



DECISION

File OF-Fac-Oil-T260-2013-03 16
30 April 2018

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Dear Dr. Jim, Mr. Blackwell, Mr. Stoness and Mr. Denstedt:

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project - Certificate OC-064
Decision for Detailed Route Hearing MH-070-2017
Little Fort Herefords**

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 (B.C.) 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 the Certificate of Public Convenience and Necessity OC-064 ([A80871](#)), the effect of which was to approve the TMEP, including the 150 metre wide corridor.

On 3 March and 12 May 2017, Trans Mountain applied to the Board for Segments 3 and 4 of its TMEP detailed route, submitting the Plan, Profile and Book of Reference (PPBoR) for Segment 3 and Segment 4. 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 route¹, 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.

The Board did not consider the issue of compensation to be paid to landowners or affected persons for the use of their land in the detailed route hearings as that matter is not within its jurisdiction.

2. Detailed Route Hearing MH-070-2017

Dr. Kym Jim is the principle of a ranching enterprise in the interior of British Columbia headquartered in Little Fort, B.C. Together, Dr. Jim's family holds lands in the name of Kym Lee Jim, JBLC Holdings Inc., and Gung Kee Jim, all of which are involved in the ranching enterprise Little Fort Herefords (Landowner).

The lands (collectively referred to as the Lands) are described as:

- District Lot 2033 Land District 25 (Tract 1230);
- District Lot 1816 Land District 25 W ½ (Tract 1234);
- District Lot 1812 Land District 25 Except Plan B49 B4972 22338 H13322 and KAP69442 (Tract 1235);
- Plan KAP4972B District Lot 1812 Land District 25 Farm Land PT (Tract 1236);
- Lot 1 Plan KAP39735 District Lot 1811 Land District 25 (Tract 1237);
- Lot A Plan KAP25820 District Lot 1811 Land District 25 (Tract 1238);
- District Lot 1811 Land District 25 Except Plan 16788 22178 25820 and 39735 (Tract 1239);
- District Lot 1818 Land District 25 Except Plan 13125 14104 14141 14624 19030 and 27367 (ADJ: 305); and
- District Lot 4455 Land District 25 Except Plan 4931 (ADJ: 306).

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

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

Trans Mountain is proposing to cross Little Fort Herefords' Lands with the new TMEP pipeline in Segment 4 (see Figure 1³). Figure 1 shows the nine tracts of the Lands.

Little Fort Herefords filed its statement of opposition on 23 May 2017 ([A83761-1](#)). The Board granted it a detailed route hearing and issued Hearing Order MH-070-2017 ([A87886](#)) on 16 November 2017. The Hearing Order set a February-March 2018 timeframe for the oral portion of the hearing. Little Fort Herefords did not request a site visit.

³ The map in Figure 1 was prepared by the Board in April 2018 to illustrate where the nine lots that make up Little Fort Herefords' Lands are located in relation to each other.

The oral portion of the hearing was held on 5 March 2017 in Clearwater, B.C. Trans Mountain presented a panel of witnesses for cross-examination, made an opening statement, answered questions, asked questions of Dr. Jim, and also provided final and reply argument. Dr. Jim, represented himself, his family members and the business, Little Fort Herefords. Dr. Jim and his counsel questioned Trans Mountain's witness panel, made an opening statement, answered questions, and provided final argument.

2.1 Proposed Detailed Route

2.1.1 Trans Mountain's Routing Criteria

Trans Mountain submitted that its pipeline corridor was developed based on a standard set of routing criteria designed to enable the pipeline to be installed safely, and reinforce the protection of the pipeline while minimizing the adverse effects of pipeline installation and operation to the extent practicable.

During its route selection process, Trans Mountain established a hierarchy of routing options. In descending order of preference, these were:

- where practicable, co-locate the TMEP pipeline on or adjacent to the existing TMPL easement;
- where co-location with the TMPL was not practicable, minimize the creation of new linear corridors by installing the TMEP segments adjacent to existing easements or rights-of-way of other linear facilities including other pipelines, power lines, highways, roads, railways, fibre-optic cables and other utilities;
- if co-location of the TMEP pipeline with an existing linear facility was not feasible, install the TMEP segments in a new easement selected to balance safety, engineering, construction, environmental, cultural and socio-economic factors; and
- in the event a new easement was necessary, minimize the length of the new easement before returning to the TMPL easement or other rights-of-way.

Trans Mountain also submitted that while installation of the proposed TMEP pipeline will generally require a construction right-of-way of 45 metres wide, Trans Mountain studied and applied for a wider corridor (generally 150 metres). The wider corridor was intended to provide flexibility for minor pipeline alignment adjustments during the detailed engineering and design phase.

Trans Mountain stated that as a practice, determination of routing feasibility for the entire TMEP included consideration of a range of factors including safety, constructability, operability, geotechnical stability, environmental, cultural, and socioeconomic suitability.

2.1.2 Proposed Detailed Route on Little Fort Herefords' Lands

Trans Mountain indicated that it would require the following proposed new easements on the Lands:

Tract ⁴	Width (m)	Length (m)	Area Hectare (ha.)	Area (acres)
1230	18	854.70	1.539	3.80
1234	18	843.03	1.518	3.75
1235	18	617.35	1.095	2.71
1236	18	234.49	0.422	1.04
1237	18	476.56	0.863	2.13
1238	18	88.21	0.159	0.39
1239	18	1,035.16	1.859	4.59
ADJ 305	18	2.61	0.033	0.08
ADJ 306	0	0	0	0
Total		4,152.11	7.488	18.49

Trans Mountain will require a new easement having a total area of 7.488 ha. (18.49 acres) being 18 m wide and approximately 4,152 m long.

Trans Mountain indicated it will require additional land for temporary workspace, extra temporary workspace, log decks and access roads. Trans Mountain also indicated that it would use an estimated 8.1 percent of the total Lands, inclusive of the right-of-way, temporary workspace, log deck and access roads. The total amount of land to be utilized during construction, including the right-of-way is as follows:

Tract	Total Tract (acres)	Total (acres) to be utilized
1230	160	12.66
1234	80	13.68
1235	127.04	8.49
1236	17.62	2.86
1237	51.52	4.83
1238	2.06	0.4
1239	91.39	9.48
ADJ 305	17	0.15
ADJ 306	149.72	3.75
TOTAL	696.35	56.3

⁴ Table prepared by the Board from the PPBoR submitted by Trans Mountain ([A81971-5](#))

Of the 56.3 acres of land that Trans Mountain is proposing to utilize for the proposed TMEP pipeline, approximately 28 acres are forested lands and 28 acres are pasture lands.

Views of Little Fort Herefords

During the hearing, Dr. Jim provided an overview of Little Fort Herefords' ranching and farming operations. Little Fort Herefords was started 75 years ago. The operation includes approximately 180 cow-calf pair purebred Hereford seedstock. Little Fort Herefords also pasture approximately 50 yearling heifers and 30 yearling bulls each summer.

As noted in Little Fort Herefords' statement of opposition, none of the animals go to range; all are pastured on the Lands. Dr. Jim noted that Little Fort Herefords uses high-intensity grazing that can achieve less than one acre per cow-calf pair in what is a constricted land base in the area. In order to do this, the Lands are mostly irrigated. Additionally, the Lands are fertilized and follow rotational grazing practices so that the cattle have to move through certain pastures at certain times with certain rest periods for the Lands.

Dr. Jim testified that the ranch does not consist of an average group of cattle; in the last 50 years alone, Little Fort Herefords has won in excess of 100 championships at bull sales in British Columbia and has had over 100 class winners during that period of time. Dr. Jim noted that this takes very specific management practices to achieve.

Little Fort Herefords indicated that the proposed TMEP pipeline cuts right through the middle of the farming and ranching operations over a distance of approximately 2.5 miles. In its statement of opposition Little Fort Herefords noted that the disruption caused by the proposed TMEP pipeline to its operations would be significant.

Little Fort Herefords did not propose an alternate route in its written submissions; however, during the oral hearing, Dr. Jim testified that when he was originally approached by Trans Mountain he suggested that the proposed TMEP pipeline could be placed on another linear corridor up the hill which is approximately a mile and half away. This alternate route would allow for the TMEP pipeline to bypass the Lands entirely. In the further alternative, Little Fort Herefords suggested the TMEP pipeline could be relocated on the Lands so that it does not go through the middle of the pasture and hay lands, but rather travels more on the periphery of the Lands.

Views of Trans Mountain

Trans Mountain stated that in accordance with its routing principles, the proposed TMEP pipeline would be installed within, overlapping, and adjacent to the existing TMPL right-of-way for the entirety of the route crossing the Lands.

Trans Mountain plans to use a conventional open-cut construction methodology and has proposed to use the minimum amount of space necessary to facilitate safe construction and installation of the TMEP pipeline. Trans Mountain noted that it had adjusted its plans to address the concerns of Little Fort Herefords such that it would use a smaller construction crew to accommodate the limited workplace available and minimize impacts to Tract 1239 where the Landowner pens its bulls during the winter.

Trans Mountain noted that it has had extensive consultation with Little Fort Herefords since 2012 during which time it has informed itself of Little Fort Herefords' operations.

In its written evidence, Trans Mountain noted that the route cuts through the middle of the ranching operations. However, at the oral hearing, Trans Mountain stated that it does not believe that the TMEP as proposed necessarily crosses through the middle of the agricultural lands and that in some cases the pipeline is routed against the bush line. During final argument, Trans Mountain reiterated that in most cases the proposed TMEP pipeline does follow the boundary of the pasture land and the forested lands.

With respect to the alternate route proposed by the Landowner, namely to relocate the pipeline off the Lands, Trans Mountain noted that this preference does not align with the routing criteria established for the TMEP, which is to follow the existing Trans Mountain pipeline where practicable, and leverage the benefits of a single pipeline corridor with two pipelines in it. For this stretch of land, Trans Mountain stated that it did not look at an alternative route outside the study corridor.

During final argument, Trans Mountain noted that the alternate route was a potential significant re-route of the proposed TMEP pipeline and that this was new information on the record. Trans Mountain also stated that the proposed route across Little Fort Herefords' Land is the most practicable, safe and environmentally sound route and therefore is the best possible route.

2.2 Methods of Construction

Views of Little Fort Herefords

During its opening statement, Little Fort Herefords took the position that the construction methods and proposal provided by Trans Mountain failed to adequately address any significant mitigation measures on the Lands.

As part of its written evidence, Little Fort Herefords filed a copy of the "Trans Mountain-Little Fort Herefords Construction Proposal" (Construction Proposal) ([A89732-1](#)). Dr. Jim noted that the first time Little Fort Herefords was given a copy of the Construction Proposal was on 7 December 2017. Little Fort Herefords argued that the Construction Proposal fails to consider that the Lands in question are not bare lands, but are an intricate and unique cattle operation.

Little Fort Herefords noted that it would have been helpful for Trans Mountain to have provided a construction plan of sufficient detail to allow Little Fort Herefords to mitigate its damages. Without these details, Little Fort Herefords questioned how it could possibly prepare for the impacts on its Lands.

Dr. Jim testified that while some of Little Fort Herefords' outstanding concerns had been addressed by the Construction Proposal, the primary outstanding concern was that its cattle manufacturing plant would be taken out of operation by the proposed TMEP pipeline going through the Lands.

Views of Trans Mountain

As previously noted, Trans Mountain plans to use a conventional open-cut construction methodology. Watercourses will be crossed using an isolated open-cut method.

Trans Mountain stated that it understands the primary concern of Little Fort Herefords to be the impact of construction on its ranching operations. Trans Mountain committed to work with Little Fort Herefords to ensure impacts to its operations are limited to the extent practicable, including impacts to pasture and irrigation. In this regard, Trans Mountain's contractor prepared the Construction Proposal for the Landowner's review and feedback. The Construction Proposal included specific measures designed to reduce the effects of pipeline construction on the livestock, such as fencing the right-of-way at locations where livestock may be present during construction and installing crossings to allow farm vehicles, equipment, and livestock to cross the right-of-way as needed.

Trans Mountain noted that it has extensive experience in constructing pipelines on agricultural lands but that it would never profess to have the expertise of the Jim family and Little Fort Herefords. Trans Mountain's stated approach is to rely on the knowledge of the landowners and their intimate knowledge of their operations. Trans Mountain would then develop the plans necessary to mitigate the impacts to those operations.

2.2.1 Irrigation System and Reseeding

Views of Little Fort Herefords

With the exception of Adjacent Tract 305, all of the Lands are irrigated pasture or hay lands. Irrigation is done by way of travelling rainguns. All of the irrigation is connected and it starts at the North Thompson River. Little Fort Herefords pumps 2200 gallons of water per minute. The main irrigation line is underground, with the irrigators above ground. The Lands are irrigated annually from approximately 20 May until 30 September.

Little Fort Herefords also explained that the cattle must have access to Alfasure, a compound which is fed to them via the water to prevent bloat caused by alfalfa consumption. As Alfasure

has to be metered into the water supply in parts per thousand, the cattle can have no access to conventional water sources.

Little Fort Herefords expressed concern that there may be permanent damage to the fields that will require reseeding even in areas unaffected by construction but affected by loss of water.

Dr. Jim testified that he believes irrigation lines would be cut off for some time during the TMEP pipeline construction. He is unsure whether Little Fort Herefords could continue to use its irrigation lines during pipeline construction, as it had not been provided with information from Trans Mountain. Specifically, Little Fort Herefords noted that it does not fully understand how long it is planned that it will not have full access to its Lands or what the reseeding time will be. Little Fort Herefords anticipates that the impact of construction of the proposed TMEP pipeline will render the Lands unusable for their current purposes for three to four years.

With respect to reseeding, Little Fort Herefords noted all its fields are reseeded on a four to five year reseeding schedule. After reseeding the Lands, it will take at least one year before the fields are able to be utilized for rotational pasture.

Views of Trans Mountain

Trans Mountain stated that it will conduct a survey to locate and mark the irrigation lines to avoid damage during construction. In the event that any damage is caused, Trans Mountain will repair or replace the damaged lines as soon as possible and where system interruption is required, Trans Mountain will provide alternate water supply and ensure functional systems.

Trans Mountain committed to working with the Landowner to ensure the irrigation system remains operational throughout construction. In reply evidence, Trans Mountain noted that temporary irrigation lines could be laid across the construction corridor during periods of inactivity and temporarily removed for short timeframes while construction takes place. At the hearing, Trans Mountain further noted that the irrigation system would be treated as an operational asset. When the irrigation lines are identified, then a construction technique would be determined to work around those lines to keep them operational. Trans Mountain noted that several of the construction techniques will be completed during the winter when the irrigation system would not be operational.

With respect to reseeding, Trans Mountain stated that its objective is to introduce seed and ground-cover crop at its earliest opportunity to minimize and prevent erosion of the right-of-way. Once the seedlings are established, Trans Mountain indicated that the irrigation guns can be operated adjacent to the construction right-of-way. Trans Mountain stated that it does not anticipate any impacts on the Landowner's ability to fully and adequately irrigate the Lands.

Trans Mountain noted that while it does not have direct knowledge of agricultural production specific to alfalfa, it can engage experts, including an agricultural expert, as needed. However,

Trans Mountain noted that the Landowner is intimately knowledgeable about its Lands and crop production needs as well as what alternatives or substitutes could be put in place. Trans Mountain stated it would work with the Landowner to define those needs.

In response to concerns raised by the Landowner during the oral hearing, Trans Mountain revised its reseeding schedule on the Lands from fall 2020 to the spring of 2020, the effect of which would be to establish ground crop as soon as possible.

Trans Mountain stated that it would take all the steps necessary to promote successful restoration of the Lands but that it would rely on the Landowner to speak to how long it would take for full production to return. Trans Mountain committed to working with the Landowner to develop plans to address these issues. Specifically, Trans Mountain testified as follows:

... Trans Mountain is very much committed to working with Little Fort Herefords to develop a comprehensive and detailed plan to address the restoration seeding requirements for the lands, but also all aspects of mitigating concerns of Little Fort Herefords specific to access, irrigation and construction reclamation.

[Transcript Volume 1 paragraph 839 [A90423-1](#)]

2.2.2 Fencing and Access

Views of Little Fort Herefords

Little Fort Herefords noted that its pastures are fenced and cross-fenced with five-strand barbed wire that is electrified. Dr. Jim explained that this extensive cross fencing is required to ensure the cattle are confined to their breeding group as well as to control access to the cattle's water supply containing Alfasure.

Views of Trans Mountain

Trans Mountain noted that its construction footprint will be situated to avoid damage to any fencing, to the extent possible. Trans Mountain further noted that if fencing needs to be removed to allow construction to occur, the contractor will re-build and/or replace any damaged sections of the fence.

As part of its mitigation strategy, Trans Mountain proposed to fence the construction area to ensure the cattle stay off the footprint. Additionally, after Dr. Jim noted that Little Fort Herefords uses five-strand barb wire, Trans Mountain committed to using that type of barbed wire fencing and to engaging Little Fort Herefords' contractors to construct the fencing to Little Fort Herefords' specifications.

Trans Mountain stated that it can install cross openings to allow farm vehicles, equipment and livestock to cross the right-of-way. Trans Mountain is confident that it can accommodate

crossings of the construction right-of-way throughout the construction period to ensure cattle can access the Lands on either side of the right-of-way as well as identified water sources.

2.2.3 Alternate Pasture Lands

Views of Little Fort Herefords

Dr. Jim testified that construction of the proposed TMEP pipeline would require the cattle to be relocated to alternate pastures because the pastures on the Lands will not be properly available. Dr. Jim further testified that prior to being given the Construction Proposal he attempted to find alternate pastures but has not been able to find suitable lands. He asked Trans Mountain to find alternate pastures four years ago. Little Fort Herefords noted that the cattle cannot be placed in a dry-lot as it affects calf weight, and affects the fertility rate and longevity of the cow.

Views of Trans Mountain

Trans Mountain stated that the ultimate goal would be to eliminate, or at least reduce the need for alternate pastures. During the oral hearing, Trans Mountain indicated that from its engagement with the Landowner, it relied upon the Landowner's comments that alternate pasture lands are not available or that not much is available. Trans Mountain noted that winter construction would reduce the need for alternate pastures and that Trans Mountain would construct the proposed TMEP pipeline expeditiously through the Lands so that the pastures can be returned to production.

2.2.4 Additional Construction Plans

Views of Little Fort Herefords

In its statement of opposition, Little Fort Herefords opposed the proposed TMEP pipeline on the basis that Trans Mountain failed to fully address the concerns of Little Fort Herefords. Dr. Jim noted that many of his original concerns posed to Trans Mountain in 2012 continue to be the same questions that were discussed during the hearing.

During final argument, Little Fort Herefords argued that the oral hearing was perhaps the first time Trans Mountain had taken the time, or the opportunity, to hear about Little Fort Herefords' business and the extensive impact that the proposed TMEP pipeline will have on the Lands. Additionally, Little Fort Herefords argued that it did not have sufficient plans in front of it to agree to or to suggest that the applied for route is the proper location for the project, or that the construction methods are going to be adequate. Little Fort Herefords maintained the position that a plan needs to be in place prior to the commencement of construction, and it needs to be in place possibly as early as the fall or winter of 2018.

Specifically, when asked what, if any, outstanding concerns remained, Dr. Jim testified as follows:

So we lack information regarding the exact period of time that Trans Mountain proposed to be on the lands for, and particular [reseeding] intervals and such. We lack any plan for finding alternative pasture and hay lands, and details around that. We have issues with regard to how they intend to lump us into a category—they've lumped us in the category of other cattle ranching operations which we're not, quite clearly. And we have specific concerns with regard to movements of cattle across the right-of-ways, access to water, bull separation, none of which have been addressed yet. We've asked these questions for the past many years.

[Transcript Volume 1 paragraph 713 [A90423-1](#)]

Views of Trans Mountain

Trans Mountain noted that it has extensive expertise in constructing pipelines on agricultural lands. Specifically, Trans Mountain's construction contractor, Ledcor Sicim, testified that it is a very common occurrence to build major construction projects within agricultural lands. Trans Mountain reiterated that it is very rare that it would not be able to work with the Landowner to find an acceptable mitigation plan.

Trans Mountain stated that its approach is to rely on the knowledge of the landowners and their intimate knowledge of their operations. Trans Mountain would then develop the plans necessary to mitigate the impacts to those operations. Trans Mountain would rely on a collaborative approach with Little Fort Herefords to develop the mitigation plans.

In final argument, Trans Mountain noted that designing a project like the proposed TMEP takes a lot of time and that until a construction contractor was retained, it was difficult to provide the types of details requested by Little Fort Herefords. Trans Mountain explained that this is why the Construction Proposal was not provided until December 2017.

In its reply argument, Trans Mountain argued that if Little Fort Herefords is given an opportunity to review and approve mitigation plans prior to the Board approving the PPBoR, it would give Little Fort Herefords a veto over what does and does not happen on the Lands. Trans Mountain argued this is contrary to the public interest. Trans Mountain concluded that the Board should rely on the mitigation proposed and the commitments made by Trans Mountain in making its decision.

3. Timing of Construction

Views of Little Fort Herefords

Little Fort Herefords requested winter construction. Dr. Jim testified that while winter construction would have the least effect on operations that does not mean winter construction would have no effect.

Views of Trans Mountain

Trans Mountain indicated that construction on Little Fort Herefords' Lands is currently planned to occur during winter months with minimal activities taking place during the summer.

The following construction proposal was set out in Trans Mountain's reply evidence:

Clearing	December 2018 through February 2019
Stream Crossings	July through August 2019
String, Ditch, Lay, Backfill	October 2019 through February 2020
Tie-ins	June 2020
Testing	August 2020
Final Clean-up	October 2020

Trans Mountain noted that it expects winter construction will reduce impacts to Little Fort Herefords' operations. Trans Mountain further noted that environmental constraints require crossing of a creek (stream) on the Lands during the months of July and August, and restoration activities will be required during the growing season.

4. Summary of Commitments

During the hearing, Trans Mountain made a number of commitments, including:

- Primarily winter construction to minimize or limit impacts;
- Continue to engage with Little Fort Herefords in developing plans to limit the impact on its operations; and
- Any change in workspace or reductions in workspace will be captured through the as-built drawings.

5. Board Decision for Detailed Route Hearing MH-070-2017

The Board appreciates the time spent by Dr. Jim, representing Little Fort Herefords, and Trans Mountain in discussing their concerns at the detailed route hearing.

The Board accepts Dr. Jim's view that Little Fort Herefords' ranching and farming operations are unique and intricate and that specific management practices have been required in order to achieve the numerous accolades won by Little Fort Herefords over the last 50 years.

Throughout the course of the MH-070-2017 detailed route hearing, Little Fort Herefords raised several concerns including irrigation, fencing, access, reseeding and the need for alternate pastures. Little Fort Herefords also requested winter construction to minimize the impacts that construction of the proposed TMEP pipeline would have on its ranching and farming operations.

The Board notes that Trans Mountain prepared the Construction Proposal which outlined possible mitigation measures on the Lands. However, this Proposal was provided to the Landowner only a few months prior to the oral hearing. The Board appreciates that developing construction methodologies for a project of this nature takes time and that specific details of construction for specific lands may not be available until later in the design process. While the Landowner noted that the Construction Proposal addressed some of its concerns, the Board is of the view that the Construction Proposal failed to provide specific details such that Little Fort Herefords could fully prepare for the impact of pipeline construction on its ranching and farming operations.

Little Fort Herefords stated that it would have been helpful for Trans Mountain to have provided a construction plan of sufficient detail to allow Little Fort Herefords to mitigate any damages. The Board agrees with this statement. The Board is of the view that a specific mitigation plan that considers the unique characteristics of the ranching and farming operations of Little Fort Herefords is necessary before the Board can determine whether the applied for route is the best possible route and that the timing and methods of construction are the most appropriate.

Therefore, after having considered all of the evidence filed on the record by Little Fort Herefords and Trans Mountain, the representations made at the oral portion of the hearing, and the matters described above, the Board is of the view that it requires additional information to determine whether the applied for route is the best possible route, and whether the methods and timing of construction are the most appropriate in this case. The Board needs to have better and more detailed information as to how Trans Mountain is proposing to mitigate the potential adverse impacts of construction of the proposed TMEP pipeline on the Lands.

The Board therefore directs Trans Mountain to prepare a report setting out how it will mitigate potential impacts on the Lands and operations of Little Fort Herefords. The Board expects Trans Mountain to obtain as much input as possible from Little Fort Herefords in preparing this report. Unless the Board otherwise directs, Trans Mountain must file this report with the Board no later than **4 June 2018** and serve a copy on Little Fort Herefords and its counsel on the same day.

To be of assistance, this report should lay down a sequential, detailed mitigation plan which considers the Little Fort Herefords' operations in their totality, over and above just the construction season. The Board expects Trans Mountain to address all relevant matters in its

report, and without limiting the generality of the foregoing, the Board would benefit from the following information:

- clarification on how a primarily winter construction schedule will minimize impacts to the Lands and operations of Little Fort Herefords and what adverse impacts may result irrespective of winter construction and how these impacts can be mitigated;
- what construction techniques will allow continuity of the irrigation system throughout construction of the proposed TMEP pipeline and how will they be implemented;
- in the event of an interruption to the irrigation system, what specific measures will be in place to ensure adequate alternate irrigation/watering is maintained;
- what steps will be in place to monitor the correct dosage of Alfasure into any alternate sources of water required during construction of the proposed pipeline;
- does Trans Mountain expect to retain any experts to assist with mitigation measures? If so, what types of experts are expected to be retained, in what capacity will those experts assist the parties, and if applicable, during what phase of construction will those experts be required;
- what impact will pipeline construction have on the Landowner's four to five year reseeding schedule? Will pipeline construction impact the rotational use of the pastures? If so, what mitigation measures are proposed to minimize any impact to the crops? If there are impacts, what reclamation measures are proposed to support successful regeneration of any lost crops;
- will the cattle manufacturing plant be taken out of operation for any period of time during construction of the proposed TMEP pipeline;
- will the impact of construction render the Lands unusable for any period of time? If so, will alternate pastures be required and will Trans Mountain assist in locating alternate pastures;
- if alternate pastures are required, how will adverse impacts to the cattle be minimized (i.e. weight and fertility rates);
- additional and relevant concerns that Trans Mountain becomes aware of during any discussions with Little Fort Herefords; and,
- a description of any concerns raised by Little Fort Herefords that could not be resolved and an explanation as to why not.

As mentioned, the questions noted above are not exhaustive; Trans Mountain should include all relevant concerns and corresponding mitigation measures in its report.

The Board notes that Trans Mountain has committed to engaging experts, as needed, including an agricultural expert. While the Board notes that Trans Mountain will rely on the knowledge of Little Fort Herefords in developing the necessary mitigation plans, the Board expects that, if needed in preparing the report, Trans Mountain will retain the necessary expertise, beyond those of an agricultural expert, to deal with the complexities of the ranching and farming operations of Little Fort Herefords.

The Board encourages Trans Mountain and Little Fort Herefords to collaborate in order to find potential solutions to address issues of interest to all parties. Alternative Dispute Resolution services are available through the Board, at the request of the parties, to assist the parties in their discussions. For more information about Alternative Dispute Resolution options, please email ADR-MRD@neb-one.gc.ca or call 1-800-899-1265.

The Board considered Trans Mountain's argument that allowing the Landowner to review and approve mitigation plans prior to the Board approving the PPBoR would give Little Fort Herefords a veto over what does and does not happen on the Lands. The Board disagrees, in part, with this argument. The Board is not requesting that Trans Mountain obtain approval from Little Fort Herefords on the report, rather the Board encourages the parties to work together to the extent possible to develop the report and address concerns that both parties may have. The Board understands that collaboration requires participation by both parties. Should there be difficulties in collaborating, the report can explain what these have been. The ultimate decision rests with the Board as to whether the applied for route is the best possible, and the methods and timing of construction are the most appropriate.

Lastly, the Board recognizes the numerous commitments made by Trans Mountain throughout the hearing to address some of the specific concerns raised by Little Fort Herefords including using five-strand barbed wire fencing, adjusting its reseeding schedule and its commitment to maintain access across the construction right-of-way to allow for equipment and cattle crossings. The Board is optimistic that Trans Mountain and Little Fort Herefords will continue their discussions to reach solutions acceptable to all parties.

The Board will keep its decision for MH-070-2017 under reserve pending the filing and examination of the report. Upon receipt and review of the report, the Board will advise Little Fort Herefords and Trans Mountain of the next steps in the process.



L. Mercier
Presiding Member



S. Parrish
Member



J. Ballem
Member