



Update to Membership — July 10, 2019

TRANS MOUNTAIN EXPANSION PROJECT: Background, Squamish Nation Decisions & Next Steps

This briefing note is to provide an update to the Squamish Nation members on Squamish Nation’s activities and Court challenge to the Trans Mountain Expansion Project (“TMX Project”), and to share our next steps.



Photo credit: Ted McGrath

BACKGROUND/TIMELINE

- Dec. 16, 2013 Kinder Morgan makes an application to the National Energy Board (NEB) to expand the Trans Mountain pipeline, tripling the capacity of the almost 70 year-old pipeline, and resulting in a minimum of a seven-times increase in tanker traffic in the Burrard Inlet. This would increase the likelihood of a diluted bitumen (an extra toxic version of tar sands oil) spill in Squamish Nation territory.
- April 2, 2014 The National Energy Board hearing for the TMX Project commences. Squamish Nation participates in this process and raises concerns about the Project.
- Jan. 27, 2016 The Trudeau government introduces interim measures for pipeline reviews, including TMX, promising that reviews will be based on science and that Aboriginal peoples will be meaningfully consulted and, where appropriate, accommodated.
- May 17, 2016 Ottawa appoints a three-member ministerial panel to engage with communities on the TMX Project. The panel identifies six unanswered questions with respect to the TMX Project after the NEB review.



- May 19, 2016 The NEB recommends approval of the TMX Project, subject to 157 conditions.
- Nov. 29, 2016 The Trudeau government approves the TMX Project.
- March 1, 2017 The Squamish Nation, along with five other First Nations, file court challenges in the Federal Court of Appeal seeking to quash the approval of the TMX Project due to, amongst other things, Canada’s flawed consultation process and the failure to protect the Squamish Nation’s Indigenous rights and title.
- April 8, 2018 After much opposition from stakeholders in BC—including legal challenges from the Province, municipalities, and First Nations—Kinder Morgan suspends the TMX Project and set a May 31 deadline to reach agreements with stakeholders.
- May 29, 2018 The Trudeau government announces it will purchase the Trans Mountain pipeline and expansion project from Kinder Morgan for \$4.5 billion. The purchase includes all work, permits, approvals, etc. for the TMX Project.
- Aug. 30, 2018 The Federal Court of Appeal overturns the Trudeau government’s approval of the TMX Project, including on the basis that Canada breached its obligations to consult and accommodate the Squamish Nation and the other First Nation applicants.
- Aug. 31, 2018 The Trudeau government purchases the TMX Project.
- Sept. 20, 2018 In accordance with the decision of the Federal Court of Appeal, Cabinet orders the NEB undertake an environmental assessment of the Project-related marine shipping for the TMX Project that would introduce at a minimum 408 new tanker in the Salish Sea.
- Oct. 5, 2018 Minister Sohi initiates a new round of consultation with First Nations. No deadline is set for the completion of the process.
- Jan. through May 2019 The Squamish Nation meets with federal government representatives to reiterate the real concerns the Nation has identified with the Project and the impacts on Squamish’s rights and title.
- Feb. 22, 2019 The NEB recommends to Cabinet that it approve the Project again, subject to 156 conditions and 16 new conditions.
- June 18, 2019 The Trudeau government approves the TMX Project for a second time, without consideration of or protection for the Indigenous rights and title of the Squamish Nation.



REASONS FOR CHALLENGING THE APPROVAL OF THE PROJECT

The Squamish Nation has challenged the TMX Project in Court because of the failure of Canada to fulfill its obligations to consult and accommodate Squamish prior to approving the Project. The Project poses a significant risk to the Nation's unceded territory, to the community's continued reliance on the marine and aquatic environment, and to the existence of the Southern resident orca – a species of cultural importance that is recognized to be in a critical state. Prior to approving the Project, Canada should have ensured Squamish's interests were protected, and meaningfully engaged with Squamish, but failed to do so.

The Squamish Nation has raised that:

- a. The fate of diluted bitumen in the marine environment and its impacts to our territory are not well understood and could be catastrophic if a spill submerges or sinks.
- b. The Project could have devastating impacts on the Southern resident orca population that is extremely endangered and Canada does not have measures in place to mitigate those impacts.
- c. The TMX Project, and the associated 408 tankers, would contribute to the cumulative impacts to the Salish Sea and Canada has not studied or considered those impacts.
- d. A spill from the Project is likely and would have devastating impacts on Squamish.

SQUAMISH NATION DECISIONS

1. Challenge to the Federal Approval

- The Squamish Nation Council has approved proceeding with an application to seek leave to challenge the second approval of the TMX Project by the Trudeau government. The Nation has to seek leave to challenge the TMX Project because of a requirement in the *National Energy Board Act*. We estimate it will take a few months before we have a decision from the Court on the leave application.
- If the Squamish Nation is granted leave to challenge the Project, Squamish will file an application for judicial review seeking to have the Court overturn the approval on the basis of the failure of Canada to consult and accommodate Squamish.

2. Challenge to the Provincial Approval

- On April 20, 2017, the Squamish Nation also filed a court challenge in the British Columbia Supreme Court with respect to the BC Government's approval of the TMX Project under the BC Liberals with Christy Clark and their failure to address



the rights and title of the Squamish Nation. The Squamish Nation lost in the BC Supreme Court on May 24, 2018.

- On June 25, 2018, the Squamish Nation appealed the decision of the Supreme Court. If successful in the BC Court of Appeal, the Court may quash the BC Government's approval of the TMX Project and order they conduct a new process to address the Squamish Nation's rights and title.

3. Option to Purchase Stake

- On many occasions, a small group of First Nations have attempted to approach the Squamish Nation with an invitation to explore purchasing the Trans Mountain pipeline and TMX Project from the federal government. The Squamish Nation has declined these invitations and is not interested in buying the pipeline project.

NEXT STEPS

If the Squamish Nation is granted leave to challenge the approval of the TMX Project, Squamish will participate in a hearing before the Federal Court of Appeal, which will likely include all the other groups (First Nations and environmental groups) challenging the Project. If we are successful again, the Court may order the Trudeau government back to the table to address the Squamish Nation's concerns meaningfully.



Photo credit: NOAA Fisheries West Coast

