

The End of Canada's TMX Dispute

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Canada's Trans Mountain pipeline has been in use since 1953, transporting crude or refined oil from Edmonton, Alberta to Burnaby, a coastal city in British Columbia. In 2013, Kinder Morgan expressed their wish to expand the pipeline by building a new pipeline in parallel to the existing one, including several new pump stations, terminals, and a dock complex in Burnaby for their tankers. Their project proposal, which has since come to be referred to as the TMX, promises additional 590,000 barrels of crude oil transportation per day and "increased capacity to support Canadian crude oil production growth and ensure access to global energy markets."^[1] The pipeline would carry diluted bitumen, also called dilbit, and would require 12 new pumping stations, the cost of completion was estimated to be 7.4 billion dollars.

While it initially received support from multiple large petroleum industry consumers, among the public, the project has raised controversy since its proposal and has rightfully faced many legal and economic challenges.

When Kinder Morgan sent the project application to the National Energy Board (NEB) in 2013, the project initially got approval and set out to start construction in 2017. A year after the approval, 100 people got arrested during a protest where they set camp in Burnaby Mountain to prevent drilling and survey work for the expansion. This event set the tone of the legal battle that ensued for almost a decade. As the project posed to bring significant economic growth to the country^[2] but significant damage to the environment^[3], several governing bodies got involved consisting of the federal government, the NEB, the First Nations, the BC government, the Alberta government, and the municipalities.



The first protests came from the local people living in the area. Concerns and occurrences of spillage and water contamination drove people to protest.[4][5][6] Many environmentalists also protested its effects on marine life and climate pollution, demanding answers on how the government would keep up with the Paris Agreement standards with this project in place. [7][8][9] The blatant risk of spillage and tanker traffic issues coupled with the project's lack of effort to mitigate these environmental hazards were criticized as well.[10][11] The response has been to silence them. This never changed, as shown by the words uttered by Alberta's Energy Minister earlier this year in May: "Now is a great time to be building a pipeline because you can't have protests of more than 15 people." [12] referring to the ban on gatherings in lieu of coronavirus precautions. Despite the public concerns gaining political support over the years, those in favor of the TMX continued to bypass laws and customs.

In 2015, the NEB put public hearings on hold after striking a piece of economic evidence that was prepared by a Kinder Morgan consultant from the record [13]. Approximately half a year later, the federal government decided that from that point on pipeline projects would be assessed in terms of greenhouse gas emissions produced in extraction and processing of the oil, additionally requiring consultations with First Nations to go forward [14] as it is custom that the Canadian government recognizes the indigenous right to the land, therefore anything that goes through their land needs to receive their approval. However, despite opposition from several nations including Tsleil-Waututh, Squamish, Kwantlen, and Coldwater, as well as the municipalities of Vancouver and Burnaby, the NEB and the federal government allowed and encouraged Kinder Morgan to continue their construction. When the First Nations filed a lawsuit against the project, it only resulted in the Albertan government receiving intervener status, which meant that the province in favor of the project now had legal rights

regarding the disputes. The continuing dismissal of indigenous concerns over the project by the Canadian government is thought to have greatly harmed reconciliations, a process initiated to acknowledge colonialism and to reconcile with the indigenous peoples of Canada by allowing them rights over their land.

In 2017, the NDP and the Greens formed a coalition in BC to fight against the expansion project. The same year, Kinder Morgan requested to begin work despite failing to obtain municipal permits from the NEB which approved the request. The Minister of Natural Resources stated that the federal government sent the NEB a letter of support in conflict resolution [15] to get the project back on track after Kinder Morgan shared concerns that it is behind schedule. In return, the BC Environmental Minister rightfully called this act an “intrusion on a province’s right to enforce its own permits, regulations, and the interests of its own citizens.” [16] and BC moved to restrict the import of diluted bitumen into the province until there were more studies regarding dealing with a spillage. Alberta responded by issuing wine sanctions on BC.



In March 2018, the BC Supreme Court effectively prevented protestors from coming within five meters of the worksites, leading to the Green Party Leader’s arrest at a protest. The Federal Court of Appeal then dismissed BC government’s protest against Kinder Morgan bypassing local bylaws.

By this time, Kinder Morgan had started losing investors due to the delay and issues the project was facing. In May 2018, the Canadian government announced that it would buy the project temporarily and would find investors for its completion. In the case of hindrance and delays, the investors would be adequately compensated. This decision was heavily criticized, with the President of the Union of BC

Indian Chefs saying “The union is absolutely shocked and appalled that Canada is willingly investing taxpayers’ money in such a highly controversial fossil fuel expansion project.”[17] Despite the backlash, Kinder Morgan shareholders approved the sale in August 2018. To their dismay, the Federal Court of Appeal overturned the government approval of the project, for the reason that the First Nations were not consulted properly and the project lacked environmental risk assessment.

In November 2018, the Canadian government organized consultations with Indigenous people; however, these consultations were limited in terms of scope and were on a tight deadline. In 2019, Governor in Council directed the NEB to issue the certificate that would allow the construction to begin. Indigenous people went to the Supreme Court to express that the consultation was not adequate as the cabin itself would be deciding whether their consultation was sufficient. As Syeta'xtn of the Squamish Nation said, "To let the federal government be its own judge and jury of its consultation process was flawed in so many ways.”[18] Unfortunately, on July 2nd, 2020, the Supreme Court dismissed their challenge, which marked the end of the almost a decade-long legal fight against the pipeline expansion project.

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