



MAR 08 2019

Ms. Jocelyne Beaudet
Chairperson
Roberts Bank Terminal 2 Project Review Panel
c/o Roberts Bank Review Panel Secretariat
160 Elgin Street, 22nd Floor
Ottawa ON K1A 0H3
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Dear Ms. Beaudet:

On August 30, 2018, the Federal Court of Appeal released its decision in *Tsleil-Waututh Nation v. Canada*, quashing the Governor-in-Council decision to approve the TransMountain Pipeline Expansion (TMX) Project. Among the reasons for the decision, the Court indicated that the National Energy Board had unjustifiably excluded marine shipping from the scope of the TMX project.

Currently, section 1.3 of your Terms of Reference for the environmental assessment of the proposed Roberts Bank Terminal 2 Project (the Project) specify that the description of the designated project under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) includes only those components associated with the Project that fall within the care and control of the proponent. As such, marine shipping that is associated with the Project and beyond the care and control of the proponent is not currently considered an activity incidental to the marine terminal forming part of the designated project.

As a consequence of the Federal Court of Appeal's ruling regarding the TMX Project, I intend to amend your Terms of Reference to specify that marine shipping associated with the Project within the 12 nautical mile limit of Canada's territorial sea is an activity incidental to the Project. As such, marine shipping associated with the Project will be considered as part of the designated project under CEAA 2012. The Environmental Assessment Impact Guidelines for the Project review will be amended as well to reflect this change.

Given that you have, from the beginning of your review, been mandated to consider the environmental effects of marine shipping associated with the Project that are beyond the care and control of the proponent and within the 12 nautical mile limit of Canada's territorial sea in its assessment, I do not anticipate this change to substantively affect

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your ongoing work to determine if there is sufficient information to proceed to the public hearing. The intent of the change is to allow me to fully consider your conclusions and recommendations with respect to marine shipping associated with the Project in my decision under section 52 of CEEA 2012.

Please find enclosed my proposed amendments to the Terms of Reference. I invite you to provide any comments on the proposed amendments to Colette Spagnuolo at colette.spagnuolo@canada.ca no later than March 28, 2019. The Canadian Environmental Assessment Agency will also be consulting with potentially affected Indigenous groups regarding the proposed amendments during this period. Following these consultations, the amended Terms of Reference will be finalized and posted on the Canadian Environmental Assessment Registry Internet Site.

Thank you for your ongoing effort and commitment with respect to the environmental assessment of the Project. If you have any questions or concerns regarding the proposed amendments, please contact Mr. Terry Hubbard, Vice-President, Operations Sector at terence.hubbard@canada.ca or by telephone at 613-948-2665.

Sincerely,

<Original signed by>

The Honourable Catherine McKenna, P.C., M.P.