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June 27, 2016

Sheri Young
Secretary of the Board
National Energy Board
517 – 10th Avenue SW
Calgary, AB T2R 0A8
Via Fax: 403-292-5503

Dear Ms. Young,

**Re: NEB File No.: OF-Fac-Oil-N304-2010-01 03
Northern Gateway Pipelines Inc. Request to Vary Certificates OC-
o60 and OC-o61 (the Certificates) in Order to Extend the Sunset
Clause Set out in Condition 2**

I write on behalf of West Coast Environmental Law Association (WCEL) in response to the National Energy Board's request for public comments on what issues and information the Board should consider regarding the request of Northern Gateway Pipelines Inc. (NGP) to extend by three years the expiry date set out in Condition 2 of its Certificates.

NGP's extension request incompatible with oil tanker ban commitment

WCEL opposes NGP's requested extension of the Certificates. For the past decade WCEL has advocated for a legislated oil tanker ban on the north coast of British Columbia, and we write to provide information and context regarding the federal government's current mandate to formalize a moratorium on oil tanker traffic on BC's north coast. In our view, it is imperative for the Board to consider this information in relation to NGP's extension request because granting an extension to NGP would be fundamentally inconsistent with the federal government's mandate to implement the moratorium.

Please find enclosed a backgrounder published by WCEL in January 2016 entitled *Keeping Our Coast Clean: Frequently Asked Questions About An Oil Tanker Ban On BC's Pacific North Coast*, which provides further detail and analysis on issues outlined in this letter.¹ Below we set out the nature of the federal oil tanker ban commitment, the background and rationale for the ban, its application to NGP, and evidence of steps taken to implement the ban to date. We conclude that the Board ought to refuse NGP's extension request in light of the federal government's mandate and ongoing work to formalize an oil tanker ban on BC's north coast.

Ministerial mandate letters direct formalization of oil tanker ban

Prime Minister Justin Trudeau's November 2015 mandate letter to the Minister of Fisheries, Oceans and the Canadian Coast Guard directs the Minister, as one of his "top priorities," to "[w]ork with the Ministers of Transport, Natural Resources and Environment and Climate Change to formalize the moratorium on crude oil tanker traffic on British Columbia's North Coast, including the Dixon Entrance, Hecate Strait, and Queen Charlotte Sound" through established legislative, regulatory, and Cabinet processes.² The Prime Minister issues a similar direction in his mandate letter to the Minister of Transport.³

Granting an extension to NGP would be incompatible with the federal government's moratorium mandate. NGP submits that the federal government's commitment to an oil tanker moratorium on BC's north coast creates uncertainty that, in NGP's view, ought to entitle it to additional time.⁴ On the contrary, the direction of the Prime Minister in his Ministerial mandate letters creates certainty that the federal government intends to prohibit the type of oil tanker traffic upon which NGP's proposal depends. This is particularly true when consideration is given to the full context for the Prime Minister's direction to formalize an oil tanker moratorium on BC's north coast.

Background for oil tanker ban commitment

As recounted by David Anderson, a former Liberal Member of Parliament and federal Minister of Transport, Minister of Environment and Minister of Fisheries and Oceans, a federal ban on oil tankers on BC's north coast was first announced in

¹ Also available online: <http://wcel.org/sites/default/files/publications/KeepingOurCoastClean.pdf>.

² Prime Minister Justin Trudeau, "Minister of Fisheries, Oceans and the Canadian Coast Guard Mandate Letter" (November 2015), online: <<http://pm.gc.ca/eng/minister-fisheries-oceans-and-canadian-coast-guard-mandate-letter>>.

³ Prime Minister Justin Trudeau, "Minister of Transport Mandate Letter" (November 2015), online: <<http://pm.gc.ca/eng/minister-transport-mandate-letter>>.

⁴ Northern Gateway Pipelines Inc. letter to National Energy Board dated May 6, 2016, at page 3.

1971 by the government of Prime Minister Pierre Trudeau, in the context of concerns regarding oil tanker traffic from Alaska. The tanker ban was not enshrined in legislation, however in the words of Mr. Anderson, it “has been honoured by every subsequent prime minister, Stephen Harper excepted.”⁵ There has been much pressure to legislate the ban. For example, a majority of Parliament passed a motion in December 2010 stating:

That, in the opinion of the House, the government should immediately propose legislation to ban bulk oil tanker traffic in the Dixon Entrance, Hecate Strait and Queen Charlotte Sound as a way to protect the West Coast's unique and diverse ocean ecosystem, to preserve the marine resources which sustain the community and regional economies of British Columbia, and to honour the extensive First Nations rights and title in the area.⁶

Additionally, between 2008 and 2014, at least six private member’s bills were put forward by various Liberal and NDP Members of Parliament that sought to amend the *Canada Shipping Act, 2001* in order to legislate an oil tanker ban on BC’s north coast.⁷ The bills were all outside the order of precedence when Parliament dissolved and thus were not voted upon, with one exception which was voted down in the previous majority Conservative Parliament (Conservative members and one Bloc Québécois member opposing; Liberal, NDP and Green members supporting).⁸

Oil tanker ban rationale

Joyce Murray, Liberal Member of Parliament and former BC Minister of Water, Land and Air Protection, summarized the rationale for seeking to legislate the longstanding policy ban on oil tankers in her introduction to Parliament of her private member’s Bill C-437. Her words remain true today:

⁵ David Anderson, “Tanker Ban Decision Was Not Taken Lightly” *The Times Colonist* (November 2015), online: <<http://www.timescolonist.com/opinion/columnists/david-anderson-tanker-ban-decision-was-not-taken-lightly-1.2111348>>.

⁶ House of Commons, *Journals*, 40th Parl, 3rd Sess, No 112 (7 December 2010) (Motion by Nathan Cullen), online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=40&Ses=3&DocId=4852969>>.

⁷ Bill C-571, *An Act to amend the Canada Shipping Act, 2001*, 2nd Sess, 39th Parl, 2008; Bill C-458, *An Act to amend the Canada Shipping Act, 2001*, 2nd Sess, 40th Parl, 2009; Bill C-606 *An Act to amend the Canada Shipping Act, 2001*, 3rd Sess, 40th Parl, 2010; Bill C-211, *An Act to amend the Canada Shipping Act, 2001*, 1st Sess, 41st Parl, 2011; Bill C-437, *An Act to amend the Canada Shipping Act, 2001*, 1st Sess, 41st Parl, 2012; Bill C-628, *An Act to amend the Canada Shipping Act, 2001 and the National Energy Board Act*, 2nd Sess, 41st Parl, 2014.

⁸ *House of Commons Votes and Proceedings*, 41st Parl, 2nd Sess, Vote No 372.

I am pleased to rise today to introduce an act to amend the *Canada Shipping Act, 2001*, which would exclude oil supertankers from the inland waters of Canada's Pacific north coast, known as Queen Charlotte Sound, Hecate Strait and Dixon Entrance. As this House well knows, Canada's quality of life is closely connected to the health of our oceans, which are integral to our environmental, social and economic services and capital. I join the majority of British Columbians who believe that transporting oil by supertankers in certain turbulent and hazardous inland coastal waters poses an unacceptable risk to the marine environment, to the communities and the businesses that depend upon that environment, and to all Canadians who share the common heritage of healthy oceans. I am therefore pleased to introduce this bill, which would legislate the long-term Liberal policy of prohibiting supertanker traffic from the waters around Haida Gwaii, in order to protect the Pacific north coast of Canada from oil spills.⁹

Oil tanker ban is intended to apply to NGP

It is clear from the context of Parliamentary debate regarding these bills that, while the formalization of an oil tanker ban is intended to protect the region from oil tankers generally, the urgency of the initiative in recent years was catalyzed by NGP, the only project under federal review that proposed oil tanker shipments in the region.¹⁰

Indeed, as leader of the opposition Liberal party when the federal government approved NGP in 2014, Mr. Trudeau was frank in his statements to Parliament that NGP was a prime example of the type of unacceptable risks posed by oil tanker shipments in the region:

Mr. Speaker, UBC researchers have told us that a single tanker spill from the northern gateway would be catastrophic for B.C.'s pristine north coast and its economy. A large spill would cost \$10 billion to clean up, and would wipe out over 4,000 full-time B.C. jobs. Will the

⁹ *House of Commons Debates*, 41st Parl, 1st Sess, No 143 (19 June 2012) at 1005 (Joyce Murray), online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=1&DocId=5690478>>.

¹⁰ See e.g. *House of Commons Debates*, 40th Parl, 3rd Sess, No 109 (2 Dec 2010) at 6727 (Bernard Bigras), online: <<http://www.parl.gc.ca/parliamentarians/en/publicationsearch?targetLang=&Text=ban+oil+tanker+traffic&PubType=37&ParlSes=40&Topic=41068&Proc=&Per=&com=&oob=&PubId=&Cauc=&Prov=&PartType=&Page=1&RPP=15#>>>.

Prime Minister do the right thing and say “no” to the northern gateway pipeline? (June 17, 2014).¹¹

Mr. Speaker, yesterday, going against the tide, the Prime Minister approved the northern gateway pipeline project. Environmental considerations and the opinion of aboriginal communities were not taken into account. Not only that, but the risk to British Columbia's coastal economy is tremendous. It is not a good location for a pipeline. Will this Prime Minister finally listen to the public and reverse his decision to approve this project? (June 18, 2014).¹²

In consideration of this fuller context, it is not open to suggest, as NGP does in its extension request,¹³ that clarity is needed regarding whether the formalization of the oil tanker ban would impact the commercial viability of the NGP proposal. Clearly, formalization of the oil tanker ban would prevent the NGP proposal from proceeding, otherwise the Prime Minister's direction has little meaning. There is no question that NGP's proposal depends upon introducing extensive crude oil tanker traffic; for example, the Federal Court states that “[o]nce completed, the Gateway Partnership expects that the Gateway Project will support the export of 30 million tonnes of crude oil and the import of 11 million tonnes of condensate requiring the annual transit of 250 oil tankers.”¹⁴ Neither is there any doubt that the NGP proposal would introduce crude oil tanker traffic into the very marine areas that have been singled out by the Prime Minister for the oil tanker ban. To illustrate this, one need only look to the map of NGP tanker routes from the Joint Review Panel's Report, below left,¹⁵ which for the purpose of comparison is juxtaposed with another map more clearly indicating the location of Hecate Strait, Dixon Entrance and Queen Charlotte Sound, below right.¹⁶

¹¹ *House of Commons Debates*, 41st Parl, 2nd Sess, No 105 (17 June 2014) at 6990 (Justin Trudeau), online:

<[¹² *House of Commons Debates*, 41st Parl, 2nd Sess, No 106 \(18 June 2014\) at 7068 \(Justin Trudeau\), online:](http://www.parl.gc.ca/parliamentarians/en/publicationsearch?targetLang=&Text=%22northern+gateway%22&PubType=37&ParlSes=41&Topic=&Proc=&Per=58733&com=&oob=&PubId=&Cauc=&Prov=&PartType=&Page=1&RPP=15#>.</p></div><div data-bbox=)

<[¹³ Northern Gateway Pipelines Inc. letter to National Energy Board dated May 6, 2016, at page 3.](http://www.parl.gc.ca/parliamentarians/en/publicationsearch?targetLang=&Text=%22northern+gateway%22&PubType=37&ParlSes=41&Topic=&Proc=&Per=58733&com=&oob=&PubId=&Cauc=&Prov=&PartType=&Page=1&RPP=15#>.</p></div><div data-bbox=)

¹⁴ *Gitxaala Nation v Canada (Minister of Transport, Infrastructure and Communities)*, 2012 FC 1336 at para 6.

¹⁵ Enbridge Northern Gateway Joint Review Panel, *Connections: Report of the Joint Review Panel for the Enbridge Northern Gateway Project*, Volume 1 (December 2013), at page 6.

¹⁶ West Coast Environmental Law Association, *Keeping Our Coast Clean: Frequently Asked Questions About An Oil Tanker Ban On BC's Pacific North Coast* (January 2016), at page 6.

MAP 1.2 KITIMAT TERMINAL AND TANKER ROUTES



Evidence of federal government’s implementation of oil tanker ban commitment

Furthermore, there is no basis to support NGP’s statement that it still “need[s] to know whether the federal government will proceed with any moratorium.”¹⁷ On the contrary, the Prime Minister’s direction is very clear that the federal government will proceed with the oil tanker ban, and there is no evidence to suggest that the Prime Minister and the federal government intend to reverse this formal commitment. Indeed, Transport Minister Marc Garneau stated as follows to Parliament in May 2016:

...my mandate letter requires me to establish a formal moratorium on crude oil tanker traffic on the north coast of British Columbia. I am doing this in concert with my colleagues, the Minister of Fisheries, Oceans and the Canadian Coast Guard, the Minister of Environment and Climate Change, and the Minister of Natural Resources. We are working on that right now.¹⁸

¹⁷ Northern Gateway Pipelines Inc. letter to National Energy Board dated May 6, 2016, at page 3.

¹⁸ *House of Commons Debates*, 42nd Parl, 1st Sess, No 46 (2 May 2016) at 1425 (Marc Garneau), online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8225684#Int-8884530>>.

Additional evidence of implementation steps includes the Minister of Transport and senior Transport Canada staff's Roundtables in January and March 2016 in Vancouver and Prince Rupert on the issue of the tanker ban. Transport Canada is holding further technical policy dialogues in early July 2016 on: (i) improving marine safety and (ii) formalizing a moratorium on crude oil tanker traffic in northern BC.

Conclusion: NGP extension request should be denied

In WCEL's view, it is clear based on the Prime Minister's formal direction to implement an oil tanker moratorium on BC's north coast, and the context in which that direction was made, that an extension to NGP's certificates should be refused because it would be fundamentally inconsistent with the federal government's moratorium commitment. Indeed, it would send highly mixed regulatory signals for the Board to grant NGP an extension in the face of the federal government's plain mandate to formalize an oil tanker ban that would prevent the NGP proposal from proceeding.

If, however, the Board feels further information on this issue is required, we would encourage the Board to specifically request further information from Transport Canada, which has primary responsibility for formalization of the oil tanker moratorium and was also a participant in the Joint Review Panel process.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gavin Smith', written in a cursive style.

Gavin Smith
Staff Counsel, West Coast Environmental Law

Enclosure: *Keeping Our Coast Clean: Frequently Asked Questions About An Oil Tanker Ban On BC's Pacific North Coast*