

**NATIONAL ENERGY BOARD  
OFFICE NATIONAL DE L'ÉNERGIE**



**Hearing Order OH-001-2014  
Ordonnance d'audience OH-001-2014**

**Trans Mountain Pipeline ULC  
Trans Mountain Expansion Project**

**Trans Mountain Pipeline ULC  
Projet d'agrandissement du réseau de Trans Mountain**

**VOLUME 29**

**Hearing held at  
L'audience tenue à**

**Delta Burnaby Hotel and Conference Centre  
2nd floor, 4331 Dominion Street  
Burnaby, British Columbia**

**January 22, 2016  
Le 22 janvier 2016**

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HEARING ORDER/ORDONNANCE D'AUDIENCE  
OH-001-2014

IN THE MATTER OF Trans Mountain Pipeline ULC  
Application for the Trans Mountain Expansion Project

**HEARING LOCATION/LIEU DE L'AUDIENCE**

Hearing held in Burnaby, British Columbia, Friday, January 22, 2016  
Audience tenue à Burnaby (Colombie-Britannique), vendredi, le 22 janvier 2016

**BOARD PANEL/COMITÉ D'AUDIENCE DE L'OFFICE**

D. Hamilton	Chairman/Président
P. Davies	Member/Membre
A. Scott	Member/Membre

## **APPEARANCES/COMPARUTIONS**

### **Applicant/Demandeur**

Trans Mountain Pipeline ULC

- Ms. Terri-Lee Oleniuk
- Ms. Lizette Parsons Bell

### **Intervenors/Intervenants**

Swinomish Indian Tribal Community, Tulalip Tribes, Suquamish Tribe, and Lummi Nation (“U.S. Tribes”)

- Ms. Kristen Boyles

District of West Vancouver

- Ms. Maegen Giltrow
- Mr. Mark Chan

Simon Fraser Student Society

- Ms. Kathleen Yang
- Ms. Tessica Truong

Cheam First Nation and Chawathil First Nation

- Ms. Nicole Schabus
- Mr. Tim Dickson
- Grand Chief Ron John
- Chief Ernie Crey
- Councillor Patricia John
- Chief Rhoda Peters

Adam Olsen

- Mr. Adam Olsen

### **National Energy Board/Office national de l'énergie**

- Ms. Nicole Godbout
- Mr. Paul Johnston

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--- Upon commencing at 9:03 a.m./L'audience débute à 9h03

14448.           **THE CHAIRMAN:** Good morning and welcome to this morning's session in Burnaby, which is part of the National Energy Board's hearing regarding Trans Mountains Expansion Project.
14449.           We will continue to hear intervenor summary oral argument today. We acknowledge today being on the traditional land of the Coast Salish people.
14450.           My name is David Hamilton. I am the Chair of the Panel and with me, to my left, is Ms. Alison Scott, and to my right, Mr. Phil Davies.
14451.           Just a housekeeping item before we get going, in the event that you hear hotel fire alarm, the procedure will be to exit the hearing room using the entrance you came in. Once you are outside the hearing room, there are two evacuation routes. The first is directly to your left when you exit the hearing room doors, and the second is located beside the registration desk where some of you received your lanyard.
14452.           Uniformed security guards will be in both locations to facilitate your exit. Please follow their instructions. Once outside the building, proceed to the hotel muster point located on the northwest corner of the Delta Burnaby Hotel and Conference Centre property where Sumner Avenue and Manor Street intersect. And I hope we don't get wet doing that and we don't have to do it, because it's quite heavy rain again today here in Burnaby.
14453.           At the hotel muster point, please ensure all members of your party are accounted for and await further instructions from Delta representatives.
14454.           As indicated in Procedural Direction No. 20, the Board has set time limits to hear oral summary argument. The time limit for intervenors is 40 minutes each. This time limit will be strictly enforced and reflect that intervenors have had the opportunity to file written argument-in-chief prior to providing oral summary argument.
14455.           There is a timer that will indicate a green light for the first 35 minutes, switching to a yellow for the last five minutes of your speaking time. Finally, when your time is up, a red light will come on and if necessary the microphones will be switched off, but I will warn you before this happens.

**Opening remarks  
Chairman**

14456. Final argument as a whole is an opportunity to express your views and opinions about the project based on the evidence filed by Trans Mountain and intervenors on the hearing record. It is also an opportunity to make recommendations to the Board about matters within the list of issues or any terms and conditions to which the project should be subject if it is approved.
14457. The Board will not give any weight to new evidence introduced during oral summary argument or any submissions made that do not address the List of Issues.
14458. With that, I think we are ready to get going, and this morning we will be hearing from the Swinomish, Tulalip, Suquamish and Lummi Indian Nations, which I will probably refer to as the U.S. Tribes, which will be followed by the District of West Vancouver, and then the Simon Fraser Student Society.
14459. And perhaps I will ask Trans Mountain, for the record, to introduce their attendants today.
14460. **MS. OLENIUK:** Thank you, sir, and good morning. My name is Terri-Lee Oleniuk and I am legal counsel to Trans Mountain.
14461. With me this morning, to my left, is Lizette Parsons Bell, and she is the Lead for Stakeholder Engagement and Communications with the project.
14462. **THE CHAIRMAN:** Thank you.
14463. And as we do every morning, I will request if there are any preliminary matters from any intervenors in attendance today. I see none.
14464. Well, we are ready to go with our U.S. Tribes and, Ms. Boyles, it's nice to see you again, and you have 40 minutes. We have read your written argument in-chief and so we are ready to hear your oral summary argument.
14465. Thank you.

**--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR SWINOMISH INDIAN TRIBAL COMMUNITY, TULALIP TRIBES, SUQUAMISH TRIBE, AND LUMMI NATION (“U.S. TRIBES”):**

**Final argument**  
**Swinomish, Tulalip, Suquamish and Lummi Tribes**

14466.           **MS. BOYLES:** Thank you. Ms. Scott, Mr. Davies, Chair Hamilton, good morning.
14467.           My name is Kristen Boyles and I have the honour to represent the Swinomish, Tulalip, Suquamish and Lummi Indian Nations today. I thank the Panel for the opportunity to speak and I want to acknowledge and thank the Tseil-Waututh, Musqueam, and Squamish people whose traditional lands we are on today.
14468.           Perhaps the most obvious thing about our participation in this process is that we aren't Canadians. This is obviously a Canadian process and will be a Canadian governmental decision.
14469.           But the Trans Mountain is not a project with solely Canadian impacts. The U.S. Tribes decided to participate in this proceeding, to come north, because Trans Mountain will impact them and their way of life. And the international border will not mark a boundary for that harm.
14470.           I have four points this morning. First, I will address the centrality of the health of the Salish Sea to the continued existence of the U.S. Tribes on economic, subsistence, and cultural grounds.
14471.           Second, I want to stress how left out of this entire proceeding and process we are and discuss why that matters.
14472.           Third, I will address the fundamental environmental harms that will be caused by Trans Mountain.
14473.           And fourth, I will talk about the complementary Canadian and international law requirements that you must use to guide your decision. Ultimately, because this project is not in the public interest, we believe you must recommend denial.
14474.           Turning to my first point. It was in a hotel conference room slightly smaller than this one, over a year ago, where the U.S. Tribal members gave traditional oral testimony to this Board. And I trust you remember those two days at the end of October because what was presented there was some of the most extraordinary testimony I have ever heard. Tribal Elders, tribal chairmen, tribal council men and women, spiritual leaders, fishermen, and a young high school student, who was able to master her nervousness spoke directly to you to describe

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the importance of the Salish Sea, salmon, the entire ecosystem, fishing, the canoe journey, and the fight tribes in the United States have waged for decades to secure and protect their treaty reserved fishing rights.

14475. Anything I say today is a pale echo of those testimonies, and I urge you to review the transcripts from those days. I have re-read them in the last week, and they represent a picture of a people with ancient roots and continued vitality tied to the natural world fighting to be heard as processes like this push forward.
14476. The Trans Mountain project would result in a nearly sevenfold increase in dangerous oil tanker traffic through treaty reserved fishing areas known in the United States as “usual and accustomed fishing areas”; areas that are the economic, subsistence, and cultural lifeblood of the tribes.
14477. As oil transport increases, so does the risk of an accident and oil spill. Cleanup after the fact, which the evidence shows is all but impossible, will not be able to undo that damage.
14478. The tribes presented written evidence attesting to these same points. Ms. Lorraine Loomis, Swinomish fisheries manager and a direct descendant of two of the Chiefs, who signed the original treaties with the United States, testified to the particulars about tribal fishing areas, how catch is allocated, tribal self-regulation, the fact that tribes are co-managers with the State of Washington for the Fisheries, and the mandate for conservation.
14479. The testimony of Jason Gobin, from the Tulalip Tribes, and Robert Purser, Jr., from the Suquamish Tribe, both directors of their fishery departments, present similar information in the three areas of economic, subsistence, and cultural grounds.
14480. On economic grounds, the evidence in the record shows that the U.S. Tribes and their members depend on fishing and the health of the Salish Sea for economic reasons; that there are millions of dollars per year caught and sold in salmon, crab, shrimp, halibut, clams, oysters, a vast majority of which comes from the marine area affected by this project in and adjacent to the international shipping lanes.
14481. On subsistence grounds, the tribal declarations also set out that the subsistence needs that are met through this fishing and gathering in the Salish Sea,

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- tribal members eat significantly more fish than the general population. And in fact, studies in the United States show that some tribes eat at least five times the amount that is usually consumed by others.
14482. And finally, on cultural grounds, salmon are the cultural beginning for the U.S. Tribes. Tribal speakers described the return of the salmon ceremonies, celebrations of the bounty of the sea. At least two tribal members remember being told when the tide is out, the table is set.
14483. The Coast Salish gatherings and the newly reinvigorated canoe journey connect people to their tribes, the tribes to each other, and the tribes on the U.S. side to the First Nation relatives across the border. None of this can be separated from the health and abundance of the Salish Sea.
14484. Which brings me to my second point, that the environmental review of this project is incomplete because Trans Mountain failed to consult with or consider impacts to the U.S. tribes on the other side of the border. Trans Mountain did not complete a traditional marine use study for any U.S. tribes. Trans Mountain did not meet with the U.S. tribes or their tribal leadership.
14485. Trans Mountain's reasoning for this blank on the page has evolved. In its initial application, Trans Mountain determined that any effects on United States fisheries were similar to effects on Canadian First Nations, and then not significant. Trans Mountain came to this conclusion, as I said, without study or consultation with the U.S. tribes.
14486. Since the U.S. tribes' involvement here, however, Trans Mountain has changed its position and now simply states that the U.S. tribes are not Aboriginal people of Canada so it needs to do nothing further. This position ignores linkages between the groups of Coast Salish people on either side of the border. It also ignores the fact that the *Canadian Environmental Assessment Act* expressly defines environmental effects to include impacts outside of Canada; and to review -- calls for review of impacts with respect to Aboriginal peoples that occur in Canada.
14487. Failing to consider impacts on the other side of the border matters. When finding the impacts to the U.S. tribes similar and insignificant, Trans Mountain failed to grapple with the huge increase in oil tanker traffic through U.S. waters and the differences between the U.S. and Canadian fishing fleets, the main one being a larger fleet of smaller vessels -- less than 150 tonnes -- that are

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used in the United States.

14488. When we asked Trans Mountain why it failed to study smaller vessel traffic, Trans Mountain responded that an accident between an oil tanker and a small fishing boat was unlikely to damage the tanker. The callousness of this response underscores the blinders worn by Trans Mountain, which never truly investigated the impact of increased oil tanker traffic on tribal fishermen in small boats.
14489. By failing even to talk to the U.S. tribes, Trans Mountain missed vital pieces of evidence. The Lummi Tribe recently commissioned a study to look at the impacts of a proposed coal terminal near their tribal lands. That's the Glosten Study, which we submitted as part of our written evidence.
14490. It estimated the risk of collision between commercial vessels and Lummi fishermen would increase by over 16 percent if that particular coal terminal were built, and by almost 25 percent when they included the Trans Mountain increased oil tanker traffic in the analysis. But that missing analysis, from this record, must be corrected.
14491. In another area, in several places in its application Trans Mountain states that fishing proximity to shipping lanes is unknown, but if they had talked to us we could have told them. Trans Mountain remains almost totally blind to the threats to our people.
14492. Another example of how this is played out is the draft conditions. The draft conditions dramatically illustrate this failure because none of the conditions try to mitigate harm to U.S. tribes and none attempt to mitigate harm to U.S. waters. At most, the draft conditions are plans to make later plans about the Canadian impacts only.
14493. Not only will increased vessel traffic reduce fishing outings -- outings and harvests, but the risks of accidents and oil spills will increase. The Vessel Traffic Risk Assessment for Puget Sound, which was submitted as written evidence by the Washington Department of Ecology, finds that the Trans Mountain project alone would result in a 38 percent increase in potential oil loss in U.S. waters.
14494. Trans Mountain has seemed to view the concern about increased vessel traffic as one of capacity, noting in its final brief and oral presentation that

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increased marine vessel traffic will not cause a capacity problem, and that's fundamentally confusing this issue. The port may be able to handle the monthly increase in traffic and those additional oil tankers may be able to fit into the international shipping lanes, but the increase in oil vessel traffic is harmful in and of itself as it interferes with and prevents U.S. tribal fishing.

14495. The increased traffic also means an increase in oil spill risk, which varies depending on different studies that are in your record. Yet every single study and model shows the probability of an oil spill in the foreseeable future, and the tribes, as a people who have lived here since time immemorial, take a long view of impacts and risks, and this risk is too great.

14496. My third point focuses on the fundamental environmental harms that we are talking about. The record is replete with evidence of the harm an oil spill would cause to the Salish Sea and the creatures that live in it and on it. I won't repeat it here, but I direct your attention to the evidence submitted by the Tsleil-Waututh Nation, Georgia Straits Alliance, Living Ocean Society, Raincoast Conservation Foundation, the City of Vancouver, and the City of Burnaby, discussing the fate and impact of oil spills in the Fraser River and Burrard Inlet, as well as spill trajectory modelling into the U.S. waters.

14497. The record is most clear on the inadequacy of oil spill response capability. This position comes from almost all levels and types of intervenors. The Washington Department of Ecology, which has a world-respected expertise and experience in oil spill prevention and response, said it straight up. Canada -- quote:

*"...will not adequately protect shared waters from the risks associated with Project-related tanker traffic."*

14498. Oil spills are frankly impossible to clean up, and the evidence -- growing evidence about tar sands clean up seems to make it clear that it is especially so for that type of crude. Canada lags behind Washington State in standards and preparation for oil spill response capability. Oil spills, whether catastrophic or the inevitable smaller spills, will impact U.S. waters and U.S. tribes.

14499. There are other intervenors in agreement. The City of Vancouver submitted the NUKA Report. Canadian conservation organizations have submitted their reports as well, and the Province of British Columbia found that

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Trans Mountain had failed to show sufficient, let alone a world-class oil spill response capability.

14500. Section 18 of the *Canadian Environmental Assessment Act* requires agencies like yours to consult and coordinate with jurisdictions that have powers, duties, or functions related to the assessment of environmental effects of the project, and we submit that that includes with foreign governments. Yet, no U.S. agencies or jurisdictions knew of these section 18 duties. There was no consultation with U.S. agencies, such as the Environmental Protection Agency, the Federal Fisheries Agencies, the Department of State, nor was there an offer to consult.
14501. Involvement of those U.S. federal agencies would have provided much more information to the process, especially with respect to oil spill preparation and response, and helped ensure that the U.S. tribes' rights were respected, as U.S. federal agencies are bound by treaty to protect U.S. tribal rights.
14502. My fourth point involves Canadian and international law duties. This pipeline is an international issue that will have long-lasting and potentially catastrophic consequences to the U.S. tribes' ability to survive. Approval of the project, especially given the failure to consult and coordinate with U.S. tribal and U.S. federal interests, will harm internationally recognized rights to culture and subsistence.
14503. Regardless of whether the harm originates in Canada or the United States, U.S. tribes and the entire Salish Sea will be impacted by it. You must consider the effects of approving this project on the Aboriginal peoples, both in Canada and in the United States.
14504. The United States and Canada have understood the complexities of governing near an international border for a long time, beginning with the Jay Treaty of 1794, which acknowledged that tribes had transboundary rights. And the related duty to avoid transboundary harm is widely recognized. Since at least 1938, this principle has been invoked to limit the way countries use their territories if that use causes harm to another country.
14505. And the Trail Smelter Arbitration between the United States and Canada started this line of precedent. Sulphur dioxide laden smoke from a lead and zinc smelter in Trail, British Columbia, blew into Washington State, sickening people and harming farmland. The arbitration found that:

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*"...no state has the right to use...its territory...as to cause injury by fumes...or [in] the territory of another."*

14506. Here the issue isn't fumes blowing across the border, but the regular parade of oil tankers through U.S. waters, oil tankers that would not come but for the Trans Mountain pipeline expansion. And as I've discussed, increased oil tanker traffic equals increased oil spills and accidents. The same Trail Smelter duties apply; Canada's actions cannot allow harm to the United States' environment and its people.

14507. But it is the 2007 United Nations Declaration on the Rights of Indigenous Peoples that most clearly acknowledges that transboundary issues exists for native peoples, providing that Indigenous populations have the right to maintain social, cultural, spiritual, political and economic contacts across borders.

14508. In November of 2015, Prime Minister Trudeau issued a ministerial mandate to implement that Declaration after many years of holding out from the rest of the world. The Declaration, which is unfortunately sometimes known by the acronym UNDRIP, assures the right to lands, territories, and resources previously owned, occupied and used. That's Article 26.

14509. The right to conservation and protection of the environment at Article 29; the right to determine and develop priorities and strategies for the use of lands and resources, Article 32; and especially at international borders, the right to maintain and develop contacts and relations for activities involving spiritual, cultural, political, and economic purposes.

14510. There are various other international accords that protect the right to one's own means of subsistence as a principle of human rights law. By failing to protect the Salish Sea from increased tanker and oil spill risks, Canada would deprive the United States tribes and its own First Nations of the right to their means of subsistence; of catching and eating the salmon, and other fish and shellfish, which are a key part of their diet.

14511. Safe travel on the sea to catch and gather food is also an inherent part of the right to subsistence. Culture is also a basic human right, a tribal right. As Jason Gobin testified, *"For thousands of years our people have lived on the marine waters of the Salish Sea"*. And Suquamish Chairman Forsman called salmon, *"Our medicine or our cultural strength to our people"*.

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14512. Whether by a devastating accident or death by a thousand smaller spills, this project will harm the cultures of the United States Tribes.
14513. The covenants that ratify and bind these duties -- I include the International Covenant on Civil and Political Rights ratified by Canada in 1976, and the Covenant on Economic Social and Cultural Rights, also ratified by Canada in 1976.
14514. Tribal rights are human rights. Violations of human rights are enforceable by individuals through various international courts, as well being open to investigation by the U.S. Commission on Human Rights. These are not issues to be taken lightly.
14515. While international human rights and human right laws are of paramount importance here, there are also international agreements governing environmental impacts and protection of imperiled species that are at play.
14516. The U.N. Framework Convention on climate change holds that sovereignty over natural resources is conditioned on countries ensuring that their activities don't cause damage to the environment beyond their borders.
14517. The U.N. Convention on the Law of the Sea holds that states must take all measures necessary so as not to damage by pollution or other means the resources, particularly depleted, threatened, or endangered species.
14518. Increased oil tanker traffic or an oil spill will cause harm to salmon and killer whales among many other creatures. Both Canada and the United States have statutes that protect species on the edge of extinction, the *Species at Risk Act*, or SARA, in Canada, and the *Endangered Species Act* in the United States.
14519. Both statutes protect the highly endangered Southern Resident Killer Whale population, which also does not recognize the U.S./Canada border.
14520. The United States Federal Marine Biological Agency that is responsible for protections for the killer whales has found that loss of a single whale of that population could push the population to the brink of extinction, and specifically called out the risk of oil spills that could wipe the whales out.

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14521. Both sets of laws in the United States and Canada have the same purpose on both sides of the line. And the *Canadian Environmental Assessment Act* embodies this concept of comity and respect with its recognition to avoid harm outside Canada.
14522. For the Tulalip Tribes the killer whale is a symbol, and like the salmon is a central part of the tribe's oral traditions, and these species are all part of the Salish Sea.
14523. In conclusion, this proposal's impacts on tribal culture and subsistence rights, rights protected by treaty with the United States, violates international laws on human rights. The project's impacts to the Salish Sea and marine creatures, especially endangered ones, violates international law on environmental harms as well, and the *Canadian Environmental Assessment Act* reflects both of those requirements.
14524. For the United States' Tribes who have lived on this land since time immemorial -- but are not part of this decision and not part of the discussion that has led up to it, save for their own intervention here -- this project is all risk and no reward. We urge you to find that Trans Mountain fail to adequately consult and consider impacts to the U.S. Tribes.
14525. We urge you to find that even with its failures, the record shows that the project will cause significant adverse environmental impacts. And, ultimately, we urge you to find that the Trans Mountain Project is not in the public interest.
14526. In the spirit of the blanketing and witnessing ceremonies that the tribes and First Nations have held to hold their communities together, expand their circle to include others, and ensure that their message and words are remembered, heeded, and passed down for generations.
14527. Thank you.
14528. **THE CHAIRMAN:** Thank you, Ms. Boyles. The Panel will take a short recess to consider any possible questions, which I'm sure you'll be keen to entertain, if we have any.
14529. We'll take -- we'll come back at quarter to 10, it gives us 15 minutes.
14530. Thank you.

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--- Upon recessing at 9:28 a.m./L'audience est suspendue à 9h28

--- Upon resuming at 9:41 a.m./L'audience est reprise à 9h41

14531.           **THE CHAIRMAN:** Ms. Boyles, I wonder if you could -- in one of your comment -- you made a comment that Washington State is better prepared for spill response than Canada. And I'm just wondering how is that accomplished; is it by legislation, by regulation? And it may -- depending I may have follow-up if one -- depending on your response.

14532.           **MS. BOYLES:** There I am. The best place to look for the totality of that answer is the Washington State Department of Ecology's written argument, but in summary it is all of those things. There is state legislation about oil spills that involve the requirements for risk prevention, for financial assurances; there are requirements for the amount of tug escorts that you need.

14533.           There's also just an experience with that level of need for spill response. We have -- unfortunately, we have five oil refineries in Puget Sound on the Washington side, and so we've had a lot of oil tanker traffic, not as much as we will have if the Trans Mountain project is approved, but we've had it. There's rescue tugs that are important, there are differences between rescue tugs and escort tugs, they're important. And all of those sort of lead to a general situation of better preparedness.

14534.           **THE CHAIRMAN:** And is the law or the regulations or the scheme -- is the obligation under the law on the communities to be prepared or the companies or -- how is that spelled out in the framework of the legislation?

14535.           **MS. BOYLES:** It is not on the individual communities. There are -- there are requirements mostly for the companies and the entities that are handling the oil. There's also -- there's also just state requirements, we have an entire department in the Department of Ecology that it's oil spill response, and there are -- there are staff prepared for that at all times.

14536.           **THE CHAIRMAN:** Well, I think with that, the Panel would like to acknowledge your attendance here today and providing your oral summary argument. So on behalf of the Panel, we thank you for that and I can assure you that we will consider this as we consider all aspects of this important decision that is in front of us.

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14537. With that, we'll take a short recess and then we'll be hearing from the District of West Vancouver.

--- Upon recessing at 9:44 a.m./L'audience est suspendue à 09h44

--- Upon resuming at 10:05 a.m./L'audience est reprise à 10h05

14538. **THE CHAIRMAN:** Welcome back. And we're now prepared to hear from the District of West Vancouver. So we will be pleased -- and I think you understand our timing process there and so we're -- we've read your written -- your argument-in-chief and so we're now prepared -- your oral summary argument.

14539. Thank you, Ms. Giltrow.

**--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR THE DISTRICT OF WEST VANCOUVER:**

14540. **MS. GILTROW:** Thank you, Panel. I'd like to introduce -- with me is Mark Chan, Director of Corporate Services for the District of West Vancouver.

14541. The District of West Vancouver is a mountainside and oceanfront community whose population, visitors and economy are focussed around the municipality's 30-kilometre shoreline which lies along the north shore of Burrard Inlet and the south shore of Howe Sound in the Strait of Georgia.

14542. The sevenfold increase in tanker traffic that would result from the proposed expansion project will have a direct impact on West Vancouver. These tankers will travel through some of the most densely populated areas in British Columbia and through some of the most biologically productive, sensitive and ecologically important marine waters in Canada. These tankers will travel and anchor along the shores of the District of West Vancouver in their journeys to and from the Westridge Marine Terminal.

14543. These submissions address the particular impacts the project would have on the Municipality of the District of West Vancouver through the increased marine shipping activities the project would bring.

14544. Now, of course, West Vancouver is part of an ocean -- a family of oceanfront communities that lies along the shores of Burrard Inlet, along with

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- Squamish and Tsleil-Waututh First Nations, the District and City of North Vancouver and the cities of Port Moody, Burnaby and Vancouver. In many respects, as you are aware, the impacts of this project will be felt in common by these communities.
14545.            These submissions recognize that while putting forward the particular position and the perspective of the District of West Vancouver.
14546.            A few words on the process.
14547.            It should be stated at the outset that the District of West Vancouver did not apply to intervene in this process with a predetermined conclusion about the outcome. Acutely aware of the potential impact on the District of West Vancouver of the increase in marine shipping traffic that would come with this sevenfold increase with the project, the Municipality knew it stood to be affected by the project. It applied to intervene in earnest and in good faith.
14548.            However, West Vancouver has been stymied in its ability to come to a full and reliable understanding of the impacts of the proposed project on the community due to the significant procedural limitations on this hearing.
14549.            For example, the inability of intervenors to cross-examine the Proponent on the evidence it has submitted in support of its application is a fundamental flaw in the process and has not been remedied by the information request process. It is a significant draw upon municipal staff, resources and time to review and understand the many volumes of application materials filed by the Proponent to come to understand the risks and the impacts the community may face from a project like this. And yet, municipalities must do so in order to understand and represent the interests of their residents and their communities.
14550.            The burden on the municipalities is only increased by the volumes of material whose function in this case turned out to be on many key issues to obfuscate and avoid the crucial questions that matter to the people of West Vancouver. What will the -- what impacts will we bear? What risks will we face? How have they been measured? How will the nature of those risks be identified and avoided? And how specifically will we prevent disaster or catastrophe?
14551.            The Board granted only approximately five percent of the motions brought by intervenors to compel the Proponent to provide sufficient answers to

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- the first round of information requests and only three percent of the motions arising from the second round.
14552.           The District of West Vancouver as a municipality relies upon senior governments to monitor and regulate important areas of public interest which will have significant bearing on the municipality and its inhabitants. Yet, for example, the NEB refused 100 percent of the Province of British Columbia's requests to compel sufficient answers from the Proponent on fundamentally important issues such as the safety record and operating history of Trans Mountain and its parent company Kinder Morgan, the strength of the Proponent's current and proposed emergency response plans, and the Proponent's ability to respond effectively to spills. These are issues that directly affect the District of West Vancouver.
14553.           Despite participation as an intervenor in the NEB process, the District has been unable to obtain evidence from the Proponent's application or responses to questions that demonstrates: a) a comprehensive and reliable assessment of the operational impacts of the project, including impacts on air quality which will directly affect West Vancouver residents; b) a comprehensive and reliable assessment of the risks to the District of West Vancouver from the shipment of diluted bitumen by tanker along the West Vancouver coastline; and c) a sufficient and coordinated emergency management plan -- management plan in the event of a spill of bitumen in or near the waters that surround the District of West Vancouver.
14554.           While the District of West Vancouver recognizes the often cited phrase by proponents that environmental assessment is not about certainty and does not require certainty, it is, nevertheless, a science, fact and evidence driven process whose purpose is in part to ensure that major decisions that will affect the environment and our population are not made in a vacuum and are not purely political decisions. And for that proposition in our written argument we cite the Federal Court decision *Pembina Institute for Appropriate Development v. Canada*.
14555.           The practical recognition that certainty is not a required standard in the assessment is not an excuse to fail to provide or require sufficient evidence to assess issues that are fundamental to the health while being in safety of Canadians who live along the route and shores of the proposed bitumen path.
14556.           The Board's statutory mandate requires it to assess not only the public interest, but also whether there will be significant adverse environmental, social

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and economic effects from the project. The Board must consider the potential negative effects of the project and it must consider those impacts in respect of the population that lives along the proposed route.

14557. It is the Proponent that has set itself a very difficult task in this proceeding. It has chosen to propose a pipeline and marine traffic route through the most densely populated corridor in British Columbia. It is the Proponent that has the onus to establish that that is in the public interest, taking all of the negative effects of that route into account. However, the Proponent has simply not addressed some glaring issues that arise from choosing this route.

14558. Moreover, the arguments in favour of the project, the need to get the oil to new markets, do not -- leaving aside the question of whether those arguments are based upon sound method and data, they do not go any distance in answering the fundamental question, "Why here?" And the Board is, as a matter of law, bound to both ask and answer that question in this proceeding.

14559. Trans Mountain has the legal framework and the National Energy Board's statutory mandate and obligation wrong. In their final argument they say, and I'm quoting:

*"Certain intervenor evidence, such as the Gunton report, asks the Board to protect industry from itself and essentially pick winners and losers among transportation infrastructure projects."*

14560. Then they say:

*"This regulatory approach is contrary to the Board's established approach of recommending necessary conditions and letting the market decide which projects are built."*

14561. And then the Proponent goes on to say that they've established market demand for the project. And that's at paragraphs 75 -- excuse me, pages 75 and 76 of their final argument.

14562. That is not the legislative scheme. The NEB has a mandatory statutory responsibility under the *Environmental Assessment Act*. The very purpose of environmental assessment is to not let the market decide when and where environmental harm may be caused for profit.

14563. Last week's B.C. Supreme Court decision, the *Coastal First Nations v. British Columbia Environment* -- which is not in our materials because it came out after our final argument submission, but the citation is 2016 BCSC34 -- addressed the Province of British Columbia's environmental assessment and regulatory responsibilities under the same equivalency agreement that applies to this process.
14564. And the Court adopted what has become recognized, both provincially and federally, as the guiding objective in interpreting environmental assessment legislation.
14565. Quoting from paragraphs 98 and 99 of the Supreme Court decision last week, I'll read to you from what has been now cited several times throughout Canada as the guiding interpretive framework for environmental assessment legislation. And it refers both to federal *Environmental Assessment Act* and provincial *Environmental Assessment Act*.

*“The regimes created by these statutes represent a public attempt to develop an appropriate response that takes account of the forces which threaten the existence of the environment. If the rights of future generations to the protection of the present integrity of the natural world are to be taken seriously, and not to be regarded as mere empty rhetoric, care must be taken in the interpretation and application of the legislation. Environmental laws must be construed against their commitment to future generations and against the recognition that, in addressing environmental issues, we often have imperfect knowledge as to the potential impact of activities on the environment. One must also be alert to the fact that governments [themselves], even strongly pro-environment ones, are subject to many countervailing social and economic forces, sometimes legitimate and sometimes not. Their agendas are often influenced by non-environmental considerations. The legislation, if it is to do its job, must therefore be applied in a manner that will counteract the ability of immediate collective economic and social forces to set their own environmental agendas. It must be regarded as something more than a mere statement of lofty intent. It must be a blueprint for protective action.”*

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14566. Contrary to the Proponent in this case's submission, the Board's job is not to simply devise conditions for the project and let the market decide whether it should be built along the route Trans Mountain has proposed. The *Environmental Assessment Act* requires -- uses the legislative term "must" -- requires the Board to take into account malfunctions or accidents that may occur, any cumulative environmental effects that are likely to result from the designated projects. Those are cumulative effects here where the project is being proposed, along the route proposed. You have to grapple with the fact that this is a densely populated area in a busy port and you have to look at the significance of those effects, and you have to look at the alternative means of carrying out the designated project.

14567. In light of that statutory mandate, as set out, as I will say, the District of West Vancouver submits that the evidence that has been put before the NEB by the Proponent is not sufficient to allow the safe recommendation of the approval of the project.

14568. The Proponent said to you in oral submission that the National Energy Board is the main guardian of the public interest when it comes to energy matters. That leaves out the very important other half of the equation, the environment. Under the current legislative scheme the Board is also bound to consider the impacts, including cumulative impacts on the environment in which the proponent proposes to build its project.

14569. As I've said, in this case that is the most densely populated oceanfront environment in the country. The Proponent cannot avoid the complexity of that proposal, nor can it trivialize the reality of this vibrant and beloved oceanfront community by asserting, as it did in oral argument, that the public interest is not determined by loud voices. You have not heard loud voices; you are hearing many voices, the voices of the people who live here, and the voices of the democratically elected governments of the people who live here.

14570. The onus is on the Applicant to establish that it is in the public interest to put this pipeline and bitumen route here. The Applicant has failed to discharge this crucial aspect of its onus. It proceeds on the presumption, as it said again in oral argument, that following the existing route, as it said, is the hallmark of good environmental planning. That is neither tested nor established on this application.

14571. The Applicant cannot avoid the crucial question of local burdens and costs weighed against asserted broader benefits, and those local costs and burdens

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are significant, as I will submit in summary in a moment. Similarly, Trans Mountain cannot avoid this analysis by saying to you that the local must yield its interest to the national; that someone will always be unhappy somewhere, because it has not established that the benefits it relies on, on the benefit side of the equation, would not be realized similarly elsewhere outside the most densely populated corridor in B.C.

14572.           So the conclusion of the District of West Vancouver after having reviewed the evidence in this proceeding is what I'll speak to next.

14573.           West Vancouver and all intervenors have been faced with a very limited process. The Proponent points to the volume of materials, number of intervenors, number of questions asked in support of the assertion that this has been the most thorough NEB process ever. This isn't a question of volume; it is a question of substance, and substantively there are some very fundamental things lacking from the Proponent's evidence.

14574.           Based upon what is missing from the Proponent's evidence, and upon the helpful evidence filed by intervenors to illuminate the gaps left in the Proponent's case for the project, the District of West Vancouver has, through review and deliberation, arrived at the following two conclusions.

14575.           First, it would not be safe for the National Energy Board to recommend approval of the project based upon the information that is before the Board in this application. And, second, from what is known on the evidence, and in particular from certain intervenor evidence, the project will bring negative impacts and costs to the Municipality of West Vancouver through its regular operations.

14576.           And we've heard a lot about spill risk, but my submissions below will deal with the certainty of impacts from regular operations, but the gaps in terms of the extent of those impacts and what's known about them. Also that it will burden the municipality with its ongoing and significant risk of serious harm from accidents or malfunctions and will, on the other hand, bring no local and insufficient regional and national benefits to justify these harms.

14577.           Significantly, this conclusion of the District of West Vancouver with respect to the safety of the project is consistent with, and affirmed by, the conclusion of the Province of British Columbia. The Province has determined, as stated in its final argument, that it cannot support Trans Mountain's application

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based upon the evidence that is filed in this proceeding.

14578. West Vancouver also places significant weight on the carefully demonstrated and articulated positions of neighbouring First Nations opposing approval of the project. West Vancouver would like to formally acknowledge and thank its neighbours, and in particular the Squamish and Tsleil-Waututh First Nation, for the long-term view they have brought to the understanding of this project.
14579. Grounded in the history of their long presence here, they have articulated a view of the future of this area that all of the oceanfront communities are seeking to preserve, a future that lends our children and grandchildren the quality and way of life that we so deeply value here.
14580. The District of West Vancouver heard Squamish Nation yesterday when Squamish said Squamish Nation cannot condone a project that poses such a significant threat to the Squamish Nation way of life, it is not in the public interest, and it is definitely not in Squamish Nation interest.
14581. The District of West Vancouver would also like to formally acknowledge and thank the Tsleil-Waututh. The evidence filed by Tsleil-Waututh, along with others, has been tremendously helpful in understanding the risks and impacts that the Burrard Inlet communities will face from the proposed project.
14582. West Vancouver would like to thank the Tsleil-Waututh for the tremendous amount of time, effort, and resource they have put in to responding to claims and assertions in the application that affect us all.
14583. West Vancouver stands beside and supports First Nations in their opposition to the project. It stands with the family of oceanfront communities that have, through their elected governments, determined their opposition to the project, including the cities of Vancouver, Burnaby, North Vancouver, Port Moody, and Victoria.
14584. The Proponent's approach to risk assessment fundamentally ignores the lived experience of risk that the communities living -- of the communities living along the ocean shores. The Proponent says in its final argument at page 64 that there will be a substantial reduction in risk per cargo per ship. In the face of a sevenfold increase in tanker traffic that has got to be a very substantial reduction

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in per cargo risk indeed to make a difference to the people living along the shores where those ships will pass.

14585. And, in fact, there is no such substantial reduction. The evidence is that the risk will go up. By how much may be unclear on the evidence, and in West Vancouver's submission, that is a gap that is left by the inability to cross-examine, but it is clear that there will be a substantial increase in risk. The Gunton report cites a 6.8 time risk increase -- spill risk increase relative to the status quo.
14586. West Vancouver also notes that this is just the beginning. The review here is restricted only to the applied for capacity of 540,000 barrels a day, despite the fact that the new pipeline is designed to carry 780,000 barrels a day and that that subsequent addition won't be subject to a process such as this, with the opportunity for comment by the communities that would be affected.
14587. To accept the reduced risk per cargo approach of the Proponent would be the opposite of assessing the cumulative impacts of the shipping and a fundamentally incorrect interpretation of the Board's mandate under section 19(1)(a) of CEAA, which requires assessment of and recommendation based upon the cumulative effects of the project.
14588. Again, going back to the lived experience of living with this risk, District of West Vancouver is particularly concerned that the Proponent has provided no risk assessment for a spill in Vancouver Harbour or English Bay. These are the most densely populated communities in B.C. living along these shores.
14589. The National Energy Board requires spill scenarios be run at representative locations along the marine shipping route. Burrard Inlet is not just a representative location; it is an essential one to understanding the human health risk alone that would arise from such a spill.
14590. West Vancouver also notes what the Province has said about spill response, and this is quoting from the Province's final argument at paragraph 98.

*"The Province submits that Trans Mountain has not provided sufficient evidence in this proceeding to show how a major spill in the marine environment would be addressed. That is, no marine spill response plans, or other detailed information,*

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*have been put on the record to show the means by which a marine spill would be responded to.”*

14591. The province goes on to say:

*“There is no evidence that west coast marine response has undertaken any exercise as respecting sourcing and managing the large shoreline workforce that would be required to respond to a major spill.” (As read)*

14592. This lack resonates deeply for the Municipality of West Vancouver, which lived the real-life gap analysis, if you will, arising from the M/V Marathassa spill in Burrard Inlet in April 2015.

14593. I am here referring to the evidence that’s set out in the affidavit of Dorit Mason at -- I don’t need to call the exhibit up, but it’s Exhibit A70221 filed by the District of West Vancouver. Dorit Mason is the Head of the North Shore Emergency Management Office which is an office that West Vancouver is part of along with other municipalities.

14594. And that evidence demonstrates that agencies with overlapping jurisdictions will respond in the event of a spill in Burrard Inlet. These local governments will be implicated in spill response when it happens.

14595. The Marathassa incident demonstrated that spill response and mitigation relies upon coordinated and competent performance of roles by all agencies involved, evidence of which, as the Province of B.C. has said, is not present in this proceeding.

14596. Empirical shortcomings in the actual real-time response to the Marathassa spill shed valuable light on the weaknesses in the Proponent’s application and its vague reliance on the same systems which were to have been in place and ready to respond to the Marathassa spill.

14597. The story of the Marathassa spill, which I will go into now, reveals why it matters; why what the Province has said matters. That the evidence of an effective spill response regime and everything that that entails, the absence of that evidence and vague assertions that this is a regulated route and these are issues that are beyond Trans Mountain’s direct control, it fundamentally matters if these aren’t here.

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14598.           The absence of evidence in this hearing along with the lived experience of the Marathassa spill reveal the risk we are already living with. There is no basis in this application to suggest that we're in any shape to add to that risk with the proposed sevenfold increase in bitumen tanker traffic that is proposed here.
14599.           So just briefly, the story of that spill. The North Shore Emergency Management Office was contacted by West Coast Marine Response to advise of the spill approximately 14 hours after the spill was detected. NSEMO and the City of Vancouver representatives working at the Vancouver Emergency Operations Centre made repeated requests to obtain information regarding the known extent of the spilled material from the incident command post but none was forthcoming.
14600.           It was not until almost 22 hours after the spill was initially detected that the extent of the spill was communicated by the Coast Guard. By that time the information revealed that the spill was approximately 500 metres from the shoreline of West Vancouver. Of course, very shortly thereafter oil was observed immediately off of the West Vancouver shoreline.
14601.           At that time, a North Shore Emergency Response Centre was established. The incident command post and NSEMO had difficulty putting sufficient personnel in place to prevent public access to the oiled beaches. The District of West Vancouver has very heavily used beaches by the public. Preventing public access without timely notice was a very significant challenge for the District.
14602.           The Marathassa spill caused a very significant draw on District of West Vancouver staff and resources. The chief administrative officer, the fire chief and information officer were all engaged at the emergency operations centre. Other municipal staff were the ones who had to respond in assessing beaches and to dealing with public enquiries. They were in fact the primary source of information for public information regarding the oil spill.
14603.           The District had to implement restrictions on water access using police and other municipal staff to enforce restrictions on water access. West Vancouver fire staff had to assess the West Vancouver shoreline by fireboat with the Vancouver Fire Department. Staff were located at the incident command post in Port Metro Vancouver offices.

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14604. They had to install signage from Park Royal all the way to Lighthouse Park to warn the public about the spill and keep the public away from the beaches. And they had to patrol the beaches and get the public to stay off the beaches.

14605. NSEMO and the North Shore municipalities were not provided with important and relevant information in a timely way during the spill response and recovery. They further observed that Unified Command initially had no formal document management system established and that not all public records of oil were being recorded adequately nor passed on to local governments.

14606. But here's the clincher. The issue of end points, recognized end points for cleanup that recognize the local conditions and the local population use of the beach, these were just fundamentally not established and were not in place before the spill occurred and they were not agreed upon after the spill occurred.

14607. And the story of John Lawson Beach really illustrates the problem here. As Dorit Mason, the head of NSEMO attests, and this is a quote from the affidavit:

*“John Lawson Beach is a high use public recreation beach, with easy access, and has a large playground right next to it. This location is a destination for families from across the North Shore and is connected by a seawalk along the whole waterfront. This beach was one of the areas hardest hit by the oil spill. John Lawson Beach would not have been adequately cleaned up to the appropriate level of beach end point criteria if not for the insistence of the District of West Vancouver that an independent analysis of the beach be done. Unified Command was prepared to leave this beach cleaned and to the level of the normal standard for beach clean-up end points which allows for globules of oil to be present. However, the District of West Vancouver insisted that this standard be modified to take into account the high public use of this beach and the potential exposure to the public.”*

14608. And even so at that time, the Responsible Party objected to an enhanced cleanup for this beach. Unified command eventually brought in an expert from Environment Canada, from Montreal who visited the beach and observing the very high use of this beach from people from the very young to the

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very old agreed that while that level of cleanup might be sufficient for beaches elsewhere, in this heavily populated high-use area, something much more had to be done.

14609. This additional clean up took three additional days to complete.
14610. Vancouver Coastal Health Authority did not approve the re-opening of the John Lawson Beach until about 21 days after the Incident Command Post was shut down on April 24<sup>th</sup>, after the spill.
14611. These were the last of the beaches reopened in Metro Vancouver. As the head of NSEMO observed:

*“There did not appear to be any objective criteria for reaching end-points such as when the clean-up of John Lawson Beach would be considered complete. Endpoints must consider all aspects of the beach, including environmental sensitivity, human use, and cultural importance.”*

14612. The Proponent in this case in response to concerns that the Province of British Columbia raised about the lack of any clear evidence of response plans that would deal with this may, on one hand, seem like detail. This is detail that has fundamental importance to the people who live in these areas, and there isn't evidence of any plan to deal with these sufficiently going forward.

14613. And yet, in response to the Province, the Proponent pointed to the Marathassa spill as a sort of success story. I am referring to paragraph -- if you refer to paragraph 100, which I won't ask you to go to, but I'll give you the cite, from the Province's written argument.

14614. The province said, at paragraph 100, dealing with its concerns about the absence of evidence of plan for effective spill response and recovery:

*“Certain assertions made by Trans Mountain in its reply evidence do not allay the province's concerns with respect to the capability to respond to a spill in the marine environment.”*  
(As read)

14615. For example, in the reply evidence, Trans Mountain contends that there have been many technological advances with respect to the ability to recover

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spilled oil during nighttime. The authors then assert that these advances led to the recovery of -- and this is the province quoting from Trans Mountain:

*"...more than 80 percent of released oil during the Marathassa spill in early April 2015." (As read)*

14616. The province says it is not clear to the province how this figure is derived, and Trans Mountain offers no detailed information regarding the effectiveness of the technological advances referred to in their reply evidence. Therefore, the basis for the asserted success of nighttime recovery techniques remains unknown.
14617. The province goes on to look at the unsupported data and assumptions in Trans Mountain's assertion that the Marathassa cleanup was somehow a success story, and concludes Trans Mountain's unsupported assertion that 80 percent of the released oil was recovered from the Marathassa spill does not provide the province with confidence that this proportion of oil could in fact be recovered in the event of a spill.
14618. I'll turn now in my -- in the last portion of our oral summary argument. As I said, I've been speaking about spill risk, as many have, to you, but there is also the certainty of operational impact.
14619. And on the one hand, I point to certainty of operational impact, that is, the fact of the seven-fold increase in tanker traffic along the marine shipping route, right in front of West Vancouver. If this project is approved, we know that will happen. We also know it will be just the beginning. But there are glaring things we don't know on the evidence about the extent of those impacts, and West Vancouver is, in particular, very concerned about human health impacts from that increased shipping.
14620. And -- so what I will submit is the evidence submitted by the Proponent fails to adequately assess the operational impacts the project would have on the District of West Vancouver. It -- first, I'll make three points. I'll talk about emissions, inadequately assessing emissions. I'll talk about the impacts from the greenhouse gas emissions from operations alone, leaving aside the fact that emissions from upstream and downstream impacts of the project are scoped out of this, but there are greenhouse gas emissions from the operations alone; and finally, in terms of lived experience, the noise and light pollution that will increase along the shores and for the residents of the District of West Vancouver

from this project.

14621. With respect to the health impacts -- the emissions and health impacts issue, West Vancouver -- as I said at the outset, West Vancouver has to rely upon expertise and in particular, where it's available, senior government expertise, on matters that are within senior government jurisdiction. West Vancouver has put significant weight on the comments and concerns of Environment Canada with respect to the significant underestimation of emissions from operations.
14622. First, as Environment Canada points out and Transport Canada, the application significantly underestimates time in port, and time in port bears directly upon how much emission will come from the ships while they're in port. The application submits that there would be an average of 20 hours in port for each vessel.
14623. Environment Canada looked at this and found that it was based on unsupported assumptions and uncorroborated by data. Environment Canada looked at the data and found -- and I'm quoting from Environment Canada:
- "...that the average time [that] a Westridge-bound tanker spends at anchor is about 70 hours [not 20], 3.5 times as long as the 20 hours used to estimate anchorage emissions in [the application]."*
14624. The Proponent has also inappropriately omitted boiler emissions from its final estimates of marine source pollutants, and Environment Canada says that this could add another 10 to 30 percent of emissions if properly considered.
14625. Environment Canada also pointed out that the Applicant failed to assess anchorages that will occur beyond the immediate area of Westridge Marine Terminal, including, very importantly to the District of West Vancouver, areas along the shorefront of the District of West Vancouver.
14626. Now, the underestimate of the sources of emissions leads to what Environment Canada has pointed out are serious and significant concerns about underestimates of the air quality emissions and the impacts of those emissions that will emerge. Environment Canada has said that nitrous oxides emissions could be underestimated by as much as 37 percent or 750 tonnes annually. And Environment Canada notes that this is in a region along the north shore of Burrard Inlet that already experiences some of the higher hourly nitrous dioxide

concentrations in Greater Vancouver.

14627. Also, volatile organic compound emissions are underestimated by approximately 800 tonnes a year, and that Environment Canada further estimates then that the total -- the appropriate estimate of 1,600 tonnes per year -- that 75 percent of those emissions occur in Burrard Inlet near the urban areas, near where the residents of West Vancouver live, in the areas where the residents of West Vancouver live.

14628. Particulate matters are also -- and this again comes from Environment Canada -- are expected to have been underestimated by about 20 percent due to the exclusions of boiler emissions by the Proponent.

14629. And then there are the CO<sub>2</sub> emissions alone that -- I'll get to those in a minute, but what Environment Canada has said with respect to marine emissions generally is that with the Trans Mountain Expansion Project -- I'm quoting from Environment Canada here:

*"...the Proponent is proposing to increase operations at an expanded marine terminal in Port Metro Vancouver, which is located in the Burrard Inlet, a harbour within an urban area with a population of close to 2.5 million [people]. Marine emissions will occur within an airshed that is considered sensitive by the National Energy Board, which acknowledged, in a previous project review, the limited capacity of the airshed to accommodate additional pollutants without negative effect."*

14630. Thank you.

14631. **THE CHAIRMAN:** I see you've noticed the fact you have five minutes remaining. Thank you.

14632. **MS. GILTROW:** The health impacts from the air emissions alone are of significant concern to the District of West Vancouver that lies in this airshed, lies along the north shore that is already burdened almost to capacity in terms of air emissions. The fact that these have been significantly underestimated and that Environment Canada has said that it does not have confidence that the proposed or the prospective emissions, as the Applicant sees them, are just under, in some cases, our accepted guidelines, Environment Canada doesn't have confidence that we've just come in under the wire. It says that certain emissions have been

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significantly underestimated and that underestimation can have significant health impacts for the residents of West Vancouver.

14633. The operation of the project will also generate an additional over one million tonnes of CO<sub>2</sub> per year from the project, the tanks, the pipelines, et cetera, and the marine shipping component would add approximately 90,000 tonnes of CO<sub>2</sub> per year. And that is on Trans Mountain's own evidence.
14634. Finally, I'll say the application does not sufficiently assess the noise and light pollution impacts that the District of West Vancouver and other communities will face. And I'll return again to the concept of the lived experience.
14635. It's obvious that a seven-fold increase in tanker traffic will have a significant impact in terms of the presence of those tankers along the shores along which they ship, along on which they pass and anchor. Despite the increased impacts that this will bring to the residents of West Vancouver, the Proponent has refused to conduct a visual modelling of the project related tankers at anchorages or on multiple points along the shipping route within Burrard Inlet, as -- because the Proponent's reason is the project related tankers are one of many kinds of vessels that may be anchored or in transit at any given time.
14636. This misses the fundamental point of this regulatory review, that it is the proposed project that will increase the marine traffic in Burrard Inlet and it will increase the impacts and risks to that traffic in a way that is specific to the proposed project. As a matter of law, the NEB is required to assess the cumulative impacts of the project. In West Vancouver's submission, the NEB cannot reasonably find that this does not require assessment of the visual and auditory impacts of the increased number of tankers anchored and in transit.
14637. And that assessment has to happen before approval. We need to know what this will look like and the extent of these impacts before knowing whether this imposition on the communities that live next to this shipping route is acceptable and in the public interest. In the District of West Vancouver's submission, it is just fundamentally not in the public interest based on what West Vancouver knows already, but certainly the NEB doesn't have the information before it to conclude that it can meet the public interest test.
14638. I will say in closing, the District of West Vancouver is, as I said at the outset, focused around its oceanfront. This goes to the core of the identity of

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West Vancouver as it does for the other oceanfront municipalities, but we're here for West Vancouver today. This project will fundamentally change what that oceanfront looks like, what the experience of being on that oceanfront looks like, in an operational sense, but also with a very significant added burden of living with the risk of catastrophe along that project.

14639. West Vancouver lived with the consequences of a small spill in April of last year. Those were significant consequences for West Vancouver, and that was a relatively small spill. What is at stake here, what has not even been modelled by the Proponent, is the risk of a catastrophic spill. It may be low probability, but is very, very high consequence, and it is a very high consequence for the people of West Vancouver.

14640. The District of West Vancouver submits that the Applicant has not established that these burdens are in the public interest, locally, regionally, or nationally. And the District submits that the Board cannot safely recommend approval of this project based upon the evidence that is before the Board, and it urges the Board to recommend against approval of the project.

14641. **THE CHAIRMAN:** Thank you. Thank you for your summation, Ms. Giltrow. I think the Panel will take a 10-minute recess to consider if they have any questions for you.

14642. Thank you.

--- Upon recessing at 10:46 a.m./L'audience est suspendue à 10h46

--- Upon resuming at 10:58 a.m./L'audience est reprise à 10h58

14643. **THE CHAIRMAN:** Thank you. The Board have a couple of questions for you and I'll start with my colleague, Mr. Davies will begin.

14644. **MEMBER DAVIES:** Just a quick question to clear up what was a misunderstanding in my mind perhaps, but I heard you repeatedly say that as a result of this project there would be sevenfold increase in tanker traffic. Is that consistent with the record?

14645. **MS. GILTROW:** Yes, that's my understanding. We're going from a 29-ship per month increase, based upon Trans Mountain's final argument.

14646. **MEMBER DAVIES:** Okay. I think the clarifying term was missing

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and I'm suggesting this and ask you to tell me whether I'm correct, and so that increase would be in project-related tanker traffic?

14647.           **MS. GILTROW:** Correct.

14648.           **MEMBER DAVIES:** Thank you.

14649.           **MS. GILTROW:** I understand that to be the scope of what's at issue here.

14650.           **THE CHAIRMAN:** I've just got an area concerning response, emergency management, coordination, integration, and all of those things involved, and I -- on page 51 of your presentation -- of your argument in-chief, you note on 103 that:

*"The proponent notes: The Board requires companies to provide relevant information consistent with...[the] specified in [the] EMP documents to first responders and all persons, including municipalities, that may be involved in an emergency response activity."*

14651.           And that's a quote from what Trans Mountain are required -- or the Board requires them to do. And then 104 you begin, "Although a marine..." -- you note correctly:

*"Although a marine spill itself...fall under the joint responsibility of federal response authorities and the responsible party..."*

14652.           Then you go on to talk about local governments. Following on to that, I note your -- in -- also on page -- anyway, sorry; in Appendix B, page Roman numeral II, you talk -- and you mentioned in your oral summary argument concerning the -- from the north shore Emergency Management Office and how they'd identified a number of things from -- that perhaps the direct impacts and experience by municipalities on the north shore of Burrard Inlet, including the District of course of West Vancouver, and you -- there's a recommendation of things that could be improved upon. And you list three -- four of those under 7.1 to 7.4.

14653.           And I noted in the City of Port Moody's submission -- I don't know

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- whether you had read it or not -- in their Appendix A on page 1, they are recommending an additional condition that there be a Burrard Inlet Spill Preparedness and Response Oversight Entity.
14654.           And I'm wondering if you could help me, how that all would be integrated for the Burrard Inlet, because your concerns raised in your submission, as we've heard in Port Moody, the integration, the involvement of municipalities and how we -- and respond. And as you point out the traditional recommendations from the north shore.
14655.           Your view on how all this should be integrated, how it should be involved with the company, the federal agencies; those kind of issues.
14656.           **MS. GILTROW:** Thank you. Well, first as a starting point, the District of West Vancouver is opposed to the project proceeding now, which I know is clear from our presentation. But I say that to frame my answer that will follow, in that the answer does not mean that this is a condition that could enable the project to proceed.
14657.           However, the District of West Vancouver is deeply invested and very interested improving the situation on the water right now, because what this has revealed is that we are living with an unacceptable degree of risk right now.
14658.           So not as a condition to approval of this project, but what should happen, we can make a response and then assessment of a future proposal would have to be based upon a much improved circumstance that's on the water now.
14659.           So with that foreword I'll say that the outcomes have to be -- so what the City of Port Moody has proposed in terms of an oversight body is fine and the District of West Vancouver has no substantive objection to that, and that might work, but it would certainly not be sufficient.
14660.           What has to be sufficient is a very clear outcome -- that oversight body clearly has to involve local government responders in terms of determining what's needed, what's happening now and what's missing. It has to involve local government response in terms of absolute training and access to equipment stashes at key locations with clear marching orders in terms of what will happen in emergency.
14661.           But then very importantly, it has to result in clear and enforceable

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regulatory standards that are not just the product of friendly discussions between neighbouring communities, because that hasn't worked. That's what Marathassa revealed and that's what the evidence on the record has revealed. It's just not -- it's just not there.

14662. So an oversight agency that has taken into account in very substantive ways the expertise, the knowledge -- the local knowledge, the insight of local government responders; that has developed very clear plans for how everybody will respond in the case of an emergency, including that issue of end points that I mentioned, the John Lawson Beach story, that needs to be worked out and clear well in advance.

14663. And then that everybody's responsibilities have to be subject to enforceable regulatory standards, so there's -- we don't have a bunch of vague finger pointing at the end of something that hasn't gone very well; we have enforceable obligations. That is the outcome that has to happen now, not as a condition to approval of this project. We should be operating under those conditions now.

14664. And any subsequent question about whether this region could bear the added risk that is proposed by the sevenfold increase in project-related tanker traffic would have to be made based upon an assessment of how all of that is working. So we need to fix the status quo before we start talking at all about adding to the risk we're living with under the status quo.

14665. **THE CHAIRMAN:** Yeah, and I perhaps should have started mine, "If we recommend approval." And as you know -- or not, depending on what that recommendation is. And as you know, we have to list conditions whether we do it or not, so I understood that -- I hope you understood that that was no fault of mine saying that we -- we're going to do this, because that's not our intention.

14666. I'm interested in -- recognizing the fact that the Board has certain authorities and then there's federal authorities, Transport Canada, Fisheries and Oceans, all the other -- and the -- West-Mark and all of those other individual bodies that are involved, enforcing regulatory standards, we may have certain responsibilities that could do that if we recommend approval, and depending on what the Governor in Council does.

14667. But others have -- also have standards as well, so how would you think the Board could influence your position in that if we were so inclined?

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14668.           **MS. GILTROW:** Thank you. That goes to the core of our -- the first of West Vancouver's submissions, which is that it is not safe to recommend approval based upon what's before you, because what is before you is before you in the context of the current regulatory standards. And in the District of West Vancouver's submissions those regulatory standards, while there, are not doing the work they need to do. And the lived experience of the Marathassa spill is evidence of that.

14669.           So West Vancouver's fundamental submission is that the Board cannot safely recommend approval of this project in reliance on regulatory standards that will kick in down the road. Because we know what those regulatory standards are, we've seen them at work, we have the authoritative assessment of the Province looking at the situation of spill risk and response capacity in the context of existing regulatory standards, and it isn't safe based upon the current regulatory standards.

14670.           So the Board's authority is restricted to making its recommendations in this circumstance based upon what it has to assess under the NEB Act and the CEEA Act. But it does so, of course, mindful of the broader regulatory standards that will be at play to absorb this project into our regulatory scheme. And our fundamental submission is knowing all of that it is not safe, based upon the evidence before the Board, to recommend approval of the project.

14671.           **THE CHAIRMAN:** Thank you for your response.

14672.           Again, the Board thanks you on behalf of the District of West Vancouver for your oral summary today, and all the other evidence you have placed on the record and we will be considering along with the other evidence that is before us. So with that, again thank you and for your attendance today.

14673.           We'll take a short five-minute break and then we will hear from the Simon Fraser Student Society.

14674.           Thank you.

--- Upon recessing at 11:08 a.m./L'audience est suspendue à 11h08

--- Upon resuming at 11:18 a.m./L'audience est reprise à 11h18

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14675.           **THE CHAIRMAN:** We're now going to hear from the Simon Fraser Student Society and we welcome you both for the hearing today. We have the joint submission from you as well as from the Graduate Student Society, Simon Fraser University so the Board would welcome to hear your oral summary argument. So please proceed.

14676.           Thank you.

**--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR THE SIMON FRASER STUDENT SOCIETY:**

14677.           **MS. YANG:** Thank you so much. My name is Kathleen Yang and I am the Vice President, External Relations for the Simon Fraser Student Society.

14678.           **MS. TRUONG:** And my name is Tessica and I am both an SFU student and the formal environment rep for the Board of Directors for the SFSS, and today we'll be only using approximately 15 minutes of your time. We are missing class to be here, so we will be going back up to the mountain after this.

14679.           **MS. YANG:** So Mr. Hamilton, Mr. Scott -- or sorry, Ms. Scott and Mr. Davies, we are so honoured to be speaking to you today on the unceded Coast Salish territories of the Musqueam, Stó:lō, Squamish and Tsleil-Waututh people.

14680.           As the Student Society for Simon Fraser University, the SFSS provides a number of services to our students and we are here to represent the over 26,000 students that attend Simon Fraser University across the Vancouver, Burnaby, and Surrey campuses. We provide an extended health and dental plan, a transportation pass, a food bank program and these are only some of the few supports that we provide to our students, and every year students elect a new Board of Directors to ensure all of our needs are met and advocated for and protected.

14681.           **MS. TRUONG:** So we are here today on behalf of countless SFU students and youth that do not have a say in the National Energy process that will be disproportionately affected by the Kinder Morgan Expansion Project. Not only was this a daunting process designed to exclude the majority of the public but among the many SFU student groups and individuals who applied to participate only SFSS and the GSS, or the Graduate Student Society, were granted the opportunity to participate as interveners. Many others who applied were denied access or downgraded to commenter status. So as we speak there as SFU students

- outside this room in the rain here demonstrating peacefully. And meanwhile we found there was an unusual amount of security inside this hotel to ensure that it stays that way.
14682.           So we, along with the GSS, are the only students that you have allowed to have a say, and throughout the National Energy Board review we have found numerous procedural issues including the shifting deadlines, the lack of oral cross-examination of evidence provided by the Trans Mountain group, something that was previously in effect, and the lack of adequate response to the questions submitted by many of the interveners. This undermines the quality of evidence that you, as a Board, have at your disposal. It does not permit you to make the best decision or fully formed decision.
14683.           As SFU students, we are among the youngest interveners speaking at these hearings. We are also the most likely to be affected not only by the direct impacts of the project but also the indirect impacts of climate change caused by this project. We are therefore particularly concerned about the scope of the review which does not include any of the upstream or the downstream impacts; this means that we cannot talk about climate change, the pollution to the Athabasca River, the extraction of the tar sands. It means the National Energy Board either does not know or does not seriously consider where the bitumen is coming from and where it goes.
14684.           So we think that it is not possible to fully consider the environmental and social impacts of the project while putting blinders on to the upstream and the downstream effects of the project. SFU's directly on the route of the pipeline and yet our community has not been properly consulted nor has -- given consent for the project to move ahead. To this failure to consult by the National Energy Board and Trans Mountain, we self-organized and consulted our students through multiple channels.
14685.           **MS. YANG:** Last year, the SFSS provided many opportunities for students to provide their thoughts on the pipeline, and an overwhelming majority cited their opposition. It is from student opinions that we came to the decision to oppose this project, and with further evidence provided by intervenors, including Simon Fraser University, the City of Burnaby, and the City of Vancouver concluded with the recommendation that the Board not recommend the approval of the Trans Mountain Expansion Project.
14686.           The risk posed to student and campus safety, the reputational risk that

would result to Simon Fraser University, the procedural failures related to this review, and the exclusion of climate change impacts as permissible evidence are all reasons that we have cited in our argument to you in our written submission.

14687. One of the primary reasons, though, that we are opposing this pipeline is due to the risk to student and campus safety. Trans Mountain has failed to provide any assessment of potential risk to SFU communities around the tank farm stemming from a significant event, such as a major fire or boil over, and has not provided the university with information to address SFU concerns around emergency planning for evacuation of SFU, emergency response to a major fire or boil over, and the lack of access to and from SFU during a major fire or boil over.
14688. The Burnaby Fire Department has said in some cases that it would be forced to allow an oil tank farm to burn itself out due to a lack of safe firefighting positions at the tank farm facility. Should a boil over event occur, heated crude oil would spill over into the Forest Grove community and across the Burnaby Mountain Parkway and Gaglardi Way intersection. As this is the primary intersection to and from campus, any obstruction to the Burnaby Mountain Parkway and Gaglardi Way would effectively trap residents and students. As a student, there are thousands of us that commute every day, every morning and every night, and sometimes we wonder; “What if something happens, what will happen to us?”
14689. Currently the only plan that we know of SFU has in place is to shelter faculty, staff and students, and residents in place, meaning we will effectively be trapped on the mountain. And from our consultations a student has noted, and I quote “I am greatly concerned about a catastrophic spill on Burnaby Mountain, for both the impact on the local ecosystems and for the thousands of staff, faculty, and students who may be trapped on campus with no means of escape.”
14690. As students more than two-thirds of our week are spent on Burnaby Mountain, we do our research, we study, we learn, we socialize, perhaps work part time on the mountain, and, of course, live on this campus. Therefore we require access to the campus 24 hours a day, 7 days a week, which may not be possible as a result of this project.
14691. This may have been a good place for this tank farm 60 years ago, but today with the university, neighbourhood residences, an elementary school, and daycare facilities, this is no longer the case.

14692.           **MS. TRUONG:** As two generations of Board members for the SFSS we also know the challenges of making difficult decisions in the face of fierce division, but we recognize that we have been trusted by our peers to do what is best for all of us.
14693.           **MS. YANG:** This is not about ideology. Our opposition to this pipeline is rooted in our commitment to ensuring the safety and wellbeing of our students and the Burnaby Mountain community as a whole, now and in the future.
14694.           **MS. TRUONG:** While you are not elected representatives the former government has invested in you the power to recommend for or against the issuing of the Certificate of Public Convenience and Necessity.
14695.           In our opinion, this project is neither convenient nor necessary for the public and you have the power to make the best decision possible for Canadians. So despite the procedural misgivings of this review we have chosen to continue to participate in this process, for it is our hope that you'll accept the trust that has been vested upon you and recommend against the approval of this project.
14696.           It is a rare moment in history where the most diverse municipalities, Indigenous Nations, the provincial government and countless others alike share a stance against this project. This is your opportunity to leave your mark and shape Canada's history.
14697.           Thank you very much.
14698.           **THE CHAIRMAN:** Thank you.
14699.           If you could just give us a moment.
- (Short pause/Courte pause)
14700.           **THE CHAIRMAN:** Maybe you can -- in your argument on page 14, number -- citation 56 you talk about public reviews -- and I'm quoting:

*"...such as this one are, among other things, public outlets for frustration. They are a legitimate and healthy way to make opposition heard and, when credible, can build social acceptance for controversial policies by making citizens feel that, though a decision did not go their way, their viewpoint*

*was considered.”*

14701.           And then you say, of course:

*“[The] public review that is not seen...”*

14702.           This public review I assume you’re talking about.

*“...[is not] credible can have [that] very opposite effect.”*

14703.           I’m wondering if you could help me understand social acceptance and public trust. And has this -- is it the process that has raised your doubts in the ability to -- not influence -- maybe that’s not the word -- to give us your thoughts on the project?

14704.           So I’m just -- do you mind if you help me with that one?

14705.           **MS. YANG:** If I could just ask again what was the direct quote that you were reciting from?

14706.           **THE CHAIRMAN:** Yeah, it’s on page 14, sub 56 -- citation 56, third one from the end on the last page.

14707.           **MS. YANG:** And you are trying to gather our thoughts on the value of public engagement? Sorry, if you could just ---

14708.           **THE CHAIRMAN:** Yeah, you say it’s social acceptance and public interest.

14709.           As you know, we have to decide in the public interest in this matter, and I’m just trying to understand your -- is it the process that the students don’t find acceptable that wouldn’t help us give it a social -- well, the word “social licence” compared to public interest?

14710.           **MS. TRUONG:** Absolutely. I think that is part -- one of the main arguments that we have is that the process itself is very difficult, at least for us, to navigate as a multi-million dollar organization. We still had troubles, and we had to hire an environmental lawyer to help us navigate the process. The application itself was 10 pages long. And many of the other students that we know or student groups that applied were either denied access -- or declined or were reduced to

commentary status as opposed to intervenor status.

14711.           And so just that very barrier to entry in this process is one of the many reasons why I think there is this lack of trust or perhaps this fear that there's intentional -- there has been an intentional -- this process has been intentionally designed to exclude the public from it.

14712.           **THE CHAIRMAN:** So following that through, that is the process that you wouldn't believe your students' body and others have expressed this in their submissions on the acceptance of the project; if the process had been different there may have been a better outcome in your consideration?

14713.           **MS. TRUONG:** Particularly also around the scope of the review we don't think that -- because the scope is quite limited we don't think that you can fully assess the entire project without looking at the upstream and downstream impacts because they do affect us as a community directly but also indirectly in the future in particular with regards to climate change.

14714.           **THE CHAIRMAN:** Do you have any advice to us on how we would -- how to balance national -- Canadian national interest and local interests?

14715.           It's not an exam. I'm sorry. You're being very helpful to us.

14716.           **MS. TRUONG:** I think firstly, and I think I mentioned this in our oral submission as well, was that just the -- to come and ask the community first, and that was never done. We were expecting or hoping that Kinder Morgan, among others, would come and actually talk to us, or the Trans Mountain pipeline project they would come and actually engage with us and hear our concerns but also perhaps whether we had support.

14717.           And part of that when we organized our Kinder Morgan dialogue was to bring those together, and we actually sent an invitation to the Trans Mountain project to come and actually present to our students so that we could have both sides of the information and have a proper conversation about this so that we could share our values and also learn from each other.

14718.           But we don't think that through this process and through, I guess, Trans Mountain, there wasn't that opportunity to really engage, and I think so there is this loss of public trust in the project and in the process as well.

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14719.           **MS. YANG:** And to go back to your question about balancing local and national interests, I think that speaks -- as a political science student that's why I kind of smirked there for a second, because this is something that we talk about on a regular basis in a lot of our classes.
14720.           I myself am currently taking a course on public engagement at SFU right now. So it's all very timely. And as someone who I know has spent a great deal of time researching electoral processes, I think this is a very permanent question that I think plagues a lot of leaders in our political climate today. Unfortunately I don't think there's any easy answer, but I do believe -- and as we said earlier, what's -- if it's best for all of us then that is the decision that we are going to conclude with.
14721.           And I know for ourselves from the Simon Fraser Student Society perspective, when we do our consultation and when we do public engagement we do our very best to try and reach out to as many students as possible. And while we recognize it is a difficult process to try and reach out and gather these students and gather the thoughts, it is something that at the end of the day that has proved worth their time and very worthwhile when students come back to us and say, "Why didn't you consult; what happened to the consultation?" We can say here it is, this is what we did, this is how we reached out, and that, to us, has been, I think, extremely important into building trust and rebuilding our relationship with our students as representatives.
14722.           **MS. TRUONG:** I think just to recognize that public engagement and public consultation is both timely and costly but it's very important. And our Prime Minister himself has said that governments can issue permits and grant permission but it's really only communities that really grant that social licence. And I think building that community support through consultation that's open and transparent and inclusive is a very good step forward.
14723.           **THE CHAIRMAN:** I appreciate your comments, and the Panel thanks you for that, and we will consider that.
14724.           And I understand we're hearing from the graduate students tomorrow, so we look forward to that as well.
14725.           So with that we are adjourned.

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14726.           And we'll let you get back to your classes.
14727.           And we're adjourned until 1:30, and at 1:30 we'll hear from the  
Cheam Chawathil First Nation followed by Mr. Adam Olsen.
14728.           We're adjourned until 1:30.
- Upon adjourning at 11:35 a.m./L'audience est ajournée à 11h35  
--- Upon resuming at 1:32 p.m./L'audience est reprise à 13h32
14729.           **THE CHAIRMAN:** Good afternoon, and welcome to the session this  
afternoon here in Burnaby, which is part of the National Energy Board's hearing  
regarding Trans Mountain's expansion project.
14730.           We'll continue to hear oral summary argument this afternoon, and we  
acknowledge today again that we are on the traditional land of the Coast Salish  
people.
14731.           My name is David Hamilton. I am the Chair of the Panel, and with me  
to my left is Ms. Alison Scott, and to my right is Mr. Phil Davies.
14732.           I'll just take a brief moment on some housekeeping items. In the event  
that we hear the fire alarm, the procedure will be to exit the hearing room using  
the entrance that you came in.
14733.           Once you're outside the hearing room, there are two evacuation routes.  
The first is directly to your left when you exit the hearing room doors, and the  
second is located beside the registration desk where some of you received your  
lanyard.
14734.           Uniformed security guards will be at both locations to facilitate your  
exit. Please follow these instructions.
14735.           Once outside the building, proceed to the hotel muster point located on  
the northwest corner of the Delta Burnaby Hotel Conference Centre property  
where Sumner Avenue and Manor Street intersect. At the hotel muster point,  
please ensure all members of your party are accounted for and wait further  
instructions.
14736.           As indicated in Procedural Direction 20, the Board has set time limits

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- to hear oral summary argument. The time limit for intervenors is 40 minutes. This time limit will be strictly enforced and they reflect that intervenors have had the opportunity to file written argument in-chief prior to providing oral summary argument.
14737.           There is a timer that will indicate a green light for the first 35 minutes, switching to a yellow for the last 5 minutes of your speaking time. Finally, when your time is up, a red light will come on. If necessary, the microphone will be switched off, although I will warn you before this happens.
14738.           Final argument, as a whole, is an opportunity to express your views and opinions about the project, based on the evidence filed by Trans Mountain and intervenors on the hearing record. It is an opportunity to make recommendations to the Board about matters within the List of Issues or any other -- or any terms and conditions in which the project should be subject to, if it is approved. The Board will not give any weight to new evidence introduced during oral summary argument or any submissions made that do not address the List of Issues.
14739.           With that, I think we're ready to get ready this afternoon, and perhaps, for the record and for our presenters, that Trans Mountain could introduce themselves, please.
14740.           **MS. OLENIUK:** Good afternoon.
14741.           My name is Terri-Lee Oleniuk and I'm legal counsel to Trans Mountain. To my left is Lesley Matthews and she's the regulatory lead for the project.
14742.           **THE CHAIRMAN:** This afternoon, we will hear from the Cheam and Chawathil First Nations, followed by Mr. Adam Olsen.
14743.           So with that, we're ready to proceed. We -- the Panel have read your -- all your filings and your written argument and so we're prepared to now hear your oral summary argument.
14744.           Thank you.
14745.           **MR. DICKSON:** Thank you, Mr. Chairman.

**--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR THE CHEAM  
AND CHAWATHIL FIRST NATIONS:**

14746.           **MR. DICKSON:** My name is Tim Dickson and my co-counsel, Nicole Schabus and I together represent Cheam and Chawathil First Nations, who are two first nations, two Stó:lō First Nations, who have intervened in this proceeding in an effort to ensure that their Aboriginal rights and title and their interests as Aboriginal peoples are properly taken into account in this proceeding.

14747.           With me are Grand Chief Ron John, Chief Rhoda Peters, and Councillor Patricia John of Chawathil, and Chief Ernie Crey of Cheam.

14748.           I want to just provide a bit of an introduction to our submissions before I tell you how Ms. Schabus and I will be dividing them up.

14749.           As I say, Cheam and Chawathil intervened in this proceeding in order to ensure that their Aboriginal rights and title are taken into account, because they see this project as putting their -- those rights and title, as well as their health and their cultural continuity, in grave peril.

14750.           As I will discuss further in a moment, the Fraser and Coquihalla Valleys are their homelands, and the Fraser River is the backbone of their communities. In their territories, the Fraser Valley is very narrow, and the mountains are steep, the creeks and streams run fast, and there is very little land between the mountains and the river.

14751.           A major spill or a series of smaller spills will quickly and inevitably find its way into the Fraser, and these communities know that that oil will have devastating consequences for the river and for the fish and for their people. But even more than that, approval of the project, without these communities' consent, would breach their Aboriginal title and undermine their right to govern their lands.

14752.           So these communities looked to the Crown to protect their rights and title and their futures as Aboriginal peoples but the Crown has said that it will largely rely on this process to fulfill its duty to consult and accommodate if it can. Well, we have been extremely disappointed by this process. The Board's process has been legalistic and process heavy, but it's lacked any real rigour in testing Trans Mountain's evidence.

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14753. For its part, Trans Mountain has entirely ignored the extensive evidence of these communities' rights and title, and has spoken only generally of Aboriginal interests and has assessed the impacts to those interests essentially through the lens of environmental risk. As for the communities, they were denied sufficient funding to participate in this process to a level that is appropriate to the rights, title, and interests that they have at stake, as I will endeavour to show you.

14754. So we say that this proceeding has not given nearly sufficient attention to the profound impacts the project would have on Aboriginal rights and title, but worse than that, the procedural obstacles, the lack of rigour, and the inadequacy of the funding appeared to us designed to mute First Nations' concerns about this project. And there is little that could be less consistent with the honour of the Crown than that.

14755. Now, in terms of our submissions I'm going to introduce you, in my time, to some of the evidence relating to Cheam and Chawathil's Aboriginal rights and title, and then I'm going to take you through a bit of the law, and I will outline some of the conclusions that I say you ought to reach on that evidence.

14756. Ms. Schabus will then take over, and she will review some of the project's impacts on the communities, and she will address the inability of this process to discharge the Crown's duty to consult and accommodate, and consequently, the inability of the Crown to justify the infringements of the communities' rights and title.

14757. So the communities have put into the record considerable evidence of their rights and title, and among that evidence is a very rigorous Traditional Use and Occupancy Study conducted by Living Proof Consultants, and we have filed that study confidentially, and we'll not display the maps here because of that, but I urge you to review them, if you haven't already.

14758. For what you will see is that the communities continue to use the lands and waters that have always been their homeland, and you will see regular use through the Coquihalla Valley and you will see an astonishing intensity of use through the Fraser Valley and on the Fraser itself, from Hope through to Chilliwack and beyond, and indeed, north of Hope on the Fraser.

14759. As I say, this area has always comprised Cheam and Chawathil's homelands, and we can see that in Exhibit C400-8-5, PDF Page No. 19, if you

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would. And this is an art -- 1860 map prepared by the famous cartographer, Augustus Peterman, and it shows the territories of the Tait, who are the Teale, T-E-A-L-E, on the map.

14760. Of those two territories, Chawathil is part of the Tait Tribe and Cheam is part of the Pallalt. And as you can see there, you can see at the extreme right of that map there's another annotation of Tait right on the side there. That southeastern bank of the Fraser in that area; that belongs to these tribes. And the evidence that we have tendered provides more detail of their regular, and indeed, intensive use of these territories and their exclusive control over large portions of them.

14761. For instance -- I will only take you through some of this evidence, but for instance the Chawathil people used to be known by the Hudson Bay Company and early settlers as the Hope Indians. They're now -- their main residential reserve is on the other side of the Fraser, but they were situated at Hope as of 1846.

14762. After the Hudson Bay set up a fort there, Governor Douglas instructed that reserves be laid aside for the Chawathil people, and that was done only very, very incompletely. And, indeed, they filed a specific claim in that regard, and that is in the evidence. The result is that the evidence of their villages at Hope and of their Aboriginal title in that area, a broad area around it, it is extensive and it's indeed incontrovertible.

14763. Now, on that I just want to give you a brief glimpse of the kind of evidence that's in the record on this. And if we turn, please, to the next Exhibit, C400-8-4, page 2, you can see here a map that was produced again in 1860 by the surveyor McColl, and it shows Hope there and it show -- and it outlines the locations of villages.

14764. And the one that is emphasized there in the rectangle is the village known as Ts'qo:ls, and it is across from Greenwood Island, very close to the bend in the pipeline route where it comes down from the Coquihalla Valley and into the Fraser Valley.

14765. And if we turn to the -- another Exhibit, C400-8-3, page 61, you can see -- I'll show you where it is in contemporary terms. It's right in there, right there. And obviously at the bottom there is the TransCanada Highway, Highway 1, that's where -- that's approximately the pipeline route in that area, and the

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village is immediately adjacent to it, to the north.

14766. And if we go, please, to Exhibit C400-8-3, page 12, you can see some of the archaeological work that has been done in this area, but only in certain lands that have been sampled, and certainly not the whole valley at this point. But just on the land sampled -- sorry, it's C400-8-3, page 12. Is that not -- that's right.

14767. There's Greenwood Island, there's the village site all along the waterfront where there has been archaeological sampling being done, we see intensive use by Chawathil people.

14768. And so the -- just on this brief sampling of the evidence we see very extensive, very intensive, exclusive use of this area. And the conclusion, I say, has to be that they have Aboriginal titles through that area.

14769. And let me turn to Cheam; their main reserve is located at one of the sites they historically occupied right in the heart of Pallalt territory on the southeastern bank of the Fraser in one of the areas I've shown you on that Augustus Petermann map. And this was one of Cheam's major centres of occupation, and indeed as that is suggested by the places that are named for Cheam throughout the area; Cheam Mountain, Cheam Wetlands, Cheam Lake.

14770. And if we turn to C400-8-7, page 6, please, you'll see a map that we created for the purposes of this proceeding showing the pipeline route that is -- that we obtained the file from Trans Mountain with their permission to use for the creation of this map, so that's an accurate portrayal of the pipeline route, and indeed of all the features. But you can see that it runs immediately adjacent to Cheam Wetlands, very close to Cheam Lake and right across from the main Cheam Reserve. This is the heart of their territory, and the pipeline route would run through Bridal Falls Park to the key spiritual site for Cheam people.

14771. And so I submit to you that -- in the very short time I have -- if you review the evidence that we have tendered, as I say you must do, then you will find that it establishes, on a balance of probabilities, that these communities have Aboriginal title over these areas, including the pipeline route.

14772. And in our written submissions we've identified portions of the pipeline route where the evidence is particularly conclusive. And the evidence we've tendered also establishes that these communities hold certain Aboriginal rights that would be impacted by this project; the right to fish for food, social and

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- ceremonial purposes cannot be doubted. And indeed that's regularly accepted by the Crown in court proceedings and in agreements it signs with these communities.
14773. But the evidence also establishes the right to hunt, to gather foods and medicines, and to engage in spiritual practices, including through this area on the southeastern bank of the Fraser through which the pipeline would run.
14774. So a question for you is; how must you deal with this evidence? As you know, the Supreme Court of Canada confirmed in the *AG Quebec* case that you must exercise your functions in accordance with the dictates of the Constitution, including section 35.
14775. And part of how you do that is by considering how the project would impact claimed rights and title. And when you do that, when you consider the impacts on claimed rights and title, I submit that you must do so on an individual nation basis, and you must consider the specific rights and title at issue. It's far from enough to consider the impact to generalized Aboriginal interest on some sort of global level as Trans Mountain has very largely done.
14776. But I want to go further on this as well. You are a Court of record, you -- according to your statute, section 11, you have full jurisdiction to decide issues of fact and law for the purposes of that statute. And so when there is sufficient evidence before you to find -- before you to find for the purposes of this proceeding, for the purposes of your statute, that Aboriginal title over a definite tract has been established or that certain rights -- Aboriginal rights have been proved, then you must make those findings.
14777. It's not enough for you to assume for the purposes of this proceeding that Aboriginal rights and title are simply claimed. If the evidence goes beyond that and establishes their existence, you must find that to be the case.
14778. And as we set out in our submissions, the evidence we have tendered proves that these communities hold Aboriginal title to portions of the pipeline route, and that they have Aboriginal rights that would be gravely damaged by a major spill or a series of smaller spills.
14779. The result is that for you to be able to recommend approval of this project, you must either have these communities' consent, which you do not have at present, or you must specifically find that the breach of their title and rights

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would be justified.

14780. My co-counsel, Ms. Schabus, will tell you why you cannot rightly find justification on the facts here.

14781. You also have a further legal duty with respect to both claimed and proven Aboriginal title and rights. The Crown, as you know and as I've said, has indicated that it will rely on this proceeding to fulfill its duty to consult and accommodate, and it has participated in this proceeding before you.

14782. And we say, as do many of the First Nation intervenors, that you have a legal duty to determine whether, by relying on this proceeding the Crown will be able to discharge its duty to consult; that's the duty that the Supreme Court of Canada set out in *Rio Tinto*, as you know.

14783. Now in the *Chippewas of the Thames* case, the Federal Court of Appeal recently held that the Board did not owe such a duty in respect of the Line 9B reversal proceeding. But it's very important to have in mind that the Court in that case specifically relied on the fact that the Crown had not participated in that proceeding.

14784. In this proceeding, of course, the Crown is here filing evidence and submissions, including evidence with respect to its consultation plan and its reliance on this proceeding to fulfil its duty to consult and accommodate to the extent that's possible.

14785. And in these circumstances, it is perfectly clear that you, empowered to determine questions of law, must determine whether the Crown will be able to discharge its duty to consult by relying on this proceeding. And as my co-counsel Ms. Schabus will submit, the answer to that question is very clearly no.

14786. With that, I will turn it over to Ms. Schabus.

14787. **MS. SCHABUS:** Board Members, I also want to acknowledge that we are on unceded Coast Salish territory and thank the Coast Salish people for hosting us in their territory.

14788. My name, again, is Nicole Schabus, co-counsel for Cheam and Chawathil. I'm also a faculty member at the Thompson Rivers University Faculty of Law and teach constitutional Aboriginal environmental law there.

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14789. Now, the Trans Mountain pipeline, which is in operation -- has been in operation since 1953 already travels through the core territories of Cheam and Chawathil and the proposed expansion route will travel through these core territories along the Fraser River. But it was also the first major infrastructure corridor along the Coquihalla River, an intensive current and traditional use area for our clients and for the communities, as documented in the confidentially filed joint use and occupancy study of Cheam and Chawathil.

14790. It broke open yet another part of their territories for commercial industrial development. Since then, the highway has followed that route and other infrastructure projects. And it has had a very significant impact and the expansion project stands to have yet a greater impact on Cheam and Chawathil's land uses.

14791. They invested a lot of time and energy into conducting joint use and occupancy study for the purposes of these proceedings. One of the things that -- and one of the examples that really stands out and that was documented in this hearing is when they mapped their extensive uses around the Coquihalla River and the Coquihalla lakes, there were extensive uses throughout. And when we had the community verification meeting, one area stood out -- and you always look for areas that stand out -- where there were no uses.

14792. And so we looked into it and we discussed it with the Elders, with the people that were there. And it is an area along the Coquihalla River from the mouth of Boston Bar along the Coquihalla River where there was hardly any use documented.

14793. And this is the area where the pipeline stays with the river but the highway moves away from it. And it's Trans Mountain that controls the access to this area and actually has it blocked off. And that is the reason why -- and when we spoke to the hunters and the land users who were all present at the verification meetings -- that there are no land uses in this area. So it already shows an impact of the pipeline on their current uses.

14794. It's a very important corridor. It's an area that Cheam and Chawathil, if you speak to the Elders, had previously used. It's also a really important migration corridor for animals. And they're very concerned about the fact that it is being blocked off by Trans Mountain and how it affects animal migration. And clearly, it has affected already their traditional and current uses.

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14795. Cheam and Chawathil have never received any remuneration for access to their territories or compensation for infringement of their title and rights by Trans Mountain for the current operations, nor has that been offered for the proposed expansion. They are very concerned about the proposed expansion, which would see a substantial increase in capacity, a substantial increase in impacts and risks for their people.

14796. Especially in coming down from the Coquihalla Summit, the pipeline is highly pressurized to -- as it drops down to the lower Fraser River. Our clients have observed that, for example, there is no snow as snow melts around the pipeline indicating how highly pressurized it is. And Trans Mountain has also acknowledged that this is actually -- the route around the Coquihalla and the Coquihalla River and especially the Coquihalla Canyon would be an especially challenging area if there was to be a spill.

14797. And I want to refer you to the response they gave to the National Energy Board information request number 1.71 in that regard. You had asked a question about spill response scenarios. And what they said is:

*“The most difficult section of the rights-of-way to access under all seasons is the Coquihalla Canyon. The pipeline enters the Coquihalla Canyon at about kilometer 963 and exits the difficult to access areas and rejoins Highway [Number] 5 at about kilometer 984. [...] During the winter months, a response in the Coquihalla Canyon may be slowed by high snowfall conditions, [et cetera].”*

14798. And they say basically that it would be very difficult to effect cleanup in this area at all seasons. So that very much coincides with the concerns that our clients have.

14799. They also agree with the conclusion that was reached by the Province of British Columbia in their final submissions regarding the insufficiency of the evidence on the record regarding emergency response and that an unsubstantiated emergency management approach does not meet the criteria for approval of a project of such dimensions carrying such substantive qualities of bitumen and the associated increased risk.

14800. The communities have expressed their concerns regarding the emergency preparedness and response in their territories, both within these

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hearings but also to Trans Mountain. They took Trans Mountain's experts out to some of the creeks in their territory close to the pipeline route and he indicated that in some of those creeks, again, in the area around the Coquihalla River, cleanup within the creeks would be -- would not be possible and it's -- and that the bitumen could not be captured before reaching the Fraser River. And we all know about the difficulties once it were to be in the main stem of the Fraser River. So our clients have very serious concerns regarding this project in that regard.

14801. I also want to take you now from the Coquihalla River where I started out down into the Lower Fraser into the strategic area where the communities of Cheam and Chawathil are located and, again, to the core of their territories.

14802. My colleague has already referred you and showed you some historic village locations in Hope and the location of the community in Cheam. I want to take you back to that area, to the upper reaches of the Lower Fraser River where the river broadens at Hope. And yes, the river broadens.

14803. But actually, the land area in the valley are still very narrow. It's bordered by steep mountainsides. There's very serious concerns about erosion and the impacts that a major flooding event could have and how there is not sufficient emergency preparedness and preparation for these scenarios on the part of Trans Mountain.

14804. So while the river broadens, the valley stays narrow. And it's really both sides of the valley in those areas are a major infrastructure corridor. Many of these developments, railroads, highway and indeed the original Trans Mountain pipeline went in at a time when Indigenous peoples were prohibited from organizing around land issues.

14805. We also detail that in our written submissions. So these developments went in without their consent and without taking their concerns into account.

14806. I want to take you back to the specific area that you saw on the map regarding where the community of Cheam is located, an area where the current main community is located but also where there were a number of their historic village sites. Those are all intense land use areas centred around the Fraser River for the Pilalt Tribe that Cheam is a part of, and these communities are some of the main communities fishing directly on the main stem of the Fraser River in S'ólh Téméxw, the territory around the Fraser River.

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14807. Today, Cheam Beach is located on the Indian Reserve Number 1. It's one of their major fishing and boat launch sites. Right behind it is the CN rail tracks. On the opposite side of the river, from Cheam Beach and Indian Reserve Number 1 is Indian Reserve Number 2, the Agassi Bridge sits right on Indian Reserve Number 2. So you're seeing basically the two main Indian reserves of Cheam being dissected by railroads on each side of the rivers, highways.
14808. Behind it, behind the CN railroad tracks is the main community of Cheam. And just within a few hundred metres of that is Highway Number 1 and then Bridal Falls, Bridle Falls Park and really the steep mountain sides and that's also where the Trans Mountain pipeline route runs along, this immediate infrastructure corridor along Highway Number 1 and in immediate proximity of Cheam Indian Reserve and also Cheam wetlands that form part of Cheam Indian Reserve.
14809. So you're seeing that any spill in this immediate area would not only have a devastating effect on their land uses downhill in the Fraser River, but on their community. It could lead to the potential displacement of their community, and they have very serious concerns of that. So it gives you a very good impression of the narrow land area that we are really dealing with.
14810. Now, I want to take you to more -- some of the concerns the communities and indigenous peoples that we represent, Cheam and Chawathil, have regarding this project.
14811. So the pipeline brought not only passes in immediate proximity to their communities or their historic village sites, passes through their territories along the upper reaches of the Lower Fraser River in their immediate use areas. Their use is very much in terms of fishing, centre around the Fraser River.
14812. They are already under extensive pressure from all the other developments and some people would say that an area that already has so much pressure from development, that it is not as serious if there is further impact. We say to you and we want to remind the Board that you should be more concerned about such threats because of the cumulative effects and the many layers of development and the impacts they already have on indigenous uses and how negatively any impacts from this proposed project could add to that. It could really take it beyond the tipping point.

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14813. David Carruthers, one of the experts who did a study and a quick analysis in terms of cumulative effects and other allocations in the territory, he makes the point in his report, that was also filed with the National Energy Board, that if you were to argue that they can just move their uses elsewhere, if you do an analyses throughout their territory, there are so many other allocations for either infrastructure projects, private uses, et cetera, that there is hardly any other areas to go to, and especially when it comes to fishing which so much centres around the Fraser River and its tributaries, if there was to be a spill event, there's really no other areas that they could go to.
14814. Connected to those are very much the direct impacts that this project stands to have on the communities and we can see them in a number of contexts. So first of all, there is impacts from the construction, from the expansion of the project, and there is also the risk that comes along with such a major infrastructure project and such a large pipeline crossing through their territories.
14815. Pipeline projects of this dimension -- we do not know of any pipeline projects of this dimension that have not resulted in spills. Indeed, we know and have extensive evidence on the record before you in this hearing that the Trans Mountain project already has had a number of spills. There have been spills in the Coquihalla Canyon, in the immediate and traditional and current use area of our communities. One of the communities of Chawathil was notified. Cheam was not even notified about this spill and they were not involved in the emergency response.
14816. So there is a direct risk and an expectation of spills and obviously a fear of a major spill event and the impact that it could have. It also -- the mere fact that there is this risk that they have to live on with an -- on an ongoing basis raises anxiety and challenges the very foundations of their culture and their connection to the land as indigenous peoples living in these territories that are their home, where they raise their children to connect to their territories to exercise their uses on the river where they are now living within -- or would be living with an increased risk of a major spill event or of a smaller spills and the impact it could have on their land uses.
14817. The stress on the Fraser River and the Fraser River sockeye salmon stalks and generally the salmon stalks has been well documented, including by the federal Commission of Inquiry into the Decline of the Fraser River Sockeye that Cheam and Chawathil participated in.

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14818. We also know, and you have evidence before you, how difficult it would be actually to clean up bitumen if it hits a water body and especially a major water body like the Fraser River.
14819. And I want to -- and I really have to move on and take you to why we -- some of the flaws that we want to point out in regard to this process and why we say it cannot charge the Crown's -- discharge the Crown's duty to consult.
14820. We have submitted extensive evidence, and I've just spoken to some of it. You have the Joint Use and Occupancy Study in front of you that shows the extensive ongoing use of our -- of the territories by our clients. My colleague has spoken to the case they have regarding title to specific areas and on a territorial basis, and they're really facing serious impacts and serious negative impacts on the basis of this project. The Crown has purported to use this hearing to discharge its duty to consult and accommodate to the extent possible, but we suggest that it has failed to do so at every level.
14821. They have not enabled -- they have neither properly studied, themselves, the impacts that this project would have on Cheam and Chawathil, nor enabled them to study it appropriately. Cheam and Chawathil applied to participate in these hearings jointly on July 10<sup>th</sup>, 2014. They submitted a joint funding application in August 2014 and then the National Energy Board announced that they would not make a funding decision until November 28<sup>th</sup>, 2014 at the earliest. In effect, the final decision didn't come down until January 22<sup>nd</sup>, 2015.
14822. Our clients, as a result, were not able to participate in oral evidence hearings and, in the end, when we got the final funding allocation that was made for Cheam and Chawathil, it amounted to less than 5 percent of the amount sought. As a joint standing group of two large nations who stand to be negatively -- very negatively impacted by this project, they received less than some single communities along the main stem of the Fraser River in their funding allocation.
14823. We noted and sent a letter to the National Energy Board on September 11<sup>th</sup>, 2014 asking the National Energy Board to either ensure that there was sufficient funding and the ability for our clients to engage in the process or otherwise declare that this proceeding cannot satisfy the Crown's duty to consult in regard to the project.
14824. **THE CHAIRMAN:** I'll just remind you, Ms. Schabus, you have five

minutes remaining.

14825.           **MS. SCHABUS:** And you will remember that the Board refused to make such a ruling. My friend has already submitted that it is actually in your mandate to not just assess whether the duty to consult has been discharged but to actually assess the strong case for title and rights that have been made out by our client.
14826.           On a quick closing point, we also submit that Trans Mountain has not properly assessed the community's Aboriginal title and rights. They at most refer to Indigenous interests. They have not properly considered the extensive evidence of current use and occupancy, and the historic evidence before them.
14827.           They had indicated when our communities were working on their Joint Use and Occupancy Study that they would take it into account as they do their environmental alignment sheets and their planning for emergency response, yet when we filed the Joint Use and Occupancy Study they -- Trans Mountain basically said that it does not change anything in their assessment and that they basically did not revise or take any of these land uses into account in their emergency response planning.
14828.           This summary dismissal of the use and occupancy evidence collected and presented by Cheam and Chawathil really reflects Trans Mountain's general failure to properly assess the community's Aboriginal title and rights and to engage with them on this basis.
14829.           As a closing point, very quickly, I want to make the point that on the basis of the argument that my colleague has put forward, in terms of the case that our clients have put before the Board in terms of the established Aboriginal title and rights, and again their rights centring also around the uses, the fishing, the hunting, the next question would be; can the infringement be justified? And so the last point that I want to make to you is that, indeed, this infringement cannot be justified in these circumstances.
14830.           And basically -- just a few quick points here -- the test for justification and infringement for Aboriginal title is set out in *Tsilhqot'in*. The first step that you have to look at is whether there actually has been appropriate consultation. I've already dealt with that point.
14831.           Furthermore, the next -- I also want to point out that the test for

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justification of infringement of an Aboriginal right, and our clients have very clearly undeniably made out an Aboriginal right to fish on the Fraser River, to exercise their traditional and current uses throughout their territory. And if it comes to justifying infringements of those rights, especially for food, social, and ceremonial purposes, that justification -- the test for justification is even narrow. As set out very clearly in *Sparrow*, there is no such thing as a public interest justification for the infringement of such rights.

14832.           So just to very quickly make the points here, there has been no remuneration for access to their territories and there is no suggestion that there would be appropriate remuneration for access to their territories, although Trans Mountain stands to make large profits from accessing their territories.
14833.           And also the negative impacts of this project clearly outweigh the benefits, and we've already spoken to those.
14834.           The Crown has the burden of proof of justifying the infringement and we submit to you that the Crown has not presented any of the evidence that would be necessary to justify such an infringement within this proceeding.
14835.           In closing, our recommendation to the Board is to recommend refusal of this project and -- on the basis of their strong position regarding proven Aboriginal title and rights and how this infringement cannot be justified in these circumstances.
14836.           Thank you. Those are my submissions.
14837.           **THE CHAIRMAN:** Thank you, Ms. Schabus, and also Mr. Dickson.
14838.           One second.
- (A short pause/Courte pause)
14839.           **THE CHAIRMAN:** Thank you both for your presentation. The Board have no questions and appreciate the clarity that you've brought in your submissions, and we will consider those, along with all the other submissions that you have made and others will make.
14840.           So with that we thank you and recognize Chief and Councillors and

Elders from the First Nation being here today. Thank you for that.

14841. We'll take a short recess and then we'll hear from Mr. Olsen.

--- Upon recessing at 2:17 p.m./L'audience est suspendue à 14h17

--- Upon resuming at 2:29 p.m./L'audience est reprise à 14h29

14842. **THE CHAIRMAN:** Good afternoon, Mr. Olsen; nice to see you again.

14843. And I hope the weather's nice at home in Sydney. The sun's coming out now.

14844. Anyway, but you're welcome. We've read your submissions and we're now pleased to receive your oral summary argument.

**--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR MR. ADAM OLSEN:**

14845. **MR. OLSEN:** Thank you.

14846. I'd like to thank my Coast Salish relatives here in this beautiful territory for opening their arms and at least welcoming this hearing, at the very least.

14847. Good afternoon. I'm happy to be here to deliver my summary presentation and my final written argument that I submitted to you last week.

14848. I'm here to articulate the reasons why I oppose this project and touch on just some of the reasons why I believe you should dismiss this application.

14849. I have argued that the First Nations consultation for this project is incomplete and that Trans Mountain has not shown respect or understanding of the Indigenous people of Alberta and British Columbia.

14850. I have raised significant questions regarding my constitutionally protected fishing rights that remain unresolved, shown that my fishing locations are directly adjacent to the proposed and current shipping lanes, and that I and other members of my family have raised questions about negative impacts to a commercial interest, that also remain unresolved.

14851. I argue that it would be reckless to recommend approval of this project before the Government of Canada has addressed these issues in much deeper consultation and relationship building.
14852. I strongly encourage you to dismiss Trans Mountain's application, recommending the federal government that they reject it as well.
14853. My name is Adam Olsen. My Coast Salish name is TSUNUP. I am a member of WJOŁŁEP. I am WSÁNEĆ. My family lives on both sides of the international border. It cut our territory into two parts, the American side and the Canadian side.
14854. I'd like to take this opportunity to introduce you to SUHENEP. Troy Olsen is from just a little south of here in Lummi. He is my brother, my relative, my cousin. We stand as one.
14855. Over the past two years we, along with many others, have been working to bring the swolle, or reef net, back to what you know as the Salish Sea, the place we inherited from our ancestors, to engage in a relationship with the sockeye salmon that has been renewed for every year for countless generations.
14856. Not only are we close relatives, but you'll note that Troy and I share a name. Last summer, we stood on the beach on Henry Island, in the San Juan's. I witnessed Troy receive two names, SUHENEP and HASMIN (ph). I have been SUHENEP for over 20 years. It's an honour to share this name with him.
14857. At the same time as receiving SUHENEP, my relative also received his NAHIAMIT (ph), his inheritance. His, and as an extension, our inheritance. Our relatives in Lummi recognize the connection to that beach that we stood on, the connection to our name, SUHENEP, the place where those we were named after exercised their relationship with our relatives of the ocean. This was their SWALET, a fishing location.
14858. We are both learning about what it means to carry this name, to carry this responsibility, the responsibility to our Sockeye relatives, the responsibility to protect our inheritance, the responsibility that we have to the SUHENEP's of the future to ensure our places have been protected, the responsibility we have to the Sockeye, whose lineage is as sacred as ours. That this place is going to be welcoming to their future generations as well.

14859. This is a relationship that we have nurtured for thousands of years. Forever. I'm just learning to understand this worldview myself, but I can assure this Panel that the more I have learned about it, the more beautiful it is to me.
14860. It is an understanding of how we can mutually benefit from each other, not just human to human. I'm talking about how human beings relate to every other species on our planet. Perhaps the members of this Panel will open their heart and their mind to allow themselves to also embrace this worldview as well.
14861. You see, when you sit in a canoe, in the very same place as countless generations of your ancestors, where they have sat, people whose experiences and wisdom is wrapped around you like a blanket. When you are quiet and the only sound is the cutting of paddles in the water and the muted sounds of voices directing the canoe as they attempt to set the first reef net in that location in more than a generation, you realize that you have a responsibility. That morning that we shared that experience is a fundamental part of who I am, and I have embraced that, I have embraced that responsibility.
14862. Just as this Panel has to -- has its place to sit, just as you, the members, have to cut through the noise of the legal arguments and the jargon to hear the paddles in the water, just as you have to determine which of these points are valid, embracing the responsibility to make this recommendation, you must acknowledge the blanket that is wrapped around you for the remaining days that you walk on this earth.
14863. SUHENEP and I are disconnected from our SWALET, not by choice but many decades of legislation, regulation and enforcement. Many decisions, like the one that are about to make have disconnected us from our many resource extraction locations on Henry Island, Mitchell Bay, Main Island, and numerous other locations through the Gulf and San Juan Islands, and those are just our inheritance; other families have theirs as well.
14864. So it is an honour to be here today with SUHENEP. I have the honour of voicing our concern about the Trans Mountain Pipeline Expansion Project and the associated shipments of diluted bitumen through our fishing areas. We take our responsibility to WSÁNEĆ and Lummi very seriously, and this proposed expansion and the current shipments of diluted bitumen directly adjacent to our resource areas deeply concern us and we do not support it.

14865. I applied, and you accepted me as an Intervenor on 3 or your 12 issues. No. 3, the potential commercial impacts of the proposed project; No. 5, the potential environmental and socioeconomic effects of marine shipping activities that would result from the proposed project, including the potential effects of accidents or malfunctions that may occur; and potential impacts of the project on Aboriginal interests.
14866. I thank you for acknowledging that I am directly affected by this proposal, and I thank you for acknowledging that my interests -- I have interests in all three of these areas. Interests and rights, actually, in all three of these areas.
14867. I have done my best to participate in this hearing process. It's not been easy and it has cost me and my young family considerably. We find ourselves once again unwillingly forced into a defensive position against the corporate interests of a rich, multinational entity, defending constitutional rights, the rights to fish as formerly as set out in the Douglas Treaty, without the resources to adequately argue the case. My dad has already defended his Douglas Treaty rights once. It took a decade of his life and ended in the Supreme Court of Canada, where he won.
14868. So I sit here today, and I am deeply saddened. As I've written in my final argument, had I received the participant funding, I would have been able to present a far more comprehensive argument with anthropological advice -- evidence, and proper case law research and legal argument. As it stands now, the evidence that I provided was only scratching the surface of the fishery and the research of the commercial activity of my ancestors. Therefore, I have been seriously disadvantaged compared to the Proponent and other Intervenors.
14869. What this inadequate NEB process has so far suggested to us is that just in the past an agreement, a treaty, is de facto not much of a treaty. The fact that my ancestors signed a treaty in 1852 with James Douglas, the representative of the Crown, doesn't appear to mean much, because it has been breached without compensation.
14870. If you recommend approval in spite of our treaty, you will be continuing this tradition and suggesting to us that our treaty is not enforceable. We know this isn't true, because Douglas Treaty people win every time. Is this the path you want to take us, more lawyers, more courts, more sadness? Reconciliation will never happen if we are always forced into the courts to defend ourselves; that is not reconciliation.

14871. I made a unique application to the National Energy Board to be able to effectively defend my rights protected in the Douglas Treaty, the right to fish as formerly, and it was assumed that because my community was also an Intervenor, and perhaps they had received participant funding, that we were all the same. The decision has me frustrated to no end.

14872. On one hand, the NEB agrees that my application was unique and that my arguments were valid, and yet when I asked to have a small amount of participant funding to defend my rights against this billion dollar multinational corporation, the response from the NEB is this -- quote:

*"While the Funding Review Committee is generally interested in supporting collaboration, in this case it made the decision not to give special consideration to individuals who are already a PFP -- part of an already PFP-funded First Nation."*  
(As read)

14873. As I said in my final argument -- my written argument, I am an individual, presenting serious, legally and factually complex issues and challenges that the NEB and Government of Canada should be closely considering. It is important to consider that to understand Aboriginal rights only as group rights, is not correct in my case, and it does not align with the rights that my ancestors were promised. In order to protect our right to fish as formerly, you need to understand the laws that govern the fishery and the social and cultural structure that they existed in.

14874. From a modern legal perspective, perhaps Tsartlip is the most correct entity to represent those rights, but our right to fish as formerly was not negotiated under a modern legal perspective. Rather, my ancestors negotiated these terms from their understanding in the early 1850s, precisely why "as formerly" is such a critical consideration here.

14875. I understand that it is quicker and easier for foreign to our village corporations to lump us together into groups that were constructed by the Government of Canada, and to only negotiate with one representative per group. However, it is my position that best practice has evolved to the point that such an impoverished understanding can only -- cannot be accepted in the face of my evidence and similar evidence that does not support such a simplistic and unjust approach.

14876. The information this Panel has to make its recommendation is severely lacking, as pointed out by the Council for BC Nature, Elizabeth May yesterday, and others, and also in regards to impacts on my specific rights and interests. This process has intentionally designed it to make it significantly easier for you to make the same recommendation that the NEB made for Enbridge Northern Gateway to proceed with dozens of conditions without an adequate evidentiary record.
14877. Perhaps that is why you decided that oral cross-examination was not necessary, nor was it necessary to consider this application in the context of its upstream and downstream socio-enviro economic impacts.
14878. Frankly, this hearing has been such a circus, in my opinion. As you have heard, the past few days, this Panel has allowed for a shockingly low threshold for Trans Mountain to cross.
14879. They haven't undergone much of a challenge. Their information -- their information as others have so eloquently articulated has gone basically untested. Intervenors' questions have been answered, if you can call them answers, with circular references back to so-called information that really doesn't exist. Intervenors like me have been starved with the resources they needed to develop sound legal arguments in our own defense.
14880. On this side of the podium, to put it bluntly, it feels like this Panel decided at the very early stage of the process to just go through the motions. Punt the difficult decision to the federal government and force us to find our own resources to defend our constitutional rights again in court.
14881. May I remind you, Parliament has empowered you to engage, albeit in a limited way, the First Nations directly before making your eventual recommendation. And that includes making sure that you have all the information. Consultation must happen early on; it must happen right from the beginning.
14882. We learned recently through the *Coastal First Nations* case against B.C. that this NEB process does not fulfill the province's duty to consult. But even if it could, this process has barely been able to be a beginning of consultation with the federal Crown. The recent BCSC decision is one that I think you must explore further.

14883. Sure, Trans Mountain may be able to brag about 24,000 plus consultations, but what about this Panel in its rulings which reduced the ability to consult? What have you done other than go through the motions?
14884. First Nations remain underfunded and the evidence you are supposed to rely on about my constitutional rights remains untested as well by adequate cross-examination. Is this really good enough?
14885. Once your recommendation is made, it's off to another agency, the government to make the final decision. It's no longer your problem, but it's the problem of the federal government; it's the problem of the fish; it's the problem of my kids; and it's the problem for our future.
14886. A primary reason I implied to be an intervenor was because it's necessary to introduce my commercial interests, my commercial rights. The fact that your ancestors and my mother's ancestors initially survived on this coast because of the provisioning of my father's ancestors, and the two were engaged in commercial activities with each other now is conveniently overlooked by Trans Mountain in its argument, suggesting this project may be in the public interest.
14887. Let me be clear; if you recommend approval of this project, you will be allowing this corporation with no constitutional rights to my fishing areas, to our fishing areas, to trump my constitutional and treaty protected rights simply because they have more financial resources than I have.
14888. The fact that this proposal has even gotten this far without any problems -- any proper discussions involving me is incredibly frustrating. I come from a long line of successful entrepreneurs on both sides of my family. I come from people who developed the resources around them.
14889. May I remind you for a minute of the information that I shared from the Aboriginal oral testimony stage of this hearing? There is a whole sub-narrative that runs about First Nations and their fish. There are stringent rules that we can't sell our fish. We're allowed to fish if we're going to eat them. This sub-narrative is what hit a nerve with First Nations people in British Columbia when it was reported that Trans Mountain lawyers asked, "How many fish does a First Nation in B.C. really eat?"
14890. As a result of First Nations not being allowed to sell their fish, it turns

to a black market, we do it illegally, some of us. There are whisperer's stories that First Nations who don't eat their fish, they sell them.

14891. I recognized a lot of this is out of scope, but it is all important information and critical to this application because I have commercial rights; the Saanich people have commercial rights in the Salish Sea. We have had those rights forever, but they were affirmed by treaty in 1852 with the predecessor of the federal government.
14892. The shipping routes are in direct conflict with the fishing grounds. A spill would negatively impact all the fishing locations throughout the Salish Sea. I think there is a conflict in commercial interests here that needs to be resolved, especially considering these operations have been ongoing for 60 years and there has not been any consultation on that.
14893. I'm putting our commercial interests on the table because we have active -- always actively traded salmon for blankets, for food stuffs, for money. And as you have heard already, James Douglas was actively trading for salmon so that he could then trade it eastward. We were a vital part of that; we were a vital part of the provisioning of the first Europeans that were here.
14894. So now with the barrel -- I think it's under -- a barrel of oil under \$30, and a barrel of sockeye worth thousands. Throw on top of that all the legal liabilities and risk we are accepting trying in vain to transport our heavy expensive oil across the Pacific Ocean.
14895. Why would we choose to threaten all of this? Especially considering we have this amazing renewable resource, salmon, that has been extracted here since forever. Extracted in an environmentally safe socially and economically beneficial way.
14896. In fact, I was just outside here and Reuben George from Tsleil-Waututh was talking about the amazing recovery that they have had by just spending a little bit of time in our streams. So to think that this is some kind of a dream world that I'm living in, that the fish are going to come back, if you spend a little bit of time there, if we spent a little bit of resources there, they do come back.
14897. Not only am I asking the NEB not to recommend approval of this project, I submit that the evidence before you would fully support an informal

recommendation from you of a moratorium on all transports of diluted bitumen on Canada's West Coast at least until Aboriginal and treaty rights are protected, and more information is known like the behaviour of dilbit in the Salish Sea.

14898. The other day you asked my colleague, Dr. Andrew Weaver, if he knew of any other governments that has moved to stop diluted bitumen transports. Yeah, our government said essentially that when Justin -- Prime Minister Justin Trudeau was elected, he said to his Minister of Transport, "Let's start putting that moratorium in place on the North Coast." So the answer -- you don't have to look too far, just look to the very own government that is running Canada.

14899. In my opinion, it's not so shocking that our B.C. Liberal Government has announced last week that they cannot support this application. It makes good politics. I believe that they want to support it; maybe they will, and maybe they won't. That said, they raised a very important concern about the safety of marine transportation of diluted bitumen, a concern that neither they, nor the federal government or its agencies have thought to act on in regards to the Southern Coast.

14900. The B.C. Environment Ministry's statement reads:

*"During the course of the NEB review, the company has not provided enough information around its proposed spill prevention and response for the province to determine if it would use [...] world-leading spills regime. Because of this, the province is unable to support the project at this time based on the evidence submitted."*

14901. So, if the government of British Columbia is not convinced we have an adequate spill prevention and response, then why are they not taking a more active role in looking out for the best interest of British Columbia? You're probably not going to answer that question, but maybe they will.

14902. Nevertheless, I'm asking you to stop threatening our coast, you can do that. The NEB approved Northern -- Enbridge Northern Gateway with inadequate spill prevention and response. And now this Panel is being asked by Trans Mountain to make a similar recommendation on the south coast.

14903. It's an honour to live in WSÁNEĆ. Living in our territory comes with responsibility, though. I'd like to introduce my late grandmother into this final

argument, Laura Olsen. You were briefly introduced you to her back in 2014 when I spoke. I did not spend as much time with her as I wished I did, but the time I spent with her, particularly at the end of her life, changed many of my perspectives.

14904. I grew up on reserve. And as I have often said, I often felt like the Indian in a room full of White people and a White guy in a room full of Indians. I didn't have the easiest of decades in my twenties. But Grandma Laura gave me purpose. You're seeing the result of that today.
14905. She did not simply encourage me to share passionately my responsibility to WSÁNEĆ. She encouraged me to honour those that live in our territory, those that live there today, with the same responsibility that she gave me and that every grandmother in WSÁNEĆ gives their grandkids.
14906. Perhaps this makes some people uncomfortable, but for Grandma Laura, sharing this duty to everyone in this place, the duty to be vigorous stewards, to protect it against threats today and for generations yet to be borne, and to protect the sacred lineages of sockeye and every other species with the same amount of zeal that you would protect your own lineage, that did not make her feel uncomfortable at all. In fact, that's what she wanted me to do.
14907. For those such as Trans Mountain or the Government of Canada through the NEB who want to do business in WSÁNEĆ, you will not just have to create deeply trustful relationships with our Chiefs and Councils, you will have to make those relationships with people like me and like him, people who have this inheritance that exists out in a context that appears the modern legal framework simply has yet to fully understand. In this, Kinder Morgan, the Government of Canada, the Government of British Columbia have failed miserably.
14908. For those who live in WSÁNEĆ, the Saanich Peninsula, the Gulf in San Juan Islands, our duty is no different than the one that our Creator first charged the first people in WSÁNEĆ with. We cannot escape it. We won't escape it.
14909. Those that came before us want to know that the responsibility they conveyed to their children is continued. They want to know that, First Nation or not, we are sharing our collective duty with the generations that follow us. The duty cannot and will not be lost.

14910. Now this responsibility has been shared with you; it is a burden that you must carry.
14911. Although I have been critical about this process and cynical about the inevitable result of this hearing, I'm sitting here because there is a table and I make it a habit of sitting at as many tables as I can.
14912. I was invited to withdraw my participation from this hearing. Many valid arguments were put forward that I should join the many other intervenors, like the very effective and prolific intervenors like Robyn Allan and Marc Eliesen who I thank for their great work. And then last August 35 commenters and intervenors, including the Wilderness Committee, stepped out of this hearing. None of them went quietly. Loudly protesting the hearing and the -- and they were deeply critical of this process. Despite that, I remain at this table.
14913. The NEB has decided to proceed with this hearing and this is the only regulatory process concerning this pipeline expansion project. This is the only game in town.
14914. These are issues that we have inherited. No one in this room can be blamed for causing these challenges that confront us; the Douglas Treaty, the First Nations, non-First Nations, the history. But we are responsible for what we do with the information that we have and our ability to influence what we and others do in the future. Take hold of that opportunity.
14915. Please don't continue to narrow your scope in order to create the perfect conditions to recommend approval just as you did by choosing not to fund certain intervenors like me. Just as you did by removing oral cross-examination of the Applicant, the Proponents, the intervenors and their evidence, and just as you did by deciding to scope the upstream and downstream impacts out of this hearing.
14916. I ask you to broaden your scope, to send a message to the Proponent, the Government of Canada, the Canadian public, including Indigenous peoples, that the NEB is not captured by industry. You can send that message by dismissing this proposal and not rewarding Trans Mountain for an incomplete, and frankly offensive, application, and the federal government for stripping environmental protections and handing environmental assessments to the National Energy Board and enabling this process.

14917. By dismissing this application you'll take the power that has been vested in you and send a strong message to the public; a message that we may be able to trust our future -- your future recommendations and that you'll be further strengthened to take this opportunity to make the clear statement that you are not going to approve applications that fail to provide basic answers to important questions about pipeline and marine spill response capability and safety, and that the Crown must take full responsibility for treaty and Aboriginal rights.
14918. Thank you for this opportunity, for providing me this opportunity to share my personal experience, my story, and the information that has been shared with me. I hope I have been able to provide you an even greater challenge. This perhaps is the most difficult decision you might make in your life. And I'm proud that I stand here today nearing the end of this process just as I stood at the beginning of it.
14919. I'd like to thank all the other intervenors, like my colleague Dr. Andrew Weaver who was able to more aptly describe this critical scientific errors of Trans Mountain and uncover some of the many examples of Trans Mountain's box-ticking exercise found buried in their 15,000-page application.
14920. I'm thankful now that I know through Andrew's work how far someone floats when they fall off a ferry and how that information may be used unchallenged as data for spill modelling. Yet I remain confused as to how that will help us collect billions of little tar balls sinking to the bottom of the Salish Sea adjacent to our fishing areas.
14921. I'm thankful for the passionate and articulate Elizabeth May. She's my -- she's our Member of Parliament. And I openly muse about where the other elected officials of WSÁNEĆ are. In addition to all the work that she has on her plate, she stood here yesterday and explained in poignant detail the tremendous error this Panel made by removing oral cross-examination from this hearing.
14922. She used the word "frailty"; it's a brilliant word. And it's the -- and the fact that it explains perfectly the strength of evidence that you have to weigh in your deliberations is what scares me. I'm afraid this Panel will continue going about its business acting like the evidence, the science, the arguments of Trans Mountain and frankly the other participants of this hearing, maybe even including me, is something more than frail. That is the foundation and the framing of this hearing and the evidence submitted by Trans Mountain and perhaps some of the intervenors.

14923.           What is really scary is how would this Panel even know? You have removed every tool that you have had available to you at this hearing that ensures the information you receive actually floats.
14924.           While my evidence and arguments are not as technical and as legal as you have heard from the lawyers representing other intervenors like from Cheam and Chawathil and the intervenors before me, it served to remind you that there are millions of ordinary, legally unsophisted [sic] Canadians who have rights and interests that must be considered in your recommendation.
14925.           I am a reminder that the hearing you have presided over is not accessible to the average person. This is a public hearing. Where are they?
14926.           Certainly it is critical that scientific and technical aspects of Trans Mountain's application must be vigorously tested and this is usually accomplished through a more thorough cross-examination. The limited written information requests you made part of this hearing has not even come close to achieving this.
14927.           Your challenge is to balance that with ensuring that these processes must be accessible by average citizens like myself. That is why you have a participant funding program. It is unfortunate that you chose not to use it in my case, a point that I continue to go back on because it adds to the frailty of the information that you have in front of you.
14928.           We want to ask questions, provide input and we do not want to feel like we're marginalized because the hearing process that you have established requires legal training and research capacity that simply is out of reach for most Canadians.
14929.           In summary, I strongly encourage you to deny Trans Mountain's proposal, recommending to the federal government that this project should not proceed. I also encourage you to clearly articulate the difficulties that you have no doubt in trying to fulfill your statutory and common law duties based solely on inadequately designed process that you have both inherited from the legislative framework you are operating under, with no fault of your own, and have failed to enhance adequately through some of your rulings including narrowing your scope of review and denying me funding.
14930.           Trans Mountain has shown a shocking lack of understanding and

respect for Indigenous people of Alberta and British Columbia. The NEB on behalf of the Crown has failed to meet its duty to consult honourably. Furthermore with the recent BC Supreme Court decision, *Coastal First Nations vs. BC Environment* 2016 BSC BCSC 34, there are now legal questions that need to be answered about whether the Province of British Columbia also has a duty to consult that they have failed to meet.

14931. I have argued that I have an individual right that is separate from my First Nation and that the NEB erred in its decision to not properly fund my intervention. At the very least I stand here today with an unsophisticated but emotionally charged final argument that exposes some of the critical failing of this hearing. At most, you are missing critical information that will allow you to feel a mistaken sense of accomplishment and comfort, while throwing my life and the lives of thousands of others into chaos.
14932. I have argued that my right to fish as formerly includes a right to access my fishery and sell the proceeds of my fishery. I have argued that you must strongly consider my constitutionally protected rights to benefit from my fishery in the context of your decision as you weigh the commercial and economic benefit to this multi-billion dollar multinational corporation.
14933. I have asked that you consider the potential legal ramifications that a spill or a malfunction may have on my right and the right of others to fish as formally in our hereditary fishing locations directly adjacent to the current and proposed shipping routes. As it stands now there is no way for this panel to understand the scope of the potential liability as I have not been able to properly quantify this for you through research and expert testimony.
14934. I encourage you to dismiss this application at least until such time as you are comfortable that you and all Canadians understand the risk that you are accepting on their behalf. In my evidence I have shown you in the most visual way I possibly could hundreds of photos, the connection Indigenous people have with salmon. I could have repeated this a hundred times over by asking of photos of other seafood species. A spill or malfunction in the Salish Sea threatens this cultural connection, threatens our identity, and should be prevented.
14935. Many other Intervenors such as the Province of British Colombia have shown that Trans Mountain does not have the capacity to clean up a spill for their current operation, never mind this proposed expansion. Trans Mountain oil spill response capacity is recklessly inadequate and both the Government of British

- Colombia and the Government of Canada must immediately place a moratorium on the shipments of diluted bitumen near my established fishing locations throughout the Salish Sea and as my other Douglas Treaty --and as my and other Douglas Treaty people's fishing rights are not limited to our inherited fishing locations.
14936. For all of these reasons and the substantial questions I raised that require more research and investigation that I offered to provide in this hearing but was denied the capacity to complete, you must recommend against this project.
14937. Initially I was not going to add conditions in my final argument. I don't support this project and I don't feel that it's appropriate to accept a project with so many technical flaws that has been pointed out by the many Intervenors in this hearing. Frankly I do not believe that any suite of conditions that you could come up with can address the lack of respect, attention to detail and willingness to cut corners that has been shown by Trans Mountain in this application. These hearings should be as much about the Applicant as it is about the application. This application is lacking in so many ways that I believe it speaks to the quality of Applicant and that needs to be considered.
14938. In the end I was convinced that I should add conditions because after all, despite what you might think of me I am a reasonable person. I acknowledge that even if you recommend against this project that you can attach conditions to the government to consider. I will highlight one of my conditions here; the others you will find laid out in my final written argument.
14939. No matter what you recommend there must be a condition for the Government of Canada to meet with WSÁNEĆ people on both sides of the border to begin a dialogue about these issues that I have raised and the many other issues that remain unresolved outside of this hearing process. Leaving them unaddressed for the next generation to deal with is unacceptable; frankly, it should never have been left to my generation.
14940. I am encouraged with the ripples in the water; perhaps our new federal government is in fact going to approach these critical relationships differently. You have an opportunity to encourage that. You have an opportunity by recommending against this project to ensure that we once again have access to our treaty protected resources, by recognizing the significance of the evidence that I and other intervenors have laid out as best as we could lay it out for you.

14941. As you have heard over and over again this process has been deeply flawed. As you have heard from the legal counsel of Squamish yesterday this recommendation lay at your feet. You have been bestowed the responsibility of the honour of the Crown. There is no reason for you to question me about whether or not consultation on these critical issues should be allowed to continue -- to be allowed to happen after this Panel makes recommendations as you ask them because my answer to that is the same answer as the legal counsel yesterday. The consultation at this point is too late; you will not be able to sidestep the responsibility you accepted when you agreed to join this Panel.

14942. I have two more paragraphs; may I?

14943. **THE CHAIRMAN:** I will give it to you, Mr. Olsen.

14944. **MR. OLSEN:** Has the NEB or Trans Mountain done enough? Have you properly discharged your duty to consult? My position is no, you have not. And that appears to be the position of many of the Aboriginal Intervenors who have spoken to this point.

14945. Thank you to the Panel for listening to our impassioned testimony -- my impassioned testimony, the evidence, the arguments and thank you in advance for your dismissal of this project. HÍSWĪKE.

--- (A short pause/Courte pause)

14946. **THE CHAIRMAN:** If you would indulge perhaps some questions, Mr. Olsen?

14947. First question, one question's coming from Ms. Scott.

14948. **MEMBER SCOTT:** Thank you Mr. Olsen. In your submission you made the point very strongly that it's a mistake to treat aboriginal rights as a collective right and to ignore individual rights in our process. And I was wondering if you could -- and I recognize you're not a lawyer but ---

14949. **MR. OLSEN:** --- No. Come on! Wasn't that -- anyway, sorry ---

14950. **MEMBER SCOTT:** Well, in any event, so I apologize in advance if I'm asking you something that you don't feel comfortable or is unfair; it isn't

meant to be that way. But I wonder what authority you have -- I am a lawyer; I have that handicap -- for making that assertion? Are you aware of any court or other precedent that has adopted that approach, particularly in relation to Crown consultation?

14951.           **MR. OLSEN:** Yeah, so -- no, not that I'm going to be able to directly point you to. Perhaps the National Energy Board will be able to -- if that question is of a significant challenge -- dig some of that up.

14952.           What I will say to that, though, is that if you take a look at the Douglas Treaty, which is in Exhibit 7 provided by the Tsartlip First Nation -- and I decided not to put exhibits up, it was too complex of an activity for my mind. But what you'll find is a series of names that are -- you know, it's not just the Chief of Tsartlip. This treaty was signed before there was an *Indian Act*. Chief of Tsartlip and Council of Tsartlip; this was signed by heads of families, our family, you know, the SUHENEP family. The Olsen family is represented in that. My grandmother's family, the Bartleman (ph) family is represented on that document. This was a series of families that signed those.

14953.           And so to then say okay we're going to now from this modern legal perspective view every family that ended up in Tsartlip -- and I can tell you there was also -- you know, we could go and on about this, but there was also a practice of moving families around. So perhaps, you know, a family lineage that was part of that area had been moved to another part and actually is now outside of a Douglas Treaty community that, you know, they no longer live there but their family is signatory to this treaty.

14954.           I'm saddened today that SUHENEP here was not his nihim (ph), his rock, that location, which is passed in an anchor stone, is not with us, it's outside. It's here on the site but it's not in the room here with us. And what it could show you is that, in fact, those fishing locations were not -- it's not like oh Tsartlip's got this big handful of -- you know, this big list of fishing locations that Tsartlip manages, the community that I'm from. No, that nihim (ph) it comes -- goes to SUHENEP HASMIN (ph). He carries that on our behalf.

14955.           I live in Tsartlip. That came way after, 1950s or, you know, whenever it came. Whenever we became a reserve; whenever they put those boundaries around our community.

14956.           So not a legal answer. Can't point you to any -- but it was an

- important point for me that how can -- if those fishing locations and the right to fish as formerly refers back to a time before there was an *Indian Act* and before there was this -- you know, the boxes around us on the reserve, it's referring to previously to that.
14957. We need to look at these fishing rights in the context of the people who signed them, the negotiators of those rights, negotiated the right to fish as formerly because it was a fundamental part of who we are to be reef net people.
14958. And so, you know, perhaps back then it was not a difficult thing to give up some land. In fact, we spent most of the time, from my understanding, from the stories that I've been told, in our canoes fishing. So the land -- but those that came before us, and even on the American side they have the Stevens Treaty -- they have the Stevens Treaty over there. Same thing. Our ancestors fought for the right to fish because that's where our culture was at.
14959. **MR. KRINDLE:** It was our relationship with the salmon.
14960. **MR. OLSEN:** Yeah. Well -- and that's right, and I connected that. It's the relationship with those fish, the salmon.
14961. And John Elliot in previous times has told the story, STOLCEL. He's from my community. Told the story about how that relationship between the fish and the fishermen -- fisherperson evolved and how important it is.
14962. **MEMBER SCOTT:** Thank you, Mr. Olsen. Lawyer or not, you're very able, and you've really assisted me in understanding your position.
14963. Thank you.
14964. **THE CHAIRMAN:** And, Mr. Olsen, I'm not a lawyer either, and so that's -- we're brothers in that, if nothing else.
14965. I noted you added the words both sides of, you know, the border, and I think that wasn't in your submission but I noted that, that the Crown, the government, the federal government should -- government-to-government-to-government should consult with -- because the fish, the salmon, don't know a boundary. And we heard that this morning as well that they just don't get that. So I took a note that you had added that to your -- which I think is throughout your theme that there is -- we are one, and that's right.

14966.           And I also recognize the challenges you had gone through to be part of this process and your criticism of it. I recognize that. We heard it. We're hearing it. And I also thank you for recognizing the burden that's on us to do and we will do what we can to bring that to fruition in some way in the end.

14967.           So I thank you for the recognition of that and thank you for being here today. And I can assure you we will be considering all of the evidence, including yours, on this.

14968.           With that we will be adjourned. We will reconvene at 9:00 a.m. tomorrow morning when we'll hear from the Salmon River Enhancement Society, the Graduate Student Society at Simon Fraser University and Mr. Ken Klakowich in the morning.

14969.           We're adjourned until 9:00 a.m.

--- Upon adjourning at 3:18 p.m./L'audience est ajournée à 15h18