



the Nation with less than four hectares of a usable land base. The Aboriginal title claim area represents less than 1 percent of kwikwəłəm's core Territory and some of the last remaining accessible undeveloped land in kwikwəłəm's Traditional Territory.

The Trans Mountain Expansion Project (The "Project") was routed through an area within the heart of kwikwəłəm's Traditional Territory, parts of which are subject to the active claim for Aboriginal title. The Project has placed a pipeline through one of kwikwəłəm's last remaining fishing areas and highly culturally important conservation areas, areas intimately tied to kwikwəłəm's identity as kwikwəłəm (small red sockeye salmon) peoples. kwikwəłəm faces significant challenges of (over)development within the Territory and the Project has further constrained kwikwəłəm's ability to exercise and benefit from our Aboriginal rights, title and culture on these lands.

kwikwəłəm signed a mutual benefit agreement with Trans Mountain Corporation and had an Indigenous Monitor working for Trans Mountain during the construction phase of the Project.

### **SUPPORT FOR THE IAMC SUBMISSION**

kwikwəłəm supports the submission to the Canada Energy Regulator (CER) by the Indigenous Caucus of the Indigenous Advisory & Monitoring Committee of the Trans Mountain Expansion Project (IAMC) and the recommendations for improving the Onshore Pipeline Regulations. In particular, kwikwəłəm agrees that for meaningful improvements to the OPR and Filing Manuals, the CER must:

- *Implement UNDA Action Plan Measure #34:* Going beyond the aspirational preambular statements of UNDRIP and build robust processes towards shared decision-making and seeking First Nations' free, prior, and informed consent on Projects. kwikwəłəm supports the work the CER and IAMC will be doing to explore the development of an Indigenous Energy Regulator to support Nations in the oversight of oil and gas activities within their Nations.
- *Require Independent Indigenous Monitoring:* While kwikwəłəm's monitors worked effectively with the proponent during the construction period, increased autonomy and independence is necessary to reflect our Nation's right to steward our lands. An Independent Indigenous Monitoring program needs to be fully funded by proponents through an arms-length fund.

It should also be noted that the kwikwəłəm monitor was aware of instances of racism amongst the contractors on-site. While Trans Mountain's senior management were quick to respond and address these serious matters, these experiences highlight how far the industry needs to go towards cultural competency and respect for Indigenous peoples. Incidents of racism are reported to the CER when contractors make racist comments to the general public (outside the workplace). When these same incidents occur within the workplace - when Indigenous Monitors work for the proponent rather than for the local Nation(s) - these events go unreported to the CER. As such, there's little accountability for this unacceptable behaviour unless the proponent takes the appropriate actions.

- *Strengthen Compliance and Enforcement through integration of Indigenous laws:* Trans Mountain's commitment to follow the Stó:lō Heritage Investigation Permit (SHIP)

permitting process provided a good example how Indigenous regulatory expectations could be integrated into construction oversight. kwikwəłəm has different expectations for cultural protections than those articulated in the Stó:lō heritage policy. These expectations are shared by our elders and our staff provides direction accordingly. At the time of construction, we did not have an associated permit process codified. As a result, we found situations where Trans Mountain's contractors were adopting and applying the Stó:lō Heritage Policy within kwikwəłəm territory. Whether shared orally (as per tradition) or codified in a permit, the CER must hold companies to account for following Indigenous laws of the locally affected Nations, not simply those who the company has made a commitment to. The CER should also provide financial support to First Nations to codify their Indigenous laws relating to oil and gas activities within their territories.

- *Protecting Indigenous Sites of Significance*: Greater baseline data to protect Indigenous sites of significance is required rather than defaulting to 'chance find' procedures. This is particularly important on Trans Mountain's existing pipeline that diverges from the expansion right-of-way within kwikwəłəm territory. Comprehensive Traditional Land Use studies have not been undertaken on the existing pipeline. These sites of significance are vulnerable to leaks within the aging infrastructure and protections aren't in place. The OPR must require companies to undertake comprehensive TLUS studies for all infrastructure.
- *Improve consultation, information sharing and notifications*: Federal capacity funding to support participation in the application review process and subsequent construction phases was woefully inadequate. While Nations may sign mutual benefit agreements with Project proponents, these agreements can also be used by proponents to constrain Nations from opposing even relatively minor aspects of their Project. While kwikwəłəm did not oppose the Project, the Nation had concerns relating to the route alignment that would bisect a parcel of land (under a Title Claim) that could reduce the development potential in the future. Trans Mountain's preference was to resolve the matter bilaterally rather than through the CER's Detailed Route processes. Independent funds (or an arms-length fund) to support Project reviews would provide Nations with greater autonomy during the Application process.
- *Integrate First Nations into emergency response*: The OPR must ensure that real-time notifications of pipeline safety risks and spill events, increased data sharing, and a voice on Unified Command Centres is provided to all First Nations during an emergency.

kwikwəłəm has participated in Trans Mountain Emergency Response Exercises and expects to be invited to participate on Incident Command should a spill occur within the territory. Through funding provided through Canada's Accommodation Measures and Initiatives (Coast Guard's Co-Development Community Response), kwikwəłəm has independently reviewed the Geographic Response Strategies prepared by Western Canada Marine Response Corp (WCMRC) and have identified areas that do not reflect local Indigenous knowledge and put our sites of significance at risk. Similarly, the CER (or proponents) should provide comparable funding to enable a comprehensive review of the company's Emergency Response Plans and better integrate Indigenous Knowledge into the Geographic Response Plans (GRPs). This data should be readily accessible and Nations should be immediately notified of potential risks to the integrity of the pipeline system.

- Require revenue sharing to support First Nation involvement: Federal, Provincial and Municipal governments acquire taxes from proponents operating within their jurisdictions. At a minimum, Indigenous governments need the same to be able to support their involvement and capacity building (application review / monitoring / emergency response / decommissioning, etc). The B.C. government has committed to co-developing a new fiscal framework with Indigenous Peoples that supports the operation of Indigenous governments and recognizes Indigenous rights as outlined in the UNDRIP. The Federal government (and CER) should push for the same. It is insufficient to compensate First Nations for participation in Projects, Nations need to benefit through wealth generation for the use of their lands by others just as other governments benefit.
- Better integration of Indigenous Knowledge into regulatory processes: kwikwəłəm supports the advice the IAMC shared with Natural Resources Canada in response to the discussion paper to inform the development of the Indigenous Knowledge Policy Framework for proposed project reviews and regulatory decisions. Specifically, kwikwəłəm supports:
  - The equitable treatment of Indigenous Knowledge with Western Science
  - Consideration of both 'fact-based' and 'value-based' knowledge into policy decisions
  - Provide additional time and resources (i.e. translators, etc) to evaluate these claims through a thoughtful, inclusive and transparent decision-making process.
  - Consider 'Invisible losses' (i.e. hard to measure cumulative and indirect impacts)
  - Enhance knowledge gathering opportunities
  - Ensure effective knowledge management (i.e. improved control, access, possession)

The United Nations Declaration on the Rights of Indigenous Peoples Act has changed the landscape in which decision-makers must engage with Indigenous Knowledge and all phases of regulatory decision-making and oversight must be amended to reflect this new reality.

kwikwəłəm appreciates the opportunity to contribute to this important work. Representatives from the Nation will continue to follow and participate in the work that the IAMC we look forward to continuing this work to update the Onshore Pipeline Regulation and Filings Manuals in the months to come.

All my relations,  
Councillor [REDACTED]



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