

# BILLION DOLLAR BUYOUT:

How Canadian taxpayers bought a climate-killing pipeline  
and Trump's trade deal supports it

BY GORDON LAXER

THE  
COUNCIL  
OF CANADIANS



LE  
CONSEIL  
DES CANADIENS

## Acknowledgements

I wish to gratefully acknowledge Robyn Allan who provided invaluable insight about the financial history of Kinder Morgan Canada and financial analysis of the Trans Mountain purchase. I would also like to thank the following people for their valuable contributions to this report: Ben Beachy, Duncan Cameron, Marjorie Cohen, Aaron Cosbey, Shannon Daub, Sujata Dey, David J. Hughes, Hereward Longely, Andrew Nikiforuk, Adam Scott, Scott Sinclair, Keith Stewart, Lori Wallach and James Wilt. Any errors or omissions are mine alone.



### About the Author

Gordon Laxer, PhD, is the founding Director and former head of Parkland Institute (1996-2011). He is a Political Economist and professor emeritus at the University of Alberta, and is the author or editor of six books, including *Open for Business: The Roots of Foreign Ownership in Canada*, which in 1991 received the John Porter Award for best book written about Canada. Gordon was the Principal Investigator of the \$1.9 million research project, *Neoliberal Globalism and its Challengers: Reclaiming the Commons in the Semi-periphery* (2000-2006). He is the author of *After the Sands: Energy and Ecological Security for Canadians*, which was a finalist for the 2016 John W. Dafoe prize in non-fiction books.

---

### Photo credits

Cover image by Kris Krüg of rapid industrial expansion in Alberta tar sands CC BY-NC-SA 2.0

Pg 4 – By the Council of Canadians, CC BY-NC-SA 2.0

Pg 6 – By the Trans Mountain Corporation, [www.transmountain.com/planning-the-route](http://www.transmountain.com/planning-the-route)

Pg 8 – By The Council of Canadians, CC BY-NC-SA 2.0

Pg 12 – By Mark Klotz, CC BY-NC-SA 2.0

Pg 16 – By The Council of Canadians CC BY-NC-SA 2.0

# BILLION DOLLAR BUYOUT:

## How Canadian taxpayers bought a climate-killing pipeline and Trump's trade deal supports it



*\*Note from the author: The Canadian government calls the agreement the CUSMA, but this report will refer to the agreement as USMCA to emphasize Washington's dominant role in its framing.*

### Table of Contents

Introduction .....	4
I. Buying an Old Pipeline .....	5
The purchase .....	5
Trans Mountain's environmental cost .....	6
Trans Mountain becomes state-owned .....	6
II. Propping up a Bad Investment .....	9
State-owned enterprises and the USMCA .....	10
Special exemption .....	11
III. Carbon Energy Exports .....	13
Energy side letter .....	14
Implications for cross-border pipelines .....	16
The end of ISDS .....	16
Conclusion .....	17
Endnotes .....	18

## Introduction

Fresh from a stunning electoral victory in October 2015, Prime Minister Justin Trudeau went to the historic international climate talks in Paris to proclaim that, “Canada is back.”<sup>1</sup> Trudeau promised to leap frog Canada from environment laggard under Conservative Prime Minister Stephen Harper to a global climate leader. While most rich countries at the Paris climate negotiations aimed to limit global warming to a 2.0°C rise above pre-industrial levels, Canada joined low-lying island states and others in the Global South to champion a stricter 1.5°C global limit.

What a difference three years make. In the summer of 2018, Trudeau’s government invoked the “national interest” to justify buying the Trans Mountain oil pipeline system – including a 65-year-old pipeline – from Texas-based Kinder Morgan. Ottawa’s aim was to expand the pipeline to send major volumes of Alberta bitumen to B.C.’s coastal shores for export. Trudeau’s volte-face left observers scratching their heads. Why would a government so committed to urgent climate action potentially enable the growth of Alberta’s oil sands, Canada’s greatest and fastest growing source of carbon pollution?<sup>2</sup> The purchase raised other important questions including: Should Canadians care that Ottawa bought a financially dubious oil pipeline? What do Canadians get for this extraordinary purchase? How much will the purchase ultimately cost taxpayers?

Ottawa bought the pipeline while the United States, Mexico and Canada were negotiating a replacement deal

for the North American Free Trade Agreement (NAFTA). The United States-Mexico-Canada Agreement (USMCA) includes a chapter on state-owned enterprises (which Canadians used to call Crown Corporations), an energy side letter, and exemptions for the Trans Mountain Corporation, the pipeline company now owned by the government.<sup>3</sup> If ratified, the USMCA will likely continue into the 2030s and perhaps beyond. This is the same short time span during which the Intergovernmental Panel on Climate Change (IPCC) says countries must rapidly change all systems to avert climate catastrophe.

This report examines the implications of the USMCA’s provisions on pipelines, specifically the Trans Mountain expansion, and whether the USMCA’s energy measures enhance or reduce Canada’s ability to meet its climate targets. This report argues that the state-owned enterprises exemption and the energy side letter simultaneously reinforce a business-as-usual approach *and* protect the extraordinary measures (and extreme cost) the Canadian government has taken to continue exporting bitumen.

This report has three sections. The first reviews the Canadian government’s purchase of the Trans Mountain Corporation (TMC). The second section outlines why the purchase was a bad investment, and how the USMCA will continue to enable the government’s poor decision-making about the pipeline. The final section focuses on the implications of the USMCA’s energy goal of integrating Canadian oil and natural gas into the U.S. market.



*An aerial photograph shows the huge expanse of the tar sands.*

# I. Buying an Old Pipeline

In August 2018, Canada bought Kinder Morgan Canada's Trans Mountain pipeline system for \$4.4 billion (see Box 1).<sup>4</sup> Although construction for the expansion was barely underway when the federal government finalized the sale, the purchase included the plan, existing permits and approval for the expansion. The federal government has long provided subsidies to the oil and natural gas industry,<sup>5</sup> but nationalizing a pipeline is unprecedented in Canada. Since the Trans Mountain Corporation (the name given to encompass all parts listed above) is now state-owned, it will be subject to the USMCA exemptions Canada negotiated for the company. To understand the implications of these exemptions, it is necessary to first understand the context of the pipeline purchase.

## Box 1: What did the government buy?

Ottawa bought Kinder Morgan Canada's pipeline system, which included the Trans Mountain pipeline, its expansion project, the Puget Sound pipeline and related facilities.<sup>6</sup> The existing 1,150 km pipeline is 65 years-old and runs from Edmonton to Burnaby. It carries crude oil and refined petroleum products. The 111 km Puget Sound line branches off Trans Mountain's mainline at Abbotsford, British Columbia to Washington State.<sup>7</sup> This spur line carries oil to four refineries in Washington state and has a capacity of 240,000 barrels a day. The expansion project will almost triple the mainline capacity from 300,000 barrels of oil a day to 890,000. It will swell the capacities of the Edmonton, Burnaby and Westridge terminals in Canada and the Sumas terminal in Washington state.<sup>8</sup>

## The purchase

Getting an oil pipeline built to tidewater was a key plank in the Trudeau government's agenda, alongside developing a national climate change strategy, which was quickly cobbled together in 2015 just prior to the climate talks in Paris. These promises may seem contradictory, but are, in fact, related. They were part of a "grand bargain" whereby a national climate strategy would help generate the "social licence" to allow a new pipeline to be built.<sup>9</sup>

Ottawa believed it had to bring Alberta inside its national climate strategy since the province is Canada's oil and gas powerhouse and its greatest source of carbon emissions – surpassing those of Ontario and Quebec combined – with five times Alberta's population.<sup>10</sup> The production of oil and gas, which occurs mainly in Alberta, is this country's largest source of greenhouse gas emissions.<sup>11</sup> Thus, an effective federal climate action plan needed to include Alberta.

Rachel Notley's NDP government took power in Alberta in 2015, breaking 44 years of continuous Conservative rule. Conservative governments in Alberta had promoted unlimited expansion of the oil sands, let Big Oil pay some of the world's lowest royalty rates, and eschewed climate action. Rachel Notley's NDP government looked like it would break from the Alberta Conservative governments' unquestioning promotion of Big Oil's agenda.

The Trudeau government, which was elected just six weeks prior to the Paris climate talks, quickly struck a de facto alliance with Alberta's NDP government. If Alberta initiated a credible climate strategy and set limits on oil sands emissions, Ottawa would incorporate them into Canada's plan. In return, Ottawa would ensure an oil pipeline was built or expanded to tidewater, on either the Pacific or Atlantic coasts, to move major amounts of oil from landlocked Alberta to non-U.S. markets for the first time.<sup>12</sup>

But it's clear the Ottawa-Edmonton alliance was already unravelling when the Liberal government bought the Trans Mountain Corporation. Alberta pulled out of the federal climate plan the day after the pipeline purchase was finalized.<sup>13</sup> The election of the United Conservative Party (UCP) government in Alberta on April 16, 2019 shredded the Ottawa-Edmonton alliance. Newly-elected Alberta Premier Jason Kenney has promised to remove the cap on oil sands emissions, ditch the accelerated phase out of coal-fired power generation, end the province's carbon tax, and wage war against Trudeau's national climate plan. This leaves Ottawa stuck with its side of the bargain – a costly and financially troubled pipeline expansion that is unlikely to ever fill to capacity – and a shredded climate plan. It now defies credibility for the Trudeau government to maintain that expansion of the Trans Mountain pipeline is in the "national interest."<sup>14</sup>

## ***Trans Mountain's environmental cost***

Almost none of the oil carried on the existing Trans Mountain line is exported by tanker. The expansion will likely change this, greatly increasing the likelihood of spills of heavy oil along the Pacific Coast. British Columbians became acutely aware of the grave dangers of ocean spills when the Exxon Valdez oil tanker foundered on a reef off nearby Alaska in 1989 and spilled 260,000 barrels of oil into the ocean. About 250,000 seabirds, 2,000 sea otters, 300 harbour seals, 250 bald eagles, up to 22 orcas, and unknown numbers of salmon and herring died as a result.<sup>15</sup> Thirty years later, oil still remains on the beaches of Alaska's Prince William Sound.

In February 2019, the National Energy Board concluded that the Trans Mountain pipeline expansion will likely cause adverse effects on the Southern resident killer whale and on Indigenous cultural use. It will also produce higher carbon emissions from associated marine vessels.<sup>16</sup>

It is uncertain how much the expansion would actually increase tar sands output given that the expansion of Enbridge's Line 3 Replacement Program and TransCanada's Keystone XL pipeline to the Gulf Coast may be completed sooner.<sup>17</sup> But if the Trans Mountain expansion enables the Alberta oil sands to raise production to fill the new line, carbon emissions will rise in lockstep.<sup>18</sup> The increased emissions would make it very unlikely for Canada to meet its 2030 Paris emissions targets, which the IPCC says are insufficient for Canada's contribution to limit global warming to 1.5°C above pre-industrial levels, the warming limit Canada championed in Paris in 2015.

In 2016, after the NEB recommended approval of the Trans Mountain expansion, Ottawa wanted an assessment of its emissions impact. Environment and Climate Change Canada (ECCC) calculated that the upstream greenhouse gas emissions – from producing and processing oil – associated with adding 590,000 barrels a day as a result of the expansion would produce the equivalent of 13 to 15 megatonnes (Mt) of carbon dioxide a year.<sup>19</sup> A megatonne is one million metric tonnes. The ECCC appraisal does not include downstream emissions from refining, or combustion in final use. Since most of the oil will be exported, most of the final use will happen outside Canada. The NEB rejected the February 2019 call by Stand.earth, an environmental group, to

consider the upstream and downstream greenhouse gas emissions of the pipeline expansion in its review.<sup>20</sup> That was a departure from the NEB's decision in 2017 to assess upstream and downstream emissions in its evaluation of TransCanada's Energy East pipeline proposal to carry Alberta oil to New Brunswick. TransCanada shelved that line in the fall of 2017.<sup>21</sup>

Fifteen Mt is the equivalent of adding 3,750,000 passenger vehicles on Canadian roads.<sup>22</sup> ECCC had already projected that under its reference case that Canada would miss its 2030 Paris emissions target by a long shot – by 79 Mt, or 15 per cent.<sup>23</sup> Using ECCC's data, we calculate that adding another 13 to 15 Mt to Canada's emissions total would push Canada another three percentage points – or 18 per cent – off its Paris target.<sup>24</sup>

Stephen Harper's government set that too modest target in 2015. The IPCC's October 2018 report warns that all countries must go far beyond their Paris targets and reduce emissions by 45 per cent by 2030 to limit global warming to 1.5°C. To meet that goal, Canada would have to cut emissions by an additional 210 Mt. Adding an oil pipeline filled mainly with diluted bitumen is the wrong direction to take when the IPCC says all countries must make "rapid and far-reaching" transitions in the next decade.<sup>25</sup> Table 1 compares Canada's actual emissions in recent years with Canada's 2030 Paris promise and the IPCC target for the same date.

## ***Trans Mountain becomes state-owned***

In December 2017, Kinder Morgan Canada (KMC) said it was suspending construction on the Trans Mountain expansion in order to focus on the permitting process.<sup>28</sup> In March 2018, KMC met with the federal government several times to discuss government guarantees and a government indemnity – referred to by KMC as "the backstop" – to allow the project to proceed.<sup>29</sup> At the end of March, Finance Minister Bill Morneau requested advice on "options for the Government's participation in the Trans Mountain project" from the Canada Development Investment Corporation (CDEV), the government body that eventually came to own the Trans Mountain Corporation.<sup>30</sup> Thus began CDEV's scrambled efforts to advise the government.<sup>31</sup>

On April 8, 2018, KMC officially announced suspension of all "non-essential" spending unless it got an agreement

**Table 1: Canada's GHG Emission Projections<sup>26</sup>**

	Amount	Mt shy of target
2005 emissions (actual)	732 Mt per annum	
2016 emissions (actual)	704 Mt per annum	
2030 ECCC projected "additional measures" scenario	592 Mt per annum	79 Mt
2030 Canada's Paris target (30% below 2005)	513 Mt per annum	
2030 IPCC target (45% below 2010) <sup>27</sup>	382 Mt per annum	210 Mt

to "allow the project to proceed" by the end of May.<sup>32</sup> KMC retained TD Securities to advise on any "potential transactions," a clear indication the corporation planned a sale.<sup>33</sup> On April 30, KMC repeated that the financial backstop was inadequate and proposed a purchase price of \$6.5 billion.<sup>34</sup>

On May 23, 2018, KMC rejected Ottawa's offer of \$3.85 billion and asked for \$4.5 billion (before tax deductions). This includes \$3 billion for the existing line, \$1.4 billion for the rights to pipeline expansion.<sup>35</sup> The government agreed to the price that day and it concurred on the condition it had six weeks to find another buyer.<sup>36</sup> Judging

the pipeline too financially risky, no private sector offer came. The expansion held additional risks, including determined opposition from Indigenous nations, environmental protestors and the B.C. government. In contrast, the existing pipeline itself holds little political risk, but significant safety risks since it is an aging line carrying a carbon-intensive fuel.

The government's financial advisor, Greenhill & Co, prepared a financial analysis of the original proposal of \$3.85 billion (which is not publicly available). It is unclear how the government had time to analyze the higher price with only "several hours" to review it.<sup>37</sup> TD



*Map of Trans Mountain pipeline route.*



*The Council of Canadians has joined with Indigenous peoples and environmental groups in opposition to the Trans Mountain pipeline expansion project.*

Securities advised KMC that the sale price was fair for the corporation's shareholders.<sup>38</sup> TD was one of several big banks that provided a \$5.5 billion loan primarily for the expansion.<sup>39</sup> The loan was cancelled after the government stepped in to buy the pipeline system.

Shareholders at both Kinder Morgan Inc (KMI) and Kinder Morgan Canada welcomed the sale. They had little to lose (see Box 2). Ottawa could either buy the pipeline itself or let the expansion fail. Instead of calling Kinder Morgan's bluff of pulling out without a buyer, the Trudeau government caved and bought the Canadian subsidiary for a high price. After financially supporting the pipeline at taxpayers' expense, the federal government plans to re-privatize it.

In an under reported story, Prime Minister Trudeau said in September 2018 that the government purchase of the Trans Mountain pipeline "would have been dead" had the decision of the Federal Court of Appeal to quash the pipeline's expansion come before Ottawa offered to buy it.<sup>40</sup> Ottawa's offer was made in May 2018. The Court decision came in August. Trudeau's statement is unconvincing. Ottawa employs lawyers to give sage advice on risks. Surely one of their scenarios would have included the possibility of a negative court decision. However, Ottawa's Purchase Agreement did not include a deal-breaker clause to take into the account the possibility of the Court's decision. The government's contract did,

however, include protections for Kinder Morgan against any court case that delayed the project's construction.<sup>41</sup> This was a gross oversight, which Trudeau justified by saying the government has a greater tolerance for risk.<sup>42</sup>

### Box 2: Shareholders had little to lose

Kinder Morgan Canada had spent \$1.1 billion on the pipeline expansion project before the sale. Due to an unprecedented approval by the National Energy Board (NEB), shippers (i.e. oil corporations) contributed around \$210-220 million.<sup>43</sup> Long-term contracts with shippers meant that if the expansion was cancelled, oil companies would bear 80 per cent of the costs. Of the remaining \$900 million that Kinder Morgan Canada spent, the corporation was exposed to 20 per cent, or about \$200 million.<sup>44</sup>

In short, the federal government rushed into buying the Trans Mountain pipeline project and taxpayers are now on the hook (see Box 3). According to Finance Minister Morneau, Canada paid a "fair price."<sup>45</sup> While the price was fair for shareholders, it was not fair for taxpayers. The next section of this report unpacks why.

### Box 3: Canadian loans to Trans Mountain

In September 2018, a month after the government purchase, the Trans Mountain Corporation had access to \$6.5 billion in loans from the federal government's Canada Account managed by Export Development Canada (EDC).<sup>46</sup> EDC provides billions of dollars every year to support fossil fuel companies.<sup>47</sup> The Canada Account is used for transactions involving "risks in excess of that which [the EDC] would normally undertake."<sup>48</sup> The loans came from the consolidated revenue fund – directly from taxpayers. There are three separate loans, each with an interest rate of 4.7 per cent: (i) a loan for \$5 billion used to buy Trans Mountain Pipeline Entities and to cover the pipeline system's operating costs; (ii) a loan of \$500 million in the case of a spill (as mandated by the NEB); and (iii) a loan for \$1 billion dollars for ongoing costs related to the expansion in its first year.



## II. Propping up a Bad Investment

The Trudeau government justified the purchase, saying it was a “good investment” and that the government did not want to subsidize Kinder Morgan.<sup>49</sup> Ironically, the government will provide even more subsidies as the new owner because the pipeline expansion was never commercially viable. Moreover, the project’s promise of unlocking higher prices for heavy oil is not supported by available evidence (see Box 4).

### Box 4: Mythical prices in Asian markets

The lack of pipeline capacity certainly has caused ire in Alberta. In its \$23 million ad campaign, the Alberta government said the Trans Mountain expansion would unlock higher prices for heavy oil in new Asian markets.<sup>50</sup> This claim, cited by CDEV in its advice to the government, stemmed from a flawed report that consultant Muse Stancil gave to Kinder Morgan.<sup>51</sup> The oil’s final destination will depend on market demand. Nowhere in its NEB application did Kinder Morgan say it would guarantee that Asia would be a final destination. In fact, available evidence suggests that prices in Asia would be lower than the U.S.<sup>52</sup> Moreover, most of the diluted bitumen Alberta currently exports is protected from the “price discount” – the lower price that heavy oil from the oil sands receives relative to lighter, higher quality oil from parts of the United States.<sup>53</sup>

While KMC said it wanted to sell the Trans Mountain line due to opposition from John Horgan’s B.C. government, the project’s commercial viability was in jeopardy even before Horgan came into power in May 2017. Intervenors in the NEB’s engagement process for the Trans Mountain expansion – which took place between April 2014 and February 2016 – outlined concerns about Kinder Morgan’s ability to finance the project.<sup>54</sup> Ignoring this evidence, the NEB ruled in May 2016 that the expansion was in the public interest.

After the federal Cabinet approved the expansion the parent corporation, Kinder Morgan Inc (KMI), failed to find a joint venture partner for it.<sup>55</sup> As many companies do when under duress, KMI restructured to protect its assets. In 2017, the corporation “hived off” its Canadian assets in a new subsidiary called Kinder Morgan

Canada.<sup>56</sup> KMI owns 70 per cent of Kinder Morgan Canada. The other 30 per cent is traded on the Toronto Stock Exchange. In May 2017, its initial public offering – the first time a private corporation offers shares to the public – produced \$1.75 billion in capital. All of it was sent to repay the parent corporation in Texas.<sup>57</sup> Shortly after, in July 2017, the parent corporation said that the subsidiary would be “self-funding,” effectively relieving itself of financial responsibility for Kinder Morgan Canada and its expansion.<sup>58</sup>

The cost of the Trans Mountain pipeline expansion continues to climb. The federal government has not released an updated estimate or an upper limit on its spending.<sup>59</sup> In fact, the federal government has been alarmingly opaque about the entire project.<sup>60</sup> The construction cost was last estimated by KMC in March 2017 at \$7.4 billion.<sup>61</sup> The question is not whether costs will exceed \$7.4 billion, but by how much.<sup>62</sup> Before the federal court quashed the expansion, TD Securities estimated in May 2018 costs to be \$9.3 billion, assuming a one-year delay and an in-service date of December 31, 2021.<sup>63</sup> The Parliamentary Budget Officer (PBO) used the \$9.3 billion figure as their base scenario and indicated a likely further delay in construction.<sup>64</sup> Economist Robyn Allan estimated the cost for the pipeline expansion to be over \$10 billion.<sup>65</sup>

Because the Federal Court of Appeal decision revoked authorization for construction, the federal government has been redoing the final round of consultations with 117 Indigenous groups. This process means it is unlikely construction will begin in the summer of 2019, a crucial target for the expansion to be in service by December 2021.<sup>66</sup> An in-service date one year later is more likely. In an April 2019 interview, Ian Anderson, CEO of Trans Mountain Corporation and former CEO of Kinder Morgan Canada, said that the construction period could increase by six months – to 36 months – depending on when the government approves the project.<sup>67</sup> However, the government has not released an updated timeline and Canadians won’t likely know construction costs until after construction contracts are signed.

As the PBO report shows, greater construction costs and delays decrease the expansion’s value. The key factor is the discount rate, or changes to the project’s risk profile.

Because the federal government did not disclose any information about the project, the PBO and TD Securities in its Financial Opinion assume a discount rate of 10 per cent.<sup>68</sup> However, during the 2012 NEB hearing when the expansion was initially considered, Kinder Morgan said that the expansion could not proceed if rates of return were outside the 12 to 15 per cent range.<sup>69</sup> Assuming a 12 per cent discount rate to reflect the lowest hurdle rate of return Kinder Morgan would have accepted, the Trans Mountain expansion is worth only \$300 million, even if it is completed by December 2021.<sup>70</sup> This is a fraction of what the government paid for the project. A one-year delay at this discount rate would lower the expansion's value to *minus* \$350 million.<sup>71</sup> Therefore, the project will most likely have a negative rate of return. It is unfathomable that a government would make such a significant investment that is practically guaranteed to lose money.

***“Taxpayers will have to provide a \$2 billion dollar subsidy over three years for the existing pipeline to cover the shortfall – mounting to \$3.4 billion over five years if the government still owns the pipeline.”<sup>75</sup>***

Tolls paid by the oil producer shippers are the pipeline's only direct source of revenue. The expansion is not financially viable without higher tolls from the existing system. In January 2019, the Trans Mountain Pipeline Unlimited Liability Corporation (a subsidiary of the Trans Mountain Corporation) applied to the NEB to approve the toll agreement it negotiated with shippers for the *existing* pipeline.<sup>72</sup> The NEB approved the toll application in March 2019.<sup>73</sup> Economist Robyn Allan calculated there will be an annual shortfall of about \$673 million a year from the proposed toll agreement.<sup>74</sup> Allan argues this constitutes a subsidy because the toll agreement does not cover the full cost of the line and taxpayers will have to cover the additional costs since the Trans Mountain is a state-owned enterprise. Taxpayers will have to provide a \$2 billion dollar subsidy over three years for the existing pipeline to cover the shortfall – mounting to \$3.4 billion over five years if the government still owns the pipeline.<sup>75</sup>

If, after consultations with Indigenous nations, the government approves new construction, the Trans Mountain Corporation must provide a new capital cost budget to its shippers that signed 15 and 20 year contracts on the expansion. Because delays raised costs, they will be reflected in the new budget. If costs are above \$6.8 billion – which they most certainly are since the most recent budget to which shippers last agreed was \$7.4 billion<sup>76</sup> – shippers can terminate their agreements and the expansion could fail. If so, the shippers would bear 80 per cent of the expansion's costs to date and the federal government would only pay 20 per cent, saving a substantial amount of money. But it would be a major defeat for the Trudeau government. Alternatively, the shippers could ask for even higher toll subsidies than they already receive. They are likely to do so. Shippers have contested toll rises as little as 10 cents a barrel on this expansion.<sup>77</sup>

In short, Ottawa bought a pipeline that was not commercially viable. The government has been losing money right from the start. Since the government purchased Trans Mountain, it has operated at a loss. For the first four months of ownership the loss is \$58 million with an anticipated loss for 2019 of \$175 million.<sup>78</sup> The government is subsidizing the original line by \$2 billion between 2019 and 2021.<sup>79</sup> Prime Minister Trudeau admitted in an interview that the government wanted to buy the pipeline “not to make a profit” but to reach markets beyond the United States.<sup>80</sup> However, the evidence to support this claim about accessing new markets is very weak, fundamentally challenging the logic on which the government's decision to purchase the project is based. As costs rise, taxpayers continue to foot the bill. There is no limit to how much the expansion will ultimately cost.

### ***State-owned enterprises and the USMCA***

USMCA Chapter 22 lays down neoliberal strictures on “state-owned enterprises” (SOEs). These restrictions will limit Canada's ability to take effective climate action through Crown Corporations to compete with for-profit corporations in building things like electric buses and cars.<sup>81</sup> Historically, Crown Corporations were crucial for Canada's development, including provincially-owned electric power companies, Air Canada, the CBC, Canada Post and many other entities. Governments set up Crown Corporations to give themselves a guiding role

in the economy to develop needed industry where it was unprofitable for private business, provide competition to private companies, create jobs, or distribute development equitably across Canada.<sup>82</sup> Some Crown Corporations were created to promote national unity, Canadian national identity, or autonomy from American social and economic influences. Many were nation and province-building enterprises.

Canadian governments have also pursued state ownership for less noble reasons. Over the years, the government has bought or bailed out several failing and bankrupt companies, usually at great expense. Prominent examples include the Canadian National Railway, General Motors and now the Trans Mountain pipeline. The federal government bought three failed east-west railways at the end of the First World War and merged them into the Canadian National Railway (CNR). The CNR helped weave together an east-west Canadian economy. Only after paying off the CNR's debts, did Ottawa privatize the rail line, which soon found greater profit by becoming integrated into the U.S. rail transport network. A similar situation occurred when the U.S. and Canadian governments, along with the province of Ontario, bailed out General Motors when it faced bankruptcy in 2008-2009. After Ottawa and Ontario helped revive GM, the company closed auto plants in Canada.

USMCA's Chapter 22 will restrict "state-owned enterprises" from competing with private, for-profit companies. This will make it difficult for governments to establish public auto insurance where it doesn't yet exist, launch a national public pharmacare plan, or set up publicly-owned energy companies that could escape from the necessity of making a profit and sell conservation rather than sell as much oil and gas as possible.<sup>83</sup> Chapter 22 includes penalties for non-compliance when governments pursue "the public interest as defined by the federal Parliament," as political economist Duncan Cameron puts it.<sup>84</sup>

### ***Special exemption***

As explored in the previous section, the Trans Mountain Corporation is not like previous "nation-building" enterprises and rests on flawed logic. Since the corporation is now a subsidiary of the Canada Development Investment Corporation, it falls under the state-owned enterprises chapter in the not-yet-ratified

USMCA. Ottawa negotiated an exemption for the corporation to provide policy flexibility mainly to subsidize its new acquisition. The exemption was taken from the "non-commercial assistance" clause developed in the 2018 Comprehensive and Progressive Trans-Pacific Partnership and transferred to the USMCA (see Box 5).<sup>85</sup> The USMCA's general restrictions on non-commercial financial assistance were designed to ensure that other member countries were not harmed by advantages state-owned enterprises get from their home states.<sup>86</sup>

#### **Box 5: Non-commercial assistance**

Through non-commercial assistance, a country can grant debt forgiveness and provide goods or services or other types of financial assistance "on terms more favourable than those commercially available" to the state-owned enterprise.<sup>87</sup> For example, a government entity could grant loans at below-market interest rates. The purpose of the non-commercial provision is not necessarily to prevent countries from providing subsidies, but to prevent subsidies that adversely affect other member countries in the USMCA. For example, the USMCA prohibits member countries from providing non-commercial assistance to state-owned enterprises that are on the brink of insolvency and without a "credible restructuring plan," or from converting outstanding debt into equity.<sup>88</sup> In the USMCA, Canada received similar exemptions for the Bridge Authorities, the Canadian Commercial Corporation, the Canadian Dairy Commission, the Canada Mortgage and Housing Corporation and Canada Housing Trusts, and the Trans Mountain Corporation. The United States only has an exemption for the Federal Financing Bank.

Most state-owned enterprises already enjoy hidden subsidies, but the USMCA exemption for the Trans Mountain Corporation makes it even easier for Ottawa to use its unlimited finances to subsidize the pipeline expansion (see Box 6). The exemption states that even though assistance to the corporation may adversely affect the interests of another country in supplying pipeline operation services, "Canada may provide non-commercial assistance in circumstances that jeopardize" the corporation's viability.<sup>89</sup> It means the United States could not retaliate even if Canada's subsidy hurt a competing U.S. pipeline proposal.<sup>90</sup> The NEB's approved

subsidized tolls for the existing Trans Mountain line would be allowed under this exemption. However, since the USMCA has not yet been ratified and NAFTA remains in force, the NEB's subsidized tolls violate NAFTA's rules about state-owned enterprises.

Ottawa has supported Indigenous ownership shares in the pipeline. This is perhaps a strategic decision since Indigenous opposition to the project has created significant risk. Since May 2018, or perhaps even before, when the federal government stated it would buy the Trans Mountain line, it had Indigenous ownership in mind. Ottawa added a clause in the USMCA exemption to allow the Trans Mountain Corporation to “accord more favourable treatment to aboriginal persons and organizations in the purchase of a good or service.” Five Indigenous groups are vying to buy an ownership stake in the pipeline project and at least one group has met with Finance Minister Bill Morneau.<sup>91</sup>

Minister Morneau said there is no project until consultations with Indigenous communities have been completed and added that the pipeline involves great risk and immense capital.<sup>92</sup> It must be “de-risked” before a deal on indigenous ownership is struck, he said. To make a sound investment, Trans Mountain Corporation CEO Ian Anderson advised potential owners to await completion of the pipeline expansion.<sup>93</sup> However, at least

one Indigenous group has considered buying a 51 per cent stake in the project before it is complete.<sup>94</sup> Several First Nations continue to oppose the project.<sup>95</sup> Indigenous ownership would be used to try and overcome their opposition.<sup>96</sup>

### Box 6: Is Trans Mountain Corporation a fossil fuel subsidy?

Canada's federal Environment Department, ECCC, does not consider the acquisition of the Trans Mountain Corporation a fossil fuel subsidy. But, in April 2019, the Auditor General disagreed.<sup>97</sup> There is no universally agreed upon definition of fossil fuel subsidies. However, a 2018 Organization for Economic Co-operation and Development (OECD) report considers loan guarantees, such as the ones provided to the Trans Mountain Corporation, subsidies.<sup>98</sup> The Overseas Development Institute (ODI) also considers state-owned enterprises' investment in fossil fuels a subsidy.<sup>99</sup> For these reasons Ottawa's purchase of the Trans Mountain Corporation should be classified as a fossil fuel subsidy. Not only is the purchase incompatible with Canada's climate promises, it directly contravenes Canada's commitment to phase out fossil fuel subsidies by 2025.<sup>100</sup>



*Protests against the Trans Mountain pipeline have delivered the message that Indigenous peoples have not given their consent.*

### III. Carbon Energy Exports

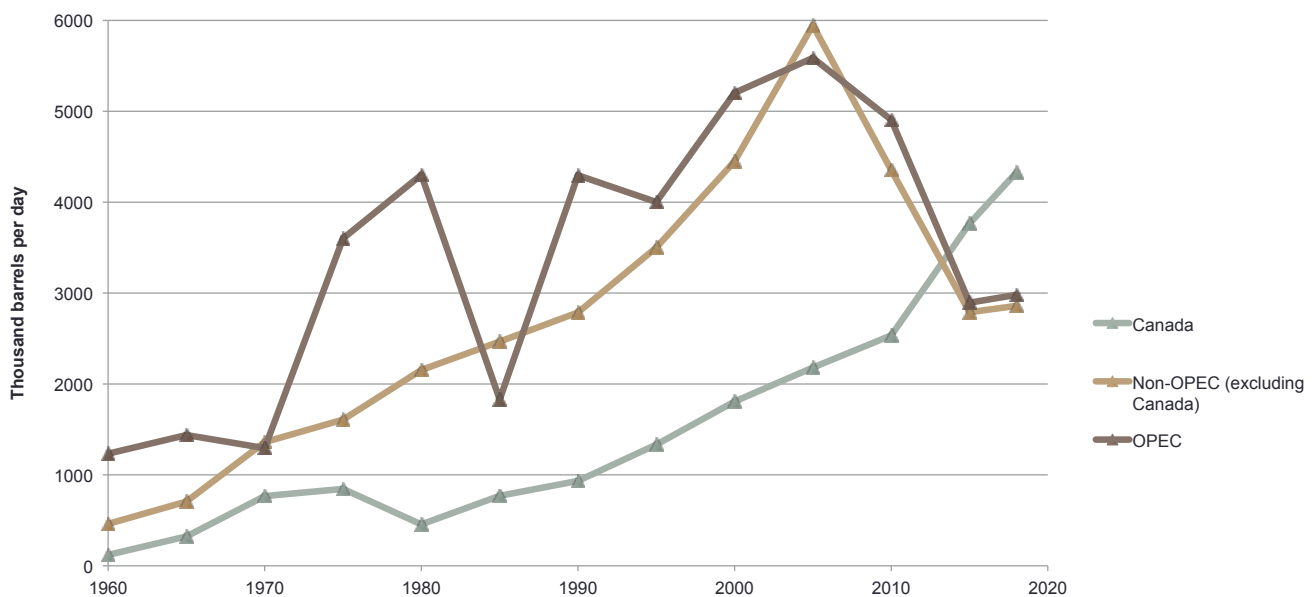
NAFTA will govern trade and investment relations among Canada, the U.S. and Mexico until all three countries ratify the USMCA. Ratification is ultimately likely, but far from certain. Canada and Mexico said they will delay ratification until Washington lifts tariffs on steel and aluminium imports.<sup>101</sup> The U.S. lifted those tariffs on May 17, 2019. Canada’s October 19, 2019 federal election could delay approval. The position of the United States is more uncertain. The Democrat-controlled House of Representatives is demanding changes to the deal and will likely delay approval to deny President Trump a political victory. In response, President Trump has threatened to begin the six-month process of withdrawing from NAFTA as a way to pressure Congress to ratify the USMCA in its current form, or else revert to pre-NAFTA trading rules.<sup>102</sup>

For the next year or two, NAFTA’s energy chapter will remain in force. It includes the energy proportionality clause that requires NAFTA countries to make available for export the same proportion of oil, natural gas and electricity to the other NAFTA countries as it has in the past three years. Given the concentration and continentalization of the oil and gas corporations and pipelines, this makes “available for export” virtually the same as obliged to export. The rule has never been invoked, but hovers like a spectre over Canada’s oil and

natural gas exports to the U.S. and limits the energy and environmental options Ottawa would consider. From the start, Mexico got an exemption from NAFTA’s energy proportionality rule. It meant Mexico was not obliged to export its oil and natural gas to the United States. Until 2015, with a few exceptions, the United States did not allow oil exports. In effect, the proportionality clause only really applied to Canada, guaranteeing the United States first access to the majority of Canada’s oil and natural gas.

The shale oil and natural gas revolution and horizontal drilling in the United States has rapidly altered the picture, lifting the country out of great fuel import-dependence. Domestic natural gas production bottomed out in 2005 and the United States became a net exporter in 2018.<sup>103</sup> Domestic oil output also rose sharply after 2008 and greatly reduced U.S. net oil imports. The surge in U.S. production of both carbon fuels led President Donald Trump to boast that the United States is now an energy superpower.<sup>104</sup> The shift weakened Washington’s resolve to retain NAFTA’s energy proportionality rule. That being said, U.S. demand for Canadian oil has only risen over time, and in 2014, oil imports from Canada overtook those from OPEC (the Organization of Petroleum Exporting Countries) (Figure 1).<sup>105</sup> However, Trump’s government also had sovereignty concerns over committing a share

Figure 1: U.S. Petroleum Imports, 1960-2018: OPEC, Non-OPEC and Canada<sup>107</sup>



of U.S. energy for export under the proportionality rule, another reason Washington did not insist on keeping the provision.<sup>106</sup>

Since Washington wants to end oil dependency on the Middle East and Venezuela, most future U.S. oil imports are likely to come from Canada via cross-border pipelines. Since no Canadian government or major political party has advocated Canadian energy independence since the early 1980s, Washington may feel secure about Canada as a supplier even without the proportionality rule. The extensive cross-border pipeline network reinforces Canadian oil exports even in proportionality's absence. The American Petroleum Institute – Big Oil's major advocacy organization in the United States – did not object to proportionality's end.<sup>108</sup>

Meanwhile, in Canada, an effective campaign by researchers and activists to drop proportionality helped convince Ottawa to oppose its inclusion in the USMCA. Ottawa felt bullied by President Trump in the USMCA negotiations and wanted a few victories. Ending proportionality was one. Besides, the Alberta government and the Canadian Association of Petroleum Producers (CAPP), the main initiators of the energy proportionality rule when it was inserted into the 1989 Canada-U.S. Free Trade Agreement, no longer pushed for it. Their focus had shifted to finding non-U.S. markets via pipelines to the west and east coasts to export oil from Alberta.

### ***Energy side letter***

A trilateral energy chapter was included in early drafts of the USMCA. It was dropped in its final version because the incoming, left-nationalist government of Andrés Manuel López Obrador (AMLO) in Mexico, elected on July 1, 2018, opposed having an energy chapter. As a way to put pressure on Ottawa over the summer of 2018, Trump excluded Canada and was negotiating a bilateral agreement with Mexico. Until two days before the USMCA text was finalized on September 30, 2018, only a bilateral U.S.-Mexico deal was on the table. Canada returned to negotiations at the last minute to make the USMCA a trilateral deal.

Canada and the U.S. included some of the originally negotiated energy chapter in a bilateral pact. All issues that are only between two countries in the USMCA are in side letters or country-specific Annexes. The U.S. and

Canada formally agreed that the energy side letter “shall constitute an integral part of the Agreement.”<sup>109</sup> Neither country can end the energy side letter without ending or altering the whole deal. There are three important implications of the side letter: (i) the elimination of proportionality, (ii) language of energy integration, and (iii) the diluent rule. Each is discussed in turn.

***“The production of oil and gas, mainly for export to the U.S., is Canada’s greatest and fastest growing source of emissions.”***

First, and most positively, energy proportionality is absent from the USMCA and its energy side letter. Killing proportionality is a major win for many including Maude Barlow and the Council of Canadians, Gordon Laxer, John Dillon of KAIROS and Ben Beachy of the US Sierra Club.<sup>110</sup> Removing proportionality frees policy room for Canada to reduce or end oil and natural gas exports and do a managed phase out of the Alberta oil sands.<sup>111</sup> The production of oil and gas, mainly for export to the U.S., is Canada’s greatest and fastest growing source of emissions.

However, the agreement may still constrain Canada’s policy flexibility. Article 3 of the Energy Annex recognizes “the importance of enhancing the integration of North American energy markets based on market principles,” and supports North American energy independence. Every U.S. president since Richard Nixon’s “Project Independence” has promised Americans U.S. energy-independence.<sup>112</sup> The energy side letter broadens U.S. energy independence to include Canadian oil. Only by adding it to U.S. oil production can “North America” (excluding Mexico) approach energy independence in the sense of resembling oil self-sufficiency where oil imports are balanced by exports.

When President Trump approved TransCanada’s proposed Keystone XL pipeline in 2017, he tweeted that it would “reduce our dependence on foreign oil.”<sup>113</sup> Given that the pipeline would be filled mainly with diluted Alberta bitumen, Trump assumed that Canadian oil is American oil. Under NAFTA’s proportionality rule it has been virtually true.

Article 4 of the Energy Annex states:

each party *shall endeavour* to ensure that in the application of an energy regulatory measure, an energy regulatory authority within its territory avoids disruption of contractual relationships to the maximum extent practicable, [and] supports North American energy market integration [...] [italics added].

The “shall endeavour” language in Article 4 is unenforceable. But a future U.S. government could well invoke it to justify its right to Canadian energy, and a Canadian government could cite it to insist that Canada cannot pursue energy or environmental independence.

If there are contractual obligations to export Canadian oil through pipelines, could this clause be used to hinder a future Canadian government from reducing or ending energy exports to the U.S., or prevent Canada from phasing out the oil sands as part of a national climate plan? A future Canadian government might do either or both. Although he quickly walked back his comments, Prime Minister Trudeau stated in Peterborough, Ontario in January 2017 what many know to be inevitable as climate disasters escalate: “We can’t shut down the oil sands tomorrow. We need to phase them out. We need to manage the transition off of our dependence on fossil fuels.”<sup>114</sup>

Four decades earlier, when Justin’s father, Pierre Trudeau, was prime minister, he told Washington during the 1970s oil supply crises, that Canada would phase out oil exports to the U.S. He reduced them to 14 per cent of their 1973 level. The past could well be prologue. In the future, if Canada is to take ambitious climate action, phasing out the oil sands may be necessary and could involve reducing or ending carbon fuel exports to the United States.

Canada’s Foreign Affairs Minister Chrystia Freeland evoked the Canadian energy independence theme of the earlier era when she waxed enthusiastic about USMCA’s gains over NAFTA. She was glad to be rid of the “energy ratchet clause” (energy proportionality), which “committed us to selling a certain portion of our energy exports to the United States [...] that impinges on our sovereignty.”<sup>115</sup> Her November 8, 2018 comment was a shock. No Canadian government official has talked positively about Canadian energy sovereignty since proportionality was included in the 1989 Canada-U.S. Free Trade Agreement. Three weeks later, on November 30, 2018 however, Minister Freeland formally signed the energy annex to USMCA committing Canada to “enhancing the integration of North American energy markets based on market principles” and supporting North American energy independence.

Although the side letter’s language about North American energy integration is weak, limits on import and export restrictions for all goods are contained in all of Canada’s trade agreements and in the World Trade Organization (WTO). The WTO’s members, including Canada, are prevented from restricting the export of any good by means other than tariffs or taxes.<sup>116</sup>

Currently, if corporations want to add diluent to bitumen to export it under U.S. tariff-free access, they have to source the diluent from the United States. Diluent is a chemical-based thinner used to make bitumen move more easily through pipelines. USMCA’s Chapter 4 (Rules of Origin) will allow the U.S. to import cheaper diluent. That will lower the cost of Canadian tar sands oil imports. The US Sierra Club calls this “a clear step backwards for our climate.”<sup>117</sup>

***“If there are contractual obligations to export Canadian oil through pipelines, could this clause be used to hinder a future Canadian government from reducing or ending energy exports to the U.S., or prevent Canada from phasing out the oil sands as part of national climate plan?”***

## *Implications for cross-border pipelines*

Before NAFTA took effect in 1994, BC Hydro's electricity exports to the U.S. northwest were charged more for transmission than U.S. domestic utilities. Article 5 in the energy side letter prohibits that practice.<sup>118</sup> Most of the provisions of the energy annex use "shall endeavour" language. But the text covering cross-border transmission and pipelines, uses binding "shall ensure" phrasing. Article 5 is mainly about power transmission from B.C., but also applies to cross-border pipeline networks. Each country shall ensure that Transmission Facilities and *Pipeline Networks* accord non-discriminatory access, and that tolls and rates are just and reasonable (italics added). The full implications of this wording are unclear, but it could hinder Ottawa from adopting a Canadian-oriented climate and energy security plan.

The energy side letter generally allows for appeals or judicial reviews of decisions by authorities over energy-related activities, but makes an exception for decisions regarding cross-border pipelines and electric transmission facilities.<sup>119</sup> There will be no right to appeal these decisions. This means that if a regulatory authority denies a permit for infrastructure, the proponent will not be able to appeal the decision.

## *The end of ISDS*

Under investor-state dispute settlement (ISDS) provisions, corporations can bypass domestic courts and sue governments directly before private tribunals, usually staffed by corporate lawyers.<sup>120</sup> If and when the USMCA is ratified, NAFTA's ISDS provisions will end between Canada and the U.S. This is a great advance. There is an important caveat: ISDS will still last for three years after the new deal goes into effect, most likely sometime in 2023. This incentivizes corporations to launch new cases while they still have the opportunity.<sup>121</sup> ISDS will also remain in the USMCA on a limited basis between the U.S. and Mexico, notably including energy.

Many of NAFTA's ISDS cases have involved energy issues, including phasing out coal in power generation and a fracking ban.<sup>122</sup> TransCanada filed a \$15 billion ISDS claim after Obama rejected the Keystone XL pipeline. Although the United States has never lost an ISDS case, TransCanada's claim might have changed that trend.<sup>123</sup> However, TransCanada withdrew its

application after Trump reopened the regulatory process for Keystone XL.

When Kinder Morgan issued its ultimatum to Ottawa in April 2018 that it would not proceed with the Trans Mountain pipeline expansion some journalists reported that the company might initiate an ISDS claim against Canada. CBC journalist Kyle Bakx reported that "a New York-based analyst asked Kinder Morgan on [an April 9, 2018] conference call whether it would potentially sue British Columbia to recover costs, but [Kinder Morgan] chief executive Steven Kean said, "[t]hat is way too premature to discuss."<sup>124</sup> In the end, Kinder Morgan didn't have to resort to an ISDS suit because it already had Ottawa over "the national interest" barrel.<sup>125</sup>



*Pipelines bring the risk of spills and contamination.*



## Conclusion

Under the right circumstances, buying an oil pipeline to supply British Columbians with domestic oil could be beneficial. Freed from profit-driven pressures to keep the line full, a government-owned line could help wean Canadians off carbon fuels. But that was not Ottawa's purpose and the price was exorbitant. The USMCA's exemptions for the Trans Mountain pipeline will allow Ottawa to subsidize the line. This directly contradicts the Trudeau government's narrative that the expansion is to be commercially viable.<sup>126</sup>

The federal government has risked billions of dollars of taxpayers' money to bail out Kinder Morgan Canada, while the latter had little to lose. To make matters worse, Ottawa purchased a pipeline expansion that was not commercially viable. The federal government claimed that purchasing Kinder Morgan Canada's assets was a good investment and Canadians were persuaded.<sup>127</sup> However, the Trans Mountain Corporation is anything but a good investment. The numbers the federal and Alberta governments cited regarding job creation and GDP growth from the expansion have been shown to be severely inflated.<sup>128</sup> The costly expansion is unlikely to yield the necessary return on the highly risky investment. While the NEB's reconsideration report approved the project in February 2019, its decision relied on outdated and flawed financial information.

At the time of writing, there was still considerable uncertainty about the project's fate as the federal government had to finish Phase III consultations with Indigenous nations, and the B.C. Court of Appeal had yet to respond to whether the government can restrict the transportation of heavy oil through the province.<sup>129</sup> More legal cases seem inevitable. There is also uncertainty and a lack of transparency about the project's ultimate cost. The price tag for the existing line and the expansion could balloon to over \$15 billion if additional related costs like the federal government's Oceans Protection Plan and its coastline and marine life protection initiatives are taken into account.<sup>130</sup>

The government is using all available tools to make the Trans Mountain expansion happen, including the Trans Mountain Corporation exemption in the USMCA so it can provide unlimited financial assistance. The line will

likely not run on a commercial basis while it's in public hands. It is also very likely that Ottawa will sell the Trans Mountain Corporation at a discount and not recover the price it paid. In short, the USMCA exemption sends a very concerning message to Canadians who value fiscal responsibility.

In a major step forward, the USMCA will drop proportionality and the energy chapter. NAFTA's energy proportionality rule will remain in place until Canada, Mexico and the U.S ratify the USMCA. However, Canada signed a bilateral energy side letter with the U.S. and has agreed to integrate Canadian energy resources into the U.S. market. This annex contradicts Minister Freeland's portrayal of ending proportionality as a gain for Canadian energy sovereignty. Moreover, the energy side letter's goal of continental market integration could constrain future effective climate-action in Canada. Fortunately, the language is unenforceable. The energy side letter's provisions for cross-border pipelines may lower prices for tar sands oil to import into the U.S. with negative climate change implications.

The USMCA is not the agreement we need to address the climate crisis.<sup>131</sup> The state-owned enterprises exemption and the energy side letter have important implications for Canada's energy and climate future because they simultaneously reinforce a business-as-usual approach *and* protect the extraordinary measures (and extreme cost) the Canadian government has taken to continue exporting bitumen.

***“The federal government has risked billions of dollars of taxpayers' money to bail out Kinder Morgan Canada, while the latter had little to lose. To make matters worse, Ottawa purchased a pipeline expansion that was not commercially viable.”***

# Endnotes

1. James Fitz-Morris, "Justin Trudeau tells Paris Climate Summit Canada Ready to do More." CBC News, November 30, 2015. <https://www.cbc.ca/news/politics/trudeau-address-climate-change-paris-1.3343394>.
2. Tzeprorah Berman made a similar argument in 2016 when the Trudeau government approved the pipeline, see "Tzeprorah Berman: Pipelines and Paris. Do our Climate Promises Match our Energy Policy?" National Observer, December 8, 2016. <https://www.nationalobserver.com/2016/12/08/opinion/tzeprorah-berman-pipelines-and-paris-do-our-climate-promises-match-our-energy>.
3. The Canadian government calls the agreement CUSMA, but we refer to the agreement in this report as USMCA to emphasize Washington's dominant role in its framing.
4. Office of the Parliamentary Budget Officer, "Canada's Purchase of the Trans Mountain Pipeline – Financial and Economic Considerations." January 31, 2019. [https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2019/Transmountain/Trans\\_Mountain\\_Report\\_EN\\_FINAL.pdf](https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2019/Transmountain/Trans_Mountain_Report_EN_FINAL.pdf).
5. Trevor Tombe, "Buying up Trans Mountain isn't Ideal, but it's the Right Call, Right Now." CBC News, May 29, 2018. <https://www.cbc.ca/news/canada/calgary/trevor-tombe-trans-mountain-federal-purchase-1.4683222>.
6. Eugene Kung, "The View from Taxpayer Mountain." West Coast Environmental Law, June 20, 2018. <https://www.wcel.org/blog/view-taxpayer-mountain>.
7. Kung, "The View from Taxpayer Mountain."
8. Construction on the Westridge Terminal had been underway for nine months at the time the project's certificate was quashed. See Trans Mountain Corporation, "Westridge Marine Terminal," n.d., retrieved February 8, 2019. <https://www.transmountain.com/westridge-marine-terminal>.
9. Andrew Potter and Christopher Ragan, "Was Trudeau's 'Grand Bargain' Just a Little too Clever?" The Globe and Mail, November 9, 2018. <https://www.theglobeandmail.com/opinion/article-was-trudeaus-grand-bargain-just-a-little-too-clever/>.
10. Environment and Climate Change Canada (ECCC), "National Inventory Report 1990-2016: Greenhouse Gas Sources and Sinks in Canada, Part 1," 2018, 11. [http://publications.gc.ca/collections/collection\\_2018/eccc/En81-4-2016-1-eng.pdf](http://publications.gc.ca/collections/collection_2018/eccc/En81-4-2016-1-eng.pdf).
11. Environment and Climate Change Canada (ECCC), "Canada's Greenhouse Gas and Air Pollutant Emissions Projections: 2018," 2018. [http://publications.gc.ca/collections/collection\\_2018/eccc/En1-78-2018-eng.pdf](http://publications.gc.ca/collections/collection_2018/eccc/En1-78-2018-eng.pdf).
12. Before they were cancelled, TransCanada's Energy East oil pipeline to Saint John, New Brunswick and Enbridge's Northern Gateway pipeline to Kitimat, British Columbia were still on the table in 2015.
13. Phil Heidenreich, "Notley pulling Alberta out of federal climate plan after latest Trans Mountain pipeline setback," Global News, August 31, 2018. <https://globalnews.ca/news/4420319/notley-federal-climate-plan-trans-mountain-pipeline-court-ruling/>.
15. Exxon Valdez Oil Spill Trustee Council, "Questions and Answers About the Spill." N.D. <http://www.evostc.state.ak.us/index.cfm?FA=facts.QA>.
16. National Energy Board, "Reconsideration Report – Trans Mountain Expansion Project." February 22, 2019. <https://www.neb-one.gc.ca/ppctnflng/mjrpp/trnsmntnxpnsn/trnsmntnxpnsnrprt-eng.html>.
17. Pipeline completion dates are very uncertain (for example, in March 2019, Enbridge announced a further one-year delay for Line 3), but if those pipelines are finished earlier, they will eliminate any supply bottlenecks and get the higher U.S. price for the diluted bitumen than will be available in China via the TM expansion. David J. Hughes, "Opinion: Fact-checking Alberta's Pipeline Ads." Edmonton Journal, February 20, 2019. <https://edmontonjournal.com/opinion/columnists/opinion-fact-checking-albertas-pipeline-ads>.
18. See Environment and Climate Change Canada (ECCC), "Trans Mountain Pipeline ULC - Trans Mountain Expansion Project: Review of Related Upstream Greenhouse Gas Emissions Estimates," November 2016, 6. <https://ceaa-acee.gc.ca/050/documents/p80061/116524E.pdf>.
19. ECCC, "Trans Mountain Pipeline ULC - Trans Mountain Expansion Project," 5.
20. The Canadian Press, "NEB Rejects Environmental Group's Call to Expand Scope of Trans Mountain Pipeline Review." February 19, 2019. <https://www.cbc.ca/news/canada/calgary/trans-mountain-environmental-review-scope-1.5025420>.
21. Shawn McCarthy, "NEB to Assess Climate Issues in Energy East Pipeline Review." The Globe and Mail, August 23, 2017. <https://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/energy-east-pipeline-review-topics-to-include-impact-of-emissions/article36069855/>.
22. Stephen Leahy, "Climate Impacts of the Kinder Morgan Pipeline Could Cost up to \$8.7 Billion." Motherboard, May 3, 2018. [https://motherboard.vice.com/amp/en\\_us/article/kzxbmv/kinder-morgan-trans-mountain-expansion-pipeline-carbon-emissions](https://motherboard.vice.com/amp/en_us/article/kzxbmv/kinder-morgan-trans-mountain-expansion-pipeline-carbon-emissions).
23. The reference case scenario includes all measures in place as of September 2018 and does not include additional measures such as the federal pollution pricing backstop. ECCC, "Progress Towards Canada's Greenhouse Gas Emissions Reduction Target." Last modified January 30, 2019. <https://www.canada.ca/en/environment-climate-change/services/environmental-indicators/progress-towards-canada-greenhouse-gas-emissions-reduction-target.html>.

24. Auditor's calculation using data from the ECCC "Canada's Greenhouse Gas and Air Pollutant Emissions Projections: 2018."
25. IPCC, "Global Warming of 1.5°C." October 2018. <https://www.ipcc.ch/sr15/>.
26. Data from ECCC, "Canada's Greenhouse Gas and Air Pollutant Emissions Projections: 2018." ix.
27. Canada's actual emissions in 2010 were 694 Mt.
28. Kinder Morgan Canada Limited. "Schedule 14A." United States Securities and Exchange Commission, August 7, 2018, 11. <https://www.sec.gov/Archives/edgar/data/1714973/000104746918005465/0001047469-18-005465-index.htm>.
29. The first meeting took place March 6, 2018 in Houston, Texas. See Kinder Morgan Canada Limited. "Schedule 14A," 11-12.
30. Shawn McCarthy and Bill Curry, "Ottawa Sought Insider Industry Analysis for Trans Mountain Deal, Documents Reveal." The Globe and Mail, January 20, 2019 <https://www.theglobeandmail.com/politics/article-ottawas-45-billion-acquisition-of-trans-mountain-pipeline-was-based/>.
31. McCarthy and Curry, "Ottawa Sought Insider Industry Analysis for Trans Mountain Deal, Documents Reveal."
32. Kinder Morgan Canada Limited, "Kinder Morgan Canada Limited Suspends Non-Essential Spending on Trans Mountain Expansion Project." Cision PR Newswire, April 8, 2018. <https://www.prnewswire.com/news-releases/kinder-morgan-canada-limited-suspends-non-essential-spending-on-trans-mountain-expansion-project-300626072.html>.
33. Kinder Morgan Canada Limited, "Schedule 14A," 13.
34. Kinder Morgan Canada Limited, "Schedule 14A," 14. Kinder Morgan Canada Limited, "Schedule 14A," 15. Kinder Morgan Inc. et al., "Share and Unit Purchase Agreement," May 29, 2018, <http://s3.documentcloud.org/documents/4616305/Kinder-Morgan-Execution-Agreement-3386-3.pdf>.
35. Due to rounding the sums do not equal \$4.5 billion.
36. Kinder Morgan Canada Limited, "Schedule 14A," 14.
37. See Kinder Morgan Canada Limited, "Schedule 14A," 15-16.
38. Kinder Morgan Canada Limited, "Schedule 14A," Appendix B.
39. The loan was cancelled after the government stepped in to buy the pipeline system. Kinder Morgan Inc., "Form 8-K." United States Securities and Exchange Commission, June 22, 2017. <https://seekingalpha.com/filing/3602718>.
40. CPAC, "Justin Trudeau in Conversation with Paul Wells." September 17, 2018 [~26:15]. <http://www.cpac.ca/en/programs/in-conversation-with-paul-wells/episodes/64598325>.
41. Jesse Snyder, "Opposition Members Criticize Protections for Kinder Morgan in Trans Mountain Contract." National Post, September 6, 2018. <https://nationalpost.com/news/politics/opposition-members-criticize-protections-for-kinder-morgan-in-trans-mountain-contract>.
42. CPAC, "Justin Trudeau in Conversation with Paul Wells" [~26:30].
43. These fees are \$28 million per year. In the Q1 2018 earnings call Kinder Morgan Inc.'s CEO Steven Kean stated that \$210-220 million had been paid by shippers in fees to date. See also Robyn Allan, "What's behind Kinder Morgan's May 31 Ultimatum? Follow the Money," National Observer, May 15, 2018. <https://www.nationalobserver.com/2018/05/15/opinion/whats-behind-kinder-morgans-may-31-ultimatum-follow-money>.
44. Allan, "What's behind Kinder Morgan's May 31 Ultimatum?"
45. Department of Finance (Government of Canada), "Backgrounder: Details of Agreement for the Completion of the Trans Mountain Expansion Project," May 29, 2018. [https://www.fin.gc.ca/n18/data/18-038\\_1-eng.asp](https://www.fin.gc.ca/n18/data/18-038_1-eng.asp).
46. Canada Development Investment Corporation, "Third Quarter Report," September 30, 2018, 29. Note the government has only spent \$5.2 billion of this, see Office of the Parliamentary Budget Officer, "Canada's Purchase of the Trans Mountain Pipeline," 5.
47. See also Patrick DeRochie, "The Crown Corporation That's Financing Climate Failure." Environmental Defence, November 22, 2018, <https://environmentaldefence.ca/2018/11/22/the-crown-corporation-thats-financing-climate-failure/>.
48. Export Development Canada, "Consolidated Financial Statements, 2015 Financial Review," 2016. [http://www1.edc.ca/publications/2016/2015ar/files/financial-review/EDC\\_AR2015\\_E\\_ConFinState.pdf](http://www1.edc.ca/publications/2016/2015ar/files/financial-review/EDC_AR2015_E_ConFinState.pdf).
49. Government of Canada, Department of Finance. "Agreement Reached to Create and Protect Jobs, Build Trans Mountain Expansion Project." Speech, May 29, 2018. <https://www.fin.gc.ca/news-nouvelles/speeches-discours/2018/2018-05-29-eng.asp>; Kathleen Harris, "Liberals to Spend Billions on Pipeline, despite Opposition from Environmental, Indigenous Groups," CBC News, May 29, 2018. <https://www.cbc.ca/news/politics/liberals-trans-mountain-pipeline-kinder-morgan-1.4681911>.
50. The Keep Canada Working campaign is available at <https://keepcanadaworking.ca/campaign>. See Bryan Carney, "Alberta Has Spent \$23 Million Calling BC an Enemy of Canada: Tyeer FOI Reveals pro-Pipeline PR Strategy, Spiralling Costs." The Tyeer, January 15, 2019. <https://thetyee.ca/News/2019/01/15/Alberta-Spent-23-Million-BC-Enemy-Canada/>.

51. McCarthy and Curry, "Ottawa Sought Insider Industry Analysis for Trans Mountain Deal, Documents Reveal"; National Energy Board. "National Energy Board Report - Trans Mountain Expansion Project - OH-001-2014 (A77045)," May 2016, 297-300. <https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A77045>; Karen Graham, "Was the Trans Mountain Pipeline Report 'Fatally Flawed?'" Digital Journal, March 21, 2018. <http://www.digitaljournal.com/news/world/was-the-trans-mountain-pipeline-report-fatally-flawed/article/518004>.
52. See Section 2.0 in Robyn Allan, "Need for, Commercial Feasibility, and Economic Impact of the Trans Mountain Expansion Project," November 25, 2016. <https://twnsacredtrust.ca/wp-content/uploads/2016/11/TWN-GIC-Allan-Report-2016.11.25-2.pdf>. Robyn Allan confirmed that updated analysis reinforces this finding (interview conducted by Amy Janzwood on February 17, 2019); see also: Andrew Nikiforuk, "NEB 'Reconsideration Report' a New Low for Failing Agency." The Tyee, February 23, 2019. <https://thetyee.ca/Opinion/2019/02/23/New-Low-for-NEB/>; Mitchell Anderson, "Only Fantasies, Desperation and Wishful Thinking Keep Pipeline Plans Alive." The Tyee, February 23, 2018. <https://thetyee.ca/Opinion/2018/02/23/Fantasies-Keep-Pipeline-Plans-Alive/>.
53. Robyn Allan, "False Oil Price Narrative Used to Scare Canadians into Accepting Trans Mountain Pipeline Expansion." National Observer, November 26, 2018. <https://www.nationalobserver.com/2018/11/26/analysis/false-oil-price-narrative-used-scare-canadians-accepting-trans-mountain-pipeline>.
54. National Energy Board, "National Energy Board Report - Trans Mountain Expansion Project," 306.
55. Allan, "What's behind Kinder Morgan's May 31 Ultimatum?"
56. Allan, "What's behind Kinder Morgan's May 31 Ultimatum?"
57. Kinder Morgan Canada Limited, "Initial Public Offering," May 25, 2017, [https://services.cds.ca/docs\\_csn/02614242-00000018-00042650-i%40%23Sedar%23Kinder%23IPO%23Final%23FinalEN-PDF.pdf](https://services.cds.ca/docs_csn/02614242-00000018-00042650-i%40%23Sedar%23Kinder%23IPO%23Final%23FinalEN-PDF.pdf).
58. Kinder Morgan Inc., "Kinder Morgan's (KMI) CEO Steve Kean on Q2 2017 Results - Earnings Call Transcript." Seeking Alpha, July 20, 2017, <https://seekingalpha.com/article/4088915-kinder-morgans-kmi-ceo-steve-kean-q2-2017-results-earnings-call-transcript>; see also Robyn Allan, "Robyn Allan: Government Aid Key to Trans Mountain Pipeline Expansion." Vancouver Sun, April 30, 2018 (last updated). <https://vancouversun.com/opinion/op-ed/robyn-allan-government-aid-key-to-trans-mountain-pipeline-expansion>.
59. The government has cited commercial sensitivity for the reason it will not release financial information about the project; notably, Kinder Morgan Canada is mandated to provide financial information by disclosure rules in both the United States and Canada.
60. Tom Sanzillo and Kathy Hipple, "Trans Mountain Pipeline Financials: Built on Quicksand and Clear as Mud: Assessing the Ongoing Cost of the Acquisition and Development of the Trans Mountain Expansion Project to Taxpayers." Institute for Energy Economics and Financial Analysis, April 2019. [http://ieefa.org/wp-content/uploads/2019/04/Trans-Mountain-Pipeline-Financials\\_April-2019.pdf](http://ieefa.org/wp-content/uploads/2019/04/Trans-Mountain-Pipeline-Financials_April-2019.pdf).
61. Kinder Morgan Media & Investor Center, "Trans Mountain Completes Final Cost Estimate Review with Shippers; Maintains Strong Commercial Support for Expansion Project." March 17, 2017. <https://ir.kindermorgan.com/press-release/kindermorgan/trans-mountain-completes-final-cost-estimate-review-shippers-maintains-st>. Notably the Trans Mountain Corporation website says the \$7.4 billion figure is based on studies from 2013 to 2015; however, this is misleading – the figure estimated was released in 2017 because of agreements with shippers (and a condition of the NEB's Certificate of Public Convenience and Necessity). Trans Mountain Corporation, "Expansion Project." Accessed February 8, 2019. <https://www.transmountain.com/project-overview?>
62. See McCarthy and Curry, "Ottawa Sought Insider Industry Analysis for Trans Mountain Deal, Documents Reveal."
63. TD Securities also included a scenario with an in-service date of December 31, 2020 but this is no longer feasible in light of the August 2018 Federal Court of Appeal ruling.
64. Carl Meyer, "Trudeau at Risk of Having Overpaid for Trans Mountain: Parliamentary Watchdog." National Observer, January 31, 2019. <https://www.nationalobserver.com/2019/01/31/news/trudeau-risk-having-overpaid-trans-mountain-parliamentary-watchdog>.
65. Robyn Allan, "Robyn Allan: An Open Letter to Rachel Notley and Jason Kenney." National Observer, March 5, 2019. <https://www.nationalobserver.com/2019/03/05/opinion/robyn-allan-open-letter-rachel-notley-and-jason-kenney>.
66. Mia Rabson, "Cabinet Expected to Extend Deadline on Trans Mountain Pipeline." The Globe and Mail, February 17, 2019. [https://www.theglobeandmail.com/canada/article-cabinet-expected-to-extend-deadline-on-trans-mountain-pipeline/?utm\\_medium=Newsletter&utm\\_source=Energy&utm\\_type=text&utm\\_content=Energy&utm\\_campaign=2019-2-18\\_7&cu\\_id=%2Fs%2FASbDaGgtE%2FtC%2FX1NSPiveD61P0Oau](https://www.theglobeandmail.com/canada/article-cabinet-expected-to-extend-deadline-on-trans-mountain-pipeline/?utm_medium=Newsletter&utm_source=Energy&utm_type=text&utm_content=Energy&utm_campaign=2019-2-18_7&cu_id=%2Fs%2FASbDaGgtE%2FtC%2FX1NSPiveD61P0Oau).
67. ARC Energy Research Institute, "Trans Mountain Pipeline 65 Years and Onward: An Interview with CEO Ian Anderson." April 5, 2019 [~26:45]. <https://www.arcenergyinstitute.com/transmountain-pipeline-65-years-and-onward-an-interview-with-ceo-ian-anderson/>. In September 2018 Ian Anderson estimated construction would take 30 months, see Dan Healing, "Trans Mountain Pipeline Construction Could Restart in 2019 Under NEB Timeline, CEO Says." The Globe and Mail, September 26, 2018. <https://www.theglobeandmail.com/business/article-neb-names-panel-to-conduct-trans-mountain-review/>.

68. Office of the Parliamentary Budget Officer, "Canada's Purchase of the Trans Mountain Pipeline," 7.
69. National Energy Board, "[Exhibit] B9-6, CAPP IR Response – A3D7H3," November 29, 2012, 5. <http://apps.neb-one.gc.ca/REGDOCS/Item/View/890491>
70. Office of the Parliamentary Budget Officer, "Canada's Purchase of the Trans Mountain Pipeline," 10.
71. Office of the Parliamentary Budget Officer, "Canada's Purchase of the Trans Mountain Pipeline," 10.
72. National Energy Board, "A97071 Trans Mountain Pipeline ULC - Application for 2019-2021 Incentive Toll Settlement." January 4, 2019 <https://apps.neb-one.gc.ca/REGDOCS/Item/View/3745328>. For an overview of Trans Mountain Corporation's structure see Canada Development Investment Corporation, "Third Quarter Report," 3.
73. National Energy Board, "A98190 National Energy Board - Letter and Order TO-001-2019 to Trans Mountain Pipeline ULC – 2019-2021 Incentive Toll Settlement." March 5, 2019. <https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A98190>; Robyn Allan, "\$2 Billion Oil Industry Subsidy in the Making as Trans Mountain Files Toll Application." National Observer, February 8, 2019. <https://www.nationalobserver.com/2019/02/08/analysis/2-billion-oil-industry-subsidy-making-trans-mountain-files-toll-application>.
74. Robyn Allan, "A97274 Robyn Allan - Response to NEB Request Trans Mountain ITS 2019-2021 Application." National Energy Board, January 14, 2019. <https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A97274>.
75. Allan, "\$2 Billion Oil Industry Subsidy in the Making as Trans Mountain Files Toll Application."
76. Kinder Morgan Inc., Media & Investor Center, "Trans Mountain Completes Final Cost Estimate Review with Shippers; Maintains Strong Commercial Support for Expansion Project." <https://ir.kindermorgan.com/press-release/kindermorgan/trans-mountain-completes-final-cost-estimate-review-shippers-maintains-st>; Kinder Morgan Inc., Media & Investor Center, "Open Season for Trans Mountain Expansion Concludes." March 22, 2017. <https://ir.kindermorgan.com/press-release/kindermorgan/open-season-trans-mountain-expansion-concludes>.
78. Robyn Allan, "What Bill Morneau Didn't Tell Canadians about the Trans Mountain Purchase." National Observer, December 5, 2018. <https://www.nationalobserver.com/2018/12/05/analysis/what-bill-morneau-didnt-tell-canadians-about-trans-mountain-purchase>. Robyn Allan. "Letter: Sweet deal for oil elite on Trans Mountain screws taxpayers". *Burnaby Now*. May 6, 2019.
79. Provided that the government does not sell the project before its construction is complete.
80. CPAC, "Justin Trudeau in Conversation with Paul Wells" [~26:30].
81. Merriam Smith and Dan Woynillowicz, "How Canada is both leading and falling behind on electric buses." National Observer, March 21, 2019. <https://www.nationalobserver.com/2019/03/21/analysis/how-canada-both-leading-and-falling-behind-electric-buses>.
82. Owusu-Nyamekye Kwabena, "Privatization of Crown Corporations (CCs) and State-Owned Enterprises (SOEs) in Canada: Goals and Aspirations of Government and Participating Businesses." 2007 MA Thesis. University of Northern British Columbia. <https://doi.org/10.24124/2007/bpgub1341>.
83. Gordon Laxer, *After the Sands: Energy and Ecological Security for Canadians*. Douglas and McIntyre: Madeira Park BC, 2015, 155.
84. Duncan Cameron, "Canada Capitulates to Trump on Trade with Renegotiated NAFTA." Rabble.ca, October 1, 2018. <http://www.rabble.ca/columnists/2018/10/canada-capitulates-trump-trade-renegotiated-nafta>.
85. The TPP became the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).
86. Yoshinori Abe and Takemasa Sekine, "Non-Commercial Assistance Rules in the TPP: A Comparative Analysis with the SCM Agreement." Social Science Research Network (SSRN), October 15, 2016, <https://papers.ssrn.com/abstract=2852915>.
87. Canada-United States-Mexico Agreement (USMCA), "Chapter 22 – State-Owned Enterprises and Designated Monopolies" (Government of Canada, 2018). <https://international.gc.ca/trade-commerce/assets/pdfs/agreements-accords/USMCA-aceum/USMCA-22.pdf>.
88. Canada-United States-Mexico Agreement (USMCA), "Chapter 22," 8.
89. Canada-United States-Mexico Agreement (USMCA), "Annex IV – Non-Conforming Activities," 3.
90. Anna Desmarais, "USMCA Protects Trans Mountain from Money Problems: Experts." iPolitics, October 6, 2018. <https://ipolitics.ca/2018/10/06/USMCA-protects-trans-mountain-from-money-problems-experts/>.
91. Kyle Bakx et al, "Five Indigenous Groups vie for Ownership of Trans Mountain Pipeline Expansion." The Energy Mix, March 29, 2019. <https://theenergymix.com/2019/03/29/five-indigenous-groups-vie-for-ownership-of-trans-mountain-pipeline-expansion/>.
92. Chris Varcoe, "Political Rivals find common ground on Indigenous ownership of Trans Mountain pipeline," Calgary Herald. March 29, 2019; Jeff McIntosh, "Morneau Unveils Principles for Indigenous Ownership in Trans Mountain Pipeline," The Canadian Press. March 25, 2019. <https://www.theglobeandmail.com/canada/alberta/article-morneau-unveils-principles-for-indigenous-ownership-in-trans-mountain/>.

93. Geoffrey Morgan, "First Nations Eye Stake in Trans Mountain Pipeline in Bid for 'Economic Sovereignty.'" *Financial Post*, January 16, 2019. <https://business.financialpost.com/commodities/time-to-raise-your-voice-more-first-nations-express-interest-in-buying-a-stake-in-trans-mountain>.
94. Jeffrey Jones, "First Nations-led Group Planning Bid for Majority Stake in Trans Mountain Pipeline." *The Globe and Mail*, March 28, 2019. [https://www.theglobeandmail.com/business/article-first-nations-led-group-planning-bid-for-majority-stake-in-trans/?utm\\_medium=Newsletter&utm\\_source=Morning%20Update&utm\\_type=text&utm\\_content=MorningUpdate&utm\\_campaign=2019-3-28\\_6&cu\\_id=X5EOlytHURYRrAOm0Dyt8bLJ2Mfwut5b](https://www.theglobeandmail.com/business/article-first-nations-led-group-planning-bid-for-majority-stake-in-trans/?utm_medium=Newsletter&utm_source=Morning%20Update&utm_type=text&utm_content=MorningUpdate&utm_campaign=2019-3-28_6&cu_id=X5EOlytHURYRrAOm0Dyt8bLJ2Mfwut5b).
95. Richard Zussman, "B.C. Indigenous and Environmental Groups Blast NEB Approval of Trans Mountain Pipeline." *Global News*, February 22, 2019. <https://globalnews.ca/news/4988674/neb-opponents-neb-first-nations/>.
96. Jones, "First Nations-led Group Planning Bid for Majority Stake in Trans Mountain Pipeline."
97. Office of the Auditor General of Canada. "Report 4— Non-Tax Subsidies for Fossil Fuels—Environment and Climate Change Canada." 2019 Spring Reports of the Commissioner of the Environment and Sustainable Development, 2019, [http://www.oag-bvg.gc.ca/internet/English/parl\\_cesd\\_201904\\_04\\_e\\_43310.html](http://www.oag-bvg.gc.ca/internet/English/parl_cesd_201904_04_e_43310.html). See also Carl Meyers, "Canada's Environment Department Didn't Think the Trans Mountain Purchase was a Fossil Fuel Subsidy." *National Observer*, April 2, 2019, <https://www.nationalobserver.com/2019/04/02/news/canadas-environment-department-didnt-think-trans-mountain-purchase-was-fossil-fuel>.
98. Jocelyn Timperley, "OECD: Fossil Fuel Subsidies Added up to at Least \$373bn in 2015." *Carbon Brief*, February 28, 2018, <https://www.carbonbrief.org/oecd-fossil-fuel-subsidies-373-billion-2015>.
99. Jocelyn Timperley, "Explainer: The Challenge of Defining Fossil Fuel Subsidies." *Carbon Brief*, June 12, 2017. <https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>.
100. Janzwood, "The New NAFTA – What's the Deal with Energy?"
101. CBC News. "Canada Could Delay Ratification of New NAFTA Until U.S. Metals Tariffs are Lifted: Garneau." February 21, 2019. <https://www.cbc.ca/news/politics/macnaughton-steel-aluminum-tariffs-1.5028408>; Michael Blanchfield, "Mexico Won't Ratify New NAFTA if U.S. Keeps Tariffs on Steel and Aluminium." *Financial Post*, March 4, 2019. <https://business.financialpost.com/news/economy/mexico-pushing-labour-reform-wont-ratify-new-nafta-with-u-s-tariffs-in-place>.
102. Andrew Morrow, "Trump Threatens to Terminate NAFTA to Press Congress to Approve USMCA." *Globe and Mail*, December 2, 2018. <https://www.theglobeandmail.com/business/article-trump-threatens-to-terminate-nafta-if-congress-does-not-approve/>.
103. Naureen S. Malik, "U.S. Becomes a Net Gas Exporter for the First Time in 60 Years." *Bloomberg*, January 10, 2018. <https://www.bloomberg.com/news/articles/2018-01-10/u-s-became-a-net-gas-exporter-for-the-first-time-in-60-years>.
104. Jason Bordoff, "Why Dominance is About More Than Just Production." *Foreign Affairs*, July 6, 2017, <https://www.foreignaffairs.com/articles/united-states/2017-07-06/american-energy-superpower>.
105. Amy Janzwood, "The New NAFTA – What's the Deal with Energy?" *Behind the Numbers*, CCPA, November 21, 2018. <http://behindthenumbers.ca/2018/11/21/the-new-nafta-whats-the-deal-with-energy/>.
106. Email correspondence between Gordon Laxer and a confidential source close to the U.S. government on January 24, 2019.
107. Data from U.S. Energy Information Administration, "Petroleum & Other Liquids: U.S. Imports by Country of Origin," 2018. [https://www.eia.gov/dnav/pet/pet\\_move\\_impcus\\_a2\\_nus\\_ep00\\_im0\\_mbb1\\_m.htm](https://www.eia.gov/dnav/pet/pet_move_impcus_a2_nus_ep00_im0_mbb1_m.htm).
108. Janzwood, "The New NAFTA – What's the Deal with Energy?"
109. Letter by Robert Lighthizer to Chrystia Freeland dated November 30, 2018 regarding the USMCA's bilateral energy annex, available at: [https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/CA-US\\_Side\\_Letter\\_on\\_Energy.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/CA-US_Side_Letter_on_Energy.pdf).
110. John Dillon and Gordon Laxer, "Over a Barrel: Exiting from NAFTA's Proportionality Clause." *Parkland Institute and the Canadian Centre for Policy Alternatives*, May 2008. [https://www.parklandinstitute.ca/over\\_a\\_barrel](https://www.parklandinstitute.ca/over_a_barrel); Gordon Laxer, "Escaping Mandatory Oil Exports: Why Canada Needs to Dump NAFTA's Energy Proportionality Rule." *Council of Canadians*, June 2018. <https://canadians.org/nafta-energy-proportionality>; Frank Ackerman, Alejandro Álvarez Béjar, Ben Beachy and Gordon Laxer, "NAFTA 2.0: For People or Polluters? A Climate Denier's Trade Deal versus a Clean Energy Economy." *The Sierra Club, Council of Canadians and Greenpeace Mexico*, April 2018. <https://canadians.org/sites/default/files/publications/report-nafta-people-or-polluters.pdf>.
111. Ackerman et al., "NAFTA 2.0."
112. *Investor's Business Daily*, "Trump Just Achieved What Every President Since Nixon Had Promised: Energy Independence." December 7, 2018. <https://www.investors.com/politics/editorials/energy-independence-trump/>.
113. Geoffrey Morgan, "Donald Trump Approves TransCanada's Keystone XL Pipeline after Eight Years of Hagglng." *Financial Post*, March 24, 2017. <https://business.financialpost.com/commodities/energy/the-u-s-state-department-approves-transcanadas-keystone-pipeline>.

114. Shawn McCarthy and Kelly Cryderman, "Trudeau's Oil Sands 'Phase-out' Comments Spark Anger in Alberta." *The Globe and Mail*, January 13, 2017. <https://www.theglobeandmail.com/news/alberta/trudeaus-oil-sands-phase-out-comments-spark-anger-in-alberta/article33622908/>.
115. Peter Zimonjic, "Opening Dairy Market to U.S. was Biggest 'Compromise' in Trade Talks, Freeland says." *CBC News*, November 8, 2018. <https://www.cbc.ca/news/politics/freeland-USMCA-free-press-deal-1.4898444>.
116. Under GATT 1994 Article XI (General Elimination of Quantitative Restrictions). Exceptions from restrictions on limiting exports include critical foodstuffs, safeguarding balance of payments, protecting human or animal health, and security.
117. Thanks to Ben Beachy for making this point. See USMCA, Annex 4-B, Section V, note 4; see also Sierra Club, "Trump's NAFTA Deal Threatens our Air, Water and Climate: More Outsourcing of Pollution and Jobs, Handouts to Corporate Polluters, and Climate Denial." October 2018 [Criterion 2]. <https://www.sierraclub.org/sites/www.sierraclub.org/files/NAFTA-environment-statement.pdf>.
118. The 'national treatment' requirements in NAFTA cover energy and petrochemicals. The Bonneville Power Administration (BPA), a US federal agency operating in the Pacific Northwest, was set up in 1937 to market electric power from the Bonneville Dam between Washington and Oregon states on the Columbia River.
119. The exceptions are for the construction, connection, operation, or maintenance of cross-border infrastructure.
120. Scott Sinclair, "NAFTA Chapter 11 Investor-State Disputes to January 1, 2015." *CCPA*, January 14, 2015, 34. <https://www.policyalternatives.ca/publications/reports/nafta-chapter-11-investor-state-disputes-january-1-2015>.
121. Kyla Tienhaara, "The Fossil Fuel Era is Coming to an End, but the Lawsuits are Just Beginning." *The Conversation*, December 18, 2018. <https://theconversation.com/the-fossil-fuel-era-is-coming-to-an-end-but-the-lawsuits-are-just-beginning-107512>.
122. Tienhaara, "The Fossil Fuel Era is Coming to an End, but the Lawsuits are Just Beginning."
123. Todd Tucker, "TransCanada is Suing the U.S. over Obama's Rejection of the Keystone XL Pipeline. The U.S. Might Lose." *Washington Post*. January 8, 2016. <https://www.washingtonpost.com/news/monkey-cage/wp/2016/01/08/transcanada-is-suing-the-u-s-over-obamas-rejection-of-the-keystone-xl-pipeline-the-u-s-might-lose/>; Scott Sinclair, "USMCA Strikes a Welcome Blow against Investor-state Dispute Settlement." *CCPA*, October 10, 2018. <http://behindthenumbers.ca/2018/10/10/USMCA-strikes-a-welcome-blow-against-investor-state-dispute-settlement/>.
124. Kyle Bakx, "If Proposed Pipeline Fails, Kinder Morgan Could Take Canada to Court." *CBC News*, April 10, 2018. <https://www.cbc.ca/news/business/nafta-tmx-kinder-morgan-oilsands-1.4611434/>.
125. Thanks to Andrew Nikiforuk for the "over the national interest barrel" phrase.
126. Department of Finance (Government of Canada), "Backgrounder."
127. Angus Reid Institute, "Good Investment or Bad Precedent? Canadians Pick Sides on TransMountain Pipeline Purchase." June 19, 2018. <http://angusreid.org/federal-transmountain-purchase/>.
128. In May 2018, Trudeau said the expansion would contribute about \$15 billion in lost revenue due to the price differential between Alberta and American oil, a figure also repeated by Rachel Notley (see Tonda MacCharles, "Trudeau Summons Cabinet for Urgent Meeting on Trans Mountain Pipeline." *The Star*, May 28, 2018. <https://www.thestar.com/news/canada/2018/05/28/ndp-says-government-should-not-aid-trans-mountain-pipeline.html>) and the PBO report estimated the contribution to GDP was \$6 billion between 2019 and 2023 (Office of the Parliamentary Budget Officer, "Canada's Purchase of the Trans Mountain Pipeline," 13). Both the federal and Alberta governments have said the project will create 15,000 construction jobs but the PBO report said at its peak in 2020, the project would create about 7,900 construction jobs (Office of the Parliamentary Budget Officer, "Canada's Purchase of the Trans Mountain Pipeline," 12). See also Allan, "Kinder Morgan Bailout to Cost North of \$15 Billion" and Bronwen Tucker, "Fact-Checking Notley's Kinder Morgan Talking Points." *The Council of Canadians*, May 26, 2018. <https://canadians.org/blog/fact-checking-notleys-kinder-morgan-talking-points>.
129. Court of Appeal - The Courts of British Columbia, "Court of Appeal File No. CA 45253," April 26, 2019, [https://www.courts.gov.bc.ca/Court\\_of\\_Appeal/announcements/Requisition\\_re\\_Environmental\\_Management\\_Act.pdf](https://www.courts.gov.bc.ca/Court_of_Appeal/announcements/Requisition_re_Environmental_Management_Act.pdf).
130. Robyn Allan, "Kinder Morgan Bailout to Cost North of \$15 Billion." *National Observer*, May 29, 2018. <https://www.nationalobserver.com/2018/05/29/analysis/kinder-morgan-bailout-cost-north-15-billion>.
131. Sierra Club, "Trump's NAFTA Deal Threatens our Air, Water and Climate"; Hadrian Mertins-Kirkwood, "Updated NAFTA Deal a Profound Failure for Climate Action." *Behind the Numbers*, *CCPA*, October 12, 2018. <http://behindthenumbers.ca/2018/10/12/updated-nafta-deal-a-profound-failure-for-climate-action/>.



300-251 Bank Street  
Ottawa, ON, K2P 1X3  
canadians.org | 1-800-387-7177



June 2019