

**FRIENDS OF THE EARTH * FRIENDS OF THE SAN JUANS * SIGHTLINE
INSTITUTE * CLIMATE SOLUTIONS * STAND * RE SOURCES
WASHINGTON ENVIRONMENTAL COUNCIL * SAN JUANS ALLIANCE**

June 17, 2016

Hon. Maria Cantwell, U.S. Senator
Hon. Patty Murray, U.S. Senator
Hon. Suzan DelBene, U.S. Representative
Hon. Dennis Heck, U.S. Representative
Hon. Derek Kilmer, U.S. Representative
Hon. Rick Larsen, U.S. Representative
Hon. Jim McDermott, U.S. Representative
Hon. Dave Reichert, U.S. Representative
Hon. Adam Smith, U.S. Representative

RE: Request that US Federal Delegation engage in Bilateral Consultation to Represent US interests and concerns with the Kinder Morgan Trans Mountain Project

To the U.S. Federal Delegation representing districts adjacent to the Salish Sea:

The undersigned are deeply concerned about the impacts to U.S. and Canadian interests by the proposed expansion of the Kinder Morgan Trans Mountain pipeline. We are seeking your assistance to assure we have appropriate representation prior to the Trudeau Administration's impending decision that could result in a project 60,000 barrels/day larger than the recently defeated Keystone XL Pipeline.

The Kinder Morgan Trans Mountain pipeline has transported crude oil from Alberta to Burnaby, near Vancouver BC since 1953, peaking at 375,000 barrels/day in 1974. It also connects to four refineries in Washington State through the Puget Sound pipeline spur. All of Washington's refineries have demonstrated the ability to use their terminals to pass through crude oil onto outbound tankers.¹

On December 16, 2013, Kinder Morgan applied to Canada's National Energy Board (NEB) to triple the capacity of the Trans Mountain Pipeline (from 300,000 barrels per day to 890,000 barrels per day). This pipeline currently transports mostly Canadian tar sand-derived crude oil (aka diluted bitumen or dilbit) from the 3rd largest crude oil reserve in the world.

On May 18, 2016 the NEB issued its [report on the Trans Mountain Pipeline Expansion Project](#) (Project) that recommended approval, subject to conditions. This expansion of diluted bitumen exports presents significant risks to both the environment and economy of Washington State as tankers pass through the transboundary waters of the Salish Sea.

Several of our organizations have formally participated in the NEB review process due to the bilateral nature of the impacts. However, our concerns were dismissed and the risks misrepresented. This is why we are urging your assistance.

For example, the NEB found the risk of a Project-related tanker spill “that may result in a significant effect ... to be acceptable.”² The reason for this is that the NEB accepted Kinder Morgan’s characterization of increased tanker traffic as compared with total BC vessel traffic; a small percentage increase when in fact Project-related tanker traffic will increase seven-fold (from an average of one per week to more than one per day).^{3, 4} At the same time the NEB accepted the assertion that the risk of an oil spill is in the order of one per hundreds to thousands of years because they only addressed the likelihood of catastrophic spills, rather than more likely size spills.⁵

In fact, the shared waters of Haro Strait and Boundary Pass are particularly challenging for navigation and spill response. Contrasting Kinder Morgan’s analysis, the most recent Vessel Traffic Risk Assessment (VTRA) analysis shows a 264% increase in the probability of spill between 6,290 and 15,725 barrels (e.g., *TENYO MARU*, 1991) to occur from one or more accidents in Haro Strait and Boundary Pass within 10 years.⁶

Not only does the Project increase the likelihood of an oil spill, but the type of oil these tankers carry significantly increases the impacts one would have on the region’s environment, economy and Treaty-reserved fishing rights. The unique challenges of recovering spills of diluted bitumen, given its propensity to sink, are addressed in the United States Coast Guard’s May 29, 2014, report to Congress, [*Risk Assessment of Transporting Canadian Oil Sands*](#); and, the National Academy of Sciences’ [*Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response*](#), which the NEB refused to consider in its Project review process.

Despite Kinder Morgan’s misrepresentation of the probability and impact an oil spill would have on the region, the NEB report concludes, “The Board finds that the operation of Project-related marine vessels would likely result in significant adverse effects to the Southern resident killer whale.” Both the U.S. and Canadian governments have listed the Southern Resident Community of Killer Whales as endangered as is the salmon on which they depend.

The proposed project would subject the Salish Sea to a significant increase in the risk of a dilbit crude oil spill from tanker and barge traffic already transiting between Kinder Morgan’s Burnaby, BC terminal and the U.S. Oil refinery in Tacoma, Washington.⁷ The cumulative impacts of the Kinder Morgan proposal on the existing risk of a dilbit crude oil spill, in addition to the possibility of Washington refineries expanding the use of their docks for crude oil exports, heightens the urgency of your attention to this matter.

The NEB review process did not include federal level engagement with the exception of an EPA comment letter. Nor did the NEB conduct tribal consultation with US Tribes or consider the impacts to the climate. On June 16, 2016 the Squamish Nation filed a lawsuit against the NEB. In a press release, Chief Ian Campbell stated, “The Squamish Nation is

stunned that the NEB has recommended that the Kinder Morgan expansion project be approved by the federal government — without first properly consulting the Squamish Nation on the impacts of the project on its aboriginal rights and title. Nor assessing the project through a real environmental assessment process.” Four U.S. Treaty Tribes on the Salish Sea (Lummi, Swinomish, Tulalip, Suquamish) intervened in the NEB proceeding to provide testimony about the significant interference with Treaty-protected fishing that the project would cause, and the existential threat posed by oil spill risk. But the NEB failed to take those concerns into account in their decision.

Over the next several months the NEB and BC Government are conducting further review of this Project. This is an opportunity to assure that our mutual environmental, economic and cultural interests along these shared waterways are fully addressed prior to the final determination on this Project’s application.

It is worthy to note that a variety of bilateral agreements exist in this region, recognizing the need to facilitate cross-boundary communication on environmental and economic matters. Unfortunately, none have been applied to the review of this application that includes significant bi-lateral ramifications. Furthermore, unlike the review of the Keystone XL Pipeline, the State Department has not been engaged in this Project’s review.

Therefore, we urgently request that you reach out to your counterparts in Canada to assure that U.S. interests are addressed during the review of one of the greatest threats ever posed to the Salish Sea.

Sincerely,

Friends of the Earth

Friends of the San Juans

Sightline Institute

Climate Solutions

Stand

RE Sources

Washington Environmental Council

San Juans Alliance

Cc: Hon. John Kerry, Secretary of State
Hon. Sally Jewell, Secretary of Department of the Interior
Hon. Penny Pritzker, Secretary of Department of Commerce
Hon. Marc Garneau, Minister of Transport
Hon. Dominic Leblanc, Minister of Fisheries, Oceans and the Canadian Coast Guard
Hon. Carolyn Bennett, Minister of Indigenous and Northern Affairs
Hon. Catherine McKenna, Minister of Environment and Climate Change
Hon. Jim Carr, Minister of Natural Resources
Hon. Lorraine Loomis, Chair, Northwest Indian Fisheries Commission
Hon. Timothy Ballew II, Chair, Lummi Nation
Hon. Melvin R. Sheldon, Jr., Chair, Tulalip Tribes
Hon. Brian Cladoosby, Chair, Swinomish Indian Tribal Community
Hon. Timothy Green, Sr., Chair, Makah Tribe
Hon. W. Ron Allen, Chair, Jamestown S'Klallam Tribe
Hon. Frances Charles, Chair, Lower Elwha Klallam Tribe
Hon. Robert (Bob) Kelly, Jr, Chair, Nooksack Tribe
Hon. Jeromy Sullivan, Chair, Port Gamble S'Klallam Tribe
Hon. Leonard Forsman, Chair, Suquamish Tribe
Hon. Jay Inslee, Governor of Washington State
Hon. Christy Clark, Premier of British Columbia
Admiral Paul Zukunft, Commandant of the U.S. Coast Guard
Rear Admiral Mark E. Butt, Commander, U.S. Coast Guard 13th District
Gina McCarthy, Administrator, Environmental Protection Agency
Dennis McLerran, Administrator for EPA's Region 10 Office in Seattle
Terry Williams, Tulalip Tribes, former liaison to US CEQ
Paul Doremus, Deputy Assistant Administrator for Operations at NOAA Fisheries
William Stelle, NOAA, Regional Administrator of the West Coast Region
Jim Woods, EPA Senior Tribal Policy Advisor
Jane Nishida, EPA, Principal Deputy Assistant Administrator

¹ Felleman, Fred (2016). Tar Sands/Dilbit Crude Oil Movements Within the Salish Sea; for Friend of the Earth
<http://www.foe.org/projects/oceans-and-forests/oceangoing-vessels/tar-sands-report>

² National Energy Board Report – Trans Mountain Pipeline ULC., page 17

³ See <https://www.transmountain.com/proposed-expansion> “ At present, the Westridge Marine Terminal handles approximately five tankers per month. Should the proposed expansion be approved, the number of tankers loaded at the Westridge Marine Terminal could increase to approximately 34 per month.”

⁴ Van Dorp, J.R., and J. Merrick. 2014. 2014 VTRA 2010 Final Report: Preventing Oil Spills from Large Ships and Barges in Northern Puget Sound & Strait of Juan de Fuca. Prepared for Washington State Puget Sound Partnership. 163 p.

⁵ Trans Mountain Pipeline ULC application, Volume 8A – Marine Transportation, Table 5.2.5. Oil spill risk with additional navigation safety measures: credible worst-case spill volume of 104,000 barrels = 1 in 2,366 years; mean-case spill volume of 52,000 barrels = 1 in 473 years; a spill of any size = 1 in 237 years.

⁶ VTRA 2015 Calibration Case presented June 1, 2016:

https://www.seas.gwu.edu/~dorpjr/VTRA_2015/PRESENTATIONS/13%20-%20COMPARISON%20VTRA%202015%20Case%20R%20to%20VTRA%202015%20Cal.%20Case.pdf

⁷ Felleman, Fred (2016). Tar Sands/Dilbit Crude Oil Movements Within the Salish Sea; for Friend of the Earth
<http://www.foe.org/projects/oceans-and-forests/oceangoing-vessels/tar-sands-report>