

**NATIONAL ENERGY BOARD  
OFFICE NATIONAL DE L'ÉNERGIE**



**Hearing Order OH-001-2014  
Ordonnance d'audience OH-001-2014**

**Trans Mountain Pipeline ULC  
Trans Mountain Expansion Project**

**Trans Mountain Pipeline ULC  
Projet d'agrandissement du réseau de Trans Mountain**

**VOLUME 9**

**Hearing held at  
L'audience tenue à**

**Coast Chilliwack Hotel  
45920 First Avenue  
Chilliwack, British Columbia**

**October 21, 2014  
Le 21 octobre 2014**

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**HEARING ORDER/ORDONNANCE D'AUDIENCE**  
**OH-001-2014**

**IN THE MATTER OF Trans Mountain Pipeline ULC**  
**Application for the Trans Mountain Expansion Project**

**HEARING LOCATION/LIEU DE L'AUDIENCE**

Hearing held in Chilliwack (British Columbia), Tuesday, October 21, 2014  
Audience tenue à Chilliwack (Colombie-Britannique), mardi, le 21 octobre 2014

**BOARD PANEL/COMITÉ D'AUDIENCE DE L'OFFICE**

D. Hamilton	Chairman/Président
P. Davies	Member/Membre
A. Scott	Member/Membre

## **ORAL PRESENTATIONS/REPRÉSENTATIONS ORALES**

### **Peters Band**

Mr. Mark Peters

Councillor Victoria Peters

Elder Fran Genaille

Ms. Georgia Pears (counsel)

## **ERRATA**

### **Monday, October 20, 2014 - Volume 8**

Should read:

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Preliminary remarks by Mr. Whitefish

Preliminary remarks by Mr. Whiteside

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## **UNDERTAKINGS/ENGAGEMENTS**

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--- Upon commencing at 9:02 a.m./L'audience débute à 9h02

3789.               **THE CHAIRMAN:** Well, good morning, everyone, and welcome to the oral traditional evidence phase of the National Energy Board's hearing regarding the Trans Mountain Expansion Project.

3790.               My name is David Hamilton. I am the Chair of the Panel. And with me to my left is Alison Scott, and to my right, Phil Davies. We want to welcome here today, both -- and welcome those who are in the hearing room and those listening on our webcast.

3791.               And I would also like to acknowledge that we are on the traditional territory of the Stó:lō.

3792.               Before we get started, I think it's important to review our safety -- any safety issues in case we have to evacuate the building for any reason. The exit signs are clearly marked where you came through, and then either side left or right as you go out is the location to get outside the building.

3793.               In addition to the Panel, we have a number of staff with us to answer any process-related questions that you may have, and you'll recognize them by their name tags.

3794.               We'll be sitting this morning from 9:00 until noon, and we'll take breaks as appropriate when either of us need a break. Please don't hesitate to ask for a break, and we'll be happy to accommodate.

3795.               Before we get underway, though, I would like to remind parties of the Panel's guidance in the Hearing Order and Procedural Direction No. 1 with regards to oral traditional evidence.

3796.               The Board understands that the Peters Band have an oral tradition for sharing knowledge from generation to generation, and this information cannot be adequately shared in writing. The Board recommends those providing oral traditional evidence focus on their community's interests and rights.

3797.               These hearings are not to hear evidence that will be filed subsequently in writing, including technical and scientific information, opinions or views, advice to the Board on whether to recommend approval of the project or the terms and conditions that should be imposed or questions to the Board or other parties.

**Opening remarks**  
**Chairman**

3798.               Sharing your traditional knowledge and stories about the use of your traditional territory is of value to us. If you wish to share any concerns about the impacts the proposed project may have on you and your community and how any impacts could be eliminated or reduced, that would be helpful to us.
3799.               This is the type of information we're here to listen to, and we will use this information we gather today, along with all other available information, in considering the possible effects of the proposed project.
3800.               We appreciate that you have chosen to be with us today. And before providing oral traditional evidence, presenters will be asked to swear or affirm that the information they are presenting is accurate and truthful, to the best of their knowledge and belief.
3801.               With that, I believe we will be ready to get going. And before I ask the Peters Band to present their oral traditional evidence, perhaps I would like the representatives of Trans Mountain, to introduce themselves.
3802.               **MS. OLENIUK:** Good morning, sir, Panel Members, and members of Peters Band.
3803.               My name is Terri-Lee Oleniuk, and I'm legal counsel representing Trans Mountain. And also with me to my right is my colleague, Heather Weberg; to my left is Annie Korver, and she's a member of Trans Mountain's Aboriginal Engagement Team.
3804.               **THE CHAIRMAN:** Maybe perhaps at the beginning of your presentation, you could indicate whether you would be prepared to answer any questions orally or in writing, or both, whatever's comfortable with you.
3805.               So perhaps I could ask if you could introduce yourselves and then we'll have you affirmed.
3806.               Thanks you, Ms. Pears.
3807.               **MS. PEARS:** Good morning, Panel, Kinder Morgan representatives. Thank you all for being here today, and a special thank you to the Board for agreeing to change our hearing from yesterday to today. It's greatly appreciated, so thank you for that.

**Peters Band - Oral presentation**  
**Introduction by Ms. Pears**

3808. I would also, like the Chairman, like to acknowledge that we're on Stó:lō territory and to thank the Stó:lō for allowing us to be here today.
3809. To my far right is Victoria Peters, Councillor for Peters Band. Next to Victoria is Fran Genaille, an Elder from Peters Band. And to my right is Mark Peters, our speaker today, a member of Peters Band and adviser and researcher for Peters Band.
3810. Mark Peters is a great descendant of Joseph and Mary Peters, who are two of the first members of Peters Band as it was formed under the *Indian Act*. Mark is an integrated member of the community, having been born and raised on the Peters Reserve.
3811. He hunts and fishes at his ancestral harvesting grounds in Peters' territory, and knows the region intimately.
3812. Mark is a welder and heavy equipment mechanic by trade, but he's taking time off of his career right now to assist the Council full-time during this very busy time.
3813. If Mark feels comfortable, he's willing to answer any questions of clarification. However, for more substantial questions, Peters Band would prefer they go through the information request process.
3814. But before I pass it over to Mark, Peters Band would like to use this opportunity to make a few comments about the process that we're engaged in today, and I'll do so on their behalf.
3815. **THE CHAIRMAN:** Perhaps we'll have them affirmed and then you can make your comments. Thank you.
3816. **MS. PEACH:** Mark Peters is the only one speaking today, so he'll be the only one affirming.

**MARK PETERS: Affirmed**

3817. **THE CHAIRMAN:** Thank you, Mr. Peters. And if any of the others who are with Councillor Peters wish to say anything, we'd be happy to have them affirmed then if they wish to.

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**Introduction by Ms. Pears**

3818.           **MS. PEACH:** Thank you.

3819.           So as I said, we are going to make a few comments about the process that we're engaged in today.

3820.           Peters, like other First Nations, has a nation-to-nation relationship with the Crown, and there is a Constitutional duty for the Crown to honourably engage in a process with Peters to consult and accommodate Peters when a project is proposed that may affect their rights or title.

3821.           The Crown has indicated that it intends to rely on the National Energy Board's process to satisfy this duty. Peters Band has serious concerns with that.

3822.           The Crown's duty is upstream of the National Energy Board's role, and requires government-to-government engagement. To date, the federal government has not engaged with Peters to discuss the project, and the National Energy Board process is a quasi-judicial type of body and, given that, Peters feels that it is not an appropriate forum for the Crown to discharge their duties to Peters.

3823.           This process does not constitute meaningful government-to-government consultation.

3824.           Also, Peters, like other First Nations, was not consulted in the design of this process. As I just discussed, the Crown has a Constitutional duty to Peters to meaningfully consult and accommodate, and Peters feels it is not appropriate for this process to be designed unilaterally if it is also intended to fulfil these Constitutional duties and obligations.

3825.           Peters Band is a very small community, with only about 50 people living on the Reserve. The band is basically a big family, with most members having the last name Peters, in fact. They have a small band office with limited capacity, personnel, and resources.

3826.           The existing Trans Mountain pipeline runs directly beneath Peters Reserve. The proposed pipeline, its preferred route, also runs directly beneath Peters Reserve. So that means that, in total, both pipelines are proposed to carry 890,000 barrels of oil a day beneath Peters Reserve.

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**Introduction by Ms. Pears**

3827. Clearly, Peters should be meaningfully involved in the decision-making process regarding this project, as it stands to seriously impact its rights and titles, and yet Peters has still not been guaranteed any form of funding from the National Energy Board.
3828. Peters applied and was told their application would be reviewed sometime after November 27, 2014. Therefore, Peters is here today participating in a process that they had no say in designing, with their limited resources and capacity, without any guarantee that they will be reimbursed for even a small portion of what they spend on it.
3829. Even if Peters secures some form of participant funding, based on the other amounts First Nations have received, we anticipate it will be far from adequate.
3830. The NEB's process is complex and lengthy. The project itself is complicated and requires deep consideration by the Nations through technical studies, evidence gathering, and legal assessment.
3831. Meaningful participation in this process for a Band like Peters, that is so clearly centrally impacted, requires a substantial amount of funding. Community funds that were allocated for other reasons and for other uses are now being used to cover the National Energy Board's process.
3832. Therefore, Peters, like so many other First Nations, have been put in an impossible bind. Either they do participate in your process, one which they had no say in and cannot afford, or they risk prejudicing their own rights and interests by not participating.
3833. As discussed earlier, the Crown has indicated that it intends to rely upon the NEB process to discharge its duties to First Nations. If it plans to do so, it must then ensure that First Nations have the capacity to meaningfully participate in the process.
3834. We know that the National Energy Board takes the stance that participant funding is separate from the Board's regulatory hearing process. To quote yesterday's Ruling No. 38 issued by the NEB, that:

*"This stance turns a blind eye to the critically important issue of capacity funding and how it's tied to First Nation's ability to*

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*meaningfully participate in the hearing, and the Crown's intention to rely on the hearing to satisfy its constitutional duties."* (As read)

3835. In light of that, Peters urges the NEB to compel the Crown to fund Bands and Nations in a matter that is proportional to the cost of the process that it intends to rely on to discharge its constitutional duties.

3836. Please take these concerns into serious consideration.

3837. So with those introductory remarks, I'd now like to pass it over to our speaker, Mark Peters.

**--- ORAL PRESENTATION BY/REPRÉSENTATION ORALE PAR MR. MARK PETERS:**

3838. **MR. PETERS:** Good morning, everyone. My name is Mark Anthony Samuel Peters.

3839. And before I start, I want to thank everyone for being here today to hear what I have to present on behalf of my family and my Band.

3840. I've lived on Peters Road, Peters Reserve, my whole life. And given the opportunity to see the area personally and witness to the beauty of the seasonal changes, along with the wildlife outside our front door, you'd want to live there as well.

3841. I managed to obtain a career that allows me to stay close to home and family, because that is most important to me.

3842. Thinking of my home, what immediately comes to mind is peace and tranquility. I was born in Chilliwack and raised by my Mum and grandparents. I was always close to my grandparents and listened to what they had to teach. They always had my respect, not only for what they did for the family, but what they had to endure. I consider myself very lucky to have been able to grow up around such caring people.

3843. Peters Band was established in 1879, but my ancestors were there long before that, a time that predates memory, long before the explorers paddled down the river looking for the Pacific Ocean.

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3844. Stories passed down to my grandparents, then to my Mum, my aunts and uncles and then to me about William and Emma Peters, my great-grandparents, I shall pass onto my own children.
3845. I did not know my great-grandparents but according to many testimonies, William was a man small in stature but strong as an ox. He owned and worked the land before it was surveyed into a smaller area and made into a Reserve. He used to cut and chop wood to sell it to barges heading up river and down, for a measly \$1 a cord. He'd also make ends meet by milking his own cows and delivering the milk for a little over a \$1 a week.
3846. After his sons were of age he would take them, weather permitting of course, to a location to pan for gold with his homemade sifter, and he was very prosperous at it. And at the same time, they would spend part of the day hunting for wild game, as well as trapping game for food.
3847. After being away with boys and teaching them how to trap and hunt, he would go right back to work on the farm. And since transportation was limited, he would hop the train to Hope to sell the gold he panned and sifted for to buy clothes and a few treats for the kids for their hard work.
3848. He would also hire hands -- hire on hands from other Reserves for harvesting hay and trade their labour for clothes that he had bought with the gold and timber sales.
3849. He landed a job, which proved to be important, as he was one of the surveyors that helped map and build the Vedder Canal just west of Chilliwack.
3850. My great-grandmother, Emma, was said to be strong and very kind to everyone. She'd go out and hike every day to gather roots for her basket weaving.
3851. The time it would take to gather roots for these baskets was incredible. One basket, just twenty inches round and twenty-four inches deep, would take her a gather time of four months because of the material she needed for the dyes as well as the material -- sorry, as well as the material she needed for weaving.
3852. She knew that you couldn't take too much from one tree to preserve that tree, so it will reproduce the roots for the next harvest. She would say a

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- prayer and ask permission and thank the tree after the harvesting was done and competed.
3853.           She made clothes as well. Knitting and sewing were all a daily activity to clothe the children and her husband. At the same time this is going on, she also did the cooking and gardening. And if that wasn't enough, she would also gather berries, all the while raising 11 children.
3854.           Thinking of that today, I don't see how that there was any time to sleep.
3855.           Both were the hardest working people that I have ever heard about, and it fills me with great pride to be a descendant and I wish I could've been able to have the opportunity to talk to them face to face.
3856.           My grandfather, Clifford Peters, born on October 8<sup>th</sup>, 1934. When he turned five, he was removed from -- removed, along with his sisters and brothers, from the household and every one of them, except him, was put into residential schools where our culture and a way of life would be changed forever. Because of this one event we lost our language, our art and traditions, except for the essentials.
3857.           We attained our herb gathering and basket weaving traditional -- or knowledge, fishing and hunting is practised, and also knitting has been passed down.
3858.           The only traditional ceremony -- ceremonial event that reoccurs is when we are able to pay our respects to our dead by performing a burning. All our other original prayers and ceremony acts were lost due to the fear of losing the children again.
3859.           Being from such a small Reserve, you could see how this would be devastating.
3860.           My grandfather was too young to recall and teach me the old ways because of the age he was taken. But he was one of the lucky ones, I suppose. He was placed in public school instead of a residential school. So at least he was exempt from the inhumane things that were done to Native children at that time. He wasn't as dark as his siblings, and because of his fair complexion it allowed him to mix in.



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3861. I remember him as a strong but gentle man with a big heart. He cared for his children and tried to pass on what he could remember learning.
3862. After he spent three years away from his home, he was allowed to return to work with his father.
3863. Now fast forward nine years. And while my grandfather was sick in the hospital with tuberculosis, he again was away from home; this time in the hospital for two years.
3864. But after getting better he stayed on with the hospital and became the hospital's ambulance driver. This is where and when he met my grandmother, Nora Henry; it was just meant to be.
3865. She came home with him, got married and started their own life together in Peters Road and raised five children, including my mother.
3866. I remember a story about my grandfather -- about one time after work he came home to check the fishing net and my grandmother was out there watching him closely because he went out in the boat by himself, at high water because his brother wasn't around, which you should never do.
3867. Anyway, something happened and the boat ended up flipping over and he was swept downstream. Well, of course, my grandmother was screaming at the top of her lungs, so she ran back to the house. She managed to call and explain the situation to the officers on the phone. It took over an hour to Search and Rescue to get under way. By this time, they figured my Grandfather Clifford was drowned and they searched for his body. Not knowing what happened, all my grandmother could do was hold the kids and wonder what will become of her and the children.
3868. Little did everybody know, my grandfather was floating down the river, clinging to a half-filled fuel cell that managed -- that he managed to grab onto just as the boat flipped. He told me he tried a few times to get to shore, but as soon as he got close the current pushed him back down out the channel.
3869. After floating for almost an hour in the cold river, he finally managed to get to an island shore under the Agassiz Bridge. That's where they found him, shivering and suffering from a case of hypothermia and nothing more.

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3870. When my grandmother heard the news, she was relieved, and also because -- she was relieved, also angry because she told him not to go in the first place. Now, you think about that. All that for some fish.
3871. Well, I look at the story and come to two conclusions. First, my grandfather was crazy. And second, he loved his family and he just wanted to look after them the best way he knew how, by fishing, providing food for the family. I think that says something about him and all of us that want the same for our family as we fish for our food to this day.
3872. My grandfather and grandmother now are able to pass on what they have learned from our ancestors, fish in the Fraser River under the point of Peters Road Island to feed five children. Going hunting in the Coquihalla River area or the Jones Lake area for deer, goats and grouse and pheasant. Mushroom picking near the Skagit, and all the way up toward the Coquihalla Lakes. Gathering stinging nettles and salmon berries for food and harvesting devils club, cedar bough and roots from our mountainside near the pipeline for medicines and weaving.
3873. We also gather berries from around the Coquihalla River, as my great-grandparents have in the past, such as blueberries and huckleberries. We were taught how to farm and grow our own food to be self-sufficient, growing vegetables for the dinner table.
3874. I remember when I was younger in the garden and on the farm, feeding cattle before school and feeding the chickens and turkeys after school. We also picked fruit from the orchard, apples, pears and plums and all the blackberries you could pick, making jams and using everything on our territory. I don't have to feed the livestock any more. That's my younger cousin's job.
3875. I've attended other hearings for other Stó:lō Nations and I've heard their powerful testimonies and woven stories, songs and language. Peters is a small band, though, and as I described earlier, contact affected us in devastating ways. The limited amount of our stories, language and songs we have left we must guard fiercely. To us, a three-hour publicly available hearing at the National Energy Board is not the appropriate place to tell you these precious and fiercely guarded aspects of our culture, so I'll not be divulging those to you today.
3876. As a process, you have asked us to share them but go against our

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beliefs in how sharing these last few aspects of our traditional would be traditionally conducted. I think that we're identified by our land and how we treat it. And as you can tell just by looking at it, that we take care of it and have great pride in it because we know it takes care of us.

3877. Since the existing pipeline and highway have been expanded, the lives back then to now have drastically changed. I'm sure you know the existing Trans Mountain pipeline is situated directly beneath the Peters Reserve. The proposed new pipeline, which, of course, is double the size of the existing one, is also proposed to be directly beneath the preserve.

3878. Given the size of our little postage stamp of a reserve, 800,000 plus barrels of oil a day beneath it -- moving beneath it is no small prospect. The proposed pipeline is to be situated about two feet from one my family member's homes, a home that he plans on living in for the rest of his life.

3879. Since the building of the highway and all sorts of other development, a lot has changed. The pollution has increased. Noise pollution, obviously, has gone up. It's unbelievable how many people choose to pull off the freeway, turn down a road and dump garbage.

3880. Before the highway and pipeline, there was hardly any inclination that there was anybody there or anything down that turnoff. We were hidden away. But since the change, trespassers non-stop leaving garbage, breaking into houses, fishermen leaving garbage in their used fishing rigs on the beach where children play. There are also people stealing things out of the yard.

3881. The pipeline has made it easier for people to access the mountain road and steal trees illegally, such as the curly maple trees. They would just take the lower half of the tree and leave the rest to rot.

3882. As a result of all these advances and new construction, wildlife is not nearly as abundant. There used to be a lot more bears and deer around, but they have -- they all have been either poached off illegally or the freeway has killed them. Also, since the freeway expanded, the reserve has become a body dump for murders. If I'm not mistaken, there has been one body dump on our reserve and two around -- floating around the reserve in the past five years.

3883. It is also in this light that you must understand how important and fragile the few things we have left are, most importantly, the land and the water,

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the residential schools, the infrastructure, the creation of our small reserve out of the vast territory. The one thing still we have -- the one thing we still have is our deep connection to our land. We still fish. We still hunt and trap. We berry pick.

3884. Our little reserve is a mere postage stamp compared to our actual territory, but it is ours. We have to protect what we have left. Our land, our waters and creatures and plants that inhabit it is all our culture. That is what I'm here to tell you.
3885. Major concerns about the new bigger additional pipeline across our entire territory and beneath our reserve is that things would only get worse, that we'd lose more than we already have. We are worried that it would cause wildlife to be disrupted, for example, bears and deer, to search for other territory with fear of humans around and less development.
3886. It's possible our water could become polluted to make it undrinkable for us and wildlife. Fish is and always has been a staple of our culture. Fish runs are much lower these years and we can't even fish for sturgeon any more, which is one of the main diets over the winter. We can't risk depleting the resource any more because -- as there are so many people that depend on the food as a year round source.
3887. You see, while we only have a small amount of precious stories, songs and language left, the landscape that form our territory tell our stories and sing our songs for us. We must guard them, protect them and take care of them.
3888. As I said earlier, we have lost a lot already. We can't risk losing any more.
3889. Thank you for listening to our story.
3890. **MS. PEARS:** Perhaps I could just follow up with some closing remarks.
3891. As Mark discussed in his presentation to you today, Peters has chosen not to use your process to divulge the limited traditional knowledge Peters has left. As he said, their stories, songs and language are sacrosanct, and much of it has been lost due to the residential school system and other systems and developments.

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3892. Peters does not feel that a public, legalistic three-hour hearing is the appropriate forum to put these sacred and private stories on display.
3893. Finally, although Mark Peters described some of Peters' concerns over the impacts of the project, it must not be thought that today's presentation is exhaustive. Studies are still being conducted to fully assess the potential impacts, and today's testimony was really intended to provide a lens through which to receive the information that's to come.
3894. Thank you all for listening so attentively and I would like to again express our gratitude for your willingness to move our hearing to today.
3895. **THE CHAIRMAN:** Thank you, Mr. Peters, for your evidence this morning.
3896. You indicated you're prepared to answer any questions of clarification, so I'll ask Kinder Morgan/Trans Mountain if they have any questions of clarification of Peters Band.
3897. Thank you.
3898. **MS. OLENIUK:** Thank you for your presentation this morning.
3899. I don't have any questions, but there is just a quick clarification that I wanted to make, and I think I heard it in Ms. Pears' opening statement, and Mr. Peters as well.
3900. There's been a lot of filings made. So I just want to make sure that the record is clear. And the preferred route for the pipeline is not on Peters Reserve. There was a filing update on August 22<sup>nd</sup> called "Technical Update No. 2" where that's found.
3901. So I'll give Ms. Pears the filing ID after for ease of access. I just wanted to make sure that that was clear.
3902. **MS. PEARS:** Okay, thank you.
3903. **THE CHAIRMAN:** The Board don't have any questions for clarification and, with that, we'd like to acknowledge the Peters Bands for some of the stories and the traditional knowledge that you have shared with us today,

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and we will consider what we have heard as we decide whether or not to recommend approval of this project.

3904.                So with that, we will reconvene at 9:00 a.m. tomorrow morning and we will be hearing from the Katzie First Nation at 9:00 a.m. tomorrow morning.

3905.                We're adjourned. Thank you.

--- Upon adjourning at 9:32 a.m./L'audience est ajournée à 9h32