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Conflict of interest: CER overrules concerns about Fraser River re-drilling by Trans Mountain

Unceded kwikwəłəm Territory (Coquitlam, BC) – The Canada Energy Regulator (CER) has approved Trans Mountain Canada's request to re-route a failed drilling tunnel under the Fraser River. The decision to rubber stamp the Trans Mountain Expansion (TMX) pipeline ignores the concerns of Members of Parliament, environmental groups, citizens and First Nations. The decision did not address the letter of concern submitted by six Members of Parliament. Nor did it consider the Statements of Opposition filed by numerous environmental groups and several citizens. CER passed its decision without granting discussion nor response to concerns filed by a local First Nation about the proposal's impact to ancestral lands.

Dr. Tim Takaro, spokesperson for Protect the Planet, said: "CER represents a serious conflict of interest when regulating the TMX pipeline. CER is an arm of government that reports to and regulates this government owned energy project.. Many of it's members have a revolving door to positions of power in the industry. This conflict of interest has been entrenched ever since the Mulroney government moved the CER head offices from Ottawa to Calgary in 1991." At that time it was the National Energy Board..

The conflict of interest is deeper than most Canadians realize. [In an article published in The Energy Mix last month](#), Marc Eliesen, former BC Hydro CEO revealed that 90% of CER's funding is derived from fees paid by oil and gas companies. Moreover, since settling in Calgary, the CER has been staffed with a revolving door that between industry and government. After the government shut down the economic analysis unit at the department, Ottawa became dependent on opinions that originate largely within the industries the CER is supposed to regulate.

CER's bias is evident along all segments of the TMX pipeline route. Rod Marining, Chair of the BC Environmental Network, notes: "In the last two years, Trans Mountain applied 78 times to the CER for exemptions to the conditions set by the federal cabinet when TMX was approved. Of those 78 applications, 77 were approved. This does not pass the smell test." He continues: "Whereas

private companies get fined millions of dollars for pipeline leaks, in 2018 the Canadian government bought the pipeline from the previous owner, Kinder Morgan. In this arrangement, who will get fined for a failed or leaking pipeline when the regulator is also the owner? Taxpayers should be seriously concerned."

The Tsleil Waututh First Nation (TWN) also expressed concern to the CER about Trans Mountain's proposal to re-drill the Fraser River in their [January 21st submission](#), stating it had not been consulted and was very concerned by the impact of the proposal on ancestral lands. Trans Mountain admitted that TWN approached it about the project first, rather than vice versa. Concerningly, it seems CER did not wait for Trans Mountain to respond appropriately to TWN before announcing its ruling, nor to the numerous statements submitted.

Dr. Takaro concluded: "CER is a quasi-judicial body that ought to be impartial, but that is not what we are seeing. We asked Jonathan Wilkinson, the Minister responsible for the CER, to bring in new people independent of the oil and gas industry, who understand Canada's climate commitments, fair process and who acknowledge aboriginal title and rights. We need the Trudeau government to act to protect our rivers, streams and salmon, because relying on this regulator is like asking the fox to guard the chicken coop."

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Our Engineers Report: Detailed Problems with the CER decision of January 28, 2022.

1) CER is relying on preliminary reports submitted by Trans Mountain

CER should have made its decision based on finalized reports from the Company, however, finalized reports were not filed. Trans Mountain's reply on January 13 relied on two reports (BGC and Hatch Mott MacDonald), which it provided to the CER in 2015. Both those reports were "preliminary". The Hatch Mott MacDonald report (2015) also discussed the state of the

HDD industry, but failed to mention unsuccessful drilling attempts, so this report is not only preliminary but also incomplete.

The Musqueam First Nation pointed out these issues in writing to Trans Mountain and the CER in 2018. The First Nation expected a response with updated information to which it could reply, however Trans Mountain never responded.

2) The pipeline will be in unstable and corrosive soil which could cause a leak in the future.

CER should have asked the Company about the soil at the tunnelling site, as the soil in that area is very unstable. When designing the first Port Mann bridge, the Province had to drill 84 bore holes. Similarly before installing its water line under the river, Metro Vancouver drilled test bores. Trans Mountain only drilled one bore hole and that was in Coquitlam, not at the River crossing. The Crown Corporation had a permit to drill 2 bore holes in the Fraser River in 2017, although these results were never published. CER should require Trans Mountain to provide the results of those two bore holes, assuming it did drill them.

A 2017 liquefaction and lateral displacement study noted that bore hole BH06-01 -SCPT06-01 had a high lateral displacement of 7.2 and the borehole is located "within a flow failure zone". Will the "flow failure zone" cause a pipeline leak in the future. Only additional soil studies at the site of the proposed pipeline will provide an answer.

CER should not have allowed Trans Mountain to proceed without drilling bore tests in the Fraser River for something as significant as a pipeline which is intended to operate for years and which could leak highly toxic diluted bitumen into the Fraser River. This area has an extremely high probability of earthquakes.

Lastly, the soils in the drilling area were found to be very corrosive, which could affect the steel pipes. In a report dated May 1958, R.A. Spence noted that the lower silt soils were highly corrosive in the steel sample tubes causing corrosion of the metal. Updated geological data about the lands at Fraser River crossing have never been provided to the CER.

3) CER is permitting Trans Mountain to sacrifice safety by approving a less expensive and riskier tunnelling method.

CER should have asked for a report outlining the pros and cons about the Direct Pipe drilling method. Direct Pipe is the safest method, though somewhat more expensive, which may explain why Trans Mountain (TM) chose to use conventional Horizontal Directional Drilling (HDD). Since the tunnel is only 350 metres long, Direct Pipe method would have been easier than the longer distance drilling. TM maintains that HDD worked for 80% of the tunnel, and that it will work for the remainder. However, no independent engineering reports have been filed that support this view. Nor has Trans Mountain disclosed details of what went wrong the first time, which now necessitates a relocation and redrill.

4) CER's decision is based on incomplete information.

The CER Commission's decision of January 28, 2022 on page 9 mentions that an inspection report about the failed Fraser River drilling program is being prepared but it is not complete. A completed inspection report would instill greater confidence in the decision. CER should have also asked Trans Mountain to submit a root cause analysis of the drilling problems. On Trans Mountain Quality Assurance report of December 2021, the Company shows non-conformance number S7-KLTP-NCR-0151 "damage to section of product pipe during extraction of Fraser River HDD section". On their request to redrill they claim "mechanical failure of the HDD pipe as it was pulling the product pipe into the bore hole."

The root cause analysis can help determine if the tunnelling method or the soil structure caused the tunnelling failure and it might provide useful information for planning a pipeline which will never leak. Trans Mountain may have done a root cause analysis of the tunnelling failure and if it has it should provide the report to the CER. If it has not done a root cause analysis, then it should do so immediately.

5) CER is ignoring concerns that the pipeline relocation will lead to more stresses on the pipes which could cause a failure.

CER should have asked Trans Mountain to produce its new analysis about pipe bending stresses. In particular it should disclose stress effects on the long-term safety of the pipe due to the relocation of part of the pipe 8 metres to the west because the only filed report on the subject is the Hatch Mott MacDonald Engineering review which anticipated the pipe would only have an up/down vertical bend. Adding a horizontal bend of 26 feet requires further study. The bend stresses might cause dil bit leaks in the river 5 years from now.

Trans Mountain admits the relocation will increase certain stresses. However it also suggested to the CER that there was an “assumed” pipe thickness of 19m and it asserts the 21.5mm pipe now being used addresses stresses adequately”. However, the liquefaction and lateral spreading report of 2017 states that a thicker 21.5 metre pipe will be used because of the soil structure. Trans Mountain attempted to install a 21.5mm pipe but the attempt failed. By Trans Mountain’s own logic, the pipe should be thicker than 21.5 in order to accommodate additional stresses from the horizontal bend which is being added to the pipeline. Further, moving the HDD exit point closer to the Fraser River with a decreased length of 86 meters for the revised route will tighten the vertical radius, increasing one of the stresses on the steel pipe.

Trans Mountain asserts the redesign reduces the pipe stress due to the original bend, but it has provided no evidence to support this assertion. Trans Mountain also says it has done some internal analysis of pipe bend stresses. Trans Mountain should file its internal reports containing the analysis of the pipe bend stresses with the CER.

6) The change in drilling could cause more sinkholes on the Mary Hill bypass.

CER should have asked Trans Mountain for information about the change in drilling equipment location. Trans Mountain disclosed that it will redrill from the north side (Coquitlam), whereas previously it was drilling from the south side. The north side has a highway, dykes and other improvements, unlike the south side. Trans Mountain should submit a report indicating whether vibration from drilling on the north side will have any further impacts on the highway and other improvements.

7) CER is allowing Trans Mountain to ignore an important recommendation from its own consultant engineer.

CER should have asked Trans Mountain why it did not follow the advice of its consultant BGC Engineering which recommended drilling test bores. Instead Trans Mountain tries to assert that nothing has changed to warrant more studies. That is incorrect. The failure of the tunnel, the sink holes and effluent releases are new information which indicate that the risks predicted in the 2015 reports are significant and warrant updated studies.

In 2015 Trans Mountain used soil data from test drilling conducted by other groups but those sites were at least 276 metres downstream. Trans Mountain had access to data from closer sites, in particular from sites drilled by CBA Engineering in 1958 for the first Port Mann bridge. Trans Mountain used data from the closer CBA test bore sites in its 2017 liquefaction study, but

not in its 2015 reports about the feasibility of the crossing. CER should have asked Trans Mountain why it did not include the data from the closer 1958 test bores in its 2015 reports?

GENERAL BACKGROUND on STOP TMX Coalition

The estimated \$20 billion pipeline project was purchased for \$4.5 billion from Texas oil giant Kinder Morgan by the federal government in 2018. This creates a conflict of interest for the federal government because the federal government is responsible for regulating pipelines through the Canada Energy Regulator (CER). Costs on the pipeline have ballooned since the purchase requiring ever greater subsidies from the federal government. Trans Mountain has not provided a cost update since February 2020.

This lack of transparency from Trans Mountain is not limited to finances. Trans Mountain's press release about the Thompson River tunnel redrill referred to "technical issues" as the cause of the need to redrill. Trans Mountain claims the Fraser River tunnel problem is due to a "mechanical failure", however the tunnelling equipment performed as expected. The Fraser tunnel problem has its origin in the Company's decision to not drill test bores at the crossing and to use HDD contrary to the advice of its experts.

The project is opposed by the Squamish Nation, Tsleil-Waututh Nation and Coldwater Indian Band, who were denied leave to appeal by the Supreme Court of Canada. It also conflicts with Canada's commitment under the Paris Climate Agreement to keep global temperatures from rising above 1.5 degree Celsius. The project crosses 1,300 streams and rivers and would impact numerous drinking water sources along the route, as well as Burnaby Mountain and Simon Fraser University. It would also spell a 7-fold increase in tanker traffic in Burrard Inlet and an increased threat to the endangered Southern Resident Orcas. The Province of British Columbia, the State of Washington, and 20 municipalities oppose the pipeline project, including the Cities of New Westminster and Burnaby.

The existing Trans Mountain pipeline is already a major environmental and public health hazard with a long history of disastrous spills. In June 2020, 50,000 gallons of crude oil spilled from a pump station located above an aquifer that supplies the Sumas First Nation with drinking water. The thirteen 67-year old tanks at the terminus of the pipeline are too close together to put out in the event of a fire, according to the Burnaby Fire Department. The tank farm expansion makes it more difficult for the Burnaby Fire Department to fight fires, according to a recent affidavit from the Fire Chief. 240,000 people live within the 4.2 km radius of the site that is considered an evacuation zone including 32,000 members of the SFU community.

A growing number of insurers have pulled out of the pipeline project; those still involved are facing pressure to divest. In November 2020, the Canada Energy Regulator released a report stating that there is no need for any pipeline expansion if Canada takes measures to curb GHGs.

In Sept 2020, economists warned that the TMX project was no longer financially viable. Indigenous groups, as well as the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls have pointed out the connection between resource extraction man-camps and violence against Indigenous women.

The coalition of environmental groups opposing the TMX pipeline includes, but is not limited to, Protect the Planet Stop TMX (PPST), Mountain Protectors, Protect the Inlet, Extinction Rebellion Vancouver, STAND.earth, Burnaby Residents Opposing Kinder Morgan Expansion (BROKE), PipeUp Network, Climate Convergence, Dogwood, Colony Farms Regional Park, BC Environmental Network, Babies for Climate Justice, Sustainability Vancouver, 350 Vancouver, 350 SFU, and Wilderness Committee.