LSSO releases results of survey on access to legal education

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A small but prosperous B.C. First Nation's environmental assessment of Kinder Morgan Canada's $5.4-billion oilsands pipeline expansion could "delay or derail" the project, a legal analysis says.

The slick and scathing 90-page report, released Tuesday by the 570-member Tsleil-Waututh Nation of North Vancouver, includes separate scientific research that says Kinder Morgan has underestimated the environmental and public health risks of both major and minor oil spills in Burrard Inlet.

"The assessment lays out the profound impacts of the ... project on Tsleil-Waututh title and rights, thus setting the stage for litigation that could delay or derail" the expansion, according to the two-page analysis of the report by six academics. The report concludes that the company's plan to triple the capacity of its pipeline system from Edmonton to Burnaby is contrary to the interests of the Tsleil-Waututh Nation and should be opposed by the chief and council.

"All experts concluded in their reports that the (company's) environmental assessment is inadequate and should not be relied upon to assess the potential effects of the proposal," the report said. Kinder Morgan Canada's plan "has the potential to affect the Tsleil-Waututh community profoundly."

The Tsleil-Waututh reserve is in North Vancouver, less than two kilometres across Burrard Inlet from the company's Westridge Marine Terminal.

Kinder Morgan Canada, which wants to increase its capacity to 890,000 barrels a day from 300,000 with the addition of a 987-kilometre pipeline, did not immediately respond to the report.

The company is seeking approval through the National Energy Board. The federal cabinet would make the final determination.

If the project goes ahead the number of "Aframax" oil tankers entering and leaving Burrard Inlet would increase to 34 a month from five.

The six law professors said the 90-page report is "pioneering" in its scope and "legally significant."

The assessment is particularly relevant for Kinder Morgan Canada, a subsidiary of a Texas-based energy infrastructure giant, given the landmark 2014 Supreme Court of Canada Tsilhqot'in ruling that expanded the scope of aboriginal rights and title to land, they argue.

It was signed by Gordon Christie, director of the University of B.C.'s Indigenous Legal Studies Program; Sakej Youngblood Henderson, research director of the University of Saskatchewan's Native Law Centre of Canada; Andree Boisselle, assistant professor at Osgoode Hall Law School; and Nicole Schabus, Janna Promislow, and Charis Kamphuis, all with the law faculty at Thompson Rivers University in Kamloops, B.C. The Tsleil-Waututh report assessed the project based on the objectives of its 2009 Marine Stewardship Project for
Burrard Inlet, and relied on five reports it commissioned - some which were made public earlier this month - to consider the risks.

Those reports included an oil spill risk assessment, an oil spill trajectory analysis, a look at the "behaviour, fate, and consequences" of spilled diluted bitumen, a study on the "gap and capacity analysis" of the oil spill response regime in the area, and an assessment of the risks to air quality in the residential area around Burrard Inlet.

The report said Kinder Morgan has underestimated the risk of a spill. It asserted there is a 79-to 87-per-cent likelihood of a spill at the terminal or in the inlet over a 50-year period. There is a 37-per-cent likelihood over 50 years of a spill higher than 10,000 barrels, and a 29-percent likelihood of a worstcase spill of 100,000-plus barrels. The worst-case spill would kill between 100,000 to 500,000 birds.

There are 280 "registered Indians" living on the 100-hectare Tsleil-Waututh reserve, according to Aboriginal Affairs and Northern Development Canada, with another 290 living off reserve. There were 1,200 non-Tsleil-Waututh living in the community in housing projects owned and operated by the First Nation, according to the 2011 census.

The band's corporate enterprises are involved in forestry, real estate, tourism, construction, wind power and fisheries.

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