

# GETTING TO IMPLEMENTATION

## THE POLITICS OF PIPELINES

UNIVERSITY OF TORONTO SCHOOL OF PUBLIC POLICY & GOVERNANCE

MARVIN J.S. FERRER, SASHA GRONSDAHL, BEN HANFF, RYAN MACDONALD

# AGENDA

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- Problem Statement & Background
- Provincial Analysis
- Regional Analysis
- Framing the Options
  - Aggressive Opposition
  - Oppose and Negotiate
  - **Moderate Opposition & Community-Based Economic Development (Recommended)**
- Benefits, Risks, Implementation, and Communications
- MLA Briefing Strategy
- Summary

# GOVERNMENT COMMITMENTS<sup>1</sup>

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“Pronteau Oil’s Plateau Pipeline is **not in the best interests** of our economy or our society”

Premier Jordan Hahn

“Take **every available immediate measure to halt** the Plateau Pipeline Project expansion”

Confidence & Supply Agreement

“Employ **every tool available to defend BC’s interests** in the face of the expansion of the Plateau Pipeline”

Minister of Environment Mandate Letter

# PROBLEM STATEMENT

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While protecting British Columbia's **provincial and regional** interests, how can the government proceed with pipeline **policy implementation** given its stated **opposition to the Plateau Pipeline Project ("P3")**?

# A DELICATE BALANCE

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EFFECTIVENESS  
IN STOPPING  
PIPELINE  
CONSTRUCTION

POLICY IMPACTS

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*PROVINCIAL  
& REGIONAL*

STRATEGIC  
IMPACTS

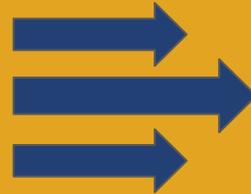
# PLATEAU PIPELINE PROJECT

3<sup>RD</sup>

Adds a **third pipe** to an existing **dual-line pipeline** that runs 1,200 km from Edmonton to Burnaby

2x

**Doubles capacity** of pipelines from 500,000 to 1,000,000 barrels per day



P3 transports diluted **bitumen** (unrefined) from Alberta to the BC coast



The federal government cancelled the **Great Bear Line**



BRITISH COLUMBIA

ALBERTA

WASHINGTON



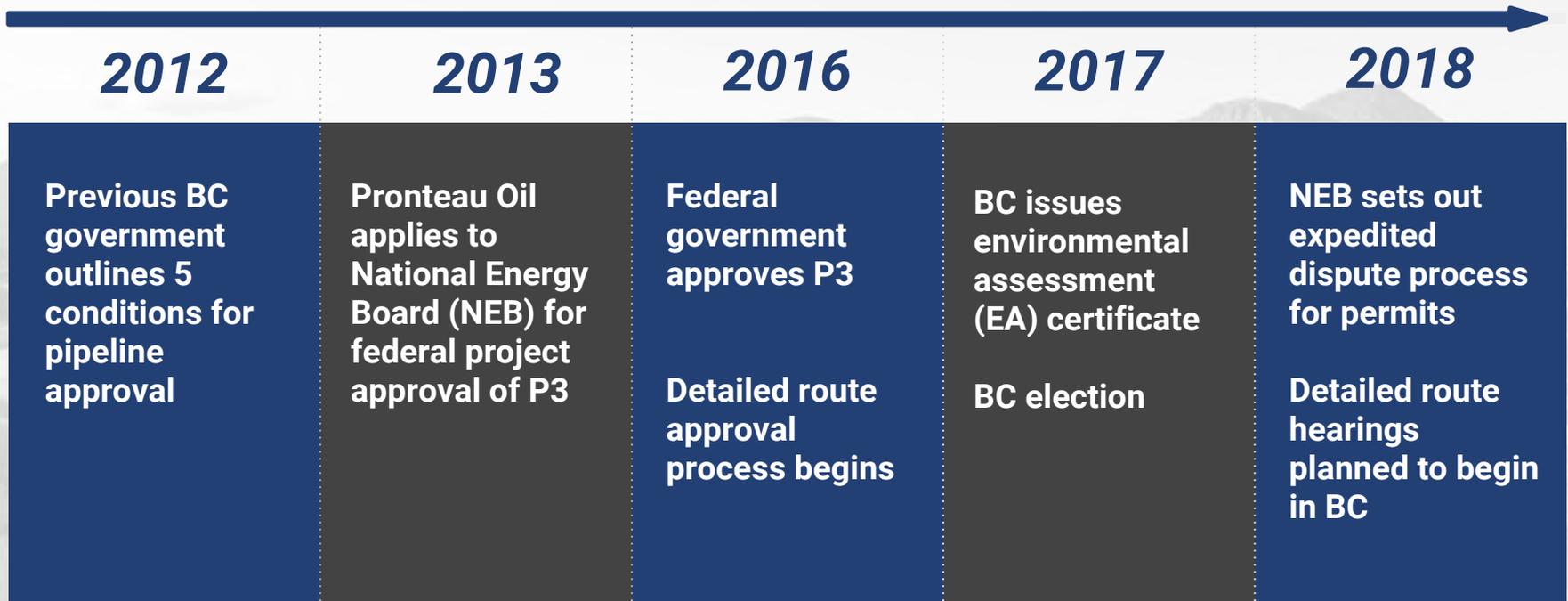
**P3** **PLATEAU PIPELINE PROJECT**

**PROPOSED PLATEAU PIPELINE EXPANSION PROJECT CONFIGURATION MAP**  
FEB 25 2015

- NEW PUMP STATION
- EXISTING PUMP STATION (DEACTIVATED)
- EXISTING PUMP STATION (EXPANDED)
- EXISTING PUMP STATION
- ADJACENTLY LOCATED PUMP STATIONS
- TERMINAL
- EXISTING PIPELINE -ACTIVE
- EXISTING PIPELINE -REACTIVATED
- NEW PIPELINE
- EXISTING PIPELINE -INACTIVE

TMEP SYSTEM MAP CANADA FEB 25 2015.DWG

# P3 TIMELINE



# JURISDICTION

Federal Authority	Provincial Authority
<ul style="list-style-type: none"> <li>• Environment</li> <li>• Interprovincial “Works and Undertakings”</li> </ul>	<ul style="list-style-type: none"> <li>• Environment</li> <li>• Municipal authority derived from province</li> </ul>

## Conflict

Provincial law is inoperative if it conflicts with federal law and it cannot impair the core of federal jurisdiction

“While the federal law says ‘yes with conditions’, the provincial law ... could also say ‘**yes, with further conditions**’”

**SOURCE:** *Coastal First Nations v British Columbia (Environment)*, 2016 BCSC 34

# ONGOING PROCESS

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- **Federal Project Approval**
  - Environmental groups are challenging NEB recommendation and federal project approval
  - Potential for challenge to provincial EA certificate
- **Proponent in midst of Detailed Route Approval Process following federal project approval**
  - Proponent proposes best possible route for P3 to NEB
  - Following NEB approval, proponent can begin construction after obtaining land rights
- **Permit-issuing provincial authorities**
  - Oil and Gas Commission
  - Ministry of Transportation & Infrastructure
  - Ministry of Forests, Lands, Natural Resource Operations and Rural Development
  - Ministry of Environment and Climate Change Strategy
- **Municipalities issue permits related to buildings, construction, and excavation**
  - Burnaby has repeatedly attempted to frustrate P3 implementation through its bylaws

# INDIGENOUS CONSULTATION

## Consolidated Challenge at Federal Court of Appeal

Tsleil-Waututh Nation

Musqueam Indian Band

Upper Nicola Band

Squamish Nation

Coldwater Indian Band

Stk'emlupsemc Te  
Secwepemc Nation

Aitchelitz Indian Band

If the federal or provincial government has knowledge of the existence or potential existence of an Aboriginal right, it has a **duty to consult and accommodate** before adversely impacting the right

The scope of the duty is **proportionate** to the **strength of the right** and the **seriousness of the potential adverse impact**

**SOURCE:** *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73

### CONSULTATION STATUS:

- Court challenges of federal project approval are ongoing
- NEB & Federal/Provincial report found proponent consulted adequately
- 41 First Nations in BC have signed agreements with the proponent
- Governments have committed to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

# PATHWAYS AND TOOLS

## PATHWAYS TO STOP P3

- The Government of Canada withdraws its support for P3
- BC imposes legal restrictions that effectively stop P3
- The proponent withdraws the P3 proposal

## POLICY TOOLBOX

- **Legal:** The Province can increase costs and uncertainty for the proponent by withholding permits, creating additional legislation/regulation, and intervening in court challenges
- **Communication:** The Province can rally public opposition and increase the risk of disruption for the proponent
- **Regional:** The Province can support local opponents to the pipeline, e.g. provide assistance for route hearings

“Faced with unreasonable regulatory risks... it may become untenable for Pronteau shareholders... to proceed.”

- Pronteau NEB Filing

The total cost spent by  
Pronteau thus far is  
**\$930M**

The monthly cost delay for  
Pronteau is estimated at  
**\$75M**

# PROVINCIAL ANALYSIS

**COSTS, BENEFITS & RISKS TO BRITISH COLUMBIA**

# P3 BENEFITS

BENEFITS	LOW RANGE (SFU 2014)	HIGH RANGE (Conf Board Canada 2014)	HIGH RANGE + DOWNSTREAM + FEDERAL (Conf Board Canada 2015)
<b>Construction</b> <b>**ONE TIME**</b>	\$180 million	\$309 million	\$394 million
<b>BC Gov Rev</b>	\$35 million	\$47 million	\$280 million
<b>Clean Futures Fund</b>	\$125 million	\$125 million	\$125 million
<b>Municipal Property Tax</b>	\$23.2 million	\$25 million	\$25 million
<b>BC Annual Benefit</b>	<b>\$183.2 million</b>	<b>\$ 197 million</b>	<b>\$430 million</b>

# QUANTIFIABLE SPILL RISKS

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**Total cost**      \$103 million - \$5,000 million

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## Liability reduction

**Marine spill: Up to \$1,300 million**  
(from federal/international fund)

**Land spill: Total**  
(proponent bears unlimited liability for all costs)

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**Chance of marine spill**

**Up to 48.3% over 30 years**

# UNQUANTIFIABLE SPILL RISKS

## CLIMATE CHANGE

Increased upstream and downstream GHG emissions

## INDIGENOUS

Negative impact on reconciliation

## ECOSYSTEMS

Negative impact on ecosystems and species-at-risk

## HEALTH

Negative human health impacts associated with a spill

## TOURISM

Negative impacts on tourism associated with a spill

# RISK OF NOT RESPONDING

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BC may benefit only marginally

BC bears significant unquantifiable risk

**The potential risk of P3 outweighs potential reward**

# REGIONAL ANALYSIS

THE REGIONAL IMPACT OF PIPELINE POLICY

# REGIONAL CONTEXT

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- Communities stand to benefit **economically** from community benefit agreements, construction spending, and property taxes
- Public opposition is concentrated on **environmental** risk of (marine) spills and tanker traffic
- Level of opposition in **Indigenous communities** varies
- Significant split in public opinion on P3 with detailed route hearings upcoming
- **Risks of not responding at regional level:** community division, continued boom-and-bust regional economies, non-maximized community benefits, provincial and regional misalignment

# EXAMPLE: KAMLOOPS

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- Increasing challenges to conventional **resource-based economy**
  - Threats to jobs from technology and automation
  - Increasing concern for environment, Indigenous rights (e.g. cancellation of Ajax mine in December 2017)
- **Higher unemployment rate** than provincial and national rates: **7.2%** rate vs 4.8% rate for BC, 5.2% rate for Canada
- P3 in Kamloops: proposed upgrades to pump station, route diversion through Lac du Bois Grasslands

# P3 PROPOSAL IN KAMLOOPS

COMMUNITY BENEFITS	RISKS TO COMMUNITY
<ul style="list-style-type: none"><li>• \$750,000 signing bonus</li><li>• \$745,000 (city estimate) to \$4M (proponent estimate) in tax revenues</li><li>• \$500M in construction spending</li></ul>	<ul style="list-style-type: none"><li>• Short-term spending does not diversify economy</li><li>• Division in community</li><li>• Threats to reconciliation: Stk'emlupsemc Te Secwepemc Nation opposes</li><li>• Concerns about impact of construction on housing, tourism</li></ul>

**Benefits from pipeline will be attractive to community, but community cohesion and economic diversification are important for the long-term**

# REGIONAL GOALS



## ECONOMIC

Develop strategies to increase resilience in regional economies



## ENVIRONMENT

Stop pipeline or, if P3 proceeds, mitigate negative environmental impacts of construction or spill



## INDIGENOUS

Facilitate local reconciliation; address tensions between Indigenous and non-Indigenous people



## COMMUNITY COHESION

Help community progress in a unified way

# FRAMING THE OPTIONS

SETTING UP THE DECISION

# KEY CONSIDERATIONS

## EFFECTIVENESS IN STOPPING PIPELINE CONSTRUCTION

Likelihood

## POLICY IMPACTS

*PROVINCIAL  
& REGIONAL*

Economic Development

Environmental

Indigenous

Community Cohesion

## STRATEGIC IMPACTS

Intergovernmental

Public Legitimacy

Confidence & Supply

# OPTIONS OVERVIEW

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1

**AGGRESSIVE  
OPPOSITION**

2

**OPPOSE &  
NEGOTIATE**

3

**MODERATE  
OPPOSITION**

& COMMUNITY-BASED  
ECONOMIC DEVELOPMENT

*\*\*RECOMMENDED\*\**

# AGGRESSIVE OPPOSITION

OPTION 1

# AGGRESSIVE OPPOSITION

<b>Provincial</b>	<p>Create <b>stringent environmental conditions</b> for P3. Issue <b>new conditions</b> if any are struck down.</p>
<b>Regional</b>	<p>Build <b>regional coalitions to oppose pipeline</b>. Sponsor <b>Indigenous, municipal, and environmental group grassroots action and litigation</b>, e.g. Secwepemc protests, coordination of grassroots days of action, intervene in court challenges of P3.</p> <p>Tailor <b>economic development plan</b> to align with pipeline opposition by supporting green innovation and infrastructure.</p>
<b>OBJECTIVE</b>	<p>Delay project at all costs, <b>aiming for proponent</b> to withdraw due to increased cost/uncertainty.</p> <p><b>Support BC communities</b> for continued prosperity.</p>

# OPTION 1 ANALYSIS

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## BENEFITS

- Increases delay of pipeline and financial pressure on proponent to withdraw
- Support of Indigenous communities/litigation consistent with government UNDRIP commitment
- Consistent with government commitment and Confidence & Supply Agreement

## RISKS

- Proponent withdrawal is not guaranteed, especially because BC may exceed its constitutional jurisdiction
- Economic development strategy may be unresponsive to needs of specific communities
- Mobilizing opposition to P3 may aggravate existing divisions in communities
- Severe intergovernmental conflict is far more likely

# OPPOSE & NEGOTIATE

## OPTION 2

# OPPOSE & NEGOTIATE

<b>Provincial</b>	<p>Make public statement re: <b>principled</b> opposition to P3 and announce <b>intention</b> to take legal action leading to pipeline delay.</p> <p>Negotiate with <b>federal government and proponent</b> re: increased regional economic benefits and reduced environmental risk.</p> <p>Set additional feasible conditions for <b>proponent</b> re: environmental protection, Indigenous consultation.</p>
<b>Regional</b>	<p>Assist communities in securing local economic benefits and environmental protections <b>from proponent</b> (e.g. providing in-kind assistance for City of Kamloops in CBA negotiation and to assist Stk'emlupsemc Te Secwepemc Nation in negotiating routing).</p>
<b>OBJECTIVE</b>	<p>The Province should strike the <b>best possible deal</b> given the likelihood of P3</p>

# OPTION 2 ANALYSIS

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## BENEFITS

- Private economic development marginally bolsters government revenue
- BC may receive a larger share of P3 benefits from the federal government
- If negotiated benefits materialize, may decrease division in some communities
- Least likely to damage intergovernmental relationships

## RISKS

- Far more likely that P3 will be constructed, with accompanying negative impacts
- Inconsistent with provincial commitment to Indigenous reconciliation, although negotiation can mitigate impacts for Indigenous communities
- Does not diversify regional economies on pipeline route
- Least consistent with public commitments and Confidence & Supply Agreement

# **MODERATE OPPOSITION**

**& COMMUNITY-BASED ECONOMIC DEVELOPMENT**

**OPTION 3 RECOMMENDED**

# MODERATE OPPOSITION

<b>Provincial</b>	<p>Establish additional environmental conditions which must be satisfied before relevant provincial permits can be issued. Conditions must be within <b>provincial jurisdiction</b>, while also adding <b>significant cost and uncertainty</b> to the P3.</p>
<b>Regional</b>	<p>Economic development strategy for communities like Kamloops that involves <b>regional roundtables</b> to determine economic priorities and <b>commitment of capital investment</b> to encourage economic growth and diversification. Include roundtable on topic of Indigenous reconciliation.</p>
<b>OBJECTIVE</b>	<p>Delay project, <b>aiming for proponent</b> to withdraw due to increased cost/uncertainty.  <b>Support BC communities</b> for continued prosperity.</p>

# BENEFITS

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- Increases delay of P3 and financial pressures on **proponent to withdraw**
- Positions regions along pipeline route for **economic diversification**
- Supports **community cohesion** through collaborative decision-making in economic development plan
- Meets government's public **commitments and Confidence & Supply Agreement**
- Adheres to commitments to Indigenous peoples

# RISKS & MITIGATION

<b>LEGAL</b>	Additional conditions are found unconstitutional; BC loses legal leverage	BC government considers negotiations with federal government using non-legal tools
<b>ECONOMIC</b>	Loss of economic benefits from pipeline	Economic benefits are marginal; province proceeds with economic development strategy
<b>INTER-GOVERNMENTAL</b>	Retaliatory measures by federal or Alberta governments	Communication of BC's interests through media; consultation with Indigenous and community groups
<b>COMMUNITY</b>	Regional roundtables set high expectations in community	Clearly communicate scope and objectives of roundtables; emphasize identified funding package

# OPTION 3 ANALYSIS

KEY CONSIDERATIONS	CRITERIA	P3 BUILT	P3 STOPPED
POLICY IMPACT	ECONOMIC	✓	✓
	ENVIRONMENTAL	✗	✓
	INDIGENOUS	—	✓
	COMMUNITY COHESION	✓	✓
STRATEGIC IMPACT	PUBLIC LEGITIMACY	✓	✓
	CONFIDENCE & SUPPLY	✓	✓
	INTERGOVERNMENTAL	—	✗
EFFECTIVENESS OF STOPPING PIPELINE		MEDIUM	

# OPTIONS COMPARISON

	OPTION 1 AGGRESSIVE OPPOSITION		OPTION 2 OPPOSE & NEGOTIATE		OPTION 3 MODERATE OPPOSITION & COMMUNITY BASED ECONOMIC DEVELOPMENT	
KEY CONSIDERATIONS	P3 BUILT	P3 STOPPED	P3 BUILT	P3 STOPPED	P3 BUILT	P3 STOPPED
POLICY IMPACT	✗	—	—	✓	✗	✓
STRATEGIC IMPACT	—	—	✗	✗	✓	✓
EFFECTIVENESS OF STOPPING PIPELINE	Medium		Low		Medium	

# IMPLEMENTATION SUMMARY

PROVINCIAL	REGIONAL
<ul style="list-style-type: none"> <li>• Consider legal tools to delay P3</li> <li>• Notify federal government of imminent provincial action</li> <li>• Plan media announcement</li> </ul>	<ul style="list-style-type: none"> <li>• Meet with Kamloops MLAs</li> <li>• Identify funding envelope for regional economic development</li> <li>• Region-specific announcements of funding envelopes</li> <li>• Host roundtable with local mayors, councillors, MLAs to identify local priorities</li> <li>• Host community roundtables to identify local priorities</li> </ul>
NEXT ORGANIZATIONAL STEPS	
<ul style="list-style-type: none"> <li>• Strike inter-ministerial task force to coordinate action at provincial and regional levels within 30 days               <ul style="list-style-type: none"> <li>- Ministry of Environment and Climate Change Strategy to lead crafting legal strategies and regulation</li> <li>- Ministry of Economic Development to lead economic development strategy roll-out</li> <li>- Contact Ministry of Finance for allocation of resources required</li> </ul> </li> </ul>	

# COMMUNICATIONS STRATEGY

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## THE PROVINCE IS:

1. Acting in **BC's best interests**
2. Empowering **regional economic development** for the future
3. Protecting the **environment and the climate**
4. Respecting **Indigenous peoples**
5. Honouring Canada's **global commitments**

# MLA BRIEFING

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- Provide **background and context of P3**, including economic impact and risks for province
- Highlight Province's **opposition** to P3
- Discuss regional context, with a **focus on Kamloops**, and goals for regional communities in economic development, environmental protection, Indigenous reconciliation, and community cohesion
- Outline **regional economic development strategy**, highlighting engagement process and opportunities for **MLAs** and local leaders to be involved in roundtables

# SUMMARY



## OPTION 3: MODERATE OPPOSITION & COMMUNITY-BASED ECONOMIC DEVELOPMENT



**POLICY IMPACT**



**STRATEGIC IMPACT**



**EFFECTIVENESS  
OF STOPPING PIPELINE**

# QUESTIONS?

# APPENDICES

**BRIEFING: THE POLITICS OF PIPELINES**

# APPENDIX 1: UPSTREAM GHGS

- A report by Environment and Climate Change Canada (ECCC) is inconclusive as to whether upstream emissions will increase as a result of the project
- Whether upstream emissions increase depends on the price of oil, whether other pipelines are built in addition to P3, and whether P3 only satisfies existing transport demand
- ECCC has been criticized for:
  - Not considering emissions in the context of Canada's Paris Agreement commitments
  - Not considering downstream emissions
  - Assuming that every barrel of oil not mined from the tar sands will be replaced

# APPENDIX 2: LEGAL TOOLS

- 1) Cabinet order under s. 7 of the *Environment and Land Use Act* establishing additional conditions and processes, beyond those set out in P3's environmental assessment certificate, which must be satisfied before relevant provincial permits can be granted
- 2) Court order setting aside provincial environmental assessment certificate on the basis that previous government did not fulfill its duty to consult
- 3) Order under s. 31 of the *BC Environment Assessment Act* varying the *Act* or its regulations with respect to "a specified reviewable project"
- 4) New legislation or regulations related to consultation, safety, or the environment

**SOURCE:** West Coast Environmental Law

# APPENDIX 3: DILUTED BITUMEN

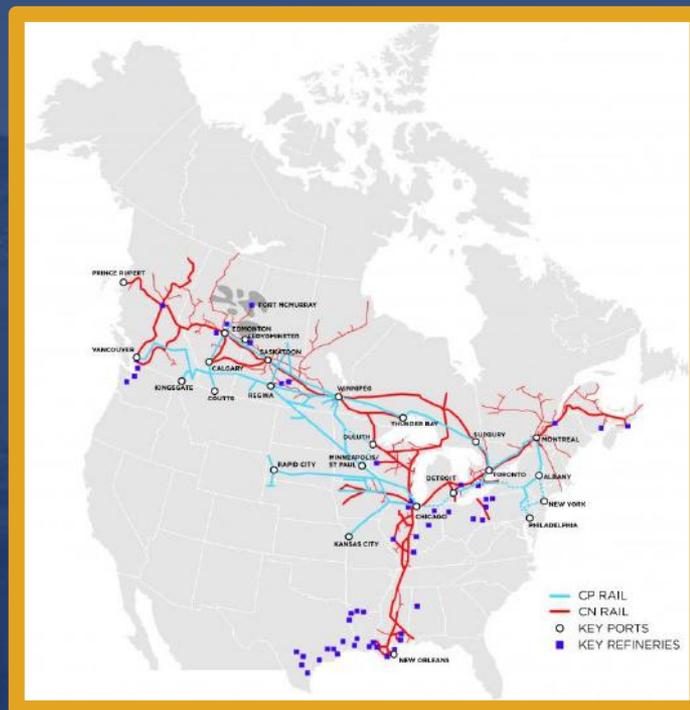
Bitumen is a semi-liquid, high density material at room temperature and is too viscous to transport through a pipeline unless it is diluted

There have been several studies on the impact of diluted bitumen in water:

- The evaporation of diluent alone is unlikely to cause sinking in marine environments, though diluted bitumen may sink depending on the presence of medium to fine sediment and mixing energy (**Government of Canada, 2013**)
- There is a knowledge deficit about how diluted bitumen behaves in different environments (**Royal Society of Canada, 2015**)
- Diluted bitumen initially floats, but subsequent weathering and evaporation of the diluent can lead the residue to sink even if the residual oil does not reach the density of the surrounding water (**National Academy of Sciences, 2016**)

# APPENDIX 4: RAIL & PIPELINES

- There is little prospect of dramatic increases in oil-carrying rail traffic through BC
- Increase from 2009 to 2014 is dramatic because there was a very low base level
- There is no large-scale rail-to-ship oil transfer terminal on BC coasts; building one will cost \$100-\$500 million
- Most oil rail traffic in Canada goes to the United States, southward or eastward



# APPENDIX 5: MARINE LIFE

- Shipping noise can create **acoustic smog which** interferes with whales sensitive hearing, which they use to hunt prey, navigate the ocean, and communicate – including between mother and child
- If too many orcas are killed by boat strikes, stress from noise pollution and starvation, P3 could easily result in the population dipping below 30, resulting in extinction
- Federal government is reasonably confident in a solution to underwater noise which should minimize acoustic smog, but this would not have any effect on the 10X increase in tanker traffic
- NEB concluded that Indigenous groups with “cultural use” of orcas would be “moderately impacted as a result of the significant adverse effects to Southern Resident Killer Whales.”



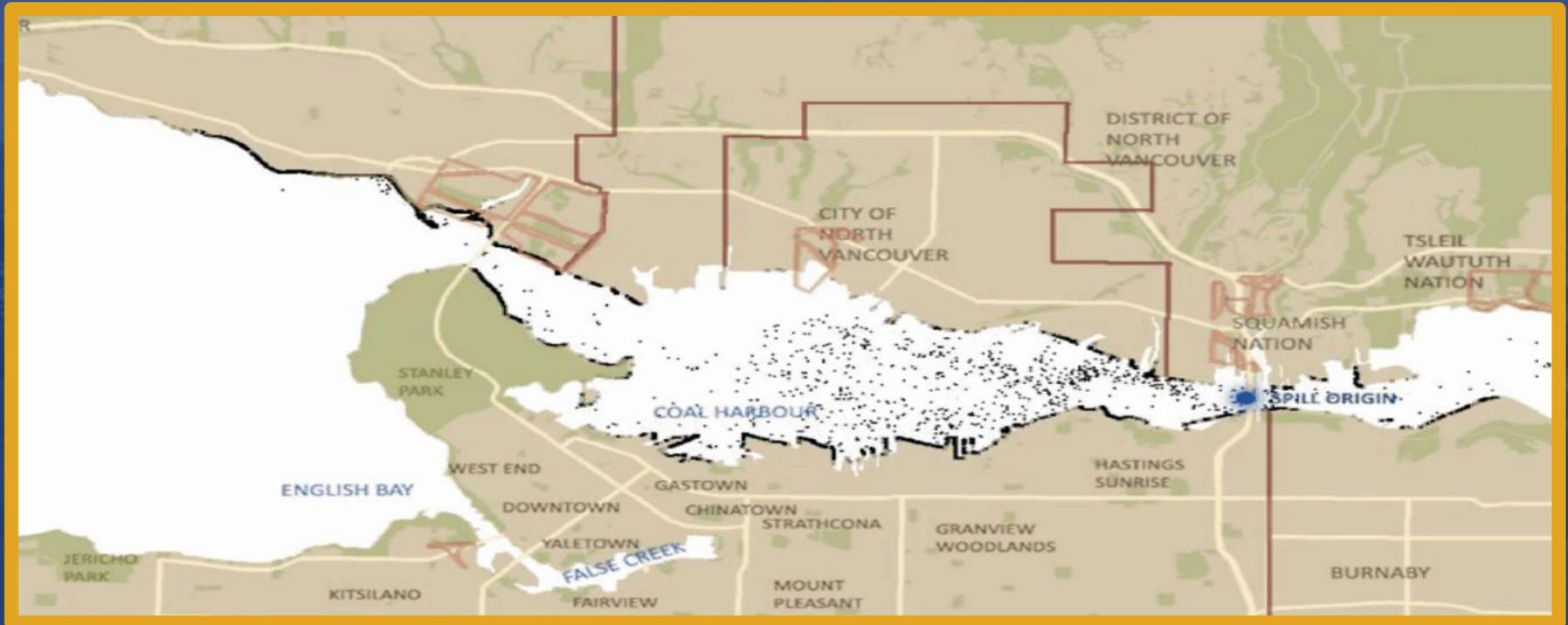
# APPENDIX 6: PUBLIC OPINION

- Insights West poll conducted a survey on Feb 7-9, 2018
- 44% of respondents oppose the project, 48% support, and 9% undecided [margin of error = +/- 3.2 percentage points, 19 times out of 20]
- Support for project is concentrated in northern and southern BC and Fraser Valley
- Opposition is concentrated in Lower Mainland and Vancouver Island
- Among those who oppose, 1 in 4 would consider engaging in civil disobedience to stop the project

# APPENDIX 7: C&S AGREEMENT

- “**Jobs, Climate and a Sustainable Economy that Works for Everyone**
  - Immediately employ every tool available to the new government to stop the expansion of the [ P3 ] pipeline, the seven-fold increase in tanker traffic on our coast, and the transportation of raw bitumen through our province”
- “A foundational piece of this relationship is that both caucuses support the adoption of the **UN Declaration on the Rights of Indigenous Peoples**, the Truth and Reconciliation Commission Calls to Action and the *Tsilhqot’in* Supreme Court decision. We will ensure the new government reviews policies, programs and legislation to determine how to bring the principles of the Declaration into action in BC.”

# APPENDIX 8: SPILL SCENARIO



# APPENDIX 9: 5 Conditions

#1.	Completion of <b>environmental review process</b>
#2.	World-leading <b>marine oil spill</b> prevention, response and recovery systems
#3.	World-leading practices for <b>land oil spill</b> prevention, response, and recovery systems
#4.	Address legal requirements regarding <b>Aboriginal and treaty rights</b>
#5.	British Columbia receives a <b>fair share of fiscal benefits</b> reflecting the risk it bears

# APPENDIX 10: OPTION 1

KEY CONSIDERATIONS	CRITERIA	P3 BUILT	P3 STOPPED
POLICY IMPACT	ECONOMIC	—	—
	ENVIRONMENTAL	×	✓
	INDIGENOUS	—	✓
	COMMUNITY COHESION	×	×
STRATEGIC IMPACT	PUBLIC LEGITIMACY	—	✓
	CONFIDENCE & SUPPLY	✓	✓
	INTERGOVERNMENTAL	× ×	× ×
EFFECTIVENESS OF STOPPING PIPELINE		MEDIUM	

# APPENDIX 11: OPTION 2

KEY CONSIDERATIONS	CRITERIA	P3 BUILT	P3 STOPPED
POLICY IMPACT	ECONOMIC	✓	—
	ENVIRONMENTAL	—	✓
	INDIGENOUS	—	—
	COMMUNITY COHESION	✓	✓
STRATEGIC IMPACT	PUBLIC LEGITIMACY	✗	✗
	CONFIDENCE & SUPPLY	✗	✗
	INTERGOVERNMENTAL	✓	✓
EFFECTIVENESS OF STOPPING PIPELINE		VERY LOW	