

# Using your voice

## Participating in the National Energy Board review of Kinder Morgan's proposed new Trans Mountain pipeline and associated oil tankers



PIPE UP NETWORK

### Overview

#### What is Kinder Morgan's new Trans Mountain pipeline and tankers proposal?

The Trans Mountain Expansion proposal would include nearly 1000km of new pipeline between Edmonton and Vancouver. The existing and new pipelines together would transport 890,000 barrels per day of tar sands oil. Oil storage capacity at Burnaby would triple with 14 new tanks increasing capacity by 3,900,000 barrels<sup>1</sup>. The number of tankers travelling past Vancouver Island and the Gulf Islands, through the Salish Sea and into the Vancouver harbour is projected to increase by 574%, from 2010 levels, to 408 every year<sup>2</sup>.

#### How can I make my voice heard?

Once Kinder Morgan submits an application to the National Energy Board (NEB), there will be a review process that will contain some opportunities for public participation. You can also make your voice heard outside of the formal review process.

#### How will this process be different from the Enbridge Joint Review Panel process?

Enbridge's Northern Gateway review was a joint assessment between the NEB and the Canadian Environmental Assessment Agency (CEAA). In 2012, the federal government changed the rules (with Bill C38) so that pipeline projects that cross provincial borders are only evaluated by the NEB. In addition, the federal Cabinet now has the final say on project approval rather than the NEB.

The rule changes have also meant that public participation is more limited. An example of these new rules can be seen with the current NEB review of the Enbridge Line 9 pipeline proposal in Ontario. In this case, anyone wishing to participate in the review process was required to complete a detailed nine-page application form<sup>3</sup> and provide evidence that they are "directly affected" and/or have "relevant information or expertise"<sup>4</sup>. We don't yet know if or how the Kinder Morgan review process will hear comments from the public.

In response to the limitations on who can participate in a federal review process, in August 2013, Forest Ethics Advocacy announced that it would take the federal government to court for infringing Charter freedoms.

#### What is the timeframe for the Kinder Morgan review process?

Kinder Morgan is expected to file their application with the NEB sometime this fall (2013). The NEB review process must be completed within 15 months after the application is deemed by the NEB to be complete.

#### What issues will be addressed in the Kinder Morgan review?

The assessment will consider the need for the project, its feasibility and the potential environmental and socio-economic impacts, including potential tanker spills. Importantly the assessment will not include "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"<sup>5</sup>, which effectively means that the review will not consider broader climate change impacts associated with the project. For full details see the National Energy Board's List of Issues<sup>6</sup>.

### Participating in the NEB Review of the Kinder Morgan Proposal

#### Will I be able to participate in the NEB's Trans Mountain review?

This will be decided by the NEB. A recent project ruling under the new regulations outlines the key considerations for who was accepted to participate in the Enbridge Line 9 review process. The document noted that, "The Board looks at how the person uses the area where the project will be located, how the project will affect the environment, and how the effect on the environment will affect the persons use of the area. The closer these elements are connected (their proximity), the more likely the person is to be directly affected. An effect that is too remote, speculative, or is not likely to impact the applicant's interests will not lead to finding that an applicant is directly affected. The Board also considers whether the relevant information or expertise being offered will add value to the Board's assessment"<sup>7</sup>.

However, it is up to you to decide whether you believe that you stand to be impacted by Kinder Morgan's proposed project. If so, it is worth submitting an application and going on record that you would like your voice to be heard.

## Why should I participate?

The NEB process is still your public process and a chance to address your specific concerns. Should you be denied the right to participate this will highlight the exclusion of public concerns. While many feel the process is deeply flawed it is still important that people participate lest the current Government is reassured that complicating the application process is sufficient to stifle public participation.

We must all have a say in proposals that threaten our lands and waters. This is especially true for First Nations in B.C. whose lands have never been ceded by treaty or conquest and First Nations in Northeastern B.C. and Alberta who have signed treaties. We all have a right to say "no" and to decide whether this project should go ahead or not. The NEB process provides a forum to voice our concerns and our opposition. It is also a forum to assert the authority of local communities, First Nations and all British Columbians to make this decision.

## What are my options for participating in the process?

We won't know the details until Kinder Morgan files their application and the NEB announces the process. However it is likely that two options will exist. "Commenters" participate by submitting a letter of comment. Commenters don't question other participant's evidence or make final argument (should an oral hearing occur). The second option, requiring a greater time commitment, is to participate as an "Intervenor." Intervenors are obliged to respond to information requests on evidence they file. Intervenors may also make information requests of other intervenors and present final evidence. Intervenors can apply for participant funding from the National Energy Board.

The deadline to apply to participate will likely be announced 3 to 6 weeks after the application is filed. There may only be a 2-week window in which to submit applications.

## References

1. Kinder Morgan Trans Mountain expansion pre application project description, Filing A51996. Available online: <https://www.neb-one.gc.ca/ll-eng/livelink.exe?func=ll&objId=956916&objAction=browse>
2. 2010 Tanker arrivals -71 source: Kinder Morgan Investor presentation, Kidner Morgan Canada, Ian Anderson, dated 03/24/11. Available at: [http://www.kindermorgan.com/investor/presentations/2011\\_Analysts\\_Conf\\_05\\_KM\\_Canada.pdf](http://www.kindermorgan.com/investor/presentations/2011_Analysts_Conf_05_KM_Canada.pdf)
3. NEB Enbridge Line 9 Application to participate form, Available online: [https://www.neb-one.gc.ca/ll-eng/livelink.exe/fetch/2000/90464/90552/92263/790736/890819/918701/941089/A5-3\\_-\\_Application\\_Form\\_to\\_Participate\\_in\\_a\\_Hearing\\_-\\_A3G6L3\\_.pdf?nodeid=941615&vernum=0](https://www.neb-one.gc.ca/ll-eng/livelink.exe/fetch/2000/90464/90552/92263/790736/890819/918701/941089/A5-3_-_Application_Form_to_Participate_in_a_Hearing_-_A3G6L3_.pdf?nodeid=941615&vernum=0)
4. NEB Enbridge Line 9 Reasons for accepting or declining intervenor application. Available online: [https://www.neb-one.gc.ca/ll-eng/livelink.exe/fetch/2000/90464/90552/92263/790736/890819/918701/956466/A11-1\\_-\\_Letter\\_to\\_Enbridge\\_Pipelines\\_Inc.\\_OH-002-2013\\_-\\_A3H8J9\\_?nodeid=956610&vernum=0&redirect=3](https://www.neb-one.gc.ca/ll-eng/livelink.exe/fetch/2000/90464/90552/92263/790736/890819/918701/956466/A11-1_-_Letter_to_Enbridge_Pipelines_Inc._OH-002-2013_-_A3H8J9_?nodeid=956610&vernum=0&redirect=3)
5. See NEB website, Trans Mountain Expansion list of issues. Available online: <http://www.neb-one.gc.ca/clf-nsi/rthnb/pplctnsbfrthnb/trnsmntxpnspn/frm/trnsmntxpnspnctcs-eng.html#s4>
6. NEB List of Issue. <http://www.neb-one.gc.ca/clf-nsi/rthnb/pplctnsbfrthnb/trnsmntxpnspn/trnsmntxpnspn-eng.html#s4>
7. NEB Hearing Order OH-002-2013 - Enbridge Pipelines Inc. (Enbridge) Application for the Line 9B Reversal and Line 9 Capacity Expansion Project (Project) pursuant to section 58 and Part IV of the National Energy Board Act (NEB Act) Procedural Update No. 2 - Ruling on Participation and Updated Timetable of Events. Available online: [https://www.neb-one.gc.ca/ll-eng/livelink.exe/fetch/2000/90464/90552/92263/790736/890819/918701/956466/A11-1\\_-\\_Letter\\_to\\_Enbridge\\_Pipelines\\_Inc.\\_OH-002-2013\\_-\\_A3H8J9\\_?nodeid=956610&vernum=0](https://www.neb-one.gc.ca/ll-eng/livelink.exe/fetch/2000/90464/90552/92263/790736/890819/918701/956466/A11-1_-_Letter_to_Enbridge_Pipelines_Inc._OH-002-2013_-_A3H8J9_?nodeid=956610&vernum=0)

## Can I apply right now to be a Commenter or Intervenor?

No. However, while intervenor applications are not currently being accepted, the NEB is accepting funding applications from people or organizations interested in being intervenors. Those interested should submit their funding application as soon as possible; see the NEB guidance link for more information. An offer of funding does not guarantee intervenor status.

## Is help available?

Yes. The NEB is planning to hold information workshops, and has assigned a Process Advisor for this project. The Advisor's role is to support the public (e.g., landowners, concerned citizens, environmental non-governmental organizations), as well as First Nations by providing information about its mandate and regulatory processes. For more information, contact Reny Chakkalakal by calling (toll free) 1-800-899-1265, or emailing [transmountainpipeline.hearing@neb-one.gc.ca](mailto:transmountainpipeline.hearing@neb-one.gc.ca).

A number of community-led and environmental groups are prepared to answer your questions as well, and will provide workshops and support for members of the public who are interested to participate in this review process. Feel free to contact any of us: Sierra Club BC, Pipe Up Network, Raincoast, ForestEthics Advocacy, Dogwood Initiative, Georgia Straight Alliance, Wilderness Committee, Living Oceans Society, and West Coast Environmental Law.

## What should I do now?

Register to be kept informed about the process at the NEB website at: <http://www.neb-one.gc.ca/clf-nsi/rthnb/pplctnsbfrthnb/trnsmntxpnspn/frm/trnsmntxpnspnctcs-eng.html> Your registration of interest will support a call for local workshops.

## Disclaimer

The NEB has yet to decide what options will exist for public participation in the review of the Kinder Morgan Trans Mountain proposal. This backgrounder has been produced using the best available knowledge and will be updated as more information becomes available.