





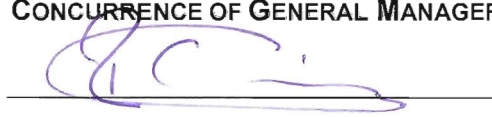

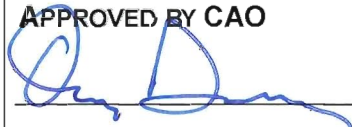
**To:** General Purposes Committee **Date:** February 2, 2015  
**From:** John Irving, P.Eng. MPA **File:** 10-6125-30-001/Vol 01  
 Director, Engineering  
 Amarjeet S. Rattan  
 Director, Intergovernmental Relations & Protocol Unit  
**Re:** **Trans Mountain Pipeline Project National Energy Board - Update**

**Staff Recommendation**

That the attached staff report titled “Trans Mountain Pipeline National Energy Board (NEB) Update” from the Director, Engineering and Director, Intergovernmental Relations & Protocol Unit, dated February 2, 2015, be received for information.

  
 John Irving, P.Eng. MPA  
 Director, Engineering  
 (604-276-4140)

  
 Amarjeet S. Rattan  
 Director, Intergovernmental Relations & Protocol Unit  
 (604-247-4686)

REPORT CONCURRENCE		
<b>ROUTED TO:</b>	<b>CONCURRENCE</b>	<b>CONCURRENCE OF GENERAL MANAGER</b>
Emergency Programs Fire Rescue	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	
<b>REVIEWED BY STAFF REPORT / AGENDA REVIEW SUBCOMMITTEE</b>	<b>INITIALS:</b> 	<b>APPROVED BY CAO</b> 

## Staff Report

### Origin

At the December 17<sup>th</sup>, 2014 Regular Council meeting the following resolutions for the Trans Mountain Pipeline Project, NEB were adopted:

*That the staff report titled Trans Mountain Pipeline Project National Energy Board (NEB) – Update and Intervenor Opportunities, dated December 1, 2014, from the Director, Engineering and Director, Intergovernmental Relations & Protocol Unit, providing details on the Kinder Morgan-led pipeline expansion project and National Energy Board (NEB) review process, be received for information; and*

*That staff proceed with a submission for Information Requests to the NEB, detailed in Attachment 1 of the staff report titled Trans Mountain Pipeline Project National Energy Board (NEB) – Update and Intervenor Opportunities, dated December 1, 2014, from the Director, Engineering and Director, Intergovernmental Relations & Protocol Unit, for the January 9, 2015 NEB deadline for Intervenor’s Status.*

As per Council’s direction, staff submitted Information Request #2 for the Trans Mountain Pipeline Project to the NEB (Attachment 1).

The intent of this report is to provide an update on the NEB process for the Trans Mountain Pipeline Project, including upcoming opportunities for Intervenor participation.

### Background

#### NEB Review Process Update

The Trans Mountain Pipeline Expansion Project (TMEP) is continuing through the National Energy Board (NEB) review process. As an Intervenor in the process, the City of Richmond was able to submit questions to the Proponent regarding Council’s concerns as part of the second Information Request #2 window that closed on January 16, 2015. The responses to these questions are expected on or before February 18, 2015.

On the same date, Intervenor’s are able to submit further Information Requests to the Proponent related to a marine traffic safety report released by TERMPOL, a Transport-Canada mandated interdepartmental committee charged with reviewing issues and risks related to the location and operation of marine terminals for large oil tankers. Transport Canada released this detailed report on December 11, 2014, and Staff is currently reviewing to determine if findings of the report are relevant to Richmond’s concerns related to the TMEP. Staff is preparing to submit TERMPOL Information Requests by the deadline on February 18, 2015.

Aside from reviewing the responses to Information Request #2 and questioning the TERMPOL report, the City’s next major milestone opportunity in the NEB process is entering written evidence to the Panel prior to May 27, 2015. Based on the terms of the review, evidence may comprise any “collection of facts or information that support your views or beliefs about the

project”, and may include original research, but must relate directly to one or more items on the “List of Issues” outlined in the original Hearing Order for the project (Attachment 2).

The proponent, the NEB, or other Intervenors would then have an opportunity to cross-examine evidence the City provides, as the City would have the opportunity to cross-examine the evidence provided by others – a process that is anticipated to continue until early August, 2015. Oral hearings are then anticipated to proceed in August 2015.

### **Analysis**

As the NEB process continues, the following considerations should be taken into account to determine whether or not the City participates in upcoming written evidence and oral hearing opportunities:

- The NEB process ends when the Board releases its report to the Governor in Council and provides it to the Minister of Natural Resources, an event that is scheduled for January 31, 2016. It is important to note that under the NEB Act, the final approval/denial decision (and any associated conditions) is made by Cabinet, and not by the NEB. The timing for this final decision is after the Elections-Act mandated date for the next Federal Election (October 19, 2015), making it unclear who will be in Cabinet at the time of the final decision and what factors will influence the final decision.
- If the Trans Mountain Expansion project is unsuccessful with the current footprint, a project with an alternate footprint with higher potential for impact on the City of Richmond could be considered in the future.
- Council has previously expressed concerns about this project, including potential impacts on the City and the Fraser River and marine foreshores of Richmond, and the ability for emergency services to respond to a significant spill or other incident along the line. Many of these concerns are also being expressed by other Intervenors and stakeholders in the process.

### External Legal Council Costs

Staff have compiled order of magnitude cost estimates in the table below to illustrate general costs associated with participation in the upcoming NEB *written evidence* and *oral hearing* phases of the TMEP. This estimate does not include costs associated with the opportunity for the City, through legal counsel, to cross-examine the evidence provided by others.

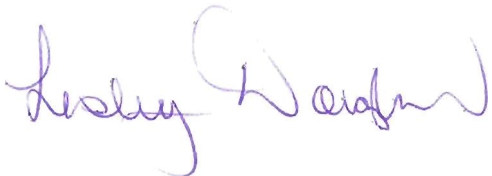
Step	Timing	Estimated Cost (external counsel)	Staff time
Prepare written evidence submission	May 27, 2015	\$75,000 - \$125,000	1 FTE for 2 weeks
Address Proponent and other Intervenor IRs regarding evidence	June 22, 2015		1 FTE for 1-5 days
Address NEB IRs regarding written evidence	July 29, 2015		
Oral Hearing Process tracking & reporting	6 – 8 weeks, beginning in August, 2015	\$75,000 - \$100,000	1/2 FTE for 6-8 weeks
Oral hearing active participation	2-3 days during August/September	\$10,000 - \$20,000	
	Total Estimated Costs -	\$160,000 - \$245,000	

### Financial Impact

None at this time. If Council chooses to proceed with participation in the upcoming NEB written evidence and oral hearing phases of the TMEP, the associated external costs will be in the range of \$160,000 - \$245,000. This order of magnitude cost estimate is for external legal counsel fees and does not include estimates for disbursements. As technical details of the hearing are not yet known, the estimate does not include the potential costs for the retaining of technical subject matter experts if required through legal counsel.

### Conclusion

Although the project footprint is outside of Richmond, Council has identified concerns in regards to the project and potential risks to Richmond's foreshore areas and has opted to be an Intervenor in the NEB review process. City staff will continue to participate in the Information Request opportunities remaining in the process, with a focus on ensuring the management of spill response along the Fraser River foreshore and proceed accordingly, as directed by Council.



Lesley Douglas  
Manager, Environmental Sustainability  
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AR:ld

- Att. 1: Information Request #2 to Trans Mountain (3p)  
2: "List of Issues" from NEB Hearing Order (1p)

**ATTACHMENT 1**

**Hearing Order OH-001-2014  
Trans Mountain Pipeline ULC (Trans Mountain)  
Application for the Trans Mountain Expansion Project (Project)**

**Information Request #2 to Trans Mountain  
(3 pages)**

Concern: Project Footprint.

Since the process of National Energy Board (NEB) review began, Trans Mountain (TM) have made several changes to the project footprint, including a fundamental shift in routing to include a bored tunnel through the Burnaby Mountain Conservation Area and a new routing through Surrey Bend Regional Park.

The City of Richmond (COR) understands that minor routing and footprint adjustments would be anticipated through the planning process, as alternate routes that reduce the environmental and socio-economic risk of the project may be identified and become preferred options for the majority of stakeholders. However, the COR is very concerned that route changes that are introduced at intermediate or late stages of the process do not provide adequate opportunities for communities or individuals that may be impacted to properly partake in the review process.

Information Requests:

- 1) What were the criteria used to establish the routing and site of the project?
- 2) What other options were reviewed in regards to routing and siting of facilities, and what were the factors that caused the other options to not be selected for public review?
- 3) Are more revisions of the siting and routing of the project anticipated?
- 4) On what date will the final routing of the project be finalized?
- 5) What principles are applied to determine if project changes, including footprint changes, require initiating a new review process under the NEB Act? Specifically, which of these listed changes would require a new NEB review process to be initiated:
  - a) A shift in export terminal location;
  - b) A change in the size or layout of the storage facility in Burnaby Mountain, or movement of this terminal;
  - c) The introduction of a new storage facility along the route between the existing facilities in Edmonton and Burnaby;
  - d) A change in the proposed Fraser River crossing location or technology;
  - e) A change in routing that results in expansion of the project footprint to a different municipality, Regional District, or other administrative area;

- f) An expansion of accessory pipelines, such as the Kinder Morgan owned spurs to Cherry Point in Washington State and Vancouver International Airport;
- g) A change in the throughput capacity or number of pipelines within the project right-of-way;
- h) A change in the proposed mixed of products to be transmitted (refined product vs. dilbit), or the introduction of condensate import and upstream shipment.

Concern: Protection of the Fraser River (fate and effects).

The Fraser River presents various challenges to the management of spilled heavy oil products. A significant spill from the pipeline in the vicinity of the Fraser River Crossing (Port Mann), or within any of a dozen watercourses being crossed between Langley and Burnaby would result in an introduction of a large volume of hydrocarbons either directly into the Fraser River, or into a combination of storm drainage and natural watercourses that would connect rapidly to the Fraser River. Based on the application, much of this product would be “entrained” along the foreshore of Lulu Island, which contains regionally-important ecosystem services and RAMSAR-designated wetlands of international importance. The lower Fraser River also includes significant job-supporting land-use vital to the City of Richmond’s economic base.

Information Requests:

- 6) Provide a detailed assessment of the areas of Lulu Island foreshore that would be impacted in a Worst Case Scenario breach of the pipeline, whether this breach resulted in a spill directly to the Fraser River, or to a direct tributary of the Fraser River in a location that would potentially result in preleased product reaching Lulu Island;
- 7) Provide a detailed inventory of ecological condition of the Lulu Island foreshore areas likely to be impacted by a spill into the lower Fraser River;
- 8) Please provide a detailed explanation of the varying products that will be carried in the pipelines after expansion, and what differing approaches would be required based on a spill of bitumen vs. the range of potential refined products;
- 9) Provide a detailed fate assessment (portions that will be floating, adsorbed, dissolved, entrained, evaporated, stranded, ingested, etc.) for each of the proposed products, that addresses directly in the influence of these factors relevant directly to the lower Fraser River:
  - a) The highly variable seasonal temperature of the river and the air;
  - b) The high silt and sediment load in the river;
  - c) The tide ranges, and extensive intertidal wetlands;
  - d) The highly variable current, including tidal flux and freshet flows;
  - e) The presence of the “salt wedge” and mixing zone between fresh and marine water;
  - f) The influence of marine traffic and log booms on spill distribution.

- 10) Based on the experience of the Marshall Spill of 2010 in Kalamazoo River, what portion of spilled product is expected to sink, and what would be the approach to addressing sunk product, including during important fisheries times?
- 11) Provide details of the compensation strategy for lost wetlands adjacent to Lulu Island, and for businesses disrupted by a spill or resultant clean-up efforts.

Concern: Protection of the Fraser River (response gaps).

The Federal Government (as represented by the NEB) and the Provincial Government (as outlined in the Ministry of Environment's "Five Conditions" consultations documents) share jurisdictional authority over the foreshore of the Fraser River.

The Federal Government addresses responsibility for spills and response by the agency responsible for the product prior to spillage - be it a railway or trucking company (Transport Canada), a terminal facility (Port Metro Vancouver), a ship (Coast Guard), or a pipeline (National Energy Board). The Province is developing a system where spills are addressed by a Maritime Spill Response Agency if they are into marine and estuarine waters, and a Land-based Spill Response Agency if the spill occurs on land.

Increasingly, local government agencies are being pressed to deal with spill events, even in areas of senior government jurisdiction such as the Fraser River foreshore, as senior governments reduce staffing levels of the agencies responsible for protecting navigable waters, natural areas, and fishery habitats.

Information Requests:

- 12) Detail any gap analysis performed to identify the jurisdictional limits and potential overlap/conflict of clean-up responsibility and cleanup agency lead;
- 13) Detail anticipated efforts to contain and clean-up such a spill, including upstream and downstream transportation of entrained or adsorbed product, the jurisdictional authorities that may be engaged in all aspects of these efforts, and provide a geographic description of potential gaps and overlap;
- 14) Detail any anticipated requirement for response from local governments in the event of a spill impacting the lower Fraser River. How will this response be directed, and under what authority?
- 15) Detail any limitations to access to the foreshore or river in the event of a spill and necessary clean-up effort.

## Appendix 2 - List of Issues

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1. The need for the proposed project.
2. The economic feasibility of the proposed project.
3. The potential commercial impacts of the proposed project.
4. The potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project, including those required to be considered by the NEB's *Filing Manual*.
5. The potential environmental and socio-economic effects of marine shipping activities that would result from the proposed project, including the potential effects of accidents or malfunctions that may occur.
6. The appropriateness of the general route and land requirements for the proposed project.
7. The suitability of the design of the proposed project.
8. The terms and conditions to be included in any approval the Board may issue.
9. Potential impacts of the project on Aboriginal interests.
10. Potential impacts of the project on landowners and land use.
11. Contingency planning for spills, accidents or malfunctions, during construction and operation of the project.
12. Safety and security during construction of the proposed project and operation of the project, including emergency response planning and third-party damage prevention.

The Board does not intend to consider the 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.