

## We Own It, So Let's Kill It: What to do about Kinder Morgan in an era of "reconciliation"

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*Now that Canada owns the pipeline, what difference does it make to Indigenous people who are fighting to stop it?*

**CANADA WILL SOON OWN THE TRANS MOUNTAIN PIPELINE** and a new dynamic is animating the conflict over land. As the Secwepemc land defenders re-occupy their ancient village grounds and **face eviction and arrests**, the matter is all the more urgent. If we better understand the Liberal strategy with this purchase, we can better support Indigenous land defenders.

The first key to understanding the new dynamic is Canada's ability to push this project through. Unlike Kinder Morgan Canada, the state has bottomless resources to finance construction. It also controls a military. Canada does not have to answer to shareholders on a quarterly basis either. Instead, elected governments must seek re-election to maintain power, so new political considerations are a factor.

How is this likely to play out? To justify the pipeline purchase, talk about the "national interest" of Canadians will be turned up to full volume. This talk will grant social license to police the pipeline at any cost, since the price of delays will be now borne by "taxpayers" who may have less tolerance for disruption now that their asset is being devalued.

**The new dynamic will also reveal the exact spot in the relationship between First Nations and Canada where the promises of Indigenous rights recognition hit the wall of the resource economy.**

Immediately after the bailout, the Secwepemc Women's Warrior Society and Tiny House Warriors **put out a statement** that called the move "a declaration of war" against First Nations. They pointed to Canada's pattern of criminalizing Indigenous peoples for exercising their responsibility to protect the land and water as **a warning of the coming conflict**.

Previously, the government's support for the pipeline was framed as merely upholding the rule of law. Now the state's ownership signals their intent to directly violate Indigenous rights and title to the land.

## FABRICATING A NATIONAL INTEREST

To solicit the support of Canadians for the Trans Mountain expansion, the Liberal government has framed it as in the interest of all Canadians. Despite the criticism from pundits and opposition leaders, **many commentators begrudgingly agreed** that Trudeau had no choice but to bail Kinder Morgan out.

Justifications include job creation, mollifying foreign capital, valuing Alberta crude's importance to the national economy, and the need to open new markets outside the U.S.; all cast as incontrovertible truths.

As Justin Trudeau tweeted on April 8, 2018: "Canada is a country of the rule of law, and the federal government will act in the national interest. Access to world markets for Canadian resources is a core national interest."

However, many of these "national interest" justifications have been soundly debunked. For example, the common refrain that Canada must expand its markets to the Pacific Rim is subject to serious contention. As **one expert noted**, the market for tar sand bitumen in Asia is imaginary and Asian markets tend to pay less for crude than Americans. The government has also been **repeating false figures of income loss** faced by Canadian oil sellers to U.S. markets.

What about scaring away foreign investment? World trade and finance regulations are incredibly hospitable to multi-nationals. In the case of Kinder Morgan Canada specifically, the company had a strong case for filing a lawsuit against Canada under Chapter 11 protections in the North American Free Trade Agreement (NAFTA). Chapter 11 provides what is called an "investor-state dispute resolution" (ISDS) mechanism that permits investors the right to sue foreign governments to recoup costs if governments fail to protect investor rights.

The new dynamic of state ownership forces the conflict out of state-company arbitration and into the terrain of political struggle. Canada must now demonstrate absolute sovereignty—over the province of B.C. and Indigenous nations.

## ABORIGINAL TITLE VS MILITARY

The province-wide injunction issued to Kinder Morgan by the courts allows for the removal of any persons interfering with pipeline construction or related infrastructure. It remains in place and will for the foreseeable future.

Because the injunction, like all injunctions in BC in recent years, refuses to acknowledge Aboriginal title, it casts Indigenous peoples as illegal trespassers on their own lands, rendering any exercise of their rights as criminal. But the Secwepmec in fact have legal protection under Canadian law, international law, and Indigenous law. So as Kanahus' father **Art Manuel used to say**, this "legal billy club" of de facto trespass law is designed to move rightful title-holders off their land through force.

**Preserving their title and integrity of land and water is not the only motivation for violating the injunction. The Tiny House Warriors are also adamant that in order to protect the safety of women and girls in the community, the "man camps" that accompany construction must be stopped as well. For acting on this urgent responsibility, they will also be arbitrarily detained.**

Over the weekend, many of the Tiny House Warriors who re-occupied what is now known as North Thompson Provincial Park have been removed to Coldwater and other Indian Reserves. Kanahus Manuel was one of those arrested on Saturday.

In defiance of this containment, three tiny houses that have been built over the past 10 months have been placed in the proposed pipeline's path near Clearwater, BC, as Secwepemc land defenders begin to re-establish an ancient village that once thrived before a much earlier eviction.

### **RISK MITIGATION & LEVERAGE**

When the Liberals bailed out the Texas subsidiary at the end of May, Trudeau directly contradicted two central planks of their party platform: a commitment to address climate change and to recognize Indigenous rights.

On the climate front, the Liberals are dodging Canada's climate commitments derailed by the pipeline expansion approval with a harder sell of the carbon tax plan, by issuing reassurances that Canada's world class Oceans Protection Plan will safeguard the coast, and by playing the 'grand bargain' of phasing out coal. Trudeau is seeking to frame the bailout as striking a delicate balance between the environment and economy.

In the case of Canada's commitment to Indigenous rights, even before Canada bought the pipeline, the federal government **suggested a First Nations-led consortium** could share in ownership of the pipeline. If the Liberals can demonstrate "social license" from First Nations, they expect the public to turn against any that continue to resist.

Solicitation of Indigenous involvement in pipeline ownership demonstrates what the implementation of "free prior and informed consent"—enshrined in the *United Nations Declaration on the Rights of Indigenous Peoples*—means for the Liberal government. Kinder Morgan sought and obtained right-of-ways and revenue-sharing agreements from a number of First Nations along the pipeline. Without requiring consensus from the Secwepemc nation (whom the Supreme Court of Canada calls the proper title-holders), "consent" can be used as a sledgehammer to smash apart a united front of resistance.

### **LEVERAGING THE RISK OF INHERENT INDIGENOUS RIGHTS**

Though dynamics have shifted with the pipeline ownership, some things will remain the same. Especially since Canada is still seeking a new buyer for the project.

First Nations will keep putting pressure on investors, insurers, and third-party service providers to leave stranded the new Crown corporation without buyers. First Nations will target the Crown's capacity to physically build. Divestment campaigns will continue to drive up the cost to borrow money, rendering financialization untenable and too costly to corporate margins.

In fact, when the bailout was announced, Ska7cis Manuel, a Secwepemc/Ktunaxa member of the Indigenous Network on Economies and Trade, was on a trip to London and Paris meeting with the investment arm of a major insurance company as well as other global insurance agencies to convince them to divest from the Trans Mountain expansion.

Dozens of insurance companies underwrite the Kinder Morgan pipeline. In the fall of 2017, Kanahus traveled to Europe with Cedar George of the Tsleil Waututh First Nation to meet with banks and re-insurers who work with pipeline companies like Kinder Morgan. Manuel and George told Credit Suisse officials, for instance, that Kinder Morgan misled financial investors about the risk of expanding the Trans Mountain pipeline, almost **half of which runs across unceded Secwepemc territory**.

Canada's banks are also deeply invested. The uncertainty, in other words, will continue to ramp up.

**Kanahus Manuel recently asserted: "Trudeau may have agreed to purchase this pipeline to make sure it gets built, but we're here to make sure that it doesn't. This pipeline is unfundable and unbuildable. It's time Trudeau and all potential financial backers of this pipeline realized that we will never allow it to destroy our home."**

We do not have to bail out companies for the sake of protecting federal jurisdiction or a dying energy economy. We can move forward in a direction of environmental stewardship under First Nation leadership. Now that we own this terrible project, it is time to kill it.