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# A Critical Analysis of the Joint Review Panel's Recommendations

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## **1 - Introduction**

This paper provides a brief, critical analysis of the report published by the Joint Review Panel (JRP) of the National Energy Board of Canada about the proposed Enbridge Northern Gateway Project.

The JRP report was published on December, 19, 2013 in two volumes titled:

- Report of the Joint Review Panel for the Enbridge Northern Gateway Project Volume 1 – Connections (81 pages – summarized findings and recommendations)
- Report of the Joint Review Panel for the Enbridge Northern Gateway Project Volume 2 – Considerations (425 pages – technical details and 209 conditions)

Copies of the report can be found at the following web site:

<http://gatewaypanel.review-examen.gc.ca/clf-nsi/dcmnt/rcmndtnsrprt/rcmndtnsrprt-eng.html>

The environmental assessment undertaken by the Joint Review Panel has been in progress since July, 2010. The JRP has gathered input from the public and other interested parties in the form of over 9400 Letters of Comment, 1179 Oral Statements, 206 submissions by Intervenors and 12 Government Participants.

## **2 - About the Proposed Enbridge Northern Gateway Project**

The Enbridge Northern Gateway Project involves the construction and operation of two pipelines and a Marine Terminal in Kitimat, British Columbia. The two pipelines would be approximately 1,170 kilometres in length, from Bruderheim, Alberta to Kitimat. One line would carry on average 525,000 barrels per day of diluted bitumen (dilbit) west to Kitimat. The other line would carry on average 193,000 barrels of condensate per day east to Bruderheim. Condensate is used to thin bitumen for pipeline transport. Enbridge is already considering increasing their initially-stated capacity significantly over time.

The Kitimat Marine Terminal would have two ship berths and a number of storage tanks for condensate and dilbit. A fleet of supertankers, operating under foreign flags, would transport the dilbit to markets in Asia and would bring back the condensate for re-use. The initial capacity would require approximately 250 supertanker trips per year.

It is clear that the risk of severe environmental damage due to an oil spill is great. This applies equally to the pipelines and their route as to the tanker traffic. However, this paper will focus only on the issues around the proposed tanker traffic on the BC Coast.

## 3 – Statements from the Joint Review Panel Report

### 3.1 – Statements Relative to Environmental Concerns

This section lists selected statements copied directly from the report (additional comments in square brackets have been added by the author; bolding by the author):

Volume 1 - Page 61: “Northern Gateway and others said a **spill of any product carried by the project could have serious effects in freshwater or marine environments**. There could be direct effects on birds, mammals, fish, mollusks, and plants, and lingering effects on the ecosystems of shore, riparian, and wetland areas.”

Volume 1 - Page 69: “We found that some level of risk is inherent in the Enbridge Northern Gateway Project, and that **no party could guarantee that a large spill would not occur.**”

“We found that, in rare circumstances, a **localized population or species could potentially be permanently affected by an oil spill.**”

Volume 1 – Page 60: “According to Northern Gateway risk assessments, the probability of a tanker spill of any size would be about 0.4 per cent in any given year. The company estimated the return period (average interval between events) would be 250 years for a marine spill. Northern Gateway said the probability of a full-bore rupture on the oil pipeline would be 0.2 per cent in a given year, based on an estimated return period of 464 years.” [The nature of probabilities is such that a major spill could occur on any day, day 1, or 10, or 100, or 1000, etc.. The average return period of 250 years does not mean that it will take 250 years until a spill occurs, and then another 250 years to the next spill.]

Volume 1 - Page 67: “For marine spills, the company said the response organization would be capable of responding to a spill up to 32,000 tonnes (about 36,000 cubic metres or 225,000 barrels). [This is less than 25% of a full supertanker load.] Northern Gateway said the organization would be able to have a task force at a spill site within 6-12 hours in the Confined Channel Assessment Area or 12 hours plus travel time in the Open Water Area. Spill response equipment and vessels would be located at Kitimat and strategic locations in the region. Northern Gateway said it would develop response plans for communities and sensitive geographic areas in the region.” [The report does not say whether the initial task force arriving within 6-12 hours would be able to deal with a major spill of the above mentioned size. This is highly unlikely due to remoteness. Also, the likelihood of doing an effective response, such as the prevention of the spill fouling the environment, is highly dependent on the weather situation at the time.]

Volume 1 - Page 71: “**Some environmental burdens may not be fully mitigated** in spite of reasonable best efforts and techniques.”

Volume 1 - Page 72: “**The environmental, societal, and economic burdens of a large oil spill, while unlikely and not permanent, would be significant.**” [The impacts of the Exxon Valdez oil spill of 1989 are still going on after 24 years. The herring fishery was wiped out and has still not returned. If one digs

one foot deep into a beach one can see a sheen of oil on the water that seeps in from the side of the hole.]

Volume 2 – Page 120: “Northern Gateway said that the effects **of a large oil spill from a tanker would likely be significant**. Northern Gateway said that the potential effects of a tanker spill would depend on numerous factors, including type of oil, volume spilled, season, and environmental receptor.”

Volume 2 – Page 121: “The company said that human activities such as **traditional or subsistence harvesting, commercial fishing, and recreational activities are also likely to be adversely affected by a large spill from a tanker.**”

“In response to questioning from the Council of the Haida Nation regarding potential spill effects on herring, Northern Gateway said that herring were a key indicator species in its spill assessment. Northern Gateway said that the Exxon Valdez spill did not appear to cause population-level effects on Prince William Sound herring.” [This is a direct contradiction to Dr. Ricky Ott’s presentation at the Vancouver Aquarium about Exxon Valdez at the 20th anniversary of that spill. She said unequivocally that the herring fishery was destroyed and has not returned. Also, the Exxon Valdez Oil Spill Trustee Council of the State of Alaska states on its web site: “The Pacific herring are considered to be NOT RECOVERING from the effects of the spill.”]

Volume 2 – Page 148: “**The Panel accepts that there is a low probability of a large spill occurring.**”

### **3.2 – Statements Relative to Financial Implications**

Volume 1 - Page 74: “All parties did not agree on whether this project should proceed or not, and it was our job to weigh all aspects and deliver our recommendations to....

**“In the end, we were persuaded that the Enbridge Northern Gateway Project would meet an economic need by diversifying Canada’s oil markets and condensate supply.....”** [It was not the JRP’s job to consider other avenues for the oil industry as a whole, such as refining the tars sands in Alberta, shipping the dilbit to eastern refineries, slowing down the reckless tar sands extraction and ensuing environmental destruction in Alberta.]

Volume 1 - Page 67: “Our conditions require Northern Gateway to provide financial assurances totaling \$950 million to cover potential costs of a spill from the pipelines or terminal.” [The responsibility of Northern Gateway goes only as far as the pipelines and terminal operations; tanker traffic on the BC coast is not their responsibility.]

Volume 1 – Page 68: “For tanker traffic..... Transport Canada said that under the Marine Liability Act, up to \$1.35 billion from Canadian and international funds and insurance would be available to cover cleanup and compensation costs.” [No further details are provided. This sounds like a super-tanker spill becomes the responsibility of others, including the public.]

“For tanker spills, Northern Gateway estimated potential cleanup costs of \$94,500 per cubic metre (\$15,000 per barrel) and damages of \$141,750 per cubic metre (\$22,500 per barrel). The company said these figures were higher than international averages but lower than costs in the United States.

“Northern Gateway said it would be financially responsible for the full costs of cleanup and damages for any spill from the pipelines or the terminal.” [but not for spills from tanker traffic]

“In addition to insurance coverage, the company said it would have cash reserves and could raise funds based on its assets, revenues, and equity.

“As a separate partnership, **Northern Gateway said it would not have access to Enbridge financial resources.**”

### **3.3 – The Panel’s Recommendations**

Volume 1 – Page71: “We recommend approval of the Enbridge Northern Gateway Project, subject to the 209 conditions set out in Volume 2 of our report. We have concluded that the project would be in the public interest. We find that the project’s potential benefits for Canada and Canadians outweigh the potential burdens and risks.

“We have taken a careful and precautionary approach in assessing the project. We are of the view that opening Pacific Basin markets is important to the Canadian economy and society. Societal and economic benefits can be expected from the project. We find that the environmental burdens associated with project construction and routine operation can generally be effectively mitigated.

“Some environmental burdens may not be fully mitigated in spite of reasonable best efforts and techniques. Continued monitoring, research, and adaptive management of these issues may lead to improved mitigation and further reduction of adverse effects. We acknowledge that this project may require some people and local communities to adapt to temporary disruptions during construction.”

## **4 – Conclusion**

The recommendation by the Panel to approve the project is very disappointing. It is tilted in favour of the short-term financial interests of Enbridge and the Alberta oil sands industry, which is largely owned by foreign interests. The panel also cites vague financial benefits in the form of tax revenues and royalties for provincial and federal governments. It ignores the value of the environment and the need to protect it for posterity.

According to the David Suzuki Foundation, at community hearings across BC, the Joint Review Panel heard from 1,159 people who spoke against the pipeline. Only two spoke for it.

According to Pacific Wild, 95% of public submissions to the Panel were in opposition to the project and countless polls indicate the majority of British Columbians are strongly opposed to oil tankers in the Great Bear Rainforest.

The **Panel is willing to risk a major oil spill** that will seriously affect the environment and requires Northern Gateway to cover only the cost arising from mishaps of the pipelines and terminal operations, but not the coastal tanker traffic. Northern Gateway is a subsidiary of Enbridge; however, **Enbridge's larger financial resources cannot be touched**. This means that the costs of a tanker spill in the coastal waters of the BC coast must be entirely covered from other resources. According to Transport Canada, under the Marine Liability Act, up to \$1.35 billion would be available. It is ludicrous that Enbridge would only be liable as far as the Kitimat shipping terminal but not beyond.

**The financial resources of up to \$1.35 billion that may be available to cover the costs of a large marine spill are woefully inadequate.**

A brief comparison with the Exxon Valdez Oil Spill of 1989 shows this clearly. The Exxon Valdez had a capacity of 1.5 million barrels and spilled 20 – 50% of its load. The exact figure is disputed, but let us assume for the moment it was 30% of its load, or .5 million barrels spilled. The clean-up cost is estimated at \$2.5 billion. Punitive damages have been set at \$507 million by the Supreme Court after nearly 15 years of litigation. Therefore, based on the actual experience of the Exxon Valdez, the total costs for clean-up and damages for a spill of .5 million barrels came to \$3 billion in 1989 dollars. When applying a inflation factor of 88% for the US dollar, the 2013 costs would be 1.88 x \$3 or \$5.6 billion.

Based on comparative analysis, the **potential costs for clean-up and damages of a large spill from one of the proposed Very Large Crude Carriers (VLCC) on the more exposed BC coast could reach approximately \$7 - \$16 billion**, depending on the amount spilled. Based on the above comparative figures, if a VLCC with a capacity of 2 million barrels spills 30% of its load the cost would be \$6.7b, a 50% spill would be \$11.2b and a 70% spill would be \$15.7b

**A serious tanker accident with a Very Large Crude Carrier will lead to a Very Large Mess that will never be cleaned up adequately.**

The issue is much more than just the Northern Gateway Project. We need to focus on the future and move toward clean energy technologies. We need to focus on the environment because this is what sustains us in the long term. According to the David Suzuki Foundation, “this project would support further expansion of the Alberta oil sands industry and more climate change-causing greenhouse gas emissions. It would take us further away from our climate commitments and from our transition away from fossil fuels to clean energy.”

Based on my extensive cruising experience in the Pacific Northwest, and especially the Great Bear Rainforest, my main concern is with the risks associated with tanker traffic. To more clearly understand these risks, you may want to read my paper titled: **“A Perfect Scenario for a Horrible Environmental Disaster.”**

Read it here:

<http://www.ursboxlerphotography.com/Concerns%20About%20Our%20Environment/index.html>

## 5 – A Simple Plea to Canadians

**The pristine natural environment along the British Columbia coast and especially the area of the Great Bear Rainforest, and the distinct first nations culture of this area, are treasures that needs to be protected forever, for all Canadians, for all future generations, and for the world.** As a nation, instead of allowing the destruction of all this with a massively polluting industrial project, we should decide to **create a Great Bear Rainforest National Park.**

Please do not allow Enbridge and the political proponents of the project to gamble with the beauty of our BC coast. A government decision is expected within 180 days of the issuance of the JRP Report. The Government of Canada must decide whether Canada should become a world oil superpower and at the same time become an environmental villain in the eyes of the world.

Please do not let this happen. Thank you.