

Credibility Crisis

MAJOR FLAWS THREATEN CREDIBILITY OF NEB ASSESSMENT PROCESS
FOR KINDER MORGAN TRANS MOUNTAIN PIPELINE AND TANKERS PROPOSAL



Photo by: Rob Polo



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Kinder Morgan's Trans Mountain Expansion Project (TMEP) is a proposed \$5.5 billion pipeline from Edmonton to Burnaby that would almost triple the diluted bitumen traveling across B.C. (from 300,000 to 890,000 barrels/day) and increase the number of oil tankers in Vancouver's harbour and the Salish Sea from five to 34 tankers monthly.

The National Energy Board (NEB), the federal regulatory board responsible for assessing the TMEP proposal has been widely criticized for failures in process, for limiting participation, and for a lack of accountability and fairness.

In this report, we detail the deficiencies in the process to date that are giving rise to public criticism and dissatisfaction and causing some intervenors to withdraw. This report summarizes those concerns; however the list is not exhaustive:

1. Public participation severely curtailed.
2. Participants denied adequate and timely funding.
3. Upstream and downstream impacts, such as climate change, not considered.
4. Kinder Morgan allowed to submit incomplete information.
5. The only evidence subject to cross-examination is First Nations oral evidence.
6. No cross examination of Kinder Morgan permitted.
7. Kinder Morgan is allowed to ignore or provide incomplete responses to written Information Requests.
8. Panel accepted 80% of the Kinder Morgan's motions, but only 11% of intervenor motions.
9. Panel failed to ensure Kinder Morgan's environmental and risk assessment conformed to accepted best practices.

Public Participation Limited

On January 15, 2014, the NEB opened applications to the public to participate in the hearing process as either “intervenor” or “commenters”. With only one month to respond, applicants wishing to comment were required to complete a lengthy 11-step process to argue the case that they would be “directly affected” by the pipeline and tanker project or have “relevant information or expertise” to share. Determined case-by-case at the Panel’s discretion¹, criteria used to consider who was “directly affected” appear to include where one lives and if their business might be directly impacted by the project.

Some excluded applicants wonder if their criticism of the process influenced their rejection. The NEB admitted they have been reviewing print and social media to see if applicants were openly critical of the Panel. Access to information requests from intervenors about these decisions revealed heavily redacted documents that refer to media reports about Forest Ethics Advocacy and PIPE UP events that assisted residents in the preparation of NEB participation applications.

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Photo by Temmuz Arsiray

Despite these initial hurdles, the NEB still received 2,118 applications to participate. After review,

- ◇ 400 were granted intervenor status.
- ◇ 798 were granted commenter status (452 requesting intervenor status were ‘downgraded’ to commenters).
- ◇ 468 were denied any opportunity to participate, including the Business Council of B.C., City of Fort St John, Surrey Board of Trade and 27 climate experts.

Once the route of the pipeline had been better identified a second round of applications resulted in Ruling No.41² in October 2014, relating primarily to Burnaby. From among 46 more applications, the Board awarded four intervenor status, 29 were allowed to comment (including 23 who requested intervenor status but were downgraded to commenters) and 13 were denied participation altogether.

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Photo by Jens Wieting

Commenters can submit only one letter of comment, and no oral statements (which were allowed as part of the Enbridge Northern Gateway Joint Review Panel process). Intervenor can file written evidence, ask written questions about Kinder Morgan's evidence, file and respond to motions, comment on draft conditions, and present written and oral argument.

Insufficient Funding for Participants

Funding provided to intervenors to participate has been lower per intervenor than in previous hearings, with some intervenors allowed no funding and many awarded much less than they applied for. This makes it difficult to engage experts and participate effectively. Besides hiring researchers and legal counsel, funding is needed to help intervenors cover expenses like travel and accommodations when participating in panel proceedings far from home.

Funding has been inadequate for First Nations. For example, Chief Percy Joe of the Shackan Indian Band of Merritt, B.C. received only \$1,250, saying "The NEB has not provided sufficient funding for any meaningful participation."

In Langley, landowners are intervening because the pipeline crosses their property, but have received zero funding.

The timing of the funding disbursement was prohibitive to effective participation. Intervenor who were granted (minimal) funding did not receive it until *after* most of the Information Requests (IRs) and evidence were presented, and *after* First Nations oral hearings. Contrary to prior practice and its own initial advice to intervenors, in at least some cases, the NEB refused to offer advance disbursements of up to half of the funding awarded. Intervenor are required to lay out their own funds to pay for experts and legal advice and then await reimbursement from the Board.

Meaningful participation in public process has to be funded, but current NEB practice fails to satisfy this basic precept of fairness for public participation.

Canada has long espoused the principle that meaningful participation in public process has to be funded, but current NEB practice fails to satisfy this basic precept of fairness for public participation.

Limited scope; climate not considered

Comprehensive assessments must consider the broader impacts and implications of a proposal.

Upstream and downstream impacts, such as the impacts of tar sands expansion that will result from building new pipeline infrastructure, and the burning of that oil facilitated by TMEP, are not considered within the scope of the review.

This exclusion from scope has been further criticized because the NEB *is* including upstream and downstream benefits (i.e. the supposed economic need for the pipeline) in its scope. Intervenors were not given an opportunity to comment on the scope of review for this hearing as they have been in every previous hearing.

At no point is the project's true contribution to greenhouse gas emissions assessed. British Columbian communities and industry are feeling the myriad impacts of climate change via early closures of ski hills, bark beetle infestations, ocean acidification, reduced snowmelt affecting salmon runs, forest fires, and flooding.

Without a formal process to look at how our energy decisions impact the climate, there can also be no process to make recommendations for climate change mitigation or adaptation measures. Comprehensive assessments must consider the broader impacts and implications of a proposal.

People who applied on the basis of climate concerns were deemed not “directly affected” and denied participation.



Photo by Galen Armstrong

Failure to adequately consult First Nations

On November 28, 2014, twelve First Nations wrote an open letter challenging the constitutionality of the process³, citing numerous concerns, particularly relating to inadequate consultation. The Canadian Government has a constitutional duty to consult and accommodate First Nations on proposed activities that could negatively impact their aboriginal title or rights.

The NEB process is already subject to court challenges. Tsleil-Waututh Nation⁴ was granted leave by Federal Court of Appeal in July 2014 on their legal challenge to the NEB's review of the Kinder Morgan TMEP. Tsleil-Waututh has appealed the NEB Hearing Order and other decisions about the review process made by the NEB, including the scoping and exclusion of certain environmental impacts, and the decision that Kinder Morgan's application was complete. If successful, the case could reset the whole NEB process and send Kinder Morgan back to the drawing board.



Chief Vern Jacks, Simon Smith, Jr. Carleen Thomas at NEB Rally, Victoria BC— April 28, 2015 Photo by: Rikki Ayers

Tsleil-Waututh takes the position that the NEB did not have the authority to begin its review process because the Crown had not discharged its constitutional duty to consult the Tsleil-Waututh before setting its review of the project. Other grounds for appeal focus on the failure of the NEB to consult and coordinate with Tsleil-Waututh as a jurisdiction with the authority to conduct an environmental assessment of the project as required by the *Canadian Environmental Assessment Act, 2012* and breaches of procedural fairness such as the one-sided nature of testing hearing evidence and tight timelines.

As discussed in further detail below, the NEB review will not include cross-examination of TMEP evidence. This means the only oral evidence now being presented and subject to cross-examination is aboriginal traditional evidence. It is unfair that Kinder Morgan has the opportunity cross-examine aboriginal knowledge holders (although First Nations could opt to later answer questions in writing), but no one can cross-examine TMEP experts.

The Crown did not consult with First Nations before setting up the NEB review and there is little indication of what further consultation will look like. Also the Crown has said it is relying on the NEB to the extent possible to discharge its duty to consult. First Nations' are effectively using their own money to be 'consulted', which is not honourable treatment.

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Flawed procedures

NEB Review is Based on Incomplete Information

On December 16, 2013, Kinder Morgan submitted their application to the NEB for their Trans Mountain Expansion Proposal, but key aspects of the proposal were missing or incomplete, including:

- ◇ The routing of major sections of the pipeline had not been determined, with the result, as observed above, that it was impossible to determine whether or not one would be directly affected by the project.
- ◇ The Human Health Risk Assessment had not been completed.
- ◇ Emergency response plans were missing.
- ◇ The “TERMPOL” review led by Transport Canada (that considers risk and accident analysis of shipping, mitigation measures, pollution prevention and contingency plans) had not been completed.

Key aspects of Kinder Morgan's Trans Mountain Expansion Proposal are missing or incomplete.

The NEB nevertheless issued a Hearing Order on April 2, 2014, setting in motion new, tight timelines prescribed by the federal government. These timelines required the NEB to produce its final recommendation to Cabinet within 15 months. Pulling the trigger on this process before the application was fully completed launched the Board on a series of procedural amendments to the original Hearing Order. This has both extended the timelines and severely compromised the quality of the hearings.



Photo Credit: Al Harvey Slidefarm

One clear example of this is the failure to file emergency responses plans—a critical piece of evidence for the public to understand the risks of this project. After being ordered to produce those plans, Kinder Morgan produced a heavily redacted version, claiming security concerns. No satisfactory explanations have been given as to why emergency response plans⁵ were provided by Kinder Morgan to Washington State, while being deliberately withheld from Canadian intervenors.

The US Transportation Safety Board requires that pipeline companies provide ongoing public awareness, given the likelihood that the public will be first on the scene of a spill⁶. The B.C. government has said that disclosure of emergency plans south of the border “renders inexplicable” Kinder Morgan’s attempt to justify its secrecy, and that the redactions are “excessive, unjustified and prohibitive.” Furthermore, it “calls into serious question the legitimacy of [Kinder Morgan]’s claim that what is presumably almost identical information ought, for ‘personal,’ ‘security,’ or ‘commercial’ reasons, not to be disclosed.”

No Cross-Examination

In order to meet the new timelines, the Hearing Order decreed that cross-examination would be replaced by two rounds of written information requests (IRs).

The Government of Canada’s Department of Justice has informed the NEB that “cross-examination is necessary to ensure a proper evidentiary record [and] serves a vital role in testing the value of testimonial evidence. It assists in the determination of credibility, assigning weight and overall assessment of the evidentiary record...without cross-examination the Board will be reviewing only untested evidence.”

The ability of participants to challenge evidence effectively has been severely compromised.

The ability of participants to challenge evidence effectively has been severely compromised. The original concept, that the evidence would be subjected to questions, and then to questions raised by the applicant’s answers, has been lost altogether. Some of the evidence was notionally subject to this two-stage process, through written information requests. However, late-filed evidence has been effectively subject to no scrutiny at all, as this evidence was filed only days before the final information requests were due, leaving no time to consult experts and prepare effective questions. The written process fails completely when the evidence continues to change throughout the course of the hearing, as it has in this case. No one has confidence that the current process

will meaningfully test the evidence, which cross-examination would have enabled.

The effectiveness of the information request process was further impaired by a lack of organization: approximately 400 separate sets of questions were filed, in addition to the Board’s own; and a separate answer filed to each.



Photo by Andre Holdrinet

The morass of paper thus generated had to be searched document by document for responses, because in many cases, Kinder Morgan's answer to a question was "Please see response to [another intervenor's] IR # 37(1)(q)". It requires the full-time resources of several researchers to maintain any reasonable grasp on the evidence unfolding in such responses to information requests. Under the former process this evidence would have been produced in an open hearing room before all interested parties, and recorded in a single transcript available to all parties. Now it is spread among thousands of documents.

Perception of Bias

The answers provided thus far via information requests have been described as being so general that numerous intervenors filed motions to compel Kinder Morgan to file proper answers. For example, Ecojustice lawyers asked⁷ about the potential effects of an oil spill on fish. The entirety of Kinder Morgan's answer was to state that "Harm to marine fish populations seems to be the exception, rather than the rule, following marine oil spills."



The company refused to answer many of the questions posed to it. According to the City of Burnaby⁸, "in the first round of intervenor requests, of the 2,501 questions for which citizens, businesses and cities felt they had received inadequate responses, the NEB ordered that Kinder Morgan provide adequate responses for only 115 – 4.5%." After Kinder Morgan ignored the 80 questions posed by the B.C. government, the Province filed⁹ a motion (which was denied) that Kinder Morgan's failure to provide adequate responses "denies the parties a meaningful opportunity to test and clarify the evidence." Multiple municipal government intervenors have filed similar motions related to this potential breach of due process by Kinder Morgan, as the answers are vital for municipalities to make decisions about risks and to prepare their second round of information requests.

Of the 2501 questions for which citizens, businesses and cities felt they had received inadequate responses, the NEB ordered that Kinder Morgan provide adequate responses for only 115 – 4.5%.

An analysis of the Board's rulings reveals that of the numerous motions¹¹ filed by intervenors concerning issues of process and substance, only 11% were granted. In comparison, 80% of the motions filed by Kinder Morgan were granted in whole or in part (see graphic¹² from the City of Burnaby below).

Denied motions included time extensions on information requests, requests that Kinder Morgan be compelled to provide adequate responses to questions posed by intervenors, and motions to have information on emergency planning submitted. Some specific examples of denied motions included:

- ◇ Intervenor Marc Eliesen's brought a motion alleging bias on the part of Chair David Hamilton.
- ◇ Intervenor Robyn Allan filed a motion requesting the board provide for cross-examination in the hearing process.
- ◇ City of Vancouver filed a motion to request that the NEB consider the broader effects of the proposal including those relating to climate change.
- ◇ Intervenor Robyn Allan filed a motion identifying Kinder Morgan as being in violation of the NEB Act for failing to have the Board's approval for a change in corporate ownership of the project after a corporate restructuring.¹³
- ◇ SFU Professor Lynne Quarmby's motion on restrictions of freedom of expression regarding the "excluded issues".

Graphic Summary of National Energy Board (NEB) Rulings – The First Year

Of the 33 requests that asked the NEB for a significant action:

80% of Kinder Morgan's requests were granted. None were entirely denied



By contrast, 89% of those from intervenors were denied -- only 11% granted



Of the 2,501 questions for which citizens, businesses and cities felt they had received inadequate responses in the first round of intervenor requests, the NEB ordered that Kinder Morgan provide adequate responses for only 115 -- 4.5%. Ninety-six per cent of those questions remain unanswered



Graphic by City of Burnaby

Although none of these facts taken alone would establish in law that the NEB is biased toward the applicant, they do lead to a perception of bias by many observers and certainly fuel the public's growing mistrust in the process.

NEB Scope and Capacity

The NEB regulates pipelines and is responsible for ensuring such projects are safe and in the public interest. In 2012, Omnibus Bills C-38 and C-45 weakened Canada's¹⁴ environmental laws and changed the NEB's responsibilities and processes. The NEB is now the body also responsible for administering the new Canadian Environmental Assessment Act¹⁵ for pipeline projects. This shift has reduced the number and scope of environmental assessments and the opportunity for independent panel assessment. Changes to the National Energy Board Act politicized the process, removing the NEB's ability to reject a project. The NEB only makes a recommendation; the final decision to approve or reject a project lies with federal cabinet. Given that the multiple pipeline proposals currently under review already face drastically reduced timelines, there are concerns that the NEB's strained capacity is not adequately resourced to also oversee increased responsibilities for conducting environmental assessments and inspections.

Substandard Environmental Risk Assessments

The NEB has not required TMEP to conform to best practices in environmental or risk assessments:

- ◇ Mapping of the route is at such a broad, imprecise scale that assessing who and what is at risk is nearly impossible. At the April 2014 meeting of the City of Surrey Environmental Sustainability Advisory Committee, Kinder Morgan advised that 90% of the engineering had not been completed. Most questions from Committee members were met with evasive responses.
- ◇ The Credible Worst Case Scenarios currently being used to model potential impacts of an incident do not accurately depict what an actual worst case could look like, downplaying the extent of damages – for which we have no effective response mechanisms.
- ◇ Risk assessments offered by Kinder Morgan fail to conform to best industry practices. Instead, their assessments rely on proprietary, undisclosed data and models and further, rely on undisclosed or unsupported assumptions, making risk calculations meaningless.
- ◇ Mitigation measures are assumed to reduce risks, without any evidence being offered as to the design, effectiveness, or potential for implementation of those measures (e.g. tanker risk is presumed to be reduced by implementation of a tanker exclusion zone, essentially a travelling no-go zone around the vessel. This has never been used anywhere in the world, there is no evidence it would work, and there is not clarity about how it would be implemented).

How have British Columbians Responded to this process?

Between June-August 2014¹⁶, the City of Vancouver hosted an online survey which showed:

- ◊ 70% of respondents oppose the TMEP proposal.
- ◊ Half of the respondents do not believe that the NEB's review process is appropriate.

Municipalities

In 2014, the Union of B.C. Municipalities passed resolutions related to the NEB's TMEP process encouraging B.C. to withdraw from the Environmental Assessment Equivalency Agreement¹⁷, which delegates B.C.'s environmental assessment powers to the NEB. The UBCM wants B.C. to establish its own process for reviewing this pipeline that includes a full and fair assessment of upstream and downstream impacts, and considers the climate impacts of the project. Concerns expressed by the municipalities included the limits on participation and lack of cross-examination, the lack of required planning for and capacity of emergency responders, the safety of the 700 streams and 12 watersheds crossed, and Kinder Morgan's failure to respond to Information Requests.

The Federation of Canadian Municipalities¹⁸ passed a resolution in March 2015 that questioned the level of discretion afforded the NEB and called on it to reinstate full public hearings processes because the current situation represented a "significant erosion of the democratic rights of provinces, territories, local governments, First Nations and citizens."

On March 31, 2015 seven B.C. Mayors¹⁹ (Vancouver, Burnaby, New Westminster, City of North Vancouver, Victoria, Squamish, and Bowen Island) signed a declaration of non-confidence in the NEB process and petitioned the federal government to put the TMEP pipeline proposal on hold. The declaration states that the NEB review hearings are "no longer a credible process from either a scientific evidentiary basis, nor from a public policy and public interest perspective." The mayors also supported B.C. withdrawing from the Environmental Assessment Equivalency Agreement²⁰.



Intervenors are Withdrawing

Marc Eliesen²¹ wrote a scathing letter withdrawing from participating as an intervenor criticizing many aspects of this ‘fraudulent process’ with a pre-determined outcome due to the bias of the NEB. As a former board member of Suncor Energy, CEO of B.C. Hydro, Chair of Manitoba Hydro and deputy minister in several federal and provincial governments, he had been involved in many reviews of this nature and stated that “for them to suggest they’ve [substituted IRs for cross-examination] in the past is totally misleading and erroneous. We’ve never had in the history of the NEB a public hearing process (for a new oil pipeline) in which there was no oral cross examination... You have a situation here where all intervenors have done due diligence and have put in a heck of a lot of work and time and cost...and you submit all these questions. And you have proponents refusing to answer questions,” said Eliesen²². “Proper and professional public interest due diligence has been frustrated, leading me to the conclusion that this Board has a predetermined course of action to recommend approval of the Project and a strong bias in favour of the Proponent. In effect, this so-called public hearing process has become a farce, and this Board a truly industry captured regulator.”

“This so-called public hearing process has become a farce, and this Board a truly industry captured regulator.”

- Marc Eliesen



Photo by Arthur Chapman

“The review is not conducted on a level playing field. The Panel is not an impartial referee. The game is rigged...”

- Robyn Allan

Economist Robyn Allan, former CEO of ICBC, has also withdrawn. Her letter²³ states: “The review is not conducted on a level playing field. The Panel is not an impartial referee. The game is rigged...The NEB has unconscionably betrayed Canadians through a restricted scope of issues violated the rules of procedural fairness and natural justice, and based its decision-making in favour of Kinder Morgan...We are being conned by the very agency entrusted to protect us. This must stop. The health and welfare of our economic, social and environmental systems are at stake.”

Recently, Watershed Watch Salmon Society has withdrawn, stating “no confidence in the fairness, objectivity, and appropriateness of the NEB’s review process for this project.”

Court Cases

The NEB is facing numerous lawsuits²⁴, beyond the First Nations challenges.

A group of parties and individuals excluded from participating in the NEB-TMEP process are currently seeking leave to appeal a Federal Court of Appeal ruling to the Supreme Court of Canada²⁵, claiming this process is unconstitutional because the new restrictions violate the applicants' freedom of expression under section 2(b) of the Canadian Charter of Rights and Freedoms. "The amendments not only restrict who can speak to issues before the National



Energy Board, but they also limit what those individuals are allowed to say," said ForestEthics Advocacy board member Tzaporah Berman.

"Canadians deserve a fair public debate about the future of our economy and energy systems. Right now, they aren't getting it." The individuals involved are concerned about the new undemocratic limits on participation and the exclusion of issues that relate to public and environmental interests (particularly impacts on climate and responsible resource development). David Martin, the group's lawyer, said, "We believe the legislation is unconstitutional. It violates freedom of expression and it precludes the public from properly participating in the National Energy Board hearings."

On September 26, 2014, the B.C. Supreme Court denied the City of Burnaby the right to appeal the decision of the NEB to allow Kinder Morgan to undertake survey work and test drilling on Burnaby Mountain Conservation Land. The decision infuriated residents, environmental, faith and many other groups and they began demonstrating against the work on the mountain. Kinder Morgan responded by filing a \$5.6-million civil suit against five people for speaking out and allegedly interfering with contractual relations. The media quickly identified the civil suit as a SLAPP suit, or "strategic litigation against public participation." SLAPP suits are generally not likely to succeed in court – their goal is not to win, but to silence critics. SLAPP suits tie up and drain resources, divide groups and may also dissuade others from speaking out and excising their rights to freedom of expression.

"The amendments not only restrict who can speak to issues before the National Energy Board, but they also limit what those individuals are allowed to say."

- Tzaporah Berman

When it became apparent that Kinder Morgan was losing the publicity war, the corporation offered the defendants a “discontinuance”, which two accepted. Discontinuance, however, is not a settlement, so the civil suit allegations against the defendants stand. Nor does it result in the corporation paying for court costs. Three of the defendants refused to settle. Burnaby resident Alan Dutton took Kinder Morgan back to court claiming the civil suit was, in fact, a SLAPP suit and sought damages. Dutton lost the case but Kinder Morgan issued a unilateral discontinuance against the three remaining defendants, which meant liability for Kinder Morgan to pay a portion of the mounting court costs.

On December 12, 2014, the Federal Court of Appeal dismissed the City of Burnaby’s appeal²⁶ of a NEB decision that federally regulated pipeline companies have the power to access public and private lands for the purposes of performing surveys and investigations under the *National Energy Board Act*. Burnaby had argued that the NEB does not have the jurisdiction to forbid Burnaby from enforcing its by-laws. The NEB Order and the denied appeal confirm that where federal laws conflict with municipal by-laws and dual compliance is impossible, federally regulated pipeline companies have the power to access public and private lands for the purposes of performing surveys and investigations.

The B.C. Government has Questions

B.C.’s Environment Minister Mary Polak said the province has its “own issues with the process,”²⁷ which include the NEB defending Kinder Morgan’s right to withhold critical information²⁸. Kinder Morgan is not being compelled to answer questions that allow the Province to conduct their due diligence in assessing the risks and mitigation measures necessary to protecting B.C.’s environment and public interests, such as the emergency response measures.

In 2010, the Province of B.C. signed an “Environmental Assessment Equivalency Agreement,”²⁹ however the NEB has failed to provide a rigorous and comprehensive equivalent process³⁰. The B.C. government can withdraw from the equivalency agreement at any time. The latest deadline for withdrawal would be 30 days before an approval decision regarding the TMEP is made under the *National Energy Board Act*, which could occur as early as January 2016.

In November 2014 a Dogwood / McAllister poll found 71% of those surveyed in provincial riding of Burnaby North agree the Province of B.C. should hold its own independent review of the TMEP project.



Photo from Wikimedia Commons

Notes

- ¹ http://www.neb-one.gc.ca/prtcptn/hrng/prtcptnthrhnggdncs52_2-eng.pdf
- ² https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449981/2540970/A98-1_-_Ruling_No._41_-_Ruling_on_Participation_-_Trans_Mountain%E2%80%99s_new_preferred_corridor_through_Burnaby_Mountain_-_A4D7G2.pdf?nodeid=254086
- ³ <http://twnsacredtrust.ca/constitutionality-of-kinder-morgan-trans-mountain-review-process-in-question-open-letter/>
- ⁴ http://www.twnation.ca/en/~media/Files/Press%20Releases/TWN%20-%20NEB%20-%20Legal%20Backgrounder%20-%20CLEAN_VAN_LAW-1461360-v4.ashx
- ⁵ <http://www.desmog.ca/2015/02/12/what-kinder-morgan-keeping-secret-about-its-trans-mountain-spill-response-plans-and-why-it-s-utterly-ridiculous>
- ⁶ The final report of the Enbridge spill in [Michigan's Kalamazoo River](#) asserted that "Public knowledge of pipeline locations and the hazards associated with the materials transported is critical for successful recognition and reporting of releases, as well as the safe response to pipeline ruptures... A pipeline presents a unique challenge to awareness because it is often buried. When pipeline releases occur, a properly educated public can be the first to recognize and report the emergency." p.103
- ⁷ <http://www.desmog.ca/2014/07/09/fish-are-fine-kinder-morgan-says>
- ⁸ <http://www.burnaby.ca/Assets/TMEP/NEB+Shows+Bias+in+First+Year+of+Rulings+as+Vast+Majority+of+Substantive+Rulings+Favour+Kinder+Morgan.pdf>
- ⁹ <http://www.desmog.ca/2014/07/04/bc-government-calls-neb-compel-kinder-morgan-answer-oil-spill-questions>
- ¹⁰ Abbotsford, Burnaby, Port Moody, Surrey, and Vancouver, the District of West Vancouver, the Fraser Valley Regional District, and the Regional District of Fraser-Fort George.
- ¹¹ Simply, a motion is a procedural step that an intervenor can take to have the NEB to rule on a question.
- ¹² <http://www.burnaby.ca/Assets/TMEP/Graphic+Summary+of+National+Energy+Board+Rulings+-+The+First+Year.pdf>
- ¹³ Robyn Allan, Motion December 10, 2014. *"Kinder Morgan Canada Inc. does not have authority to operate the Trans Mountain Pipeline system and has not had authority to do so since February 14, 2008. The entity holding certificates authorizing system operation—Trans Mountain Pipeline Inc.—no longer exists and Kinder Morgan Canada Inc did not seek leave to transfer the certificates from Trans Mountain Pipeline Inc. to Trans Mountain Pipeline ULC or to change the name from Trans Mountain Pipeline Inc. to Trans Mountain Pipeline ULC."*
- ¹⁴ <http://wcel.org/resources/environmental-law-alert/greenwashing-canada-enviro-assessment-laws>
- ¹⁵ http://www.elc.ab.ca/Content_Files/Files/Bill38AnalysisArticlefinal.pdf
- ¹⁶ <http://www.mayorofvancouver.ca/nebreview#more-3801>
- ¹⁷ http://www.eao.gov.bc.ca/pdf/NEB-EAO_Equivilancy_Agreement_20100621.pdf
- ¹⁸ <http://www.burnabynow.com/news/federation-of-canadian-municipalities-backs-burnaby-s-call-to-reinstate-full-neb-hearings-1.1789467>
- ¹⁹ <http://vancouver.ca/news-calendar/mayors-stand-together-against-kinder-morgan-pipeline-proposal.aspx>

Notes

²⁰ http://www.eao.gov.bc.ca/pdf/NEB-EAO_Equivalency_Agreement_20100621.pdf

²¹ https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2451033/2543157/C118-6-1_-_Marc_Eliesen_Letter_of_Withdrawal_-_A4E1Q6.pdf?nodeid=2543843&vernum=-2

²² <http://www.vancouverobserver.com/news/former-bc-hydro-ceo-calls-neb-industry-captured-pulls-out-kinder-morgan-hearings>

²³ https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2558704/2776410/C9-31-1_-_Withdrawal_Letter_-_A4L3S6.pdf?nodeid=2776227&vernum=-2

²⁴ Current court challenges to TMEP found at <http://www.neb-one.gc.ca/pplctnflng/crt/index-eng.html>

- ◇ *L. Quarmby, E. Doherty, R. Walmsley, J. Vissers, S. Samples, Forestethics Advocacy Association, T. Berman, J. Clarke, and B. Shende v. Canada (AG), Trans Mountain Pipeline ULC, Canadian Association of Petroleum Producers, and NEB.*
- ◇ *City of Burnaby v. Trans Mountain Pipeline ULC and NEB*
- ◇ *L.D. Danny Harvey v. NEB and Trans Mountain Pipeline ULC*
- ◇ *City of Vancouver v. NEB and Trans Mountain Pipeline ULC*
- ◇ *Tsleil-Waututh Nation v. NEB, Trans Mountain Pipeline ULC, and Canada (A-G)*

²⁵ <http://www.watershedsentinel.ca/content/national-energy-board-act-court-challenge-backgrounder>

²⁶ <http://www.osler.com/NewsResources/Court-Denies-Challenge-to-NEB-Jurisdiction-over-Access-to-Municipal-Lands/>

²⁷ <http://www.theglobeandmail.com/news/british-columbia/kinder-morgan-pipeline-hearings-a-farce-former-bc-hydro-chief-says/article21433093/>

²⁸ <http://www.desmog.ca/2015/01/19/national-energy-board-rules-kinder-morgan-can-keep-pipeline-emergency-plans-secret-weakens-faith-process>

²⁹ http://www.eao.gov.bc.ca/pdf/NEB-EAO_Equivalency_Agreement_20100621.pdf

³⁰ From the City of Victoria UBCM Motion August 21, 2014: On June 21, 2010, the EAO and the NEB entered into an agreement respecting the environmental assessment of “Projects” (the definition of which includes “a transmission pipeline”) that are reviewable under both the Reviewable Projects Regulation, B.C. Reg. 370/2002, and the National Energy Board Act, R.S.C. 1985, c. N-7 (“NEB Act”). The Agreement provides that an NEB assessment of such Projects constitutes an equivalent assessment under sections 27 and 28 of the BCEAA. The Agreement is premised upon an understanding that an NEB assessment “would take into account any comments submitted during the assessment process by the public and Aboriginal peoples”. The EAO has the right, under clause 6 of the Agreement, to terminate the Agreement upon giving 30 days written notice to the NEB. This Agreement was the reason there was no provincial environmental assessment of the Northern Gateway pipeline.

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