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STRATEGIC DECISION MAKING RECOMMENDATIONS

Kinder Morgan Trans Mountain Expansion Project

TIME-SENSITIVE MATERIAL

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Executive Summary

About the Strategic Analysis

The objective of this strategic analysis is to apply the Focal Thinking methodology developed by Mark Szabo, PhD, to the current Kinder Morgan Trans Mountain Expansion Project (TMEP) conflict, in order to identify strategic options available to the conflict participants. The point of this approach is to find where the true conflict lies, eliminate the extraneous information, and build the foundation for resolution strategies and tactical approaches.

This is not an analysis of ideas, it is an analysis of action. Rather than parse all the arguments, the model looks at the hard decisions available to the parties involved and identifies where the true conflict lies. From there we can build persuasion strategies, knowing where to focus our efforts to maximum effect.

This information and the recommendations noted are TIME SENSITIVE and are current as of the noted date on the cover.

Focus

There are dozens of participants in this conflict but only five material participants as of current writing. The root of the direct conflict lies between the Provincial Government of British Columbia and both the Federal Government of Canada and Provincial Government of Alberta. The proponent, Kinder Morgan, and the First Nations opposed to the project also have options available to them that can have material impact on the project, but the heart of the matter lies between the two government factions. All other conflict participants at this time are not *directly* relevant to the discussion.

Resolution Strategy

The key to the Trans Mountain Expansion Project may actually lie in the small town of Uclulet, on the other side of Vancouver Island, 1400 kms away from Edmonton.

This strategic decision-making analysis indicates that resolution strategy should revolve around the marine spill recovery initiatives already underway. They are in motion and have general public support in principal in a way not entirely dependent on the TMEP. They are, however, a political football, stuck between insufficient funding from the Ocean Protection Plan, funding for the West Coast Marine Response Corporation (WCMRC), and Kinder Morgan's halt of non-discretionary funding. These are a common point of interest between the conflicting parties that can help generate resolution. The strategy recommended is to create coalitions around the marine safety issue, find alternatives that will enable each material participant to tolerate a mutual outcome, or co-create a new one in context of the discussion.

Objective & Methodology

The objective of this whitepaper is to apply the Focal Thinking methodology developed by Dr. Mark Szabo to the current Kinder Morgan conflict, in order to identify strategic options available to the conflict participants. The point of this approach is to find where the true conflict lies, eliminate the extraneous information, and build the foundation for resolution strategies and tactical approaches.

This is not an analysis of ideas, it is an analysis of action.

The value of this approach is that it centres on power and decision making in order to determine where to focus activity. Rather than parse all the arguments, the model looks at the hard decisions available to the parties involved and identifies where the true conflict lies. After getting to the root of the issue we can build persuasion strategies that focus our efforts to maximum effect.

This methodology was developed as part of Dr. Szabo's doctoral research. We combined thematic analysis of current news media in order to determine the parties to the conflict and their desired outcomes and decision drivers. This information is then coded into the Graph Model for Conflict Resolution, which was developed by Hipel, Kinsara, Kilgour, Fang, and Bristow at the University of Waterloo's Department of Systems Design Engineering. The approach identifies the parties involved, analyzes their respective options, runs an agent-based model to identify current and desired future states of the conflict, and recommends strategic options available to the conflict participants.

This analysis will not outline the arguments for or against a particular position. The issue at hand is power, and power lies in deciding what actions each participant can and should make. From that can flow a conflict strategy, which arguments and ideas can subsequently inform.

This is not a predictive model. It is meant to guide strategic planning, not predict outcomes. The outcome is driven by how we approach the conflict.

This it is a snapshot of the current state, and that state will change. The entire point of the analysis is to look at a conflict as a dynamic system that is always in flux. That does not make the analysis invalid, that makes it realistic, with a long enough shelf-life to warrant serious attention.

This analysis does not take sides, except in the sense that it looks towards possible opportunities for resolution and not all participants want resolution. In fact, some explicitly state that their objective is to perpetuate the conflict to ensure the project is disrupted. My bias, however, is towards solving the issue, so the reader will want to be aware of that at the outset.

Background Facts

The following facts are not contested and will provide some useful background on the Trans Mountain Expansion Project (TMEP).¹

From a regulatory perspective, the TMEP was granted approval by the federal government's Governor in Council on November 29, 2016, following a recommendation by the National Energy Board (NEB) on May 19, 2016. The NEB held a 29-month review process and concluded the TMEP was in the Canadian public interest, with 157 conditions that still needed to be satisfied. The BC Environmental Assessment Office also provided an assessment certificate for the TMEP.

As the name implies, the TMEP is largely a brownfield project that will twin part the exiting route and add 980km of pipeline from just outside Edmonton, Alberta to Burnaby, BC, increasing capacity from 300k to 890k barrels per day.

“Most of the pipeline's oil is destined for Westridge Marine Terminal in Burnaby, where it would be loaded onto oil tankers that would navigate past Vancouver, the Gulf Islands and through the Juan de Fuca Strait before reaching open ocean.... The expansion would mean a seven-fold increase in oil tanker traffic from the Westridge terminal, from around 60 oil tankers to more than 400 per year.”²

Other salient facts from the proponent's website:

- 73 per cent of the route will use the existing right-of-way, 16 per cent will follow other linear infrastructure such as telecommunications, Hydro or highways and 11 per cent will be new right-of-way
- It will include 193 km of reactivated pipeline
- 12 new pump stations will be built
- 19 new tanks will be added to the existing storage terminals in Burnaby (14), Sumas (1) and Edmonton (4)
- Three new berths will be built at Westridge Marine Terminal in Burnaby. Once the new berths are completed and in service, the number of tankers loaded at the Westridge Marine Terminal could increase to approximately 34 per month.
- The existing pipeline will carry refined products, synthetic crude oils, and light crude oils with the capability for heavy crude oils
- The new twin pipeline will carry heavier oils with the capability for transporting light crude oils

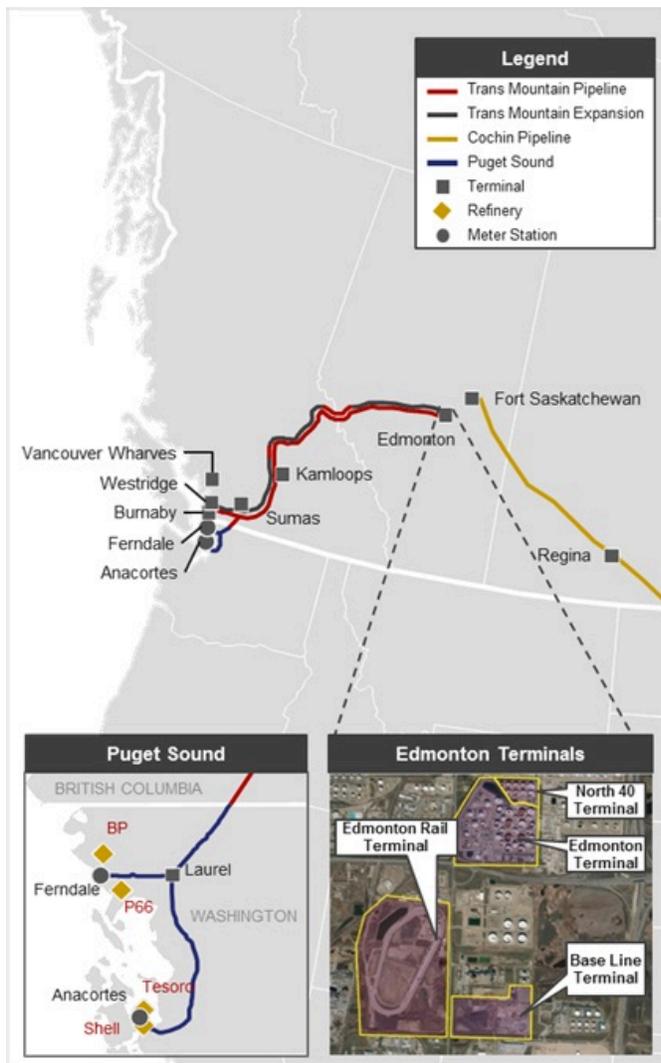
According to the proponent the impact on government revenue for construction and the first 20 years of expanded operations is \$46.7 billion. British Columbia would receive \$5.7 billion,

¹ From <https://www.transmountain.com/project-overview> unless otherwise noted.

² <https://www.desmog.ca/kinder-morgan-trans-mountain-pipeline>

Alberta \$19.4 billion and the rest of Canada would receive \$21.6 billion. There are also spin-off benefits that would accrue from the increased price point the Shippers can charge, since petroleum from the Alberta oilsands trades at a discount by virtue of its land-locked status. That is not relevant to this analysis but is an important consideration.

The process was not without controversy. “In addition to concerns about an increase in oil tanker traffic, many criticized the National Energy Board review for its elimination of oral cross-examination, exclusion of upstream climate change considerations and failure to adequately consult affected First Nations along the pipeline route.”³



³ Ibid.

Human Environment Audit

The root of this conflict is a jurisdictional dispute between British Columbia and a combination of the Federal Government and Alberta. The proponent and anti-project First Nations are active factors, but the root of the issue is between the two sides of government. All efforts at resolution should be focused on alleviating this hotspot in the immediate term.

The following analysis explains why this is the case in some depth. The reader is welcome to skip ahead to the next section for the strategic recommendations if this detail is not required.

The most important part of this analysis is where to focus our attention. In the midst of complexity, it is critical to make sure we pay attention to the right things and ignore the others. In this case, clarity comes from focusing on which parties have options that are will make a material difference to the overall conflict. This enables us to be ruthless with our focus and get right to the heart of the issue. Where a participant has no current material options, that simply means they are not a factor today; there is nothing they can do right now to make a material impact. This may change over time, but as of today, this is where things stand. A “material option” must have a significant impact on the conflict and be a live option currently available to the participant. The full summary chart can be found in the Appendix.

Participant	Current Material Options	Non-Material Options
Kinder Morgan (KM)	(1) Enforce May 31 deadline	<ul style="list-style-type: none"> • Divest ownership • Cancel at later date

KM’s one current material option: enforce their self-imposed deadline of May 31, 2018. On April 8, 2018, KM said they would stop “non-essential activities and related spending” until they received sufficient assurances of support in the face of BC opposition. They indicated that without an agreement in place, “it is difficult to conceive of any scenario in which we would proceed with the project.”⁴ In a new release, KM stated: “A company cannot resolve differences between governments. While we have succeeded in all legal challenges to date, a company cannot litigate its way to an in-service pipeline amidst jurisdictional differences between governments.”⁵ At a later date they can choose to agree to ownership divestment or cancel the project entirely, but these are not currently material.

⁴ Kinder Morgan to suspend all non-essential spending on Trans Mountain project, National Post Emma Graney and Keith Gerein, April 9, 2018, 12:07 AM EDT

⁵ 'They can't mess with Alberta': Notley promises consequences for B.C. over latest Trans Mountain setback, Edmonton Journal, Emma Graney and Keith Gerein, April 8, 2018 | Last Updated: April 8, 2018

Participant	Current Material Options	Non-Material Options
Federal Government (FED)	(1) Legislation to force TMEP (2) (Co)Purchase TMEP (3) Fund Marine Response	<ul style="list-style-type: none"> Financial support to KM

FED has several current material options. (1) FED may be forced to codify its otherwise constitutional authority in new legislation aimed at TMEP. This is in large part because of the uncertainty created by FED's decision to not refer this matter to the Supreme Court and instead to legislate incremental federal oversight in Bill C-69.⁶ (2) FED can take steps to purchase TMEP outright, or in conjunction with the Alberta government and/or First Nations groups. As will be discussed below regarding Alberta, there is precedent for this being relatively successful in Alberta. This is material because plans for this will disrupt the interaction between the parties significantly. (3) FED can also focus on the marine spill response program overseen by the West Coast Marine Response Corporation (WCMRC), which had planned to augment the FED's Ocean Protection Plan. When KM scaled back non-discretionary spending in advance of the May 31 deadline, this program was included in that cut. As will be noted below, there is an important opportunity for achieving resolution regarding this program. Another option open to FED is to offer financial support to KM to mitigate the risk of loss from uncertainty around the TMEP. This is essentially a taxpayer-funded insurance policy against the FED's inability to enforce the constitutional rule of law, and while it may be persuasive to keep KM in the project it is not a material option at this point.

Participant	Current Material Options	Non-Material Options
Province of Alberta (AB)	(1) Blockade oil to BC (2) (Co)Purchase TMEP	None

AB is strongly in favour of TMEP, and they have two material options now. They have indicated they will blockade the export of Alberta oil to BC if not satisfied with the outcome of the conflict. This will have far-reaching impact on local shippers and transportation companies, but it is an option that Premier Notley has been vocal about. This approach will most assuredly bring legal challenges from multiple parties, including BC.⁷ She has also been adamant that AB would be willing to purchase the TMEP if KM chooses not to proceed. As noted in the FED discussion above this has precedent in AB. In the 1970s the Progressive Conservative party created Alberta Energy Co. and sold shares to Alberta residents. This merged with Pan Canadian Energy in 2002 to become Encana.⁸

⁶ Trudeau government to privately discuss money for Kinder Morgan in Houston, New York, Toronto and Calgary, National Observer, [Mike De Souza](#), April 15th, 2018

⁷ 'A clear message:' Alberta tables legislation to limit B.C. oil shipments, National Observer, Dean Bennett, April 16th, 2018

⁸ Don Braid: Notley says to save Trans Mountain, Alberta would buy it from Kinder Morgan, Calgary Herald, Don Braid, April 10, 2018, 11:32 AM EDT

Participant	Current Material Options	Non-Material Options
Province of British Columbia (BC)	(1) Remove 6 conditions (2) Restrict AB oil imports (3) Fund Marine Response	<ul style="list-style-type: none"> Engage support of other provinces

BC Premier Horgan came to power relatively recently with the clear mandate that he would oppose TMEP, and in many ways his political future depends on maintaining that promise to his constituents. His options are straightforward. (1) He can choose to remove his objections to TMEP, which are in the form of 6 conditions placed on the approval of TMEP. This is reminiscent of the 5 conditions then-Premier Clark placed on the NEB's approval of Northern Gateway, despite the fact that she arguably had no constitutional authority to do so and those conditions largely repeated the core of the 209 conditions place by the NEB. This is unlikely to happen any time soon. (2) BC has talked about an embargo of AB oil imports, which interestingly is the flip-side of the very same argument AB is making as way to punish BC. This is a material option because it is something they can do immediately to disrupt the conflict. (3) BC can also look at ways to fill the funding gap that currently exists with the marine spill response program. We will note below that this is a common point of interest that might help with resolution of this matter. Premier Horgan reached out to QC Premier Couillard for support and received it, but that is not currently material to the conflict because no direct action can come from it.

Participant	Current Material Options	Non-Material Options
First Nations Against (FN-CON)	(1) Court challenges	<ul style="list-style-type: none"> Public protest

FN-CONs have one material option in the conflict and that is court challenges. The main cause of action seems to revolve around the extent to which there was insufficient consultation as part of the regulatory process. This has been a familiar cause of action since cases like Tsilqot'in established a fiduciary obligation on the Crown with respect to First Nations, not just a procedural one. It should be noted that references to international law considerations like the UN Declaration on the Rights of Indigenous Peoples are not ultimately persuasive unless they are codified into domestic law. They make for good sound bites, but they are not otherwise law. According to Desmog, going back to October 2017 there were 18 legal proceedings against the TMEP.⁹ This number will only increase in the coming weeks and months, and it will be a

⁹ Facts and Recent News on Kinder Morgan Trans Mountain Pipeline (undated), <https://www.desmog.ca/kinder-morgan-trans-mountain-pipeline>

powerful tool in the hands of FN-CONs. This is particularly true of FN-CONs that garner the support of environmental groups, many of which have significant offshore backing.¹⁰

Participant	Current Material Options	Non-Material Options
First Nations in Favour (FN-PRO)	None	<ul style="list-style-type: none"> • Advocate for ownership stake • Advocate for marine response • Lobby other FNs

FN-PROs do not have any current material options. They can advocate for an ownership stake directly or indirectly with the TMEP, including the marine response function, and they can lobby other FNs and try to sway public opinion. But there is no current material option available to them.

Participant	Current Material Options	Non-Material Options
Environmental Groups (ENV)	None	<ul style="list-style-type: none"> • Financially support protests, PR, and court challenges

ENVs have no opportunity for direct impact on the conflict at this point, but they can provide support to protests, public relations, and court challenges. Since 2000, American charities have donated some \$300M to Canadian ENV groups.^{11 12}

Participant	Current Material Options	Non-Material Options
Shippers (SHIP)	None	<ul style="list-style-type: none"> • Lobby AB & BC over concerns about boycott

The SHIPs, i.e. the oil producers who contract to ship their product, have no material options. They can lobby both provincial governments about concerns regarding an oil boycott, but they have no way to make a material impact on the conflict.

¹⁰ Environmentalists 'red-wash' their fight against pipeline, First Nation chief says, Vancouver Sun, Randy Shore, Published on: April 13, 2018 | Last Updated: April 13, 2018 5:55 PM

¹¹ It's Time for the Energy Industry to Ignore Vivian Krause, Alberta Oil, Markham Hislop, October 27, 2016

¹² Vivian Krause: The cash pipeline opposing Canadian oil pipelines, Financial Post, Vivian Krause, December 2, 2016

Participant	Current Material Options	Non-Material Options
Rail Companies (RAIL)	None	<ul style="list-style-type: none"> Benefit from increased demand

The RAILS have no material options. The increased demand for their services is problematic from an operational perspective and because it causes other customers (like grain farmers¹³) significant problems getting their product shipped as they normally would, but the RAILS stand to benefit from the increased demand overall.

Participant	Current Material Options	Non-Material Options
Province of Quebec (QC)	None	<ul style="list-style-type: none"> Public support of BC

QC has no material options at this point, and all they can do is offer public support of BC's stand against FED.

Participant	Current Material Options	Non-Material Options
National Energy Board (NEB)	None	<ul style="list-style-type: none"> Enforce 157 conditions

NEB has no material options, having approved the project May 19, 2016. It is now up to them to enforce compliance with the 157 conditions.

Summary

The root of this conflict is a jurisdictional dispute between British Columbia and a combination of the Federal Government and Alberta. The proponent KM and FN-CONS are active factors, but the root of the issue is between the two sides of government. All efforts at resolution should be focused on alleviating this hotspot in the immediate term.

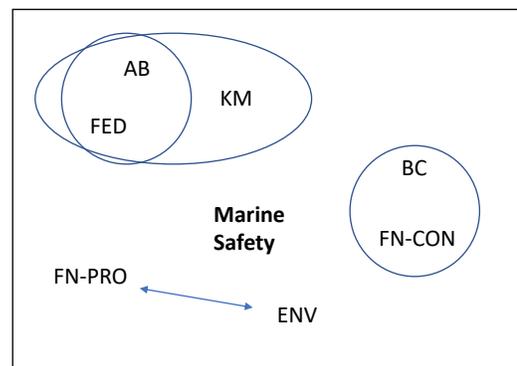
¹³ Railways feel the heat over grain backlogs, as farmers feel the pinch in their wallets, Financial Post, Neil Powers, March 19, 2018

Strategic Recommendations

This strategic decision-making analysis indicates that resolution strategy should revolve around the marine spill recovery initiatives already underway. They are in motion and have general public support in principal in a way not entirely dependent on the TMEP. They are, however, a political football, stuck between insufficient funding from the Ocean Protection Plan, funding for the West Coast Marine Response Corporation (WCMRC), and Kinder Morgan's halt of non-discretionary funding. These are a common point of interest between the conflicting parties that can help generate resolution. The strategy recommended is to create coalitions around the marine safety issue, find alternatives that will enable each material participant to tolerate a mutual outcome, or co-create a new one in context of the discussion.

Strategic Steps

- Solidify the common importance of marine safety to all parties and sever that importance from the TMEP. Make sure it is a common rallying point that all sides can agree on.
- Find and co-create specific opportunities for BC to win on the marine safety issue.
- Find and co-create specific opportunities for AB and the Federal Government to win on the marine safety issue.
- Build coalitions between the Environmental groups and pro-project First Nations, and between the pro- and anti-project First Nations. This can help change the calculus of BC in their opposition.
- Create marine safety as the common win that everyone can agree upon and leverage the forward momentum to co-create palatable options for realistic consideration.



Tactical Considerations

The key to these strategic recommendations is to break through existing patterns of perception and behaviour and *scramble the signals* that create and perpetuate the conflict. Conflicts like this perpetuate themselves when participants oversimplify and stereotype each other as a way to make sense of the complexity of it all, and because that's just how humans treat the "other" group.

The case for TMEP is has been positioned rationally, and the case against emotionally. The neurology of decision making unfolds at three levels. The decision to trust is made at our base, reptile brain, which has no capacity for language. That is our gut feeling about something or someone, and it often is either not articulated or identified. The next level is emotional, where we prioritize the feelings that are important to us and base our decision there. The last stage is our neocortex, which helps process the rational, factual elements of our decision. All of these need to be in alignment in order for us to make a decision.

The effectiveness of those making the case against projects like TMEP is that they have co-opted the moral high ground and owned the emotional case. No amount of facts can assail that type of positioning, and arguments based on fact and rationality only make the counter-argument stronger because you are playing to type.

The moral high ground is based on a few important factors:

1. FEAR: All energy-related projects carry some level of risk of harm; to populations, to animals, or the environment. By stoking fears of harm, the Anti groups capture an easily-exploited emotional response.

So What? When Pro groups try to point out the relatively low probability of harm they only make it worse, because they openly acknowledge and draw attention to the fact that there is a risk in the first place. This only plays into the Anti's hands.

Now What? Pro groups need to stop pinning their hopes on the idea that people make a decision to support a project based on some abstract percentage of risk. If we know that there is a legitimate fear, that needs to be addressed in ways that do not reinforce the fear. Instead of abstract percentages of low risk, make comparisons to risks that are common, or that the Anti group themselves chooses to make.

Example: This recent tweet from CEPA is an example of what not to do. By putting an image in people's minds of the very thing we want to avoid, they make the case against them. This is like scoring an own goal; an unforced error.



2. **STEREOTYPES:** When we face complex conflicts our natural (although unhelpful) response is to stereotype others as a way to make sense of a complicated situation. By framing the other side in less-than-flattering or even less-than-human terms, we make ourselves feel better about the rightness of our own position.

So What? When Pros are stereotyped as greedy corporations, unfeeling capitalists, even racist colonizers, it is much easier to capture the moral high ground.

Now What? The key to breaking down stereotypes is to scramble the signal. At all levels of interaction between participants, the Pro group needs to go against type by highlighting aspects of their position that run counter to the stereotypes.

Example: By showing the importance that marine safety has to people in Alberta, we can start scrambling the signal and create new connections that will allow people to allow the coalitions being created.

3. **FIRST NATIONS:** The constitutional make up of Canada is currently trending towards devolving political power to First Nations groups, so cross-jurisdictional projects like TMEP inevitably get caught up in these uncertainties.

So What? Uncertainty around jurisdictional control is easily co-opted by the Antis, who come alongside First Nations and offer support for their political power in exchange for help in protesting the project.

Now What? The fatal flaw in this argument of the Anti side is that First Nations are not a monoculture. They are in fact a widely-diverse set of cultures that operate independently of each other. Attempts to paint all First Nations with an environmental protest brush, therefore, are not reflective of reality. In fact, these attempts are simply another form of stereotyping that plays on the emotions of those less aware of the reality.

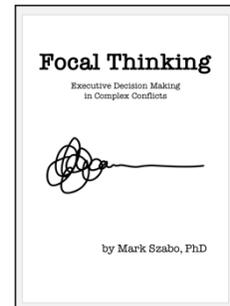
Example: The opportunity for the Pro side is to call out this hypocrisy for the disingenuous stereotype that it is and scramble the signal by showcasing First Nations groups that are in support of the project, and who resent being lumped in with an unrealistic stereotype of how First Nations should participate in the economic development of the country.

By building a new frame of reference around the common interest of marine safety, this conflict can start to dislodge and move towards a co-created solution.

About the Author



Dr. Mark Szabo is a seasoned communications advisor with global brand experience in a wide range of industries, including luxury brands like Rolex and Mercedes-Benz. He brings both academic credibility and 20+ years in the trenches. His unique value-add is the ability to effectively mobilize people in complex and challenging environments and conflicts, creating compelling experiences that capture hearts and minds with just the right people. He is also in the process of having his book on executive decision making in complex conflicts published.



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Appendix

Participant	Current Material Options	Non-Material Options
Kinder Morgan (KM)	(1) Enforce May 31 deadline	<ul style="list-style-type: none"> • Divest ownership • Cancel at later date
Federal Government (FED)	(1) Legislation to force TMEP (2) (Co)Purchase TMEP (3) Fund Marine Response	<ul style="list-style-type: none"> • Financial support to KM
Province of Alberta (AB)	(1) Blockade oil to BC (2) (Co)Purchase TMEP	None
Province of British Columbia (BC)	(1) Remove 6 conditions (2) Fund Marine Response (3) Restrict AB oil imports	
First Nations Against (FN-CON)	(1) Court challenges	<ul style="list-style-type: none"> • Public protest
First Nations in Favour (FN-PRO)	None	<ul style="list-style-type: none"> • Advocate for ownership stake • Advocate for marine response • Lobby other FNs
Environmental Groups (ENV)	None	<ul style="list-style-type: none"> • Financially support protests, PR, and court challenges
Shippers (SHIP)	None	<ul style="list-style-type: none"> • Lobby AB over concerns about boycott
Rail Companies (RAIL)	None	<ul style="list-style-type: none"> • Benefit from increased demand
Province of Quebec (QC)	None	<ul style="list-style-type: none"> • Public support of BC
National Energy Board (NEB)	None	<ul style="list-style-type: none"> • Enforce 157 conditions