

NATIONAL ENERGY BOARD

IN THE MATTER OF the *National Energy Board Act*, R.S.C. 1985, c. N-7, as amended
("NEB Act") and the Regulations made thereunder;

AND IN THE MATTER OF an application by Trans Mountain Pipeline ULC as General Partner of Trans Mountain Pipeline L.P. (collectively "Trans Mountain") for a Certificate of Public Convenience and Necessity ("CPCN") and other related approvals pursuant to Part III of the NEB Act for the Trans Mountain Expansion Project ("Project");

AND IN THE MATTER OF the National Energy Board's reconsideration of aspects of its Recommendation Report ("Report") as directed by the Governor in Council through Order in Council P.C. 2018-1177 (the "Reconsideration").

MÉTIS NATION BC OPENING STATEMENT

5 December 2018

INTRODUCTION:

The Métis Nation British Columbia (MNBC) represents nearly 90,000 self-identified Métis people in British Columbia. Of that, over 18,500 are provincially registered Métis Citizens of MNBC. Recognized by the Métis National Council, the Province of British Columbia and the Government of Canada, the MNBC is the official governing body of the Métis in BC. MNBC represents thirty-eight (38) Métis Chartered Communities in British Columbia and is mandated to develop and enhance opportunities for Métis communities by implementing culturally relevant social and economic programs and services. MNBC's Ministry of Natural Resources (the "Ministry") will advocate for consultation with government and industry where actions and activities on provincial and federal crown lands (or towards crown resources) have the potential to infringe on Métis rights and traditional land-uses. The BC Métis Assembly of Natural Resources (BCMANR), is comprised of eight regional Captains of the Hunt.

MNBC has significant concerns about the risks posed by the proposed Project. The Métis Nation and its citizens depend on the marine environment and its resources for food, social, and ceremonial purposes. Each of these usages stands to be significantly altered if not permanently changed.

MNBC contends it must play a larger role in project monitoring and oversight. MNBC has thus far been prevented from taking a seat on the Indigenous Advisory and Monitoring Committee.

SUMMARY OF EVIDENCE:

MNBC's written evidence demonstrates a deep connection to the lands and waters of British Columbia. Beyond harvesting for food, social, and ceremonial purposes mentioned above, a number of our Métis Citizens rely on the Salish Sea for their livelihood in the commercial fishing industry. Further, we aspire to have economic development through commercial fishing opportunities as a Nation. Lastly, MNBC has grave concerns regarding the southern resident killer whale (SRKW), migratory shorebirds, and seabirds.

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MÉTIS NATION BC WRITTEN EVIDENCE

5 December 2018

INTRODUCTION:

The governing body for Métis in this province is Métis Nation British Columbia (“MNBC”). MNBC was formally incorporated in 1996 under the Métis Provincial Council of British Columbia (MPCBC). In 2003, the Métis leadership ratified the Métis Nation British Columbia *Constitution* and, in so doing, established the new Métis Nation governance structure that persists today.¹ MNBC represents over 18,500 citizens in 38 Métis Chartered Communities from seven regions in the Province. Since ratifying the *Constitution* in 2003, MNBC has developed laws, regulations, and policies for maintaining, protecting, and furthering the Aboriginal rights of its citizens in this province.

Under MNBC’s *Métis Nation British Columbia Consultation Guidebook* (“Consultation Guidebook”), MNBC’s Ministry of Natural Resources and the BCMANR have a duty to “advocate for consultation with government and industry where actions and activities on provincial and federal crown land (or towards crown resources) have the potential to infringe on Métis rights and traditional land-uses.”² Furthermore, the Consultation Guidebook states that, “[t]he MNBC Ministry of Natural Resources will advocate and manage, where applicable, the consultation process and, where necessary consult directly with the Métis Chartered Communities where land management and resource development on provincial or federal crown land may infringe Métis rights and traditional land-use”.³

MNBC’s Ministry of Natural Resources (the “Ministry”) is mandated to address natural resource issues on behalf of MNBC’s Métis citizens.⁴ The BC Métis Assembly of Natural Resources is comprised of eight delegates of the MNBC regions (region 7 is divided in two) to represent the natural resources needs in that region.⁵

MNBC and the Government of British Columbia signed a 2006 Métis Nation Relationship Accord “to signify a positive working relationship” with all the self-identifying Métis in BC, and set out a number of objectives to address a number of concerns of the Métis community.⁶ British Columbia and MNBC signed a further 2016 Métis Nation Relationship Accord II on Louis Riel Day (November 16, 2016) “to renew the commitment to work together for the betterment of Métis people throughout BC”.⁷

As a Governing Member of the Métis National Council, MNBC also signed the Canada-Métis Nation Accord with Prime Minister Trudeau in April of 2017. The accord details a number of agreements regarding Métis issues, addresses the need to strengthen the government-to-government fiscal

¹ For a full description of this governance structure see

http://webcache.googleusercontent.com/search?q=cache:http://www.mnbc.ca/pdfs/constitution_métis_nation_bc.pdf

² Métis Nation British Columbia, *Métis Nation British Columbia Consultation Guidebook* (March 2009), online: Métis Nation British Columbia at 3 <

https://www.mnbc.ca/media/attachments/view/doc/final_consultation_guidelines/pdf.

³ *Ibid.*, at 4-5.

⁴ Métis Nation British Columbia, *Ministry of Natural Resources: Strategix Plan* (August 2010), online: Ministry of Natural Resources

<https://www.mnbc.ca/pdfs/ministry%20of%20natural%20resources%20october%202012,%202010%20edit.pdf>.

⁵ Métis Nation British Columbia, “BCMANR (BC Métis Assembly of Natural Resources)”, online:

<https://www.mnbc.ca/directory/view/345-bcmanr>.

⁶ Métis Nation British Columbia, “Métis Nation Relationship II Accord”, online: <

<https://www.mnbc.ca/about/metis-nation-relationship-accord>>.

⁷ *Ibid.*

relationship, and established a permanent bilateral forum chaired by the Prime Minister that is meant to commence negotiations on shared priorities.

Since July 2017, the Government of Canada has continuously highlighted its commitment to “achieving reconciliation with Indigenous peoples through a renewed, nation-to-nation, government-to-government, and Inuit-Crown relationship based on recognition of rights, respect, co-operation, and partnership as the foundation of transformative change”, which was expressed in the Federal Government’s Ten Reconciliation Principles statement. The Prime Minister further solidified this commitment in a speech made in the House of Commons on February 14, 2018 in relation to the implementation of the UN Declaration on the Rights of Indigenous Peoples.

Additionally, one of the principles that Thomas Isaac underscores in his 2016 Report of the Minister’s Special Representative on Reconciliation with Métis: Section 35 Métis Rights and the Manitoba Métis Federation Decision is the principle that “Métis rights are protected equally along with First Nations (Indian) and Inuit Section 35 rights”, as such a principle is “unassailable and fundamental in nature”.⁸

British Columbia Métis Assembly of Natural Resources

MNBC has eight captains of the hunt that make up the British Columbia Métis Assembly of Natural Resources (“BCMANR”) based on the buffalo assembly and laws of the prairies.

Métis have long-standing legal traditions that speak to a deep and extensive connection to the land as well as their broad territorial use. This law was derived from their time on the prairies. Once planting was done in the Red River settlement, the Métis organized around the buffalo hunt. Hunting was integral to the sustenance of Métis communities and served as the backbone of their economy. Mechanisms were designed to oversee these large expeditions, “to ensure efficiency, protection and discipline”.⁹ These hunts were biannual and “played a seminal role in fostering Métis nationalism and cultural expression, as well as political identity.”¹⁰ Kelly Saunders describes how the Laws of the Buffalo Hunt were set prior to the excursion, based on the first-hand account of Alexander Ross:

All the adults would gather and a council meeting would be called. At these council meetings nominations for the leaders of the hunt, referred to as captains would be taken and a vote would be held. Ten captains of the hunt would be elected, one of them would also be chosen chief of the Hunt. Below each captain and serving under his command were ten soldiers and ten guides. The chief of the Hunt, along with his captains, were responsible for ensuring compliance with the customary rules and regulations of the hunt, as well as providing for the safety and security of the camp. Because the captains of the hunt were freely chosen by the people and were required to govern according to the laws established by the community (in this instance, the Métis of the Red River settlement), the leaders’ authority was seen as legitimate and freely accepted.¹¹

⁸ *Ibid*, at 33.

⁹ Kelly Saunders, *No Other Weapon: Métis Political Organization and Governance in Canada* in Christopher Adams; Ian Peach; Gregg Dahl (14 August 2013). *Metis in Canada: History, Identity, Law and Politics*. University of Alberta at 347.

¹⁰ *Ibid*.

¹¹ *Ibid* at 347-348.

With each successive hunt, the laws would be tweaked as necessary. The following rules were made for the 1840 hunt:

1. No buffalo to be run on the Sabbath-day.
2. No party to fork off, lag behind, or go before without permission.
3. No person or party to run buffalo before the general order.
4. Every captain with his men, in turn, to patrol the camp, and keep guard.
5. For the first trespass against these laws, the offender to have his saddle and bridle cut up.
6. For the second offence, the coat to be taken off the offender's back, and be cut up.
7. For the third offence, the offender to be flogged.
8. Any person convicted of theft, even to the value of a sinew, to be brought to the middle of the camp, and the crier to call out his or her name three times, adding the word "Thief" at each time.¹²

This system of rules and punishment would evolve to become part of a system of self-government for the Métis people.

As the Métis moved out across the plains, the hunt would traverse through Rupert's Land from Manitoba, to Saskatchewan, Alberta and down through Montana and Dakota. The Chief of the Hunt and the other Captains operated as a mobile government. As Larry Chartrand articulates, "It was the governance traditions of the buffalo hunt that were relied on by Métis communities when they grew and became more permanent as Métis families transitioned from primarily a hunting economy to a farming economy. When these larger, more permanent communities desired a more formal governing authority, they would rely on the tradition of the Laws of the Buffalo Hunt as a basis for their constitutions."¹³ This Métis legal tradition was necessary to govern the people and was a system of incentive-based laws with a positivist legal base. Custom was clearly important as the law evolved with each successive hunt. These important principles continue to this day through our BCMANR Captains who guide our Citizens with an ethic of respect for the land and reprimand for environmental/harvesting infractions.

Métis History in BC

Métis have been documented in BC as early as 1793, when Sir Alexander Mackenzie's Expedition traversed the Rockies and established a signpost marking at North Bentinck Arm [near Bella Coola, BC] on July 22nd, 1793. The Western Mackenzie Valley Drainage Basin, which now falls within the boundaries of southern Yukon and northern British Columbia, encompasses a vast area drained by the Mackenzie,

¹² George Bryce. *The Remarkable History of the Hudson's Bay Company* Nabu Press 1910 at 371-372 online: <http://archive.org/stream/baycompanyhud00brycrich#page/372/mode/1up>

¹³ Paul L.A.H. Chartrand, "Defining the 'Métis' in Canada: A Principled Approach to Crown- Aboriginal Relations" in Frederica Wilson and Melanie Mallet, eds., *Métis-Crown Relations: Rights, Identity, Jurisdiction, and Governance* (Toronto: Irwin Law, 2008), pp. 27-70.

Laird, Finlay, Stikine, Peace, Parsnip, and Halfway Rivers. The area includes the modern settlements of Frances Lake and Fort Grahame in the west, to Hudson's Hope and Fort St. John's in the south and to the British Columbia-Alberta border in the east.

David Thompson's Expedition into BC occurred around 1800. Thompson documented the presence of 20 Métis families in the Flathead Valley, Kootenays. Ethnologist James Teit noted a band of Iroquois who settled at Tete Jaune Cache in 1816. According to Teit, they spoke Cree and French and were noted for having traded flower beadwork leggings with the Shuswap. They were known by the Shuswap (and documented by Teit) as "*Le Mechif*." Other notable Métis expeditions into BC are as follows: Simon Fraser (1805), Sinclair Expedition (1841, 1854.)

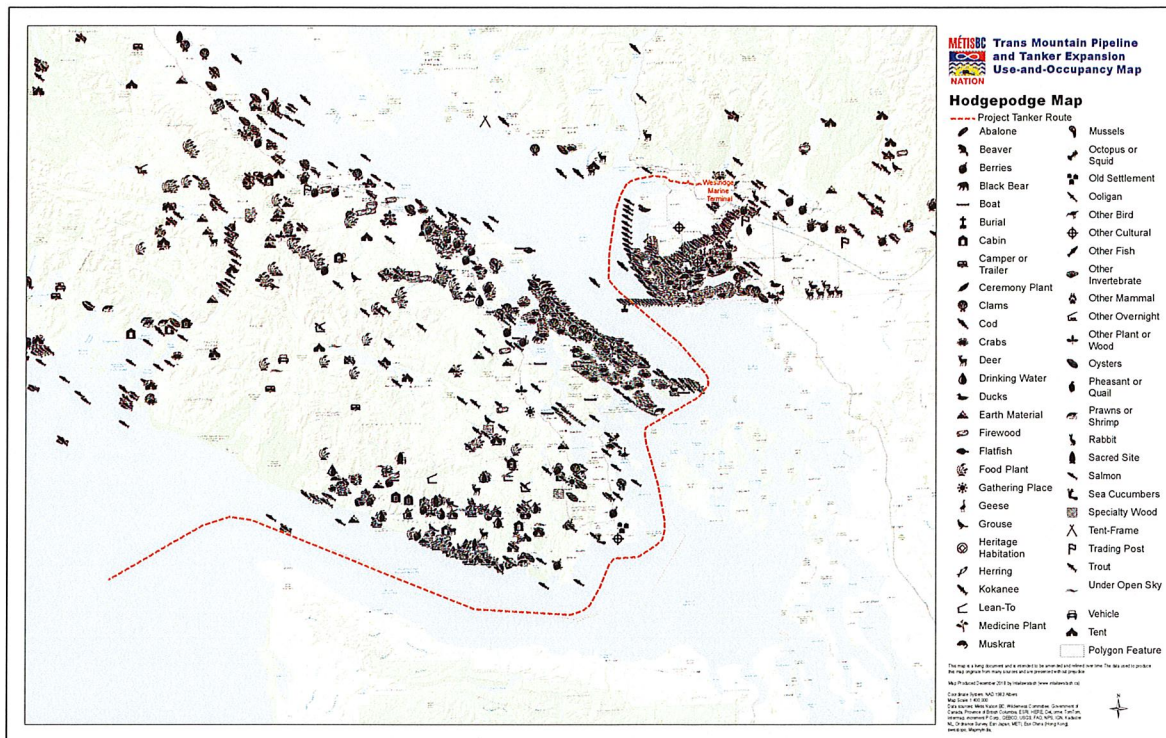
In 1851, a small corps of volunteers was formed to enforce justice on Vancouver Island. They were known as the Victoria Voltigeurs. They were mostly Métis of French-Canadian and Iroquois descent. Their military uniform consisted of a sky-blue capote with a red woolen sash. The Voltigeurs frequently accompanied Royal Navy expeditions to intimidate First Nations along the Northwest coast. The Voltigeurs were the first military unit and police force in BC and they existed until March of 1858.

Perhaps one of the most striking, albeit unknown, features of Métis history in BC is the fact that Métis existed in positions of political and economic power during the early years of the colonial and provincial governments. For example, Joseph McKay (founded Nanaimo,) Lady Amelia Douglas (wife of Sir James Douglas,) Josette Legace (wife of John Work, HBC Chief Factor and member of Legislative Assembly, also the largest landowner on Vancouver Island,) Isabella Ross (first female land owner in BC,) and Simon Fraser Tolmie (BC Premier 1925-30) are all identified as Métis.

Métis were on the Pacific Slope well before the exertion of government control around 1858. They were also recognized by the federal government as having a rights bearing community in the Fort St. John area, evidenced by the fact that the area was included in the Half-breed Commission associated with Treaty 8. The Métis in BC were both connected to historic Métis families and also to the Mixed Aboriginal communities that developed in BC during the colonial era. The Métis built their influence in this province to a point where they were in positions of political power. However, European newcomers and their discriminatory attitudes, in addition to a hostile legal regime in BC, forced the Métis underground but it did not extinguish our culture, history or social structures.

Métis Use in the Project Area:

Métis harvest many marine resources including birds, earth materials, fish, invertebrates, mammals, and plants.



Impacts to Southern Resident Killer Whales (SRKW) and Other Protected Species:

The SRKW is under imminent threat to survival. This assessment indicates that not only can the population likely not endure new stressors, but that if mitigation efforts are not implemented, the population is unlikely to survive. A no-net impact consideration is likely inadequate for the Project. Rather, avoidance, mitigation and compensation for the SRKW because of the Project should exceed the perceived impacts. Following the latest published recovery strategy for the SRKW (2012; http://www.sararegistry.gc.ca/document/default_e.cfm?documentID=1341, accessed Oct 2, 2018) and the current proposed recovery strategy (~2021), the following considerations should be adequately addressed by the Project application prior to NEB approval.

The SRKW feeds primarily on salmon, and continued declines of the salmon stocks off the coast of BC are a paramount concern for the recovery of the SRKW. Efforts to offset impacts to marine fish, or improve fish stocks (outside of the Project footprint) would be a value added effort in the restoration of SRKW stocks. Ensuring that marine shipping routes are not actively interfering with migrating salmon stocks or foraging timing of the SRKW will also be important. Salmon are a significant food source for the SRKW, are a culturally significant species, and are an important food source for Aboriginal people. Current research suggests salmon populations are under threat. Salmon migration patterns could be

affected by noise, vibration and/or light during any, or all, stages of the proposed project. This also includes increased vessel traffic and possible spills. As different species of salmon spawn and migrate during different times of the year, what may work as a “low-risk” approach for one species may not for another. Additionally, we are supportive of sea lion and seal harvest proposals to assist the decreasing salmon population.

As top trophic-level predators, the SRKW tend to bioaccumulate contaminants from their surrounding environment. Several key strategies are proposed in the recovery plan to provide more information and to offset these risks for SRKW. A primary consideration for the Project is managing and removing the risk of contamination for the SRKW food supply. The following are strategies to support a continued effort to reduce contaminants in the food supply:

- Investigate the effects of chemical and biological pollutants on the health and reproductive capacity of resident killer whales.
- Monitor chemical and biological pollutant levels in resident killer whales and their prey.
- Identify (and prioritize) key chemical and biological contaminants and their sources.
- Reduce the introduction into the environment of pesticides and other chemical compounds that have the potential to adversely affect the health of killer whales and/or their prey, through measures such as national and international agreements, education, regulation, and enforcement.
- Mitigate the impacts of currently and historically used 'legacy' pollutants in the environment.
- Investigate diseases, pathogens, parasites and pathologies of killer whales
- Reduce the introduction of biological pollutants, including pathogens and exotic species, into the habitats of killer whales and their prey.

Avoiding anthropogenic stressors to the population is an obvious and basic requirement, likely best carried out by strategically planning shipping routes and schedules to avoid conflict and vessel strikes with free-swimming SRKW at all life-history stages. Avoiding critical habitat and aiming to provide protection or rehabilitation of habitat may be viable considerations for compensation and mitigation.

Seasonal avoidance and reduction of food-borne contaminants will also be important considerations for migratory birds that may be impacted by the shipping routes. Finally, our Citizens feel that the impact that light and noise may have on migratory birds has not been adequately studied or assessed.

Monitoring and Oversight:

MNBC must play a larger role in project monitoring and oversight. MNBC has thus far been prevented from taking a seat on the Indigenous Advisory and Monitoring Committee.

Kinder Morgan initially promised that there would be several emergency response platforms put in place in the vicinity before they proceed with the Trans Mountain Project. There has presently only been one built. Since the Government of Canada purchased the pipeline, they have not committed to keeping

the initial promise of multiple platforms. Furthermore, there is a lack of emergency response boats in the area. The lack of emergency response boats near the harbour at Thunder Island is especially worrisome, as a spill would most likely to occur here.

Finally, while the required radar systems that tankers are to be equipped with will help lessen the likelihood of a spill, there will still be a chance of such an occurrence. If such an event were to occur, the proper mechanisms are not in place to effectively mitigate the significant harm to the environment. There are currently major shortcomings in the emergency response mechanism put in place, which will drastically hinder cleanup efforts in the event of a spill. We are not confident in the ability of emergency response with the measures currently in place. Therefore, we believe approval cannot be made without first ensuring adequate emergency response measures are in place.

Cumulative Effects:

Climate Change is an additional concern. The cumulative impacts of this project could negatively impact Métis land use, human health, wildlife populations, ecosystems, and lead to increased natural disasters (forest fires, floods, droughts, etc.).

Conclusion:

As noted above, MNBC and BCMANR are concerned about the impacts of marine shipping in relation to the project. Further, MNBC signed a Mutual Benefits Agreement (“MBA”) with the Proponent in 2014. It is Canada’s responsibility to uphold the MBA. As Mr. Isaac notes, “[r]econciliation is more than platitudes and recognition. Reconciliation flows from the constitutionally protected rights of Métis protected by Section 35 and is inextricably tied to the honour of the Crown, and must be grounded in practical actions.”

MNBC and BCMANR will work diligently and in good faith to protect the resources that Métis people in B.C. rely on as a way of life and cultural connection. MNBC’s vision is to build a proud, self-governing, sustainable nation in recognition of inherent rights for our Métis Citizens.

Kind regards,

Christopher Gall M.A., J.D.
Director of Natural Resources
Métis Nation BC