No Pipeline Expansion), spoke of her group's frustration that they had been denied NEB intervenor status because the North Shore was

regarded as outside the affected area because the pipeline itself wouldn't touch the North Shore and because the NEB ruled that is jurisdiction ended with the pipeline and that shipping dangers were the responsibility of other authorities. Edmonds, a nurse by profession, spoke at length of the health risks from potential spills and from the normal operations of a busier export terminal, even if no spill occurred, for example from cumulative small spills at the loading terminal, and from the noise, light and air pollution from shipping. Edmonds told the panel of the challenge of making sense of Trans Mountain's 15,000-page application, especially with no funding from the company or the NEB to pay for expert or legal analysis. She posted a particular concern that Trans Mountain had not shared information on the impacts to regional air quality, and reiterated concerns that the company had not modelled large spills or shared its emergency plans with municipalities or emergency responders.

> "One particular concern we share with local governments in our area is the need to model the effects of a large oil spill in the Burrard Inlet and English Bay... such a modeling is imperative because, while the probability for such an event is very low, its health consequences could be very large, especially if the region is not prepared."
>
> – Dr. Patricia Daly, Chief Medical Health Officer, Vancouver Coastal Health and Dr. Victoria Lee, Chief Medical Health Officer, Fraser Health Authority

Presenters also pointed out that the impacts of cumulative spills and air pollution are magnified because the Westridge terminal is located so deeply into Burrard Inlet. While most major international ports site dangerous cargo terminals as close to the open ocean and as far as possible away from population centres, the Westridge terminal is more than 15 kilometres into the harbour, at a point where the inlet becomes fjord-like, trapping the prevailing winds, and on the far side of a shallows, which discourages the effective flushing of tidal action. The site is also close to recreational areas and in sight of residential developments on both sides of the harbour. On the North Shore, Erian Baxter runs Deep Cove Kayaks, which has operated just across the arm from Westridge for two generations, employing 100 people and renting boats to 35,000 visitors a year. Baxter, who spoke in the Public Town Hall, said tourism business like hers generates more than $14 billion in annual revenue in B.C., adding, "It's mind-boggling that we would contemplate putting that at risk."

> "The Vancouver harbour is the second most important port on the West Coast. It doesn't belong to the people of the North Shore or of Vancouver alone; it belongs to all of the people of Canada."
>
> – George Reynard, North Vancouver

On the south side of the harbour, Jo Ledingham said she had lived in a waterfront cottage in Belcarra since 1964, directly facing the Westridge terminal. She said that when tankers pull in "and the anchors go down, everyone is aware. At night, it's never dark anymore (as tankers leave their lights on 24/7) and it's never quiet," a situation she said would get much worse as exports increase. That could be especially true in the winter or in bad weather. Because the Aframax tankers can only transit the Second Narrows at daytime high tide, Port Metro Vancouver officials say that several could get caught on the terminal side when the days are short and the weather is uncooperative.

The panel's last stop was in Victoria, where more than 500 attendees signed up during four meetings over two days. As in the Burnaby, Vancouver and on the North Shore, municipal officials on Southern Vancouver Island said they were concerned about the impact of the pipeline (and related shipping), unhappy to have been largely ignored in the NEB process and grateful that the Ministerial Panel was providing an avenue for input.

Victoria Mayor Lisa Helps pointed out that tourism is a $2-billion industry that employs 22,000 in her city. She said: "We accept a certain level of risk, but any benefits of this project are far outweighed by the risks." Although the shipping channel south of Victoria is busy, and runs close enough to threaten a popular and beautiful coastline, Helps said there is no coordinated oil spill response and there has been no first responder training. Her staff has not been invited to participate with WCMRC. Maja Tait, the Mayor of the smaller community of Sooke, west of Victoria, said her council added the Trans Mountain proposal as a ballot question during their 2014 election and found that 70 percent of voters were opposed due to effects on ecological tourism, crabbing, sports fishing, the effects on natural areas and the effects of noise pollution on the orca population.

In Victoria, as in Burnaby, Vancouver and North Vancouver, the largest crowds gathered for the public town hall meeting. In each of these locations, there were more presenters than we had time to hear, even after extending the session as much as time and circumstances would permit. There were large public protests in Vancouver and Victoria and passionate, often emotional presentations during our sessions. As will be evident in the next section, which offers a further survey of some of the issues raised in the town halls, the level and quality of input was excellent. Citizens, academics and other interested parties have all done a considerable amount of research on the proposed pipeline project and if they have not come to agreement on the answers, they have been exhaustive in identifying reasonable questions.

However, there was no question, in any of these sessions, about the depth of concern that presenters have about the environmental impact — not least of which as it pertains to climate change. As you will see below, it is most widely regarded as one of the great gaps in the NEB process. Nor was there, ultimately, a question as to the general takeaway from these sessions. Once again, opinions in British Columbia vary by geography, demographic and economic interest. The panel heard from strong pockets of support. But in the Lower Mainland, especially among elected officials representing those close to the pipeline route or to the ocean, there are clear voices raised in opposition. In Burnaby, Mayor Derek Corrigan said: "The Prime Minister says that governments grant permits but communities grant permission: well, we don't." In Vancouver, Mayor Gregor Robertson said: "The flawed process has led to thousands of residents and local First Nations coming together to say that there is no social licence for the Trans Mountain Pipeline Expansion Project." Terry Beech, the Member of Parliament for Burnaby–North Seymour said: "After speaking with tens of thousands of individuals... I can tell you with confidence that the people of Burnaby–North Seymour on balance stand opposed to this project, and that the community does not currently grant permission for this project to proceed." And in Victoria, Mayor Lisa Helps concluded, "The project is not in the broad public interest and should be dismissed."

ISSUES SURVEY

> "Opponents of petroleum development have no idea where funds would come from to develop alternatives to fossil fuels and I suspect that these opponents have no idea how dependent their lives are on the use of petroleum. Most probably are driving their internal combustion engine vehicles to the anti-pipeline protests."
>
> – Bill and Susan Wilson, Saanichton, B.C.

During 44 meetings in 11 cities, with almost 2,500 participants and more than 650 speakers, we, as the Ministerial Panel, heard what sometimes seemed like an inexhaustible list of issues — concerns, complexities, points in favour of building a new Trans Mountain pipeline and arguments against. Among issues that the public felt the NEB had not addressed adequately, there certainly were too many to canvas comprehensively in a document such as this. At the same time, the ultimate repetition of themes in the public sessions and in the many thousands of emails suggests that even if we didn't get to hear from every speaker in every location, the panel's overview had been thorough. For that, we would like to credit the many hundreds of people who engaged in this process. There were paid experts, lawyers, academics and scientific specialists, and staff members from First Nations and municipalities. Some participants received funding through the NEB to help defray the costs of responding to the Trans Mountain proposal, but many also did the work at their own expense. There were also hundreds of others, individuals and members of volunteer organizations such as Burnaby Residents Against the Kinder Morgan Expansion (BROKE) and North Shore No Pipeline (NS NOPE), some of whom had clearly spent an enormous amount of time informing themselves about the project and related issues and sharing their knowledge. And there were the campaigners from environmental NGOs such as Dogwood, Stand, Leadnow, and the Sierra Club who helped publicize our meetings, encouraged engagement and made their own contributions. We would like to acknowledge all for their efforts and input in identifying issues already noted in previous pages and those in the high-level survey in the pages to come.

MARINE IMPACTS

"In the event of a tanker-based spill, there is approximately $1.3 billion of compensation available. As stated throughout this hearing process, this area is not under the Board's regulatory jurisdiction. The evidence before the Board indicates that there are competent authorities responsible for this regime, and the Board has no reason to believe that this regime is not functioning as designed." This quote, which appears in Sections 14.2.1 and 14.7 of the NEB report recommending approval for the Trans Mountain Pipeline, raises one of the most often-mentioned gaps in the NEB's review process. Although the NEB heard some evidence on marine impacts and made some recommendations on that basis, many presenters said they were upset by the notion that the NEB would so summarily reject responsibility for potential damage to Vancouver's harbour and foreshore and to the waters of the Salish Sea.

Marine impacts fall into three main categories: those that occur in the event of a spill, damage that occurs because of a ship collision (with another ship or with onshore infrastructure) and impacts that occur in the normal course of operations.

Spill risks have been touched on elsewhere. And on the question of damage to infrastructure, Brian Gunn of the Concerned Professional Engineers noted that "the risk of Aframax tankers colliding with the Second Narrows bridges has not been evaluated, despite requests by CPE to the NEB to have this done." Gunn reports that the railway bridge spanning Second Narrows (which is the narrowest and shallowest point of passage on the route to Westridge terminal) "has been struck by vessels and knocked out of commission five times in its history. The Aframax tankers in the Trans Mountain project will be five-times heavier than the largest of those vessels and could knock the bridge right off its foundations and carry the bridge superstructure into the highway bridge to the west, possibly causing its catastrophic collapse."

In the category of marine impacts that will occur even without accident, one of the most frequently repeated concerns was for the local orca population. On this issue, the NEB report states: "… the Board found project-related marine shipping to have significant effects on the southern resident killer whale, and on Aboriginal cultural and spiritual use of the southern resident killer whale." As a species listed on the federal Species at Risk Registry, several presenters suggested that any conscious action that would undermine the killer whales' chance of survival would be a violation of the Species at Risk Act. Among the specific threats listed on the federal registry, the anticipated increase in tanker traffic addresses many of the issues.

> "There is not the risk but the absolute certainty that massively increased super-tanker traffic will degrade – in some ways outright kill – regions of the Salish Sea. …
>
> "First, ships are floating industrial plants. They leave pollution trails in the course of everyday operations. They suck up and discharge seawater. They burn great volumes of fuel, with emissions settling onto the sea and nearby forests.
>
> "Second, they make noise. Big ones make lots of noise. While we are concerned for effects of noise on whales and dolphins, noise adversely impacts salmon. And more, in ways that are only now being researched.
>
> "Third, vessels leave wakes. An elder described how sand bars have been eroded by ferries washes. Effects are felt throughout the intertidal zone by creatures in the mud, by eel grass and more. That intertidal zone has been called the dinner table for First Nations. While wakes from super-ferries, displacing 10,000 to 12,000 tonnes are damaging, Aframax-class tankers displace more than 270,000 tonnes. The passage of a single tanker is like passage of 25 super- ferries all at once. And this proposal is to increase such tanker traffic seven-fold."
>
> – Greg Holloway, Victoria

"The greatest threats to Southern Resident Killer Whales include a reduction in prey availability; exposure to contaminants from prey; toxic spills; acute acoustic disturbance (e.g. mid-frequency active sonar, seismic surveying, marine construction); and masking of vocalization and echolocation required for navigation, foraging, cultural and social purposes. Chronic acoustic disturbance, physical disturbance, interactions with commercial fisheries and aquaculture, direct killing and climate

change are other human-related threats that have potential to jeopardize the Southern Resident Killer Whale population."

Biologist Dr. Abby Schwarz, suggested in a presentation to the panel in Burnaby and in further documentation submitted online that the project's acoustical impact is a double threat on this count. While the effect of noise on marine mammals is well-known, Schwarz submitted research showing that shipping noise is also a hazard to fish and specifically to Pacific herring, an indicator species that is "at the centre of the B.C. coastal marine food web." Schwarz also reported that her research had demonstrated that the larger the vessel, the greater the impact in part because they generate louder, lower frequency noises that are the most disruptive.

> "Howe Sound is just recovering from years of industrial abuse. It would be devastated by even a minor spill that drifted into our area. We are outside the prime response area for spills. The legislated response time is 18 hours … three tide changes."
>
> Daniel J Rogers, Gambier Island Trust Area Trustee

> "Currently the federal government is contributing to an endeavor to make the Salish Sea a UNESCO World Heritage Site, preserving it and encouraging its creatures to bounce back. How does that square with the industrial corridor that the Kinder Morgan proposal will create? Any argument that finds these two compatible with each other is bogus."
>
> - Bill Henderson (leader of classic rock group Chilliwack)

Peter Luckham, chair of the Islands Trust, resubmitted a report that had gone to the NEB suggesting that protection of the trust area "merits special measures." The Trust itself exists as a provincial body mandated to "preserve and protect the trust area and its unique amenities and environment." That area comprises almost 500 islands and islets in the Salish Sea, with 1,363 kilometres of coastline in total and 290 kilometres of shoreline in publicly protected areas and parks. In addition to the environmental damage, "a large oil spill from a project-related marine shipping accident or malfunction could dramatically reduce oceanfront property values, both in the short and long term."

EARTHQUAKE ZONE

While the Trans Mountain and the NEB reported on the seismic safety standards of the project, many presenters — and especially those who live near the 60+ year-old tank farm in Burnaby — posted their concerns about living in an area at high risk for a major earthquake.

RIGHT ROUTE? RIGHT PRODUCT?

The panel heard from many presenters, in Alberta and B.C., who supported the export of Canadian fossil fuels but strongly opposed a pipeline route through the most densely population part of British Columbia and an export terminal deep in the second-busiest port on the West Coast of North America. As noted elsewhere, some suggested a completely new alternative route to Prince Rupert, but many offered alternatives that would still follow much of the original Trans Mountain right of way. Others suggested a routing to Roberts Bank, which was earlier rejected by Trans Mountain on the basis

of greater cost ($1.2 billion) and environmental impact on the Agricultural Land Reserve, the marine foreshore including the Fraser River estuary, the bird habitat and the southern resident killer whale habitat.

An oft-mentioned alternative was to divert the pipeline at Sumas, south of Abbotsford along the route of an existing Trans Mountain line that runs to the refineries and export facilities at Cherry Point, in Ferndale, WA. This would obviously require a closer engagement with U.S. authorities and likely approval from the Environmental Protection Agency, but in the words of retired Vancouver engineer, Douglas Bruce, "the advantages are clear: It is much closer to the open sea; (and) it has been handling oil tankers for 45 years since it was completed in 1971."

"Now the Puget Sound has historically received the vast majority of its crude oil from Alaska via tanker. You know that West Coast tanker ban? Well, Americans have been shipping up to 600,000 barrels/day of crude from Alaska to the Puget Sound via the Salish Sea for the last 20 years. That Alaskan oil is drying up and besides Canadian oil (via the existing Trans Mountain) the Puget Sound is going to be getting its future oil by rail.

"How will they do that? Well, the infrastructure is almost in place to supply up to 725,000 barrels/day to the U.S. West Coast by rail. Much of that oil will travel along the headwaters of the Kootenay River and alongside the Columbia River to the Puget Sound.

"The principal alternative that should be considered is to increase the capacity of Trans Mountain's existing pipeline from Sumas (B.C.) to the Cherry Point area in Washington State, and to export the oil from there through the Strait of Juan de Fuca to Asia."

John Boyle, PhD, ORION Environmental Planning & Assessment, Vancouver

OIL BY RAIL

Another frequent argument, also in the category of alternative routes, arose over whether shipping oil by pipeline is safer than shipping by rail. Many pro-pipeline presenters said that failing to build the Trans Mountain would, inevitably, push more oil and/or diluted bitumen onto the railways. Blair King, a PhD chemist from Langley, B.C., and an oil-spill remediation specialist, made this point in his online submission: "Pipelines have 4.5 times fewer accidents/spills than oil-by-rail and while every oil spill represents a catastrophe, spills from pipelines do not hold a candle to the apocalyptic aftermath of rail accidents. People like me can clean up the Kalamazoo River, but we can't do anything to restore all those lives lost in Lac-Megantic."

Pipeline opponents offered two counterpoints. In a report from the Canadian Centre for Policy Alternatives, David J. Hughes said: "Bitumen transported by rail requires the use of little or no diluent, which reduces the volume of material to be moved and decreases or eliminates the cost of diluent. Furthermore, bitumen without diluent is a semi-solid with low volatility and is unlikely to result in conflagrations in the event of accident such as the Lac-Megantic rail disaster." And Will Horter, of the Dogwood Initiative, told the panel that while the railways were moving much larger quantities of fossil fuels before the price fell off in 2014, there is currently no rail-based export potential that could match the capacity of the proposed pipeline.

DILUTED BITUMEN

We have noted earlier one aspect of the case against shipping and exporting unrefined bitumen — especially if the target market is in Asia — where there is currently no established refining capacity. Many presenters argued that if a new refinery is to be built, and new jobs created, it should be built close to the source of the resource, to save transportation expenses and to keep those jobs in Canada. But in both Alberta and, especially, in B.C., the panel heard a huge number of presenters express concerns about the dangers and environmental toxicity of diluted bitumen.

> "Dilbit's diluents or solvents, along with bitumen's sulphur containing compounds, aromatic hydrocarbons and toxic metals, are a potent mixture, with each component magnifying the toxicity of the others... Early exposure can impair a child for life, and exposures at any time may contribute to chronic disease and death."
>
> - Meg Sears PhD, Adjunct Investigator, Children's Hospital of Eastern Ontario Research Institute, Ottawa

Burnaby businessman John Clarke told the panel that he had been alarmed to receive a brochure from Kinder Morgan warning about the potential for a petroleum-product spill in his neighbourhood (near the Trans Mountain tank farm). The brochure, a copy of which he provided to the panel, says that if you smell petroleum odours or rotten eggs — or see "dead or discoloured vegetation" — that you should, "Leave the area immediately, on foot, and in an upwind direction." It further warns not to start a vehicle or use any appliance that could act as an ignition source — including a cell phone. Clarke said he found the warning chilling and that it inspired him to begin research on the properties of diluted bitumen. This is not necessarily a simple matter, as different companies use different diluents. But for reference, the fact box below contains a description from a 2014 Cenovus Energy Inc.

Toxicological Properties of Product

From: Cenovus Energy Material Data Sheet on the "Condensate" that it ships under the name "Petroleum Crude Oil (contains Hydrogen Sulfide)"

Routes of Entry:

Skin Absorption: Yes	Eye Contact: Yes	Chronic: Yes
Skin Contact: Yes (liquid)	Inhalation: Acute: Yes	Ingestion: Yes

Effects of Acute Exposure: Initial odour of H2S detected at about 0.1 ppm. Gas/vapour may cause irritation of eyes, nose and throat, dizziness and drowsiness. Hydrogen sulfide may cause a loss of sense of smell at 100 ppm. At higher concentrations, severe irritation of eyes, nose, throat and lungs, dizziness, headache, nausea, unconsciousness and respiratory failure may occur. Death may result if not revived promptly. Contact with skin may cause irritation and possibly dermatitis. Absorbed through intact skin. Contact of liquid with eyes may cause severe irritation and possible damage.

Effects of Chronic Exposure: Due to presence of benzene and n-hexane, long term exposure may increase the risk of anaemia, leukaemia and nervous system damage.

Carcinogenicity: Yes	Teratogenicity: Possibly
Reproductive Effects: Possibly	Mutagenicity: Possibly

document describing the condensate that it ships under the name "petroleum crude oil (contains hydrogen sulfide)."

Further information suggests that the blend contains pentanes, n-hexane, butanes, benzene and hydrogen sulfide and is explosive in volumes ranging from 0.6 percent to 44 percent. (By comparison, natural gas is explosive only between five percent and 15 percent.) Even diluted, the bitumen mix is still much more viscous, which means that it is pumped at much higher pressure — as much as 1,400 psi rather than 600 psi for regular crude. As a result, as presenter Steve Bramwell told the panel in Chilliwack, "if there is a release, it's not so much a spill as a blowout."

This could explain the wide spray of fuel after the excavator struck the Trans Mountain line in Burnaby in 2007. Although the spill was reported at the time as being "crude oil," a recent academic paper on the properties of dilbit in the environment (A Study of Fate and Behavior of Diluted Bitumen Oils on Marine Waters, Witt O'Brien's, Polaris Applied Sciences, and Western Canada Marine Response Corporation) stated: "Two documented spills of dilbit into an aquatic setting are the 2010 Marshall Spill (Kalamazoo, MI) from the Enbridge Pipeline (NTSB 2012; see also Enbridge Line 6B Response) and the 2007 Burnaby Spill (Burrard Inlet) from an excavator puncture of the TMPL. [...] the Burrard Inlet incident was an Albian heavy blend that reached the estuarine waters and shoreline near the TMPL Westridge Terminal." (Albian Heavy is listed as a "dilsynbit," partially upgraded bitumen.)

> "My crew and I were exposed to benzene, trichloroethylene, methyl ethyl ketone in very small amounts. The damage caused to me was catastrophic, liver damage, kidney damage, stomach problems, breathing problems, just to mention a few. To say the least, this life has not been easy since that exposure. But still I fared better than the other firefighters, as they have all passed on, some at a very young age and all far before their time.
>
> "This pipeline and the tankers will carry huge amounts of deadly chemicals mixed together in the bitumen and the diluent. Considering the high risk of a spill from a pipeline, the tank farm, Westridge Marine Terminal, and the tankers, the probability of hundreds or thousands of people being exposed to the vapours from the bitumen, the diluent and the dispersant, it will be a nightmare for those people, as it has been for the people affected by the spill in Kalamazoo, Michigan, Mayflower, Arkansas, Alaska and the Gulf of Mexico. They are still suffering, years later and I don't want that to happen here."
>
> - Steve Edmonds, former Vancouver firefighter

Presenters stated concerns about dilbit on three fronts. Emergency responders were concerned about the dangers of fighting fires or managing spills when the noxious volatiles in the blend, creating a potentially deadly threat to anyone in the vicinity. Public health officials and members of the public expressed concern about the long-term health risks given the industry caution that the mix can cause cancer and birth defects. Others said

> "According to NEB's assessment, the tank farm could pose significant life and health risks, but according to their view the risk is acceptable. I am asking you what mathematical formula did they use to calculate how much those thousands of lives and their health worth?"
>
> Anna Berke, Burnaby

they were concerned about the spill risks as early research has shown that dilbit is more difficult to clean up in the environment. Many presenters also said they did not feel that the NEB had taken this issue seriously enough, especially as it declined to consider what was then the most recent research, a paper by the National Academy of Sciences, Spills of Diluted Bitumen from Pipelines.

This is a subject area beyond the panel's expertise and one in which a good deal of additional research has occurred even since the NEB issued its report, but there appears, on one hand, to be a lively academic conversation about how much more complicated a dilbit spill might be in the long term. In context, it's interesting to note that, however much more difficult it is to clean up dilbit over regular crude, the rescue crews may be measuring from a low bar. In a 2013 review of ship-source oil spill preparedness, Transport Canada reported: "Evidence suggests that mechanical recovery rates, in optimal conditions, are usually only between 5% and 15% of the oil spilled."

> "Spills of diluted bitumen pose particular challenges when they reach water bodies. The residues will start quite early to submerge or sink to the bottom of the water body.
>
> "During the initial days of spill response, the major components of concern to human health in crude oils include the volatile compounds - benzene, toluene, ethylbenzene, and xylenes (collectively called BTEX) and hydrogen sulfide (H2S) - that can result in acute and sub lethal effects via inhalation exposure. Benzene is also a well-known human carcinogen."
>
> Bede Kosman, North Vancouver, quoting from the National Academy of Sciences Paper, *Spills of Diluted Bitumen from Pipelines*

AGE OF INFRASTRUCTURE

When the original Trans Mountain Pipeline was commissioned in 1953, the company is reported to have estimated a 50-year life expectancy. Several presenters said they are concerned that the line and tank farm are still in operation after 63 years. For example, Robert McCandless, a supporter of pipeline development who lives in Delta, B.C., said in an online comment, "Kinder Morgan's application should have started with a risk assessment for the existing pipeline; or the NEB should have ordered the proponent to do it. Protecting the public and environmental safety in the long term requires Kinder Morgan to receive approval to build Line 2, but only in accordance with first eliminating risks in Line 1."

ECONOMIC ARGUMENT

"The principal reason a society can sustain itself or grow sustainably is low-cost energy and access to such low-cost energy. We will not have a viable technical alternative to hydrocarbons and new nuclear power for the next 50 years. If you lose sight of this reality, you will slide all Canadians and their descendants further into an irretrievable disaster of impossibly high energy costs and undesirable social upheaval." The panel received this as an online comment from Tim Webber, who described himself as a chemical engineer trained at the University of Toronto. It described well a common argument that the pipeline is needed and makes economic sense.

Yet, Robyn Allan, a former President and CEO of the Insurance Corporation of BC and, before that, senior economist at the BC Central Credit Union has done considerable research that challenges the economics of the Trans Mountain proposal, for the industry and for Canada. For example, she documented that the companies that signed take-or-pay shipping contracts in support of the Trans Mountain Pipeline did so before the 2014 fall in oil prices.

> "The NEB states that it accepts that Kinder Morgan has received requests for increased capacity and has signed long-term contracts with 13 shippers, but, incredibly, the Board did not actually see those contracts. One of its 157 conditions is that Kinder Morgan file them 90 days prior to construction. This is the crux of the Board's finding of economic viability, and yet it has not even verified the evidence."
>
> Carol Baird Ellan, former Chief Judge of the BC Provincial Court

And while demand for pipeline capacity has since fallen commensurately (Allan documents 2.6 million barrels/day of proposed oil sands production that has been cancelled or deferred since 2014), the signatories are contractually bound to use the new pipeline should Trans Mountain build it — and are prohibited by the same contracts from speaking out against the pipeline in the meantime. Allan points out that her argument that new pipeline capacity is not needed accords with a leaked federal Finance Department document that suggests Canadian oil companies will not need new pipeline capacity before 2025 at the earliest.

As for an anticipated increase in government revenue, Allan points out that Kinder Morgan has been clear in its annual report communications to shareholders that it pays very little tax on its Canadian operation: during the five years between 2009 and 2013, Kinder Morgan reported average income of $172 million on which it paid an average $1.5 million in taxes. Accordingly, any government windfall would have to come from increased income on oil sales.

On that count, University of British Columbia political scientist (and Acting Dean of Arts) Kathryn Harrison wrote, in her submission to the panel: "The economic analysis underlying the Trans Mountain proposal does not take into account the potential for policy changes to impact global demand for oil, particularly Canada's relatively expensive and carbon-intensive oil. It is not credible that policies affecting demand for oil will remain stagnant for the 20-to 30-year life of the proposed project … It is already projected that petroleum consumption in California, Japan and South Korea will decline. In the case of China and India, there is greater uncertainty to be sure, but it is a fundamental flaw of the TMX proposal that it does not even consider the implications of possible climate policy initiatives in making the economic case for the project."

> "The economic argument is weak at best. There has been an attempt to oversell the importance of oil sands jobs and revenue to the Canadian economy. While exports of crude oil and petroleum products account for 25% of Canada's exports, production of crude oil represents only 3% of the GDP and all energy sectors combined contribute only 1.6% to Canadian employment."
>
> Peggy L. Olive, Ph.D. Scientist Emeritus, Salt Spring Island, BC

David Hughes, from the Canadian Centre for Policy Alternatives, also makes a case that there may actually be no windfall from gaining access to an international point of export (thereby overcoming the so-called price discount received from a U.S. importer). In a CCPA report submitted to the panel, he writes: "Although oil is a globally priced commodity, between 2011 and 2014 the international price of oil (Brent) was significantly higher than the North American price (West Texas Intermediate or WTI), which caused enthusiasm for "tidewater" access to allow overseas exports. This premium, which was primarily a result of the rapid increase of U.S. tight oil production and a lack of pipeline capacity to move it to the Gulf Coast, has largely disappeared as a result of new pipelines coming online to relieve congestion, coupled with an end to the U.S. ban on oil exports. Canadian oil, as exemplified by the Western Canada Select (WSC) benchmark, is a lower-quality grade (due to its heavy, highly viscous nature and high sulphur content) that requires more effort to refine. It also comes with higher transportation costs and therefore commands a lower price than the WTI benchmark. This discount will occur regardless of where the oil is sold."

CLIMATE CHANGE

"The Board does not intend to consider the environmental and socio-economic effects associated with upstream activities, the development of oil sands, or the downstream use of the oil transported by the pipeline." — a NEB Hearing Order, Page 18.

As the Ministerial Panel travelled through Alberta and B.C., few "gaps" in the National Energy Board process drew more attention than the NEB's finding that it would not consider the influence of the proposed pipeline on greenhouse gas emissions or climate change. Presenters, in Alberta and B.C., said that a decision of this magnitude, and with these wide-ranging and long-lasting climate implications, should only be made in the context of a national climate plan, especially in light of the commitments Canada made in Paris in 2015 to show international leadership in an effort to keep global warming to less than 1.5 degrees. The following (along with other quotations in the boxes inset) are a taste of the reaction that we heard in almost every location — and certainly in every meeting in British Columbia.

"Canada's political leaders and media elites [are] still, for the most part, in denial about climate change. Not outright denial of climate science, but a more insidious form of denial that accepts the science but refuses to acknowledge the implications." — Marc Lee, economist for the Canadian Centre for Policy Alternatives

> "The vocal and aggressive anti-pipeline activists represent a very small proportion of the Canadian populace. Their ideologically based arguments against pipelines are, in fact, a stalking horse for their wish to stop the use of fossil fuels. They are incapable of compromise."
>
> Charles Webster, Kamloops, B.C.

> Canada cannot, on the one hand, sign on to the Paris Agreement, that basically calls for the phase-out of fossil fuel use globally, and at the same time approve permits to construct a pipeline that will result in upstream AND downstream fossil emissions for a very long time into the future. The circle cannot be squared.
>
> Glen Estill, Bruce Peninsula, Ont.

"To embrace the economic viability of this project is to self-consciously make an economic bet on a world of catastrophic climate change that the Government of Canada itself has explicitly committed to avoid." — Kathryn Harrison, Professor of Political Science at UBC

"Instead of putting all of this time and energy into the expansion of a pipeline, maybe we should use that time and money for exploring new options that are not devastating to the planet. I am 16, and when all of you are old and grey, my peers and I will either be thriving on your legacy, or forced to clean up the mess you left behind." – Avery Pawson, Burnaby

"Canada needs a plan for how we're going to reduce our GHGs in line with our international commitments under the Paris agreement, and until we see how that can be done, there should be no expansion of oil sands and no more pipelines." — Cheryl Kabloona, Chair of the Kamloops Chapter of the BC Sustainable Energy Association.

This position was not unanimous: one presenter asked why the fossil fuel infrastructure industry should be help responsible for upstream GHG emissions when other relevant industries — automobile manufacturing, for example — were not. But there was widespread concern that Canada should be making the decision in the context of a larger climate and/or national energy plan.

> "Before the Liberal Government contemplates giving final approval to the Kinder Morgan project — or to any proposed pipeline — a science-based review must answer the basic question: is the current projected expansion of the oil sands production compatible with Canada's commitment to reduce our total annual emissions 30 percent by 2030?"
>
> David Gooderham, Vancouver Lawyer

Vancouver lawyer David Gooderham submitted a comprehensive paper on this topic, The Kinder Morgan Pipeline and Canada's Chances of Cutting Total Emissions by 2030. In it, he made the argument that allowing the oil sands to continue expanding — in effect, promoting expansion by approving the Trans Mountain Pipeline — will make it impossible to meet Canada's international climate commitments, or will force every part of the economy other than the oil industry to make devastating cuts to reach Canada's targets. Gooderham pointed out that the current commitment, to cut Canadian emissions 30 percent from 2005 levels by 2030, means that we are aiming for a total emissions target of 524 megatonnes. However, at the same time, the oil sands industry is planning to double its production between 2014 and 2040. By Gooderham's calculations, in order to reconcile those two trajectories, all of the non-oil and gas sectors of the Canadian economy would have to cut their emissions by 49 percent, while the oil sands continued to grow. Even with Premier Rachel Notley's proposal to cap oil sands emissions at 100 megatonnes (up from 62 in 2013), that would still require a 45 percent cut in emissions from all other sources. Gooderham concludes:

The question of upstream emissions was, of course, subject to an Environment and Climate Change Canada report released in the same month that this panel received its mandate. Another presenter, Simon Donner, a professor of Climatology at the University of British Columbia, took direct issue with that report and particularly with the conclusion that incremental upstream emissions are likely to be negligible. The Environment Canada report, *Trans Mountain Expansion Project: Review of Related Upstream Greenhouse Gas Emissions Estimates*, states:

"… if oil sands production were to not occur in Canada, investments would be made in other jurisdictions and global oil consumption would be materially unchanged in the long term in the absence of Canadian production growth."

Donner described this as typical of the tragedy-of-the-commons analysis in which, if everyone in the world decides that the impact of *their* contribution is irrelevant in a global context, then everyone will continue to expand. As Donner says, "In sum, the analysis in the Environment and Climate Change Canada review is mathematically inconsistent if applied broadly."

> "It was clear that [the] NEB as regulator and agency responsible for the review of the project has been captured by the petroleum industry ... no amount of public consultation will turn a highly flawed project review by the NEB into a foundation for a sound evidence-based decision."
>
> Joseph Gilling, resident of Vancouver, former World Bank energy economist

Simon Fraser University communications professor Bob Hackett characterized the analysis somewhat differently. He said, "That's the drug dealer defence. If we don't do it, someone else will."

PUBLIC CONFIDENCE IN REGULATORY PROCESS

While the panel's mandate was to engage the public and to identify "gaps" in the National Energy Board review process, we would be remiss if we failed to report the large number of complaints about the NEB process and performance and the degree to which the public reports a loss of confidence in any recommendation that the NEB might have rendered. For example, many presenters in the City of Burnaby — the population that would see the greatest disruption and, potentially, the greatest risk if the new pipeline were to be built and the tank farm doubled in size — complained that the NEB held no hearings in their community. Individuals, municipal authorities, First Nations and organizations of all kinds reported the difficulty in trying to manage, understand and respond to a 15,000-page Trans Mountain proposal, and complained further at having no opportunity to cross-examine Trans Mountain or its experts. They also said they were disappointed that the NEB did not compel Trans Mountain to answer questions more fully — or sometimes at all. And again, it bears noting that these complaints did not originate only from interest groups that might have been ideologically hostile to the project; even municipalities that ultimately endorsed the project often complained about the process.

Dr. Thomas Gunton, Director of the Resource and Environmental Planning Program at Simon Fraser University conducted a best-practices study on the NEB process and, in a submission to our panel, reported what he described as key information gaps:

1. Failure to scope the review to include all significant adverse effects (e.g. GHG emissions)
2. Failure to assess accurately the adverse effects that are included in the NEB process (e.g. oil spills, excess pipeline capacity)
3. Failure to assess adequately the need for and alternatives to the TMEP (Trans Mountain Expansion Project)

4. Failure to compare costs and benefits of the TMEP in any systematic way to determine the public interest
5. Failure to include provision for compensating those made worse off
6. Failure of the process to command the confidence of stakeholders

The following are quotes from a selection of other parties and presenters who expressed dissatisfaction with the NEB process or performance:

> "I decided to withdraw as an expert Intervenor because I came to the discouraging conclusion that the Board was on a predetermined course of action to recommend approval of the Project." – Marc Eliesen, former President and CEO of BC Hydro, Chair of Manitoba Hydro, Chair and CEO of Ontario Hydro, and Deputy Minister of Energy in the Provinces of Ontario and Manitoba
>
> "Almost all of the conditions proposed by the NEB are generic and are not performance related … many conditions call for the submission of a report or that consultations with stakeholders take place. These conditions do not necessarily define any kind of metrics that those reports and consultations have to meet." - City of Coquitlam report to council, copied to panel online portal.
>
> "This process has been so fundamentally flawed that it risks not just damaging our economy, environment and [the] health of Vancouverites, but indeed the faith of our residents in democracy." - City of Vancouver Presentation and online submission
>
> "The [NEB] Report is nothing more than an endorsement of Trans Mountain's application, not a scientifically rigorous assessment of the project, upon which a public interest determination can be made." - Burnaby Mayor Derek Corrigan
>
> "Their [Trans Mountain and its environmental consultants] reports completely fail to adequately determine the extent of Serious Harm to fish habitat, under the *Canada Fisheries Act*. They have specifically, repeatedly and unequivocally stated that there would be no instances of Serious Harm along the entire line ….With the best will in the world that is plain ludicrous." - Annabel Young, Director of the Salmon River Enhancement Society
>
> "Raincoast and Living Oceans are concerned that the Board avoided a full review of the Project's marine impacts, which was required by the *Canadian Environmental Assessment Act, 2012* ("CEAA 2012") and the *Species at Risk Act* ("SARA")."– Legal counsel for the Raincoast Conservation Foundation and the Living Oceans Society

INDIGENOUS ISSUES

In chronicling public attitudes to the Trans Mountain Pipeline expansion project, we as the Ministerial Panel have observed so far sweeping differences – and myriad complexities – in Alberta and British Columbia. But the range and diversity of opinion, and of political jurisdiction, are yet more complex among the Indigenous groups whose lands and interests lie in the path of the proposed pipeline. The federal Crown estimates that the Trans Mountain right-of-way crosses the traditional territories of 115 *Indian Act* bands or Métis communities, and the NEB reported that Trans Mountain's own "final list included 120 Aboriginal groups, two non-land based B.C. Métis groups, and 11 Aboriginal associations, councils and tribes. These communities are highly diverse in their geography, language, culture, population size, economic conditions and in their legal and political circumstances. Some have historic treaties (Treaty 6 and Treaty 8 in Alberta and the Douglas Treaties on Vancouver Island), the Tsawwassen First Nation has a modern treaty, and much of the route through British Columbia is covered by un-ceded territories on which there are no treaties. Yet, as the courts have affirmed, all First Nations have constitutionally protected rights. And, as we have seen from the Federal Court of Appeal decision that quashed the NEB approval for Enbridge's Northern Gateway pipeline in June 2016, failing to consult appropriately with these groups has the capacity to bring a project of this nature to a standstill.

> "First Nations have had their lands raped of their resources through mining, forestry, natural gas and oil (for) far too long. It is time for First Nations to become equal partners in major projects like this in order to get the First Nations to fully agree and participate in the consultation process, while First Nations still can be stewards of the land."
>
> Brian Titus, Seabird Island Band, CEO of the Sqewqel Development Corp.

Although not part of the ongoing federal consultation process, the panel engaged with Indigenous groups across both provinces, hearing from 22 First Nations, 4 First Nation organizations and with 15 individuals who self-identified as First Nations. The panel is grateful to First Nations participants, especially those who had to stretch their own resources in order to participate. These small round tables were extremely valuable in helping the panel to a deeper understanding of indigenous issues. Given the range in those presenters' rights and world views, it was not surprising their positions on the pipeline also varied widely — from absolute rejection to formal support. But there were common threads from presenters in every jurisdiction. Even among those people who had negotiated benefit agreements and signed letters of support with Trans Mountain, most said that their rights were not respected and that their concerns about impacts were ignored or, at the very least, minimized. Consistently, First Nations also stated that the scope of their rights and title were not considered appropriately — that Aboriginal rights and title are comprehensive and cannot be constrained to potential environmental impacts on specific areas or resources. And most people reported that they are tired of seeing their communities struggle with grinding poverty and alienation from their land and their way of life while others, who are not Indigenous and often not even residents in the neighbourhood or the country, grow more wealthy developing the resources on First Nations territory.

For most Indigenous presenters who spoke to the panel, the fundamental concern was how they were able — or not able — to participate in decisions that have major impacts on their territories and their people. As many noted, First Nations rights in this regard are no longer in doubt. After generations of engagement, direct action, and litigation, First Nations rights and title are now established in law. In the words of Tyrone McNeil, a board member of the Seabird Indian Band's Sqewqel Development Corp. near Chilliwack, when you look back at Supreme Court of Canada decisions, including Delgam Uukw, Haida and Williams, "The court doesn't *give* us title; it *recognizes* our title."

And yet, presenters said, the government of Canada has failed to make the necessary efforts to reconcile Aboriginal and Crown title and has consistently pushed the responsibility to consult onto others. Lee Francoeur, legal counsel for the Sunchild First Nation, said this is a common frustration.

> "I felt that we were not a respected level of government — more an annoyance."
>
> Kwantlen Councillor Tumia Knott

"Government pushes consultation off to industry. And then industry says, 'If you have issues with government, don't take that up with me."

In this case, the National Energy Board (NEB) became the principal government surrogate. As stated in the NEB report (page 45):

The Board notes that the Government of Canada indicated in letters to potentially affected Aboriginal groups that it is relying on the NEB process to the extent possible to meet the Crown's duty to consult Aboriginal groups. While the Board itself does not owe the duty to consult, the Board is of the view that this reliance is appropriate given the Board's robust and inclusive process, its technical expertise, and broad remedial powers with respect to Project-related matters.

Further, the NEB pronounced the consultation adequate:

Having considered all the evidence submitted in this proceeding, the consultation undertaken with Aboriginal groups, the impacts on Aboriginal interests, the proposed mitigation measures, including conditions to minimize adverse impacts on Aboriginal interests, and Trans Mountain's commitments to and Board-imposed requirements for ongoing consultation, the Board is satisfied that its recommendation and decisions with respect to the Project are consistent with section 35(1) of the *Constitution Act, 1982*.

(NEB Page xii)

The new government of Canada has since reaffirmed its responsibility and willingness to consult with First Nations on the potential impacts on their rights and title. As mentioned in previous chapters, a concurrent consultation is ongoing and will result in another report to Minister Carr prior to a government decision on this project.

> "Kinder Morgan cannot take away Crown's responsibility to consult."
>
> Tyrone McNeil, Seabird Indian Band

But numerous indigenous presenters made an effort, in person and in online communication, to drive home the point that appropriate consultation has not occurred. Writing on behalf of the Kwikwetlem First Nation (KFN) near Coquitlam, B.C., Chief Ron Giesbrecht said, "KFN has not been meaningfully consulted." He also said, "The NEB's review … did not assess, nor did it purport to address or assess, potential adverse impacts to our rights and title and the proponent Kinder Morgan repeatedly told us that they were not responsible for looking at impact to our rights and title. Instead, Kinder Moran, and the Crown, have taken a very generalized approach to understanding impacts.

Chief Giesbrecht said the shortcomings related both to process and to a failure to assess adequately the substantive environmental impacts of the new pipeline. He said there was no baseline study and no assessment of impact to fisheries, sedimentation and related matters, regardless that a long section of the pipeline runs along the Fraser River, "the Kwikweltlem's last remaining fishing area (which) provides critical habitat to numerous fish species still relied upon by the nation."

Tumia Knott, councillor for the Kwantlen First Nation, expressed a supportive position when she said, "The NEB's bureaucratic, empty and meaningless process … failed us considerably. It did absolutely nothing to address rights and title."

> "It's not consultation until we actually are heard."
>
> Mavis Underwood, Tsawout First Nation

On Vancouver Island, Scia'new Chief Robert Chips also complained about the lack of baselines studies in the Salish Sea (a complaint that also arose from First Nations and others in the Vancouver Harbour). Chief Chips said, "Scia'new does not want to see an increase in tanker traffic through out territory, but believes that such an increase is inevitable. To help protect our interests, Scia'new engaged in negotiations directly with Kinder Morgan. Those negotiations were constructive and resulted in a Mutual Benefits Agreement that addresses some of Scia'new's economic concerns."

This raises the sometimes-controversial question of whether the signing of a benefit agreement — or even a letter of support — actually indicates an unconditional approval of the pipeline project. The NEB reported that, "Trans Mountain said it executed 94 agreements, including LOUs (letters of understanding), … capacity funding, and integrated cultural assessments with an aggregate value of $36 million. Trans Mountain said it received 30 letters of support from Aboriginal groups." And Trans Mountain has maintained publicly, and in its briefing to the panel, that these instruments indicate a significant degree of support in the Indigenous communities along the route.

> By signing a benefit agreement, "We're not saying we agree with it. We're just preparing for the worst."
>
> Jason Campbell, Seabird Indian Band Councillor

But some First Nations said that, as with the Scia'new, they signed the benefit agreements or letters of support out of concern that, if they failed to do so, they risked getting nothing at all. Kyra Northwest, of the Samson Cree Nation, said "You can oppose, but with the past government it (a

proposed project) would get approved either way, so Sampson Cree agreed just to be sure we would get something." And Summer Ebringer, of the Enoch Cree First Nation agreed, "The fear is that if you don't sign and it goes ahead anyway, you get nothing." For that reason, Ebringer said, it was also common for First Nations to file Letters of Non-Objection.

> "We (the Coast Salish) are all one people. We all eat out of the same plate."
>
> Esquimalt Chief Andy Thomas

There were other common complaints from Indigenous groups that had been involved in, or were on the periphery of, benefit agreement negotiations. One is that the proponent would use the negotiation to minimize its liability. Lee Francoeur said it was common for industry negotiators to start the negotiation by asking, "How many moose or caribou are we affecting?" or "tell us how we're affecting your berry patches?" Then, they would calculate an economic value for that impact as a baseline for any settlement. But, Francoeur said, "It's not about the list of plants. It's the forest!" This is particularly the case in areas where there has already been a considerable amount of disruption – it's all about the effect of cumulative impacts. Francoeur used the example of oil wells, saying that when the first wells were drilled in the 1950s, it didn't make much of a difference to the land. But now there are thousands, so every additional well has a correspondingly greater affect. "It's death by a thousand cuts," Francoeur said. "You can't go anywhere today without feeling the impact."

> "Everyone knows you don't mix oil with water – and you don't mix children with risk."
>
> Carla Peters, Chilliwack

The concern about cumulative impacts also resonated on the West Coast. Several presenters in our Aboriginal round table meeting in Victoria talked about the need to calculate and compensate for the burden that has already been imposed upon the Salish Sea. Esquimalt Chief Andy Thomas said, "We have a treaty (the Douglas Treaty, negotiated in the 19th century) that respects our right to hunt and fish as if we are the sole occupants of this land." And yet the beaches in his community had been closed all summer because of a "small" diesel spill that occurred in May. And Adam Olsen of the Tsartlip First Nation agreed, "We were promised salmon forever and yet, with complete sadness, they closed the Fraser River salmon fishery this year." Yet, because of the cumulative effects of all activity in the Salish Sea, he said, "The fishery is a complete disaster."

Another concern about industry consultation tactics arose from the perception that while First Nations with reasonable capacity might negotiate an acceptable agreement, small First Nations without experts at their disposal are unlikely to receive something comparable. Although industry frequently uses impact benefit agreements during their consultations with First Nations, many Indigenous presenters (and many municipalities) characterized these agreements as bribes, often aimed at the communities that needed them most desperately. In the words of Summer Ebringer, "It's divide and conquer."

There are also different views about who in the First Nations community should have decision-making authority: small *Indian Act* bands or the entire nation; elected councils, hereditary leaders, or citizens

of these entities. Neskonlith Chief Judy Wilson, who spoke to the panel at our Kamloops session, complained further that the proponent would also negotiate an agreement with a small band whose land is directly in the path of the pipeline, but then freeze out others in the same First Nation who still regard that land as part of their traditional territory. Bonaparte Indian Band Chief Ryan Day agreed on this point, saying, "A lot of money is spent for the purpose of splitting us up."

The question of unequal capacity raises another concern that was posted by First Nations, just as it was raised by municipal governments, environmental and other interest groups and concerned individuals. All found it extremely difficult to respond to the Trans Mountain Pipeline proposal within the rules — and budget — set by the NEB. The NEB recognizes that organizations intervening in hearings often need financial support and in this last round, it made $3 million available to 72 eligible intervenors — 79 percent of whom were First Nations. But, according to everyone who raised this issue with the panel, it was not nearly enough to hire the legal and scientific experts needed to understand the material. Kwantlen's Tumia Knott pointed out that there were tens of thousands of pages of documents, "and when Kwantlen asked questions, they simply pointed us back to the documents. We simply could not afford to participate in the second round (of hearings)." Without a full understanding of the material, Knott said the Kwantlen felt they could not recommend mitigation measures. "We were not consulted — but marginalized." Neskonlith Chief Judy Wilson said the money her band received from the NEB was barely enough to cover the costs of attending a hearing, leaving no money for legal or scientific analysis. The Neskonlith also withdrew from the NEB process. Even those who stuck with the process reported that they were unhappy with the result. Andrew Bak, Territory Management Officer for the Tsawwassen First Nation, said he submitted 120 questions "and got meaningful answers back on 12." He went on, "We've invested a lot in technical work, but we didn't get a response on our comments." As an example, he said the NEB responded to one query by saying, "Your question about scope is out of scope." As Tyrone McNeil said, "It's really unfair. They've got entire departments, and we haven't got the capacity."

> "A deep understanding of Tsawwassen treaty rights is not reflected in the NEB report."
>
> Andrew Bak, Tsawwassen First Nation

Ernie George, Director of Tsleil-Waututh's Treaty, Lands and Resources Department, said the funding shortfall was such that "most of the First Nations who participated (spent) tens or hundreds of thousands of dollars 'to be consulted'." Again, both Indigenous presenters and staff and politicians from several municipalities complained that this meant they were being forced to actually subsidize the review process.

Moving from a question of consultation to reconciliation, many presenters said they felt that Trans Mountain, the NEB and the government were all treating First Nations as an obstacle, not as a potential partner, as would be appropriate when dealing with a party who has a legal interest in the land over which you plan to build. In this context, Lee Francoeur said First Nations are looking for the same consideration that the province of British Columbia has requested in one of the five conditions that it set for its own approval: that B.C. gets some share of the benefit. So, Francoeur said, "If your product is going through our land, we should share in the benefit. If no benefit, we would just as soon

it not get done." Former Neskonlith Chief Arthur Manual, now speaking on behalf of the Indigenous Network on Economies and Trade, made a similar point, saying, "Billions of dollars pass through the existing pipeline, and we have no part in that." To which Harold Aljam, Economic Development Coordinator for the Coldwater Band, added that he is not opposed to the notion of industrial development on First Nations land, "I understand we need pipelines. Do I like it? Not particularly so. But it's a necessary evil." But, Aljam says that if the pipeline is to be built, "I'd like to tax the crap out of it. Canada is at the table. The province is at the table. Well, they have to move over so the Shuswap can sit at that table. I don't want Canada's money. I want to tax our own resources."

In a letter submitted to the panel on-line, Mike LeBourdais of the Kamloops-based Tulo Centre of Indigenous Economics expanded on that proposal, describing an Aboriginal Resource Tax that would be "a transparent, standardized and pre-specified system of charges that would be applied to the extraction, transportation or processing of resources on our respective territories." Such an instrument would give industry certainty, whereas it now finds itself trying to negotiate a large number of one-off agreements, nation-by-nation. The acceptance of this kind of tax regime by provincial and federal jurisdictions would also "signal a real commitment to nation-to-nation relations. … It would demonstrate respect for Aboriginal title and a commitment to its implementation," … thereby "improving all aspects of government relations and the investment climate."

Francoeur said that in the end, reconciliation will be all about working in partnership, "Industry and First Nations must have the same vested interests in a project going through. Otherwise, there are winners and losers." Francoeur added, (so) "Get us on board and get this project done."

The bottom line, for many, was that narrow consultations and one-time benefit agreements cannot substitute for a serious Crown commitment to nation-to-nation negotiations and full reconciliation of Aboriginal rights and title. Many presenters mentioned the federal government's new commitment to the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and its call for "free, prior, and informed consent" on projects with impact on First Nations territory. But the responsibility to resolve these issues arises nearer to home, said Kanaka Bar Chief Patrick Michell, "The law of Canada today requires consent."

It is important, in this discussion, to remember again that the Ministerial Panel's mandate was not to assess a level of support or opposition to the Trans Mountain Pipeline, but rather to engage with communities and First Nations whose interests would be affected if the pipeline were to be approved. And while the panel was impressed by and grateful for the input that we received from First Nations and others, we are also conscious that our process also had gaps. There are, for example, First Nations such as the Squamish and Tsleil-Waututh, that are firmly opposed to the project and that have chosen to pursue their interests in the courts or pursue direct discussions with the Crown rather than engage at this level — as is their right. Tsleil-Waututh's Ernie George wrote to the panel after our hearings were completed to put on record that "our community voted unanimously to reject the project." He said the Tsleil-Waututh had "conducted our own, independent assessment of the project,

grounded in our own laws and backed by 1,200 pages of expert scientific evidence on oil-spill risk, diluted bitumen behaviour and spill response. The assessment found that the project represents an unacceptable risk to TWN's rights and title in Burrard Inlet."

There also are those in the First Nations community who came before us to praise Trans Mountain and its parent company. One Edmonton presenter said that among resource companies working with First Nations, "Kinder Morgan has been better than 90 percent of them, even if it's still nowhere near where it needs to be." Ebringer was also among those who were more open to the prospect of the new pipeline being built. "We do need to get (Alberta's oil) to the shoreline and if Kinder Morgan is doing it responsibly, we don't object. We realize that we would actually die without the byproducts of natural resources. But if too much damage is done to Mother Earth, no one will survive."

That element of concern — the inclination to tip back into stewardship mode — was ultimately dominant throughout our meetings with First Nations. In Chilliwack, for example, Seabird Band member Tyrone McNeil said, "We haven't seen detailed design. We haven't seen emergency response plans. We haven't seen any analysis of the effect of a spill or a recovery strategy for salmon and sturgeon. Especially with the recognition of UNDRIP, the timelines need to slow down, if not halt and be reset, so we can build the capacity to engage with you at a level that gives us comfort."

And Cheam Chief Ernie Crey offered a final thought on context. "I sit up nights wondering what a spill into the Coquihalla River might look like. Even a small spill into the Coquihalla would devastate salmon in the Fraser River and plunge First Nations into utter destitution. Global trade, investment, jobs: I know those are important, but consider what could be lost."

PUBLIC ENGAGEMENT: MEETINGS, EMAILS AND QUESTIONNAIRES

The extent of public engagement on the question of whether Trans Mountain should be permitted to build a second pipeline from Edmonton to Burnaby is, by some measures at least, unprecedented. For example, an online questionnaire that Natural Resources Canada designed on behalf of the Ministerial Panel attracted 35,259 responses, the highest-ever response rate to a government of Canada questionnaire, surpassing one on prostitution legislation in 2014 and another on marijuana legislation in 2016. The panel's online portal also drew 20,154 email submissions. More than half of those messages included significant personalized content and 141 of the messages came with additional documentation — reports and academic papers addressing different elements of the proposed project. As to direct engagement, the panel's 44 meetings in 11 cities attracted almost 2,500 participants.

350.org — 31 emails

SUBJECT: Reject the Kinder Morgan Pipeline

The Kinder Morgan pipeline is not in Canada's national interest.

Kinder Morgan will make it impossible for Canada to meet its Paris climate commitments. If approved, it would be the emissions equivalent of adding 34 million new cars to Canada's roads.

Building Kinder Morgan would also be an egregious violation of Indigenous rights and make an oil spill in the Pacific Ocean almost inevitable.

Reject Kinder Morgan.

In combination, we found these efforts at engagement were extremely effective in helping us to identify outstanding issues and in forging an understanding of the elements of public support, opposition or concern about the proposed pipeline. After hearing from more than 650 speakers and reading selections from the 20,000+ emails, we are generally satisfied that we have a good sense of the breadth of issues that are most important to Canadians. (And to this end, we would like to acknowledge the staff in the Major Projects Management Office West for their help in reading and categorizing each of the emails submitted.)

We have no such confidence that the questionnaire responses, email input and public participation provided a statistically valid or reliable measure of general public support. The questionnaire and emails were both open to self-selection and to the possibility that they may have been influenced by supporters or opponents — as, indeed, they appeared to have been. The questionnaire results, which were difficult to categorize, in part because of the design of the questionnaire itself, showed that 77 percent of those who volunteered substantial reasons for their position said that they supported the project. At the same time, the emails, which definitely reflected the efforts of several well-organized campaigns, came down more than 98 percent opposed to the project. Attendance at panel meetings, and especially at public town hall sessions, was also heavily weighted to project opposition. Sven Biggs, a campaigner for the environmental organization Stand, who attended every one of the panel's meetings in British Columbia, later wrote in the Vancouver Sun that "90 percent of speakers who took

significant time from a work day in the middle of summer to present to the panel" stood in opposition to the project. Biggs argued in this article, as others did elsewhere, that the protests and one-sided crowds reflected a broad public opposition, conveying a lack of social licence for the project. However, here again the panel is aware that Stand, as well as other environment groups including most prominently the Dogwood Initiative, Leadnow and the Sierra Club of B.C., were all extremely active in encouraging their supporters to attend and speak at panel meetings. Thus, as the analysis firm Nielsen, Delany + Associates said of the questionnaire results: "Findings are not statistically projectable to a broader population and no estimates of sampling error can be calculated." As well, it was never in the panel's mandate to measure popular support. (Presumably, if the government had wanted a statistically valid public opinion poll, it would have commissioned one.) Rather, the panel's role was to provide government with some insight as to issues that might have been missed — and to provide Canadians and First Nations the opportunity to raise their concerns directly.

BC Independent Contractors – 311 emails

SUBJECT: I support the Trans Mountain Expansion Project

Dear Ministerial Panel,

I strongly urge you to recommend the Trans Mountain Expansion Project. This project alone will help families and communities and thrive.

We need this project to move forward. It will play a large role in creating jobs and wealth for local families, and help build a stronger future for B.C. The Trans Mountain Expansion Project will create more than 108,000 person years of employment and generate $18.5 billion in revenue for social services, health care, education and other government services.

That revenue could pay for 132 extra firefighters or the full cost of garbage collection in Burnaby. The total BC municipal taxes paid for the extended pipeline will equal 565 senior teacher salaries every year for 20 years. Every time a tanker docks at Westbridge Marine Terminal in Burnaby, it brings $310,000 in value to the local economy.

The Trans Mountain pipeline has been operating safely for 60 years while creating many real and well-paid jobs for B.C. families. Please recommend this project for approval.

	Repeat Email Text	Personalized Content	TOTAL
350.org	31		**31**
BC Independent Contractors	311		**311**
Dogwood		9501	**9501**
Environmental Defence	2765	69	**2834**
Georgia Strait Alliance		218	**218**
Leadnow	3616	2081	**5697**
Living Oceans Society	49	4	**53**
Sierra Club BC	19	432	**451**
Stand	876	92	**968**
Wilderness Committee		90	**90**
TOTAL:	**7667**	**12487**	**20154**

However, in no way does any of the foregoing undermine the importance, quality and value of public input through any of these mechanisms. The emails were particularly rich in content and it's worth noting, again, the high level of engagement through environmental and other organizations. For example, Table 1 shows how many emails were submitted through each campaign and how many included personalized content. (For the record, pro-pipeline comments were limited to the 311 BC Independent Contractors, 33 submissions from among the 9,501 Dogwood emails and 40 from among the 5,697 emails from Leadnow.)

Leadnow – 5,697 emails (including 2,081 with additional personalized content)

Subject: TMX Ministerial Panel

In the midst of the hottest year in recorded history we don't need a new pipeline that exposes our communities to oil spills and climate disaster.

I call on the federal government to stop this dangerous and unnecessary pipeline.

By way of example, we have included three of the repeat emails — emails that senders picked up and submitted, which contained previously prepared copy. Below, as well, is a list of themes identified from all 20,154 submissions.

Themes from those in opposition to the project include:

- The impact of the project on children and future generations; First Nations rights; climate change impacts (including GHG emissions and Paris climate commitments); the need to transition to renewable energy; the impacts of the project (including increased tanker traffic) on water, air, ecosystems, recreation and tourism, and wildlife (including fish and orca whales); the high risk and impacts of oil spills (including the properties/impacts of bitumen, Kinder Morgan's international track record, and potential cleanup costs); the impacts on the beauty of the West Coast/tourism; the economic impacts (short-term vs. long-term economic impacts); gaps or perceived flaws in the NEB process; the lack of social licence/consent from communities; negative ethical and economic implications of foreign trade; risks from a tank farm expansion; health impacts; earthquake risks; the limited jobs from the project and the need for jobs in clean energy and other sectors; and the need to refine oil in Canada.

Themes from those in support of the project include:

- The need for jobs and economic growth; the need to get Canada's resources to market; the safety of the project; the safety of pipelines compared to other modes of fossil fuel transportation; and the need to displace fossil fuels produced in other countries.

QUESTIONS

The French anthropologist Claude Lévi-Strauss once said, “The wise man doesn’t give the right answers, he poses the right questions,” and in that spirit, we end this report with “questions,” rather than “conclusions.” This is also a direct reflection of the Ministerial Panel’s mandate, the conditions that Natural Resources Minister Jim Carr set forth in May, 2016, when he invited us to hear from the public about Trans Mountain ULC’s proposal to build a pipeline that would carry diluted bitumen from Edmonton, Alberta, to Burnaby, B.C. Minister Carr asked that we:

- review and consider input from the public via an online portal;
- meet with local stakeholder representatives in communities along the pipeline and shipping route;
- meet with Indigenous groups that wish to share their views with the panel, noting that the panel’s work will complement, not substitute, the Crown consultations; and,
- submit a report to the Minister of Natural Resources no later than November 1.

We were not asked to critique the National Energy Board’s methods or performance, but rather to identify gaps in the whole process of considering a new Trans Mountain pipeline. For that reason, we quickly came to think of ourselves as “the omissions panel” — we were searching and listening for important details that might have been overlooked. Our mandate was also clear in asking that we report our findings, rather than make recommendations. While it was an honour to engage with communities and First Nations along the proposed pipeline route and hear about the important issues they felt had been missed in the NEB process, our panel hadn’t the time, technical expertise or the resources to fill those gaps. Our role was not to propose solutions, but to identify important questions that, in the circumstances, remain unanswered.

At the detail level, the list of outstanding questions could easily overwhelm. (Given the complexity of this project, it’s no surprise that the NEB report totalled more than 500 pages.) For example, during our meetings, people raised a host of questions about the nature, content and risks of transporting and storing diluted bitumen. You could easily fill a report this size by recording the recent scientific debate about whether spilled dilbit is more likely than crude oil to break up and sink, accentuating risks to the ocean, the land and the creeks and rivers along the route of any new pipeline (or along any rail right of way). While a matter of urgent concern, issues like the dilbit threat remain beyond the purview of the panel.

Rather, we have identified six high-level questions that we heard repeatedly and that we commend to the Government of Canada for serious consideration — if not resolution — as it considers the potential future of this project. The six questions are as follows:

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?
6. How does federal policy define the terms "social licence" and "Canadian public interest" and their inter-relationships?

1. Can construction of a new Trans Mountain Pipeline be reconciled with Canada's climate change commitments?

On a hot August evening in the Simon Fraser University's Segal Graduate School of Business in downtown Vancouver, a capacity crowd of nearly 300 people began to grow restive in the Ministerial Panel's public town hall. The meeting had started in what the online National Observer had described as "a jubilant mood," with a protest on Granville Street, followed by the ceremonial delivery of a large anti-pipeline petition — a dozen symbolic (but empty) file boxes and a single USB drive bearing 140,000 names. But the jubilance had given way to impatience and a certain amount of anger as some of the speakers attacked the panel's credibility and impartiality, and others spoke in increasingly emotional terms about the potential impact of the proposed pipeline.

Midway through the evening, a woman who self-described as an "ordinary senior citizen," stepped up to the microphone and thanked the panel for the opportunity to be heard. She said that she and her husband had "never thought of ourselves as activists." They were academics and business people; both have MBAs and her husband also has a science PhD. And yet, she said, she had walked into her living room a couple of years earlier to find her 20-something son "sobbing in front of the television." He told her that he had "just watched an important politician give a speech that had actually mentioned climate change," and he was overcome, because he thought the message so overdue. The presenter said: "In his heart, he was angry — but even more than that, he was afraid." The incident triggered a larger family discussion, in which the woman found that her other two children — daughters — were also deeply hopeless about the future. She said: "It's hard to hear that I will never have grandchildren." She then went on to condemn the Trans Mountain proposal as the kind of "tipping point project" that cannot be allowed if Canadians hope to slow the advance of climate change. And the crowd cheered and applauded their support.

Earlier in the same meeting, Vancouver lawyer David Gooderham had given a detailed presentation of what he introduced as "a horrible, horrible document" — the Environment and Climate Change Canada report, The Kinder Morgan Pipeline and Canada's Chances of Cutting Total Emissions

by 2030. "If you haven't seen it," he said, "it will crush your hopes." Gooderham described the report's two contradictory messages — that Canada has promised to reduce greenhouse gas (GHG) emissions 30 percent from 2005 levels by 2030, while at the same time proposing to double production from the oil sands, the country's largest point source of GHGs, by 2040. He concluded: "We're being invited to acquiesce to a pipeline expansion that offers no chance at all" of keeping the commitments that the federal government made in the 2015 Paris climate talks.

> "All of the oil, gas and coal producers are well aware that a majority of the world's carbon reserves will have to remain sequestered and all of these companies are competing in a mad scramble to sell as much of their reserves as they can before they are told to stop."
>
> Keith Mathers, Victoria

> "B.C. has over 33,000 kms of energy pipelines that serve us well and meet world-class standards for safety and reliability today. Thirty percent of the fuel for the vehicles, transit, and other modes of transportation in B.C. comes from a refinery in Burnaby that depends on oil shipped in by the TM pipeline... The evidence is clear: we will continue to need oil and petroleum-based products for decades to come, even as the world transitions to less carbon-based energy sources."
>
> Greg D'Avignon, Business Council of British Columbia

As noted in the early chapters of this report, the issue of climate change arose in every meeting. Pipeline proponents never hesitated to raise the issue; they asked repeatedly how they might convince the doubters that increased oil sands production should be part of an orderly transition to cleaner fuels and a low-carbon economy. But DeRoo, Gooderham and scores of others said they look at the Government's own calculations and simply don't believe that Canada can continue to build fossil fuel infrastructure while meeting even its most modest emission targets.

One of the most often-quoted experts on this question is Mark Carney, former Governor of the Bank of Canada and current Governor of the Bank of England. In a speech to the insurers at Lloyds of London in 2015, Carney said the world cannot safely — or profitably — continue to exploit fossil fuels. Carney said:

"Take, for example, the IPCC (Intergovernmental Panel on Climate Change) estimate of a carbon budget that would likely limit global temperature rises to 2 degrees above pre-industrial levels: That budget amounts to between 1/5th and 1/3rd of the world's proven reserves of oil, gas and coal. If that estimate is even approximately correct it would render the vast majority of reserves 'stranded' — oil, gas and coal that will be literally unburnable without expensive carbon capture technology, which itself alters fossil fuel economics."

So, we are left with the question: Can Canada demonstrate how it will meet international commitments while approving this project?

In our North Vancouver session, we heard from Dr. Courtney Howard, a North Vancouverite currently working in Yellowknife. She pointed out that the World Health Organization has identified climate change as the number- one health threat of our time, while the medical journal, The Lancet, has called it the number-one health opportunity. Cautioning against a climate policy that is based on waiting and wishful thinking, she said that, as a frontline medical worker, "I know what its like when you lose a patient because you act too slowly."

> "Canada needs a plan for how we're going to reduce our GHGs in line with our international commitments under the Paris agreement, and until we see how that can be done, there should be no expansion of oil sands and no more pipelines."
>
> Cheryl Kabloona,
> Chair of the Kamloops Chapter of the BC Sustainable Energy Association.

2. In the absence of a comprehensive national energy strategy, how can policy-makers effectively assess projects such as the Trans Mountain Pipeline?

This question is closely related to the first, but has broader and, in some regards, contradictory implications. For example, absent a transparent calculation of how a new pipeline development might fit within an orderly reduction of greenhouse gas emissions, a certain proportion of the community will stand against every pipeline proposal. There is no compelling and broadly acceptable argument that such a development would be safe and reasonable, and there is no venue in which to adjudicate which of many pipeline proposals might be the most preferable — or perhaps just the least-worst. Accordingly, as several presenters pointed out in British Columbia, you create the potential for a different kind of divide-and-conquer strategy in which development opponents attack every new proposal with equal fervor. They might oppose the Trans Mountain Pipeline based on risks to the Vancouver harbour and the Salish Sea; they oppose the Northern Gateway Pipeline proposal based on risk to the inland waterways around Kitimat, B.C.; and they oppose the Energy East Pipeline for the potential water impacts along the route. And they oppose all three based on their impact on First Nations' rights and, especially, on Canada's greenhouse gas emissions. However, at the same time, many of these groups then stand in opposition to the Site C hydroelectric development on the Peace River in British Columbia.

> "New projects cannot be evaluated in a vacuum as was done in the National Energy Board's Trans Mountain Expansion and in other project hearings."
>
> Karen Whiteside, submitted online.

It's clear that the Government cannot create a national energy strategy overnight, nor can it put every project proposal on hold pending the establishment of such a strategy. Similarly, the federal–provincial agreements necessary for a national climate strategy also impose an inevitable delay. But as the Ministerial Panel heard, from project proponents and opponents alike, a broader and more transparent planning regime would offer certainty to industry and reassurance to those who are worried about the social, environmental and economic consequences of huge new resource-related developments. It leaves the difficult question of how to plan in the meantime in a way that gives these groups comfort that a broader vision is being considered.

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?"

Earlier in this chapter, we suggested that there were many more questions to be answered at the detail level — that is certainly the case on Indigenous issues. We might ask: How do we build trust? How do we make decisions together as we travel down the long uncertain unmapped path of reconciliation? How do we change government institutions and decision-making processes in the short and long term? How do we indigenize current processes? How do we continue to make timely decisions of national importance as the reconciliation process unfolds? How do we put action behind political commitments?

> "… we need to focus on defining Aboriginal title rather than trying to extinguish or diminish it."
>
> Mike LeBourdais,
> Chair Tulo Centre of Indigenous Economics

Looking behind us, we have more than 60 years of apparent progress that, Indigenous presenters said, again and again, has not gone nearly as fast or taken us as far as we need to go. The record, as reflected in the history of the Trans Mountain Pipeline, is uneven, at best. A speaker at Chilliwack told the Ministerial Panel that, if you want to find an Indian reserve in the B.C. Interior, you just look along the railway tracks, hydro lines and pipelines. Not only was British Columbia settled as "free land," but between 1927 and 1951 (the year planning began on the first Trans Mountain Pipeline) Canadian law forbade an Indian band from even engaging in a land claim conversation. A lawyer could be disbarred for taking a case.

Even after the federal government lifted the ban, change came slowly, with the recognition of "existing Aboriginal rights" in the 1982 Charter of Rights and Freedoms and with transformative decisions of the Supreme Court of Canada, ranging from Calder, before the constitutional change, to Sparrow, Delgam Uukw, Haida, Williams and Tsilhqot'in Nation, in the years since.

In the first instance, these decisions set up a duty to consult, as Chief Aaron Sam of the Lower Nicola Indian Band and Cheam Chief Ernie Crey said in a letter to Prime Minister Justin Trudeau, Alberta Premier Rachel Notley and B.C. Premier Christy Clark (and later submitted to the Ministerial Panel):

> "Based on Haida Nation and other related court decisions, the law in Canada is clear that prior to proof of Aboriginal rights and title, your governments have an obligation to consult with our Nations whenever you contemplate a decision that may impact our asserted Aboriginal rights and title. … the evidence is clear that TMX could have a significant adverse effect on our strong claims of Aboriginal rights and title, and therefore your governments are at a minimum required to engage our Nations in 'deep consultation."

The letter goes on:

> "Based on *Tsilhqot'in* and other related court decisions, the law in Canada is also clear that following proof of Aboriginal rights and title, in the absence of Aboriginal consent, your governments must justify any infringement of our proven interests. Where there is no Aboriginal consent, and where the infringement cannot be justified, projects that have been previously approved may be required to be cancelled."

> "…the practice of negotiating financial compensation on a project by project basis is costly and time consuming for all parties. We simply do not have the resources. Consequently, decisions about projects cannot be timely and if they are not timely, B.C. is going to lose investments."
>
> Mike LeBourdais,
> Chair Tulo Centre of Indigenous Economics

As we heard from Indigenous presenters all along the route, the pattern in recent years has been for government to devolve the obligation to consult to others and in this case to the NEB and Trans Mountain, which negotiated benefit agreements with several First Nations whose rights would be impacted by the project. However, this delegation of responsibility for consultation was rejected in the June 2016 Federal Court decision that rejected the NEB approval of the Enbridge Northern Gateway Pipeline on the basis that the federal government had not adequately consulted First Nations. This may be particularly the case if interim agreements or side consultations are used — or even just seen — to undermine Indigenous rights. As Chief Bryce Williams of the Tsawwassen First Nation said in an online submission to the panel: "We do not see significant value in discussing 'mitigation' or other initiatives to reduce the potential impact... as we are concerned that our participation in those initiatives will be used as evidence that we are active participants in the process — and de facto, that we have been 'consulted' or 'accommodated' with respect to the project."

A briefing note prepared for the panel by the Sunchild First Nation proposes that the next stage is to build a consultation regime that is sufficiently open and trustworthy that the parties can begin to work toward true and ultimate reconciliation. As the Sunchild note states:

> "Reconciliation requires sincere acts of mutual respect, tolerance, and goodwill to heal the rifts and create the foundations for a harmonious relationship. Reconciliation should help to establish a sense of self-worth and internal peace within our community. Sunchild believes that reconciliation in this context means an acknowledgement that we have more than just an ability to weigh in on how to mitigate the adverse impacts of the proposed Project on the exercise of our Aboriginal and treaty rights but rather a sincere recognition of our desire to be continuously involved in decision-making with respect to the proposed Project in relation to our treaty lands and to share in the benefits of the proposed Project in a direct and meaningful way."

The question of resolving First Nations interests also illustrates how much support exists for this kind of economic and resource development in Indigenous communities that might otherwise be

categorized broadly as anti-development. In an introductory letter to the briefing note quoted above, Sunchild Chief Jonathan Frencheater said:

> "Sunchild is not categorically opposed to this proposed project, we simply wish to be included. We do not deny having been given the opportunity to speak to the National Energy Board, but we have not been heard. The NEB process has been unilateral; Kinder Morgan has not engaged Sunchild First Nation as a true stakeholder in this proposed Project, but as a bystander to be placated and bypassed."

The panel heard variations of this complaint from many First Nations. For example, several First Nations on Vancouver Island, including the Scia'new, the Esquimalt and others, endorsed a proposal for a Salish Sea Environmental Foundation. Esquimalt Chief Andy Thomas wrote:

> Esquimalt Nation is concerned about the long term health of the Salish Sea, not just as a result of this Project, rather as a result of the cumulative impacts of development on the Salish Sea. Recent spills, including the May 2016 diesel spill in Esquimalt Harbour and the 2015 oil spill in English Bay have demonstrated a need for further measures to better protect the health of the Salish Sea. The Foundation could serve as one tool, for example, by
>
> - gathering baseline data on the health of the Salish Sea,
> - better understanding the cumulative impacts of development on the Salish Sea in both Canadian and US waters, and
> - assisting in policy development.

The latter two points were also common among many First Nations. They say they want to be involved in the stewardship of their land and territory at every point, from the design of projects through the monitoring of construction to the sharing of profits — and of responsibility for oversight — ongoing. Scia'new Chief Russell Chips said: "Scia'new wants to be part of the solution and suggests that the federal government should step up and be part of the solution, too."

A final and frequent consideration is the Government's avowed commitment to the principles of the *United Nations Declaration of the Rights of Indigenous Peoples*. In another briefing note to the panel, the Union of BC Indian Chiefs states:

> Canada must uphold its commitment to fully implement the UNDRIP in considering approval of the TMX project: This includes UNDRIP's direction that States shall "consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

In conclusion, the positions that First Nations have taken toward the proposed pipeline vary considerably. But there appears to be a broad appetite for engagement and, among many First

Nations, an open door for any government that is prepared to consult and work toward reconciliation in good faith.

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?

> "The NEB appears to unquestioningly accept what Trans Mountain says. The intervenors, due to the manner in which the hearings were set up, had no opportunity to cross-examine evidence by Trans Mountain."
>
> Suzanne Hale,
> co-founder of the Yarrow Eco-Village

While it was never the Ministerial Panel's role to assess the National Energy Board's performance, the panel heard from many dozens of presenters who complained that the NEB process had alienated would-be participants or overwhelmed their ability to participate. Municipalities and First Nations said they were presented with huge amounts of information, impossibly short deadlines in which to respond and inadequate resources with which to analyse or understand the challenges before them. They were denied an opportunity to cross-examine Trans Mountain or its experts orally, and when they submitted questions in writing, they were often ignored or dismissed with references back to Trans Mountain's original 15,000-page proposal. More than 400 individuals or organizations were denied standing — as intervenors or commentators — and among those who gained standing, many said they abandoned their participation because they were overwhelmed by the flow of material or they simply lost faith in the goodwill of the NEB.

> "… (Prime Minister Justin) Trudeau stated that the gutting of environmental legislation and the politicization of the NEB by the Harper Government undermined the Board's legitimacy. He said the NEB had 'torqued' project reviews to make it easier to recommend approval ... the Prime Minister of Canada has broken his very specific promise that the Trans Mountain Expansion Project would not proceed but would have to be 'redone.'"
>
> Marc Eliesen,
> former President and CEO of BC Hydro, Chair of Manitoba Hydro, Chair and CEO of Ontario Hydro, and Deputy Minister of Energy in the Provinces of Ontario and Manitoba

Accordingly, as the Ministerial Panel began its work, it was greeted with a significant amount of anger and suspicion. Supporters who had spent a huge amount of time and effort in the NEB's complex — and they said thorough — process were unhappy that the Government had set aside the NEB's positive recommendation in favour of another series of reviews and consultations. And those who were opposed to the project, many of whom had sought and expected a complete dismissal of the NEB finding and a new review that would start from scratch, complained that the panel process looked like what one presenter called "a band-aid for a botched NEB process." People complained about our timetable, condemning the summertime meeting schedule that was necessary for us to meet our deadline, but inconvenient for those in vacation mode. They complained that our process was not formal enough — that there were not transcripts

or video recordings. They attacked the credibility of individual panelists, saying, for example, that because Chair Kim Baird had once participated in a leadership exchange with Trans Mountain ULC President Ian Anderson that her impartiality was in question. Presenters called the panel "a sham," "a politically motivated and corrupt process," and "Jim Carr's punching bag." Panel members were accused, individually and severally, of being "just Trudeau's messenger" and of having "less credibility than Donald Trump."

> "The flaws in the NEB process are well documented. In short, Kinder Morgan's evidence was not adequately tested and the findings in the final report rejected all Tsleil-Waututh scientific evidence .... TWN did not attend ministerial panel meetings because of our longstanding call for a jointly developed consultation process between First Nations and the federal government that recognizes and respects nation-to-nation relationships and governance rights.'"
>
> Tsleil-Waututh Chief Ernie George

We attribute much of this response to a mix of frustration and, perhaps, to confusion about the panel's mandate, which was understandable. For example, when First Nations received invitations to participate in a panel roundtable, but had not yet been contacted to re-engage in formal consultation with the Government of Canada, some mistook the nature of our request. At one point, Cheam Chief Ernie Crey called in "a drive-by consultation." We hope that the formal Crown consultations underway will resolve that confusion.

But there remains a question about how government can satisfy itself as to the accuracy of its inputs and how it can build confidence in the public that it is making decisions based on reliable processes. And this is complicated, again, by the variety and complexity of the issues. On job creation alone, there are a host of alternative analyses. For example, in its original application, Trans Mountain said it would create 36,000 person-years of employment. But the Goodman Group, in collaboration with SFU's Centre for Public Policy Research, produced a report in 2014 which said that Trans Mountain had overstated its job-creation potential by a factor of three.

> "The Union of BC Indian Chiefs is concerned that the Ministerial Panel is designed to try and buy political cover for the Liberals to approve the TMX project. The Liberals are currently working to 'restore trust in the regulatory system' but given that the actual NEB process left out the voices of many people impacted and ignored climate change, the Ministerial Panel is not restoring trust."
>
> Union of BC Indian Chiefs

The Goodman Group estimated 12,000 jobs or less. Then, in response to this discussion, Trans Mountain pointed the panel to a December 2015 Conference Board of Canada report suggesting that the real number was 678,000 person-years of employment (over the first 20 years of pipeline operations) based on jobs that might be created as oil companies re-invest profits (because they are expecting to receive a higher price for their crude oil exports).

The Conference Board went on to say: "… additional investment in the oil and gas sector would be expected to lift production beyond what it would otherwise be. This would lead to significant

operational and fiscal impacts associated with incremental production that are not measured in this briefing. As such, the estimates provided here can be considered conservative."

So, the Conference Board projects that we can look forward to increased economic activity — and says that we can attribute that activity directly to the pipeline construction, on the basis that the oil sands cannot expand if there is not also an expansion in the distribution infrastructure. Yet, at the same time, Environment and Climate Change Canada maintains in its report on upstream emissions, that no additional GHG emissions can be attributed to the Trans Mountain project because oil sands expansion can be expected to occur anyway, with the distribution load spread, say, to rail. These contradictions are difficult to resolve within the current policy and planning regime.

There also are other points on which presenters to the Ministerial Panel asked for further consideration. For example, presenters pointed out that the NEB report states that: "… the Board found project-related marine shipping to have significant effects on the southern resident killer whale, and on Aboriginal cultural and spiritual use of the southern resident killer whale." Given that this endangered population is protected under the federal *Species at Risk Act*, several presenters suggested that this finding alone should have been sufficient for the NEB to reject the project.

It is not within the Ministerial Panel's brief to indicate that any of these positions is more credible than any other. The challenge falls to the federal Cabinet to decide how, or if, it can make these findings on the strength of information already in hand, or whether further information or processes will be necessary — particularly in the context of the changing economic circumstances and the Government's own shifting political positions on climate change.

5. If approved, what route would best serve aquifer, municipal, aquatic and marine safety?

From the opening day of the Ministerial Panel's meetings and deliberations, reports of recent and current oil spills were a constant topic of conversation. The bunker fuel spill in English Bay in April 2015 from the grain ship Marathassa shocked and angered residents and municipal officials alike. Here was a brand-new vessel, a Japanese-built freighter with all the most up-to-date safety equipment, spilling bunker fuel into the water and onto the shores of Vancouver's beaches and parks. And while the Western Canada Marine Response Corporation (WCMRC) told the panel that its response in this instance demonstrated its capacity to manage a West Coast oil spill, others pointed out that even here, right in Vancouver harbour — and in very favourable weather conditions — WCMRC had managed to recover less than half of the original spilled fuel.

In July, just as we had moved the panel's public meetings from Alberta to B.C., the Husky Oil pipeline burst in Saskatchewan, leaking almost 1,600 barrels of diluted bitumen into the North Saskatchewan River, forcing the communities of North Battleford, Prince Albert and Melfort to shut down their drinking water intakes and make emergency plans to attain water from other sources. And then in October, a tugboat pushing an empty fuel barge ran aground on the B.C. north coast near Bella Bella, the tug sinking and leaking diesel into the choppy seas and onto the shellfish beds that the Heiltsuk

people depend upon food. Early recovery operations in the Bella Bella spill went badly, with the oil booms breaking up in bad weather. On October 27, a Vancouver Sun editorial said:

> "This Bella Bella accident points primarily to the abject failure of government and regulatory authorities to address what environmental critics, First Nations and the public have been arguing for years — that we are neither adequately resourced, equipped, trained nor prepared to deal with an oil spill of any significance on B.C.'s convoluted, craggy and complicated coast."

It is in this context that the Government must decide whether the Trans Mountain Pipeline is a worthwhile risk — and whether its current route is the right one. The route question came up again and again during panel meetings. Presenters along the proposed route complained about the risk to treasured places such as Jasper National Park or Surrey Bend Regional Park. They worried about a leak into the drinking water aquifers in the Fraser Valley. Residents of Burnaby complained about the prospect of Trans Mountain tripling the capacity of its tank farm at the foot of Burnaby Mountain and filling those tanks with a highly volatile substance — diluted bitumen — an explosion from which could strand more than 35,000 people. The students, staff and faculty of Simon Fraser University and the residents of the adjacent community, UniverCity, currently have no other way off the mountain in the event of a fire at the tank farm, which sits at the intersection of the only roads up or down the mountain. Presenters also questioned the positioning of an expanded oil export terminal in the least-accessible portion of the busiest port in Canada. They expressed their concern about the route through the Salish Sea and the inevitable impacts on marine mammals and other sea life — even if there was never an accident.

Further to the discussion in a previous section about the current absence of a national energy strategy, more than one presenter suggested to the panel that the Trans Mountain route, as proposed, is an historical accident, not a first choice. They said they doubted that anyone, designing an optimal route today, would choose to thread the pipeline through some of the most densely populated parts of British Columbia and into the busiest waters.

In a response to this discussion, Trans Mountain later pointed out that in its original submission to the NEB, it had raised the prospect of an alternative pipeline route ending by the coal terminals on Roberts Bank, but had dismissed this option on the bases of greater costs and environmental impact in that location. The company did not address another suggestion, that the pipeline be diverted into the United States at Sumas, following an existing Trans Mountain line to the Cherry Point export terminal in Washington State. As with the oft-requested considerations that any new pipeline be reserved for upgraded crude oil and that the mass transportation and export of diluted bitumen be limited or prohibited, these remain questions for government and industry. But in Burnaby, especially, officials from SFU suggested that the tank farm expansion should only be considered with the provision of an alternative public access to — and egress from — the mountaintop.

6. How does federal policy define the terms "social licence" and "Canadian public interest" and their inter-relationships?

"While governments grant permits for resource development, only communities can grant permission." This line, enshrined in the 2015 Liberal election platform, appears to have set an expectation among many people in communities and First Nations along the proposed Trans Mountain Pipeline route that they have what amounts to a veto — that the Government will respect a community's decision to withhold permission. As reported earlier in this document, we heard from many presenters who said, flatly, that on the basis of community support, the pipeline has no social licence. A quote from the MP for Burnaby–North Seymour, Terry Beech, was one of the clearest on this topic. He said, "After speaking with tens of thousands of individuals ... I can tell you with confidence that the people of Burnaby–North Seymour on balance stand opposed to this project, and that the community does not currently grant permission for this project to proceed."

As we on the panel were reviewing the material that we had gathered, in meetings and from online and other sources, however, we found a different interpretation of "social licence." In response to a question in the House of Commons, Natural Resources Minister Jim Carr said, "'Social licence' is about ensuring public confidence in the decision-making for major resource projects." And his department followed up with a further clarification, saying that the Government is "striving to act in the best interest of Canadians" as it tries to restore public trust in federal regulators. The department stated: "The goal is to provide regulatory certainty not only to project proponents, so they know the basis on which decisions will be made, but also to the public, so they know that the environment will be protected and that economic growth will be based on proper oversight, protections and safeguards."

However, social licence is ultimately defined — and ultimately, the various "publics" along the route will play a central role in that process — the Government will also be challenged to reconcile the degree of licence with a finding on the national public interest, another term that, so far, remains only loosely defined in this context.

> "The Kinder Morgan expansion would be a disaster for coastal British Columbia. There is no social licence, no anticipated benefit, and a very high level of risk to our endangered Orca population, as well as to our economy and health."
>
> Gillian Darling Kovanic, Bowen Island

In our meetings, the National Energy Board's conception of the public interest was often rejected — or deemed unsatisfactory. The NEB uses the following as a definition for public interest:

> "The public interest is inclusive of all Canadians and refers to a balance of economic, environmental and social interests that change as society's values and preferences evolve over time. As a regulator, the Board must estimate the overall public good a project may create and its potential negative aspects, weigh its various impacts, and make a decision." NEB Reasons for Decision, Emera Brunswick Pipeline Company Ltd., GH-1-2006.

Specific as this seems, the NEB offered no evidence in its report on the Trans Mountain proposal as to what specific elements of the Trans Mountain proposal fulfilled the public interest. Acknowledging its responsibility to weigh benefits against negative impacts, it stated: "The Board recognizes that there are burdens associated with this Project that cannot be completely mitigated and that these residual burdens rest primarily within the local and regional communities. This includes Aboriginal communities." The NEB further stated that while the benefits were "national or regional in scope," the burdens "would be shouldered by local and regional communities." This was the complaint most often put to the panel, that the communities that carry the most risk will not enjoy the benefits, many of which flow instead to an infrastructure company that is not even based in Canada.

> "It is folly to think this jury-rigged addition to a completely one-sided NEB process will somehow achieve social licence in BC for the Kinder Morgan expansion. It's difficult to see this as anything other than a cynical public relations ploy, particularly when we see the swift reaction to conflict-of-interest involving the Energy East review. I urge the government to acknowledge the inadequacy of this panel, and undertake the full, fair and transparent review process that was promised in the last election. "
>
> Michael Brockington, submitted online

The challenge for a federal administration is to assess whether the disadvantages to one region of the country are adequately balanced by advantages in another region. Perhaps not surprisingly, the panel heard frequently in Alberta that the project is in the public interest and is urgently needed for economic development, while in B.C., it was more likely to hear that the risks outweighed the rewards. The answers to the questions this generates are unlikely to garner easy agreement. It will be for the federal government to interpret whether there is a national public interest and whether it has the capacity to imply or engender a more broadly based social licence, even in instances when local communities stand firmly in opposition.

> "The definition of public interest cannot include local communities bearing the burden of the unnecessary risks and costs of the project."
>
> Langley Township Solicitor Maegen Giltrow

The issues raised by the Trans Mountain Pipeline proposal are among the most controversial in the country, perhaps in the world, today: the rights of Indigenous peoples, the future of fossil fuel development in the face of climate change, and the health of a marine environment already burdened by a century of cumulative effects. There are matters of public safety and environmental sustainability, overlaid against economic need in a province where a once-strong resource sector is currently under severe strain. We, as the Ministerial Panel, hope that we have done well by the many thousands of people who provided input in this process — in helping to craft a set of questions that may bring clarity in the decisions to come.

Remarks made by ERSU Council Representative Grayson Barke to SFSS Student Council Wednesday, November 9, 2016

Life is Short, and the World is a Big Place

Yesterday, as I'm sure many of you are aware, Justin Trudeau visited SFU Surrey to announce joint federal-provincial funding for a new energy and natural gas innovation center. Call me cynical, but I believe this investment is SFU's reward for not making a fuss about the tank farm next door to SFU Burnaby.

In light of this announcement, I feel it is futile for us, as students, to try and influence the final decision about the tank farm expansion, because the Federal Government, the Provincial Government, and the University are all on board with this plan.

This investment in SFU is in step with the Provincial Government's policy of matching education funding to industry interests. There's nothing wrong with that; however, we will not all choose to work in the industries our governments prioritize.

If students still have concerns about how the tank farm expansion will affect their experiences at SFU, I suggest they shift their attention from prevention of the expansion, to adaptation. The reality is, many of us here today will not have to deal with the consequences of this decision – the timeline for project completion extends to 2019. I think the biggest concern for current students is disruptions caused by protests, and again, I'm not sure that is something we can control.

Today, the World awoke to a new reality. Trudeau's announcement has changed our situation dramatically as well, and we too must face a new reality. The expansion of the tank farm will not be the end of SFU, as long as there is never an accident, but this is the beginning of a new chapter that will see some faculties and programs receive more attention than others.

People change, communities change, countries change – if we don't agree with the changes we have three choices:

1. We can change ourselves;
2. We can try and change others; or
3. We can join a different community that more closely aligns with our values.

Trudeau's announcement suggests to me that SFU, British Columbia, and Canada may have less need for, and therefore be less supportive of, students entering my field versus those students interested in careers in the energy sector – I can accept that. If this is the direction SFU, under the guidance of the Provincial Government is taking, I will not stand in the way. Ultimately, I am just a customer here. If I feel that another university can provide better opportunities for someone going into my field, I am free to take my business elsewhere.

I am not giving up the fight, because I was never fighting to begin with. I am not a protestor, an activist, a politician, or a leader. I am not here to fight the tide or stand in the way of progress. I am first and foremost a student; my priority is to acquire knowledge and skills so that I can address the needs of this planet and all its inhabitants. I don't need to fight the University or the Government to do that – in fact, doing so will only slow me down.

My goal in raising the issue of the tank farm and its implications for student safety was simply to share my concerns, and the information that gave rise to those concerns. I believe I have achieved that goal. Now, what you do with that information, as individuals and as a society, is up to you.

I'm not going anywhere anytime soon, and I am happy to answer questions and offer my opinions if requested; however, I will no longer raise this issue to council.

Thank you.