

National Energy
Board



Office national
de l'énergie

DECISION

File OF-Fac-Oil-T260-2013-03 15
6 February 2018

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Dear Mr. Peterson, Mr. Carter, Mr. Stoness, Mr. Denstedt and Ms. Oleniuk:

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project - Certificate OC-064
Decision for Detailed Route Hearing MH-010-2017
Cribb Construction Ltd. - Mr. Dean Peterson**

1. Background

On 19 May 2016, the National Energy Board (NEB or Board) issued its Report recommending that Governor in Council approve the Trans Mountain Expansion Project (TMEP), subject to 157 conditions ([A77045](#)).

The TMEP included twinning the existing 1,147 kilometre long Trans Mountain Pipeline (TMPL) system in Alberta (AB) and British Columbia (BC) with approximately 981 kilometres of new buried pipeline; new and modified facilities, such as pump stations; additional tanker loading facilities at the Westridge Marine Terminal in Burnaby; and reactivating 193 kilometres of existing pipeline between Edmonton and Burnaby. Trans Mountain requested approval of a 150 metre wide corridor for the TMEP pipeline's general route.

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On 29 November 2016, Governor in Council directed the Board to issue Certificate of Public Convenience and Necessity (Certificate) OC-064 ([A80871](#)), the effect of which was to approve the TMEP, including the 150 metre wide corridor.

On 17 and 24 February 2017, Trans Mountain applied to the Board for its detailed route, submitting the Plan, Profile, and Book of Reference (PPBoR) for Segments 1 and 2 of the TMEP. Under section 34 of the *National Energy Board Act* (NEB Act), Trans Mountain made available for public viewing copies of its PPBoR, served notices on owners of lands proposed to be acquired for the proposed detailed route,¹ and published notices in newspapers in the vicinity of the proposed detailed route².

In all detailed route hearings, the Board considers the following issues:

1. the best possible detailed route of the pipeline;
2. the most appropriate method of constructing the pipeline; and
3. the most appropriate timing of constructing the pipeline.

In its 31 August 2017 Letter of Decision ([A85762](#)), the Board stated that it would not consider the issue of compensation to be paid to landowners as that matter is not within its jurisdiction.

2. Detailed Route Hearing MH-010-2017

Mr. Peterson is the principal of Cribb Construction Ltd, the registered owner of lands located at NW 27-53-12 W5M, NE 27-53-12 W5M, NW 26-53-12 W5M, NW 28-53-12 W5M, and NE 28-53-12 W5M, in the Rural Municipality of Yellowhead County in Alberta. Trans Mountain identified these as Tracts 442 to 446 and the tracts are proposed to be crossed by the new TMEP pipeline in Segment 2. Mr. Peterson resides on the land.

Dean Peterson, on behalf of Cribb Construction Ltd., filed a statement of opposition ([A83073](#)) on 2 May 2017 in relation to Tracts 443 and 444. These tracts are shown on PPBoRs: M002-PM03006-043 and M002-PM03006-044 and appear in Figure 1. The Board granted Cribb Construction Ltd. a detailed route hearing and issued Hearing Order MH-010-2017 ([A85764](#)) on 31 August 2017. The Hearing Order set a November-December 2017 timeframe for the oral portion of the detailed route hearing.

A site visit of Cribb Construction Ltd. lands was requested on 24 October 2017 ([A87157](#)), and granted by the Board on 15 November 2017 ([A87818](#)). The site visit occurred on 23 November 2017 ([A88645](#)).

¹ As required by paragraph [34\(1\)\(a\)](#) of the NEB Act.

² As required by paragraph [34\(1\)\(b\)](#) of the NEB Act.

The oral hearing for Cribb Construction Ltd. was held on 24 November 2017, in Edson, AB. Trans Mountain presented a panel of witnesses for cross-examination. Mr. Peterson did not file written evidence and was not present at his detailed route hearing. However, Mr. Peterson's lawyer was present and asked questions of Trans Mountain's witness panel, and provided an opening statement and argument on behalf of his client.

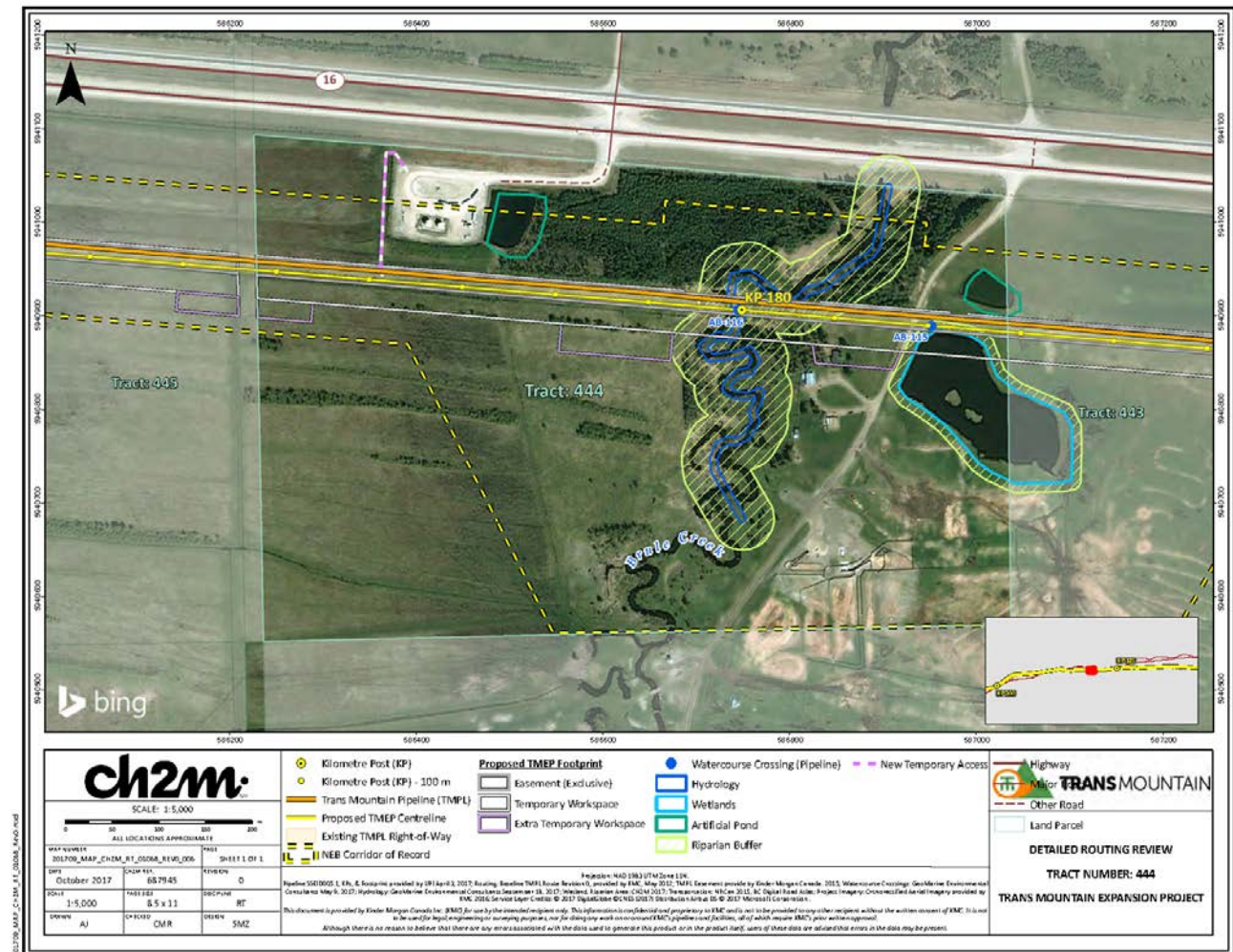


Figure 1 Map of Cribb Construction's property

2.1 Proposed Detailed Route

2.1.1 Trans Mountain's Routing Criteria

In selecting its 150 metre wide corridor and detailed route for the new TMEP pipeline, Trans Mountain submitted in its written evidence and opening statement at the detailed route hearing that it had established a hierarchy of routing principles. Of the four principles, the highest preferred criteria Trans Mountain used in the case of the Cribb Construction Ltd. lands was, where practicable, co-locate the new TMEP pipeline on or adjacent to the existing TMPL easement.

Trans Mountain submitted that it had been engaging the landowners in its routing discussions since 2012 and used landowner feedback to optimize the location of its 150 metre wide corridor. Trans Mountain stated that the width of the corridor provided flexibility for minor route adjustments including those informed by landowner input.

2.1.2 Proposed Detailed Route on the Cribb Construction Lands

The proposed route for the new TMEP pipeline follows the existing TMPL alignment and is proposed to be installed within the existing TMPL easement for the entirety of the route crossing Cribb Construction Ltd.'s lands:

- 808.00 metres of pipeline and a corresponding permanent easement area of 1.454 hectares (3.59 acres) would be situated on the property in Tract 442, with a permanent right-of-way width of 18 metres;
- 805.52 metres of pipeline and a corresponding permanent easement area of 1.449 hectares (3.58 acres) would be situated on the property in Tract 443, with a permanent right-of-way width of 18 metres;
- 806.73 metres of pipeline and a corresponding permanent easement area of 1.451 hectares (3.59 acres) would be situated on the property in Tract 444, with a permanent right-of-way width of 18 metres;
- 809.14 metres of pipeline and a corresponding permanent easement area of 1.455 hectares (3.60 acres) would be situated on the property in Tract 445, with a permanent right-of-way width of 18 metres; and
- 807.09 metres of pipeline and a corresponding permanent easement area of 1.453 hectares (3.59 acres) would be situated on the property in Tract 446, with a permanent right-of-way width of 18 metres.

Trans Mountain stated that installing the new TMEP pipeline within the existing TMPL easement was consistent with its routing principles and minimized environmental effects.

2.2 Method of Construction

In the statement of opposition, Mr. Peterson, on behalf of Cribb Construction Ltd., stated (without providing any justification) that the new TMEP pipeline should be bored or directionally drilled on the N½ 27-53-12-W5 (which corresponds to Tracts 443 and 444) under the yard site (including the service road that accesses the house and corrals), and under Brule Creek.

2.2.1 Watercourse Crossing

Views of Trans Mountain

In response to Cribb Construction Ltd.'s proposal to use a bore or directional drill for the watercourse crossing at Brule Creek, Trans Mountain acknowledged this and said that Mr. Peterson's input was considered when the method of crossing of Brule Creek was determined, and that it had been in discussions with him since 2012.

Regarding trenchless options for crossing the Brule Creek, Trans Mountain stated that a horizontal drill bore is a shallow technique that would not be suitable for a creek crossing due to the high potential for a frack-out, where drilling mud is inadvertently released to the surface or into a watercourse. Regarding the possibility of using a horizontal directional drill to cross the creek, yard and service road, Trans Mountain explained that this technique was not suitable for several reasons, including that it typically takes longer to complete, requires additional temporary workspace at the exit and entry locations, poses technical risks due to uncertain geology, and is significantly more expensive than an isolated open cut crossing.

Trans Mountain said that for Brule Creek it selected an isolated trench crossing method, also referred to as an isolated open cut crossing, with fish salvage and water quality monitoring during the fall period of low flow because it can be successfully crossed without disrupting potential fall spawning species. Trans Mountain submitted that the isolated open cut crossing is a proven crossing technique and that based on the fisheries information collected at the Brule Creek crossing, an isolated open cut crossing would maintain the integrity of the stream as well as maintaining the integrity of the fisheries species. Trans Mountain stated that the area around Brule Creek is a riparian area, and as such, the Riparian Habitat Management Plan would apply (which is included as part of the Pipeline Environmental Protection Plan, NEB Condition 72 in Certificate OC-064).

Trans Mountain's submitted in its evidence that the crossing at Brule Creek would use an isolation method with fish salvage, and water quality monitoring. Trans Mountain added that the horizontal directional drilling method is typically employed when isolated crossings are not possible or when there are significant and un-mitigatable environmental impacts, which is not the case at Brule Creek. Trans Mountain further submitted that it had demonstrated that its proposed isolation crossing method is the most appropriate method for this crossing, stating that it will take less time, and that any potential environmental impacts of installing the pipeline can be avoided, mitigated and restored.

2.2.2 Crossing Service Road

Views of Trans Mountain

Trans Mountain stated that, typically, for an unpaved residential road open cut construction methodology is used. In response to Mr. Peterson's concerns regarding access, Trans Mountain committed to crossing the service road via conventional bore to ensure that access (to the yard and house) would not be cut off during construction. Trans Mountain also committed to continue engaging with Cribb Construction Ltd.

During the hearing, Trans Mountain updated their plans and committed to extending the road crossing to an approximate 120 metre long horizontal drill bore which would extend to the east side of the open water pond (identified as a wetland in the map provided in Trans Mountain's written evidence, and at times also referred to as a dugout during the hearing) thereby reducing impacts to the open water pond. Trans Mountain stated that, should some unexpected ground

conditions be encountered that makes a horizontal drill bore not feasible, the contingency plan would be to install an aqua dam to isolate the open water pond for construction, and reconstruct it after construction of the new TMEP pipeline.

2.3 Timing of Construction

Cribb Construction Ltd. did not provide any evidence regarding the timing of construction.

Views of Trans Mountain

Trans Mountain stated that their preferred timing for construction of the crossing where the ground was softer (as it is around Brule Creek) is in the fall or early winter, ideally October to November. Trans Mountain stated that the creek crossing would take approximately 7 to 10 days to complete. Trans Mountain added that, in addition to the restricted activity period (which Trans Mountain explained is a guideline set out by the province for an entire water system or in this case Brule Creek), one can look at the fisheries studies³ and see the habitat potential in a particular area of the crossing and see which species of fish can be found. Trans Mountain explained that with respect to those restricted activity periods, when one also considers the data and information contained in those fisheries studies, one can then look and see if there can be some changes to that restricted activity period which can therefore influence the construction schedule at that crossing.

Trans Mountain submitted in final argument that the only evidence on the record that the timing of construction is appropriate comes from Trans Mountain.

3. Board Decision for Detailed Route Hearing MH-010-2017

The Board notes that no issues were raised with the proposed location of the detailed route and the only concerns raised dealt with methods and timing of construction. The Board is of the view that the timing, methodology and mitigation proposed by Trans Mountain for the crossing of Brule Creek is appropriate. Environmental effects are expected to be effectively mitigated through the commitments made during the detailed route hearing, and the commitments made through conditions and commitments of the Certificate hearing. In the Board's view, using a horizontal drill bore to cross Brule Creek would add additional environmental risk to the watercourse should a frack-out occur. The Board is of the view that the creek can be successfully crossed by an isolated open cut crossing. The Board is also of the view that constructing in the fall or early winter is appropriate to minimize environmental effects.

The Board notes that while concerns were raised regarding Trans Mountain's proposed methods of construction, Cribb Construction Ltd. was not available to provide information or answer questions. The Board recognizes that to address Cribb Construction Ltd.'s concerns, Trans Mountain committed to using a trenchless crossing for the service road. Trans Mountain also committed to extending that trenchless crossing further east to minimize impacts to the open water pond.

³ Studies are referring to the fisheries surveys completed as part of the 2013 TMEP application, and as part of the requirements for the Watercourse Crossing Inventory, NEB Condition 43 in Certificate OC-64.

The Board also notes Trans Mountain's commitment to continue to engage with Cribb Construction Ltd.

Having considered all of the evidence filed on the record by Cribb Construction Ltd. and Trans Mountain, the representations made at the oral portion of the hearing, and the matters described above, the Board finds that Trans Mountain's proposed route is the best possible detailed route for the TMEP on Cribb Construction Ltd.'s lands. The Board also finds that the methods and timing of constructing the new TMEP pipeline are the most appropriate.

Any approval by the Board of PPBoR for the Cribb Construction Ltd.'s lands will include a condition requiring Trans Mountain to list and fulfill the commitments it made in the course of the detailed route proceeding, and update its alignment sheets. Cribb Construction Ltd. is entitled to seek remedy from the Board if commitments are not being fulfilled.

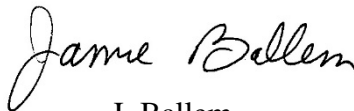
Trans Mountain is reminded that the relevant conditions of approval in Certificate OC-064 apply to the construction and operation of the new TMEP pipeline on Cribb Construction Ltd.'s lands.



L. Mercier
Presiding Member



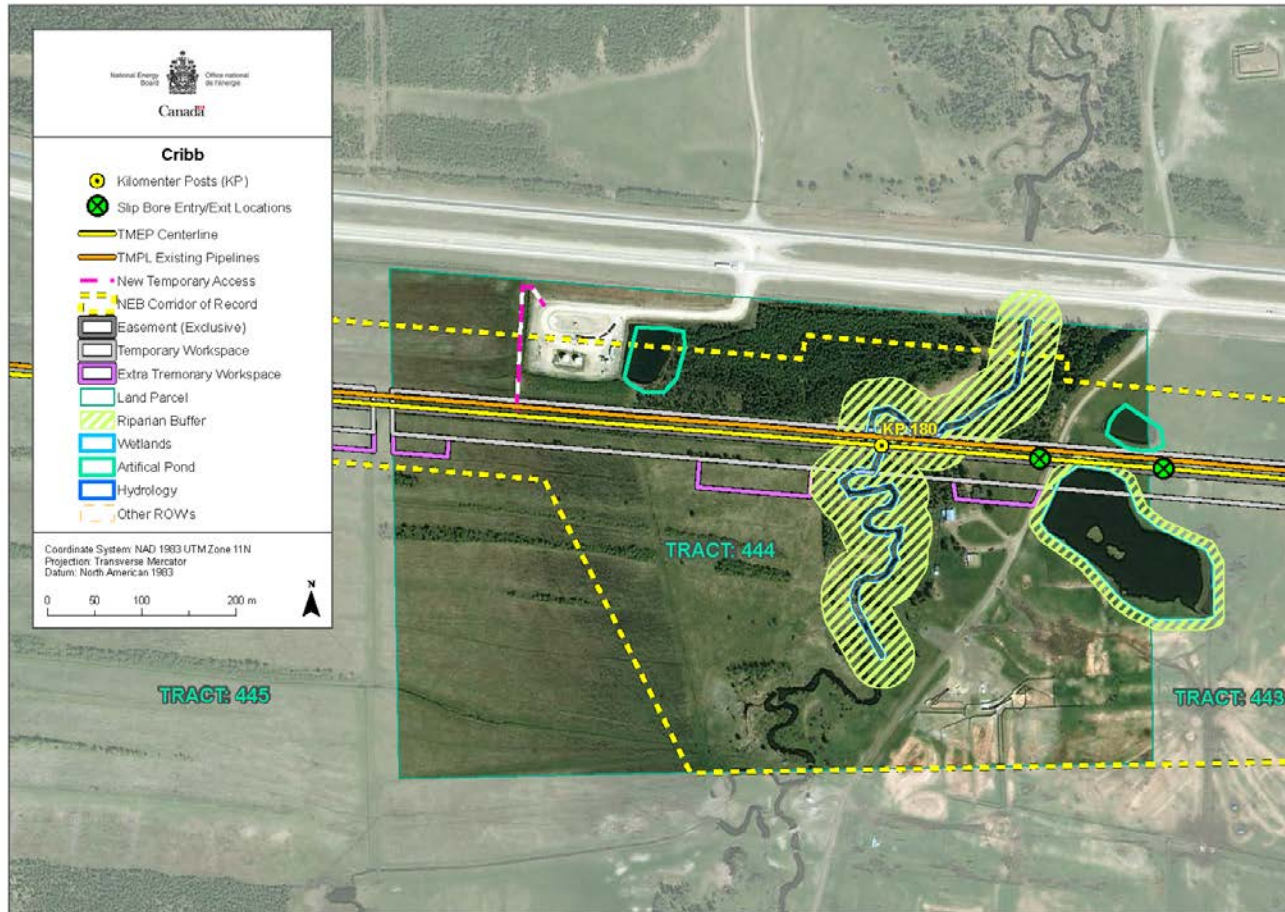
S. Parrish
Member



J. Ballem
Member

Appendix I – Map of Cribb Construction Ltd.’s property

This map was created by the NEB for illustrative purposes only.



MAP PRODUCED BY THE NEB, JANUARY 2018. THIS MAP HAS BEEN GENERATED BY THE NEB FOR ILLUSTRATIVE PURPOSES ONLY. THE NEB DISCLAIMS ALL RESPONSIBILITY FOR ANY ERRORS, OMISSIONS AND INACCURACIES. READERS WISHING TO CONSULT THE ACTUAL MAPS AS THEY WERE FILED SHOULD REFER TO THE OFFICIAL RECORD.