

## Executive Summary

Resource development and extraction in British Columbia has threatened the livelihoods and rights of Indigenous communities, most recently the Wet'suwet'en First Nation. The policies in place regarding government-to-government relations and Indigenous consultations value economic prosperity over consent and environmental degradation. Going forward, third-party firms should ensure that Indigenous communities are prioritized and protected as greater stakeholders in these projects.

## Introduction

Pipeline construction has exacerbated the tense relationship between resource extraction and many Indigenous communities across British Columbia (B.C.). Poor communication between Indigenous communities and governments has led to unjust treatment of land and Indigenous peoples, coupled with a lack of clear and quality environmental assessments and risk projections of the pipelines themselves.<sup>1</sup> Since *Delgamuukw v. The Queen* 1997, the land and title relationship of the Hereditary Chiefs of the Wet'suwet'en Nation has been unclear, and the Canadian government has been inconsiderate of the Hereditary Chief's governance of the land. The construction of the Coastal GasLink and Trans Mountain expansion pipelines will set precedence for Indigenous-Canadian relationships and face international scrutiny. The serious environmental threats posed by pipelines have not been well managed and contradict Canada's increasing commitment to climate change agreements. Current policies and actions have not been inline with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), nor do they reflect the current economic and climate modelling that proposes a major decline in oil and natural gas demands and profits in the next decade. The failure to acknowledge Indigenous concern towards environmental degradation and land use are responsible for the pipeline gridlock; therefore, Indigenous

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<sup>1</sup> Lynne, Quarmby, "Eleven Reasons to Oppose the Trans Mountain Pipeline Expansion: Lynne Quarmby," *National Observer*, July 31, 2018, accessed March 21, 2021 <https://www.nationalobserver.com/2018/07/31/opinion/eleven-reasons-oppose-trans-mountain-pipeline-expansion-lynn-quarmby> .

communities should be greater stakeholders in projects concerning their land.

## Approach

## and

## Results

The current policy options include programmes regarding Indigenous people's inclusion with environmental assessments and pipeline projects. The Government of Canada established the Indigenous Advisory and Monitoring Committee for the Trans Mountain Expansion Project<sup>2</sup> in 2016. It is set to provide opportunities for Indigenous communities to participate in verifying Trans Mountain's compliance with conditions and regulations. Despite advocating for the inclusion of Indigenous communities, the Committee is chaired by only 13 Indigenous members, who disproportionately represent 129 unique Indigenous communities affected by the project. Moreover, only 120 of the 129 affected Indigenous communities have 'supported' or 'not opposed' the project.<sup>3</sup> The Committee therefore lacks proportionate representation.

The newly amended *Environment Assessment Act* (EAA) by the government of British Columbia provides a framework to ensure protection from environmental, social, health, and economic consequences caused by projects and activities within the province.<sup>4</sup> The EAA values engagement with First Nations in reviewing project proposals at every step, but lacks proper implementation. The legislation includes reviewable project regulations, dispute resolution regulation, and Indigenous capacity funding regulation, which was supposed to be established by 2020 but to date has made no progress.<sup>5</sup> The EA Office must release information on these regulations to ensure equitable resolution for the pipeline conflicts.<sup>6</sup>

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<sup>2</sup> Indigenous Advisory and Monitoring Committee: Trans Mountain Expansion and Existing Pipeline, *IACM-TMX*, accessed March 21, 2021, <https://iamc-tmx.com/>.

<sup>3</sup> John Paul Tasker, "In a Major Victory for Trans Mountain, Federal Court Dismisses Indigenous Appeal of Project's Approval," CBC, February 05, 2020, accessed March 21, 2021, <https://www.cbc.ca/news/politics/federal-court-appeal-trans-mountain-1.5450748>

<sup>4</sup> Ministry of Environment and Climate Change Strategy, "2002 Environmental Assessment Act, Regulations and Agreements," *Province of British Columbia*, accessed March 21, 2021, <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/environmental-assessments/act-regulations-and-agreements/2002-act-regulations-and-agreements#cooperating-with-Indigenous-nations>.

<sup>5</sup> Ministry of Environment and Climate Change Strategy, "Indigenous Nation Guidance Material - Environmental Assessment Act 2018," *Province of British Columbia*, October 30, 2020, accessed March 21, 2021, <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/environmental-assessments/guidance-documents/indigenous-nation-guidance-material>.

<sup>6</sup> Sarah Cox, "UN Committee Rebukes Canada for failing to Get Indigenous Peoples' Consent for Industrial Projects," *The Narwhal*, January 15, 2021, accessed March 21, 2021, <https://thenarwhal.ca/un-rebukes-canada-industrial-projects/>.

The Memorandum of Understanding (MOU) signed between Canada, British Columbia, and Wet'suwet'en First Nation, "three equal governments," aims to negotiate Wet'suwet'en Aboriginal title and rights.<sup>7</sup> It outlines negotiations over Wet'suwet'en jurisdiction in water, wildlife, lands and resources, and other areas consistent with the UNDRIP. While this legislation demonstrates a strong commitment by the Canadian and British Columbian governments to respecting Indigenous governance, it is signed with Wet'suwet'en Hereditary Chiefs and fails to acknowledge the elected leaders of the five Wet'suwet'en Band Councils as designated by the *Indian Act*.<sup>8</sup> The two groups have had tense disputes over the Coastal GasLink pipeline and continue to conflict over land use matters.<sup>9</sup> In limiting the negotiations to Hereditary Chiefs, the MOU is an incomplete attempt to resolve jurisdictional disagreements and excludes the valuable perspectives of the elected leadership.

## Conclusion

The EAA, MOU, and Indigenous Advisory and Monitoring Committee for the Trans Mountain Expansion Project are policies that value **economic prosperity** over **Indigenous consent and environmental protection** which require immediate amendments for projects to be equitable.

## Implications and Policy Recommendation

1. Stakeholders should **rethink pipeline design** to limit capacity in order to maintain current production with little room for volume increase and instead focus on increased environmental protection. The COVID-19 pandemic has demonstrated an unprecedented reduction of demand for oil and gas that is likely to continue; this makes limited capacity pipelines feasible since the forecasted increase in oil production can

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<sup>7</sup> Government of Canada, "Memorandum of Understanding Between Canada, British Columbia and Wet'suwet'en as Agreed on February 29, 2020," Government of Canada, May 14, 2020, accessed March 21, 2021, <https://www.rcaanc-cirnac.gc.ca/eng/1589478905863/1589478945624>.

<sup>8</sup> David Bursey et al., "Memorandum of Understanding on Wet'suwet'en Rights and Title-An Ambitious Plan: Bennett Jones," Bennett Jones, June 03, 2020, accessed March 21, 2021, <https://www.bennettjones.com/Blogs-Section/Memorandum-of-Understanding-on-Wetsuweten-Rights-and-Title#:~:text=On%20May%2014,%202020.%20British.en%20aboriginal%20title%20and%20rights>.

<sup>9</sup> David Bursey et al., "Memorandum of Understanding".

be accommodated with existing pipelines for the next decade.<sup>10</sup> Further, while there may be pushback due to speculation of lost profit, there is little concrete evidence that the Trans Mountain Expansion project will lead to increased netbacks for Canadian producers.<sup>11</sup> Limiting volume also addresses the environmental concerns of many communities, including the Wet'suwet'en Nation. Canada's commitment to reduce emissions has failed since levels have continued to increase since and despite the yearly cap on oil sands emissions; the oil and gas sector alone is currently projected to exceed Canada's emissions reduction target in 2050 by roughly 81%; therefore, the pipeline's \$12.6 billion budget would be better spent on a project that is directly aimed at reducing emissions.<sup>12</sup>

2. The Duty to Consult, as per s.35(1) of the *Constitution Act 1982* has proved insufficient in dealings with Indigenous communities, as they should be **greater stakeholders** in projects that disrupt their land.<sup>13</sup> Therefore, expediting the UNDRIP in B.C. and including Indigenous communities prior to considering projects involving resource development over their land is crucial to mending government-to-government relations. It is essential for the government to enforce environmental assessments by **third-party firms** to gain an impartial and non-partisan perspective on the environmental implications. Considering that the project must comply with 156 provisions, having a third-party inspection by a private actor will help oversee and ensure that the policy is being followed.<sup>14</sup> An Indigenous-led environmental assessment will be a beneficial perspective and aid in reaching an equitable solution. This recommendation includes interdisciplinary research and community involvement, taking into account Indigenous Knowledge and

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<sup>10</sup> David Hughes, "Reassessment of Need for the Trans Mountain Pipeline Expansion Project Production Forecasts, Economics and Environmental Considerations," *Corporate Mapping Project*, October 29, 2020. <https://www.corporatemapping.ca/no-tmx/>

<sup>11</sup> David Hughes, "Reassessment of Need for the Trans Mountain Pipeline Expansion Project Production Forecasts, Economics and Environmental Considerations."

<sup>12</sup> *ibid.*

<sup>13</sup> Yanduan Li to Government of Canada, November 24, 2020, accessed March 21, 2021, [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT\\_CERD\\_ALE\\_CAN\\_9296\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ALE_CAN_9296_E.pdf)

<sup>14</sup> "CER Conditions," TransMountain, August 09, 2019, accessed March 21, 2021, <https://www.transmountain.com/cer-conditions>.

Practices and socio-economic monitoring.<sup>15</sup> To relieve pressure between governments, committees such as the Indigenous Implementation Committee (part of the EAA process) should be expanded to all projects concerning Indigenous land and *all* affected Indigenous communities should be included in decision-making processes.

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<sup>15</sup> Jimmy Thomson, "How Indigenous-led Environmental Assessments Could Ease Resource, Pipeline Gridlock," *The Narwhal*, September 04, 2018, accessed March 21, 2021, <https://thenarwhal.ca/how-indigenous-led-environmental-assessments-could-ease-resource-pipeline-gridlock/>.

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