

Summary of Recommendation



Canadian public interest

The National Energy Board (NEB or Board) finds that the Trans Mountain Expansion Project (Project) is in Canada's public interest, and recommends the Governor in Council (GIC) approve the Project and direct the Board to issue the necessary Certificate of Public Convenience and Necessity (CPCN) and amended CPCNs. Should the GIC approve the Project, the associated regulatory instruments (Instruments) issued by the Board would come into effect.

Should the GIC approve the Project, the Board considers it necessary that the CPCNs and Instruments be subject to 157 conditions.² These conditions would address issues such as safety, protection of the environment and other considerations that are identified throughout this NEB Report.

To set the context for its recommendation, the overarching consideration for the Board's public interest determination was: can this Project be constructed, operated and maintained in a safe manner. The Board found the Project would meet this threshold.

While this initial consideration was fundamental to the Board's determination, a finding that a pipeline can be constructed, operated and maintained in a safe manner does not mean it is necessarily in the public interest - there are other considerations that the Board must weigh in coming to its public interest determination, as discussed below. However, the analysis would go no further if this fundamental question were to be answered in the negative; an unsafe pipeline can never be in the public interest.

If constructed, the Project would approximately triple the capacity of the Trans Mountain Pipeline system in Western Canada. Together, the current and expanded pipeline would ship oil from Edmonton, Alberta, to Burnaby, British Columbia. At that point, oil would be loaded on to tankers at the Westridge Marine Terminal (WMT) for export to Washington State, California and Asia.

A full description of the Project is provided in Chapter 1 of the NEB Report, but it is important to note that marine shipping beyond the WMT is not part of the Project and is not within the Board's regulatory jurisdiction. Other governmental departments and agencies are charged with those responsibilities.

Environmental assessment

The Board completed a comprehensive environmental assessment of the Project in accordance with its authority under the *National Energy Board Act* (NEB Act) and the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). Although marine shipping is not regulated by the Board, as part of its overall public interest determination under the NEB Act, the Board considered the potential environmental and socio-economic effects of Project-related marine shipping. This included the potential effects of accidents or malfunctions.

² Conditions are found in the NEB Report, Appendix 3.

Over 85 per cent of the pipeline route for the Project parallels existing disturbances, including the right-of-way for Trans Mountain's existing pipeline. This is important as it reduces the requirements for new right-of-way disturbance, minimizes the potential impacts of construction, and reduces effects on nearby residents and communities. While much of the route parallels existing disturbances, this is not always the case in urban areas.

With the implementation of Trans Mountain's environmental protection procedures and mitigation, and the Board's recommended conditions, pursuant to its authority under the CEAA 2012, the Board finds that the Project is not likely to cause significant adverse environmental effects. However, effects from the operation of Project-related marine vessels would contribute to the total cumulative effects on the Southern resident killer whales, and would further impede the recovery of the Southern resident killer whale population, an endangered species that lives in the Salish Sea. Therefore, pursuant to its authority under the NEB Act, the Board finds that the operation of Project-related marine vessels is likely to result in significant adverse effects to the Southern resident killer whale, and that it is likely to result in significant adverse effects on Aboriginal cultural uses associated with these marine mammals.

The Board is mindful that Project-related marine vessels would follow an established shipping route that currently has high volumes of vessel traffic and that, even if the Project does not proceed, the intensity of commercial and recreational traffic along the shipping route is predicted to increase in the future. The Board is encouraged by current initiatives being undertaken by Trans Mountain, Fisheries and Oceans Canada, and other organizations to support the recovery of the Southern resident killer whales.

The Board also considered greenhouse gas emissions from the Project and from Project-related marine vessel traffic. The Board would impose a condition requiring Trans Mountain to develop an offset plan for the Project's construction-related greenhouse gas emissions. The intent of the offset plan would be to confirm that there are no net greenhouse gas emissions from the Project construction.

The Board also took into consideration the likelihood and potential consequence of a spill from the Project or from a Project-related tanker. The Board found that while the consequences of large spills could be high, the likelihood of such events occurring would be very low given the extent of the mitigation and safety measures that would be implemented.

Aboriginal interests

The Board's process is designed to be thorough and accessible to Aboriginal groups so that they may make their concerns known to the Board on potential impacts on their interests, and have those concerns considered and addressed. The Board interprets its responsibilities under the NEB Act in a manner that is consistent with the *Constitution Act, 1982*, including section 35(1), which recognizes and affirms the existing Aboriginal and treaty rights of Aboriginal peoples.

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*.

The Government of Canada has stated that there will be additional consultation following the issuance of this Report.

Should the Project proceed, the Board would impose conditions requiring Trans Mountain to continue its consultation with potentially affected Aboriginal groups throughout the life of the Project. Those conditions would require Trans Mountain to report to the Board on its consultation with Aboriginal groups during construction and through the first five years of operations, among other things. This consultation would include the development of a number of plans related to environmental protection and emergency response programs.

Weighing Project-related benefits and residual burdens

The following two tables summarize the key benefits and residual burdens of the Project and Project-related marine shipping. Each table indicates whether a benefit or burden would apply locally (e.g., within the immediate vicinity of the Project such as a municipality along the route), regionally or nationally.

The Board finds that the benefits associated with the Trans Mountain Expansion Project, taken as a whole, are considerable.

Benefits associated with:	Brief description	Type of impact	Report chapter(s)
Market diversification	The Board finds there would be a considerable benefit gained by providing Canadian shippers with more flexible and diverse markets, the ability to manage risk associated with competing in multiple markets, the ability to manage development and operational risk, and a likely reduction of discounts to Canadian crude.	Regional National	12
Jobs	The Board finds a considerable benefit in the form of jobs created across Canada: <ul style="list-style-type: none"> • Pipeline construction - 400-600 workers per spread • Tank construction - between 60 and 370 workers • Westridge Marine Terminal construction - 95 workers • Over the first 20 years of operation - 443 jobs/year (313 in B.C., with remainder in AB) 	Local Regional National	11
Competition among pipelines	The Board finds a considerable benefit would be gained from the increase in flexibility and optionality for those producers looking to get their product to markets, and that all western Canadian producers are likely to benefit from the Project in the longer term, through greater customer choice and efficiencies gained through competition among pipelines.	Regional National	12
Spending on pipeline materials	The Board finds there would be a considerable benefit to local and regional economies from the direct spending on pipeline materials in Canada and spending within the regions where the Project is located.	Local Regional	11
Community Benefit Program	The Board finds a modest benefit to local communities and the environment along the Project from the establishment of a Community Benefit Program, including: <ul style="list-style-type: none"> • local emergency management capacity enhancements; • improvements to community parks and infrastructure; • support for events and educational programs; and • Environment Stewardship Program. 	Local Regional	10 11
Enhanced marine spill response	The Board finds there would be a modest benefit from the enhanced marine spill response planning for and capacity to respond to spills from vessels not associated with the Project (e.g., fuel spills from container ships and cruise ships).	Local Regional	14
Capacity development	The Board finds that a modest benefit from local economic and educational opportunities, and the development of capacity of local and Aboriginal individuals, communities and businesses.	Local Regional	11
Government revenues	The Board finds that direct Project expenditures will likely result in considerable revenues to various levels of government.	Local Regional National	11

A number of concerns are identified in this NEB Report. Many of the issues underlying these concerns can be mitigated, and the Board assessed and weighed the likely success of potential mitigation options in reaching its recommendation. Other mitigation would be found in the commitments from Trans Mountain and through conditions that the Board would attach to the new CPCN, amended CPCNs and Instruments. Nevertheless, some impacts or residual burdens remain, and they must be considered and weighed in the Board's recommendation under Part III of the NEB Act.

Burdens associated with:	Brief description	Type of impact	Report chapter(s)
Southern resident killer whales	The Board finds that the operation of Project-related marine vessels would likely result in significant adverse effects to the Southern resident killer whale. Although the effects from Project-related marine vessels on the Southern resident killer whale would be a small fraction of the total cumulative effects, the Board recognizes that the increase in Project-related marine vessels would further contribute to cumulative effects that are already jeopardizing the recovery of the Southern resident killer whale.	Local Regional National	14
Aboriginal cultural use associated with Southern resident killer whales	The Board finds that that the operation of Project-related marine vessels would likely result in significant adverse effects on Aboriginal cultural use associated with Southern resident killer whales. The Board acknowledges concerns raised by a number of Aboriginal groups about the social and cultural effects that would result from impacts of Project-related marine shipping on the Southern resident killer whale.	Local Regional	14
Marine greenhouse gas emissions	The Board finds that greenhouse gas emissions from Project-related marine vessels would likely be significant . Given that there are no regulatory reporting thresholds or specific requirements for marine greenhouse gas emissions in Canada, and that the modelled emissions would result in measurable per cent increases, the magnitude of these emissions is high. While the Board understands that emissions from Project-related marine vessels would be a small percentage relative to Canadian greenhouse gas emissions, the Board finds the greenhouse gas emissions from Project-related marine vessels are likely to be significant.	Regional National	14
Municipal development plans	The Board finds that the Project may pose a modest burden on municipalities with respect to potentially constraining future plans for municipal development. There is the potential for reduced flexibility and/ or additional municipal time constraints with respect to planned or possible future municipal projects that may be impacted by the Project.	Local	11
Aboriginal groups' ability to use the land and water during construction and operation	The Board finds that there would be modest burdens sustained by Aboriginal groups as their ability to use the lands, waters and resources for traditional purposes would be temporarily impacted by construction and routine maintenance activities, and that some opportunities for certain activities such as harvesting or accessing sites or areas of traditional use would be temporarily interrupted. For activities directly affected by the WMT, the Board finds that these effects would persist for the operational life of the Project, as traditional activities would not occur within the expanded water lease boundaries. The Board finds that while the effects would be long term in duration, they would be reversible in the long term and would be confined to the water lease boundary for the WMT.	Local	11
Landowners' and land users' ability to use the land and water during construction and operation	The Board finds that there would be modest burdens sustained by landowners and land users as their ability to use the land and water would be affected by construction and routine maintenance activities during operations. Construction and routine maintenance activities will cause temporary, limited effects on recreational and commercial hunting, fishing, agricultural practices and access to property, and will cause nuisance disturbance, such as noise.	Local	11
Project spill (i.e., from pipeline, tank terminals, pump stations, or Westridge Marine Terminal)	The Board finds that there is a very low probability of a Project spill (i.e., from pipeline, tank terminals, pump stations, or WMT that may result in a significant effect (high consequence). The Board finds this level of risk to be acceptable .	Local Regional	2 9 10 11
Spill from a Project-related tanker	The Board finds that there is a very low probability of a marine spill from a Project-related tanker that may result in a significant effect (high consequence). The Board finds this level of risk to be acceptable .	Local Regional	2 14

The task of balancing Project-related benefits versus residual burdens was difficult. Many of the benefits would be national or regional in scope, fewer strictly local. With respect to the residual burdens, the reverse would be true: local and regional communities would shoulder the larger share.

In weighing the benefits and residual burdens, the Board placed significant weight on the economic benefits of the Project, many of which would be realized throughout Canada, particularly in British Columbia, Alberta, Ontario and Quebec. This national perspective was critical in the Board's finding the Project would be in the Canadian public interest.

Board-imposed conditions

Trans Mountain formally committed to specific measures to mitigate Project-related risks and, should the GIC approve the Project, the Board would attach 157 conditions to the CPCNs and Instruments that cover a wide range of matters, including:

- safety and integrity of the pipeline;
- emergency preparedness and response;
- protection of the environment;
- ongoing consultation with those affected, including Aboriginal communities;
- socio-economic matters;
- affirmation of commercial support for the Project prior to construction; and
- financial responsibility.

Lifecycle regulation

When Trans Mountain filed its Project application, it commenced an initial phase of the Project's regulatory lifecycle. While the Board made a finding that Trans Mountain's application was complete, the Project application was not at the detailed engineering phase that leads to the final design. This was of concern to a number of participants who felt that the Board lacked critical information on which to found its Recommendation.

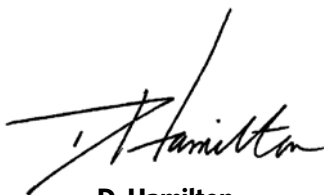
At this early stage in the regulatory lifecycle, the Board does not require final information about every technical detail. Rather, the information available to the Board must be sufficient to allow it to make a recommendation to the GIC that the Project is or is not in the public interest, and adequate to allow the Board to craft conditions that would attach to the CPCNs and Instruments should the GIC approve the Project.

If the GIC directs the Board to issue the CPCNs, before Trans Mountain may begin construction, it would first have to satisfy the Board that it has complied with a number of specific conditions and, once constructed, Project operations could not commence until Trans Mountain met a number of additional conditions.

After operations commence, Trans Mountain would be subject to the continuing regulatory oversight of the NEB throughout the lifecycle of the Project. Trans Mountain would be accountable for meeting the Board's requirements that the Project be operated and maintained to ensure safety, and protect people, communities and the environment.

Recommendation

The Board finds that the Project is in Canada's public interest, and recommends the GIC approve the Project and direct the Board to issue the necessary CPCN and amended CPCNs. Should the GIC approve the Project, the associated Instruments issued by the Board would come into effect.



D. Hamilton
Presiding Member



P. Davies
Member



A. Scott
Member