



**Administrative Monetary Penalty
Sanction administrative pécuniaire**

Notice of Violation / Procès-verbal

REFERENCE NUMBER / N° DE RÉFÉRENCE:

AMP-001-2022

Information for Pipeline Company/Third Party/Individuals

Information pour la société pipelinrière / une tierce partie / un particulier:

Name / Nom:	Trans Mountain Pipeline ULC	TOTAL PENALTY AMOUNT / MONTANT TOTAL DES PÉNALITÉS:
Contact / Contactez:	Ian Anderson	
Title / Titre:	President and Chief Executive Officer	\$ 88,000
Address / Adresse:	Suite 2700, 300 – 5 th Avenue SW	Date of Notice / Date du Procès :
City / Ville:	Calgary	February 24, 2022
Province / State / Etat:	Alberta	Regulatory Instrument # / N° de l'instrument réglementaire:
Telephone / Téléphone:	[REDACTED]	OC-065
Email / Courriel:	[REDACTED]@transmountain.com compliance@transmountain.com	

Trans Mountain Pipeline ULC

Was observed to be in violation of a CER regulatory requirement. This violation is subject to an administrative monetary penalty, as outlined below.

A commis une violation aux exigences réglementaire de la RCE, sujet à la sanction administrative pécuniaire ci-dessous.

Section 1 – Violation Details / Renseignements sur la violation

<input checked="" type="checkbox"/> Single-day violation / Violation d'un jour	Date of Violation / Date de la violation: May 27, 2021
<input type="checkbox"/> Multi-day Violation/ Violation multi-journée:	(from / du): [Date] (to / au): [Date]
Total Number of Days / Nombre total de jours: [#]	Has compliance been achieved? La situation est-elle rétablie? <input checked="" type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non
	If no, a subsequent NOV may be issued. Si non, un autre Procès verbal de violation pourrait être envoyé
Location of Violation / Lieu de la violation:	Trans Mountain Expansion Project: Spread 7B, Construction Work Package 95
Short Form Description of Violation / Description abrégée de la violation	
Failure to establish, develop, implement, maintain and document processes as prescribed	
Act or Regulation/Section:	
Canadian Energy Regulator Onshore Pipeline Regulations 6.5(1)(k) and 6.5(1)(q)	

- Contravention of an Order or decision made under the Act (ss. 2(2) of the AMP Regulations) / Dérogation à une ordonnance ou à une décision rendue sous le régime de la Loi (paragraphe 2(2) de Règlement sur les sanctions administratives pécuniaires)
- Failure to comply with a term or condition of any certificate, licence, permit, leave or exemption granted under the Act (ss. 2(3) of the AMP Regulations) / Manquement à une condition d'un certificat, d'une licence, d'un permis, d'une autorisation ou d'une exemption accordé sous le régime de la Loi (paragraphe 2(3) du Règlement sur les sanctions administratives pécuniaires)

Not applicable

Section 2 – Relevant Facts / Faits saillants

Briefly describe reasonable grounds to believe a violation has occurred / Décrire brièvement les motifs raisonnables de croire qu'une violation a été commise.

Executive Summary:

Trans Mountain Pipeline ULC is regulated by the Canada Energy Regulator (CER) under a Certificate of Public Convenience and Necessity OC-065 (OC-065) to construct and operate the Trans Mountain Expansion Project (TMEP) between Edmonton, Alberta, and Burnaby, British Columbia.

As set out under OC-065, Trans Mountain Pipeline ULC must comply with all conditions, unless the CER otherwise directs; and must implement all the commitments it made in its Project application and committed to on the project proceeding record, including implementing, at a minimum, all the policies, programs, mitigation measures, recommendations, and procedures for the protection of the environment. Trans Mountain must also comply with the *Canadian Energy Regulator Onshore Pipeline Regulations* (OPR) and establish, implement and maintain a management system to ensure the safety and security of people and pipelines, as well as the protection of the environment.

There were multiple environmental incidents, including near misses, during the 2021 migratory bird nesting window on different Spreads of the TMEP. These incidents demonstrate that the management system in place which establishes the process to conduct clearing activities during the migratory bird nesting window, and the mitigation measures described in the Trans Mountain Environmental Field Guide - Nesting Bird Risk Assessment (EFG) failed to protect the environment. While these observations represent multiple individual non-compliances of various requirements in the OPR, this Notice of Violation is being issued due to the non-compliances demonstrated to management system processes required pursuant to sections 6.5(1)(k) and 6.5(1)(q) of the OPR.

Between April 12 and May 27, 2021, Trans Mountain Pipeline ULC had two incidents causing harm to the environment and two near miss incidents. These incidents included: the destruction of an Anna's Hummingbird's nest and eggs; the destruction of an American Robin's nest and eggs; the removal and then replacement of an American Robin's nest that was being constructed; and the completion of clearing activities without following Trans Mountain Pipeline ULC's environment requirements and mitigations.

Relevant Facts:

As the sole holder of OC-065, Trans Mountain Pipeline ULC (Trans Mountain) is responsible for the supervision of all project personnel, and the coordination and control of all operational activities for the TMEP. In addition to the obligations set out under the *Canadian Energy Regulator Act* and related certificate conditions imposed on the TMEP, Trans Mountain must comply with the *Canadian Energy Regulator Onshore Pipeline Regulations* (SOR/99-294) (OPR).

Canadian Energy Regulator Onshore Pipeline Regulations

The relevant subsections of OPR section 6.5(1) for the purposes of this Notice of Violation, state the following:

A company shall, as part of its management system and the programs referred to in section 55,

- (k) establish and implement a process for verifying that employees and other persons working with or on behalf of the company are trained and competent and for supervising them to ensure that they perform their duties in a manner that is safe, ensures the safety and security of the pipeline and protects the environment;

and

- (q) establish and implement a process for coordinating and controlling the operational activities of employees and other people working with or on behalf of the company so that each person is aware of the activities of others and has the information that will enable them to perform their duties in a manner that is safe, ensures the safety and security of the pipeline and protects the environment.

ECCC Inspection Trans Mountain Spread 7: Officer identifies disruptive activities should be halted during migratory bird nesting window

On March 23, 2021, the Trans Mountain site identified as Construction Work Package 98 (CWP-98) at Spread 7, was inspected by an Environment and Climate Change Canada (ECCC) Wildlife Officer and Canadian Wildlife Service (CWS) Biologist. During this inspection, three hummingbird nests were observed by the Wildlife Officer. The CWS Biologist noted disruptive activities such as: cutting vegetation and trees, bulldozing, using chainsaws, using heavy machinery during the nesting window, including searching for active nests, would likely result in disturbance or destruction of the identified nests and potentially nests of other migratory birds species. The CWS biologist also stated during the inspection that all disruptive activities should be halted during the migratory bird nesting window until the young have naturally left the vicinity of the nest. The ECCC Wildlife Officer relayed these findings to the Chief Environment Inspector, Trans Mountain, the next day, March 24, 2021.

April 12, 2021: Anna's Hummingbird Nest & Eggs Destroyed, Trans Mountain Spread 7

A public complaint was received by the CER and ECCC on April 9, 2021. On April 12, 2021, ECCC Wildlife Officer conducted an unannounced site inspection on Trans Mountain Spread 7 in Burnaby, BC. The ECCC Wildlife Officer issued a verbal Compliance Order for a contravention of the *Migratory Birds Regulations* stopping work at the site. The order was specific to Construction Work Package 98 (CWP-98) Spread 7. During clearing activities supervised by Trans Mountain, a tree containing an Anna's Hummingbird nest was felled. This resulted in the disturbance of a migratory bird species and destruction of its nest and an egg. The ECCC officer confirmed with the tree feller that he had cut down the tree containing the nest. A written Compliance Order was subsequently issued by ECCC to Trans Mountain on April 16, 2021. The Anna's Hummingbird is identified as a protected migratory bird under the *Migratory Birds Convention Act, 1994* (S.C.1994, c.22) (MBCA).

As part of a CER Compliance Verification Activity (CV2122-125), Trans Mountain provided the CER with a Final Environmental Event Report relating to the April 12th incident resulting in the destruction of the Anna's Hummingbird nest and egg. The Trans Mountain report stated the destroyed Anna's Hummingbird nest was not within any active migratory bird nest buffers identified by a Trans Mountain Resource Specialist (Trans Mountain RS). The report also stated the tree feller in the area was fully aware of all active buffer areas in place at the time of the incident. Photos included with the Trans Mountain report show a nest attached to a felled tree and a broken egg.

May 8, 2021: American Robin Nest & Eggs Destroyed Spread 5B

Less than 4 weeks later, after the Anna's Hummingbird nest and egg destruction incident, on May 8, 2021 an American Robin's nest and eggs were destroyed by a Trans Mountain clearing contractor on Spread 5B near Agassiz, BC. The American Robin is also identified as a protected migratory bird under the MBCA. The nest had been identified, flagged, staked, and roped with a 30m buffer by Trans Mountain RS on May 7, 2021. On May 8, 2021, some of the buffer flagging and staking was placed on the ground by a Trans Mountain contractor (to

move an excavator through the established buffer) and the buffer flagging was not re-established per Trans Mountain requirements, which caused confusion for the Trans Mountain clearing crew. The Trans Mountain contractors cleared alder shrubs within the established, but now unmarked buffer, and an American Robin's nest was destroyed.

Trans Mountain Environmental Field Guide - Nesting Bird Risk Assessment (EFG)

The EFG identifies the roles and responsibilities of Trans Mountain, the Contractor, sub-contractors, and the Resource Specialist (i.e., Professional Biologist and personnel working under their supervision) in assessing the risk of disturbing nesting birds and in developing mitigation measures to avoid the inadvertent harm, destruction or disturbance of nesting birds, their nests, or eggs. The EFG was addressed to all construction contractors working on the TMEP. The EFG identifies an EI as a Trans Mountain Environmental Inspector (Trans Mountain EI). One of the roles of Trans Mountain contractors is to observe and maintain flagging installed by Trans Mountain or the Trans Mountain RS. The EFG states consultation between the Trans Mountain EI and Trans Mountain RS is required prior to authorization of any works within an active nest buffer. Appropriate mitigation measures such as permitting buffer reductions or some works within the buffers may be feasible, after expert consultation and per the list of criteria in the EFG. During the events leading to the destruction of the American Robin's nest, the required consultation between the Trans Mountain EI and Trans Mountain RS did not occur, prior to the movement of equipment through the established buffer.

May 13, 2021: Near Miss Burnaby Terminal

On May 14, 2021, as part of CV2122-125, Trans Mountain provided a table identifying all active nests that had been damaged, destroyed or altered. The table identified that on May 13, 2021 an American Robin's nest, that was being built, was removed from the boot room by a Trans Mountain worker. The nest material was replaced after consultation with the Trans Mountain RS, the area was then buffered, and the robin returned and continued nesting. These actions by Trans Mountain were contrary to the Nest Discovery protocol in the EFG. The EFG states that if an active nest is discovered or suspected, all work in the vicinity of the nest is to be immediately suspended and a buffer distance will be determined by a Trans Mountain RS. An active nest would then be staked and flagged.

May 18, 2021: Project-Wide Environmental Stand-down

On May 18, 2021, a project-wide environmental stand-down was held by Trans Mountain's Chief Operating Officer, TMEP Executive Vice President, and Director of Environment with Trans Mountain and contractor management. This included a review of two recent environmental Incidents (April 12 & May 8). The messages conveyed included: it is everyone's responsibility to comply with environmental protection requirements, managing risks of working within the migratory bird nesting window, and the mitigations strictly required for working during migratory bird nest period.

May 27, 2021: Unauthorized Clearing Near Miss Incident Spread 7B

On June 2, 2021, Trans Mountain advised the CER that on May 27, 2021 a section of trees and shrubs had been cleared by a contractor without Trans Mountain's authorization in Construction Work Package 95 (CWP-95) on Spread 7. A Trans Mountain clearing sub-contractor had completed clearing activities without adherence to TMEP's environmental requirements; including the mitigations to protect nesting migratory birds. Trans Mountain learned about this unauthorized clearing activity the next day, on May 28, 2021.

- (i) The events leading up to the Unauthorized Clearing Near Miss Incident Spread 7B

On May 20, 2021, following the May 18, 2021 Environmental Stand-down, Trans Mountain provided new direction to the contractor for Spread 7B regarding mandatory mitigation measures for clearing activity during the migratory bird nesting window, including the completion of daily nest sweeps and non-intrusive monitoring of clearing activity during the migratory bird window by a Trans Mountain RS. These measures were specific only

to Spread 7B and were not required project wide. These new requirements were not communicated to the Trans Mountain clearing subcontractor. On May 21, 2021 the contractor issued a 4-week look ahead schedule to Trans Mountain indicating clearing was planned at CWP-95 for the week of May 27, 2021.

On May 25, 2021, the Trans Mountain RS updated the migratory bird nest maps and tracker for all of Spread 7. The most recent nest survey for CWP-95 was completed on May 20, 2021, and there were no active nest buffers. The nest survey expired end of day May 26, 2021; however, the tracker indicated a survey expiry date of May 27, 2021. Under the enhanced requirements issued on May 20, 2021 a nest sweep should have been conducted the morning of May 27, 2021, prior to the commencement of clearing. The daily work plan issued May 26, 2021, by the Trans Mountain contractor for May 27, 2021, did not identify any planned clearing on CWP-95.

However, on May 27, 2021, the clearing subcontractor was issued a “safe work agreement” by Trans Mountain that included tree falling/clearing as one of the planned activities for the day on CWP-95. Trans Mountain indicated a safe work agreement was not intended to authorize scope of work and did not meet the new requirement to document a pre-construction walk through as required per the May 9, 2021 Project wide environmental bulletin.

(i) Unauthorized Clearing Near Miss

At about 4pm on May 28, 2021, Trans Mountain personnel discovered clearing had occurred on CWP-95 which did not meet the new Trans Mountain mandatory mitigation requirements for clearing activities during the migratory bird nesting window. A Trans Mountain RS was sent to the site to complete an assessment and bird survey. The Trans Mountain RS identified one active nest in a standing tree. No damaged or destroyed nests were identified in cleared vegetation by the Trans Mountain RS.

Environmental Migratory Bird Nesting Buffers

Trans Mountain’s messages to its contractors about environmental controls were inconsistent and demonstrate inadequate control and coordination of operational activities. In the Trans Mountain EFG, environmental flagging is described as: 1/4-inch yellow rope with “Green Environment” feature ribbon attached to the rope at regular intervals to create a continuous barrier. The EFG was prepared in March 2021 and approved by Trans Mountain on April 1, 2021. However, an environmental bulletin for all parties on the TMEP, dated April 15, 2021, described migratory bird nest buffer markings with black and orange striped tape and an example photo was provided in the bulletin. Trans Mountain also provided photos of nest buffers on Spread 7, taken on May 6, 2021, marked with red tape with black writing. Photos provided of the buffer around the American Robin’s nest destroyed on Spread 5B, dated May 8, 2021, show it was marked with yellow rope with yellow flags or stakes, and orange and black striped tape or stakes.

On June 3, 2021, a CER Inspection Officer issued Order No. DLB-001-2021 (Order). The Order required that all clearing activities stop across the entire TMEP. The Order identified specified measures that were required to be undertaken by Trans Mountain.

June 18, 2021: Meeting with Trans Mountain and Order lifted

On June 18, 2021, CER Inspection Officers held a meeting with Trans Mountain, and Inspection Officer Notice was issued lifting the Order. A number of documents were provided by Trans Mountain in order to satisfy the Order and restart clearing activities; one of these documents was the Trans Mountain Expansion Project Environment Stand Down: Migratory Birds May 2021 (ESD) power point presentation. The slides stated that: the TMEP cannot risk a shutdown; TMEP must follow legislative and Project requirements; and the EFG would be updated to clarify the only personnel authorized to remove or alter a nesting migratory bird buffer is a RS, TMEP EI or Contractor Env. Coordinator.

The presentation also stated that there would be project wide communication to all staff and contractors reiterating that legislation such as the MBCA applies to all activities, not just activities deemed "construction" by CER. The CER Inspection Officer noted that the documentation submitted after the order, on June 18, 2021 showed that the updates to the EFG, committed to in the May 18, 2021 ESD, had yet to be completed. These updates were ultimately completed and submitted to the CER Inspection Officer on June 22, 2021.

These facts identify four separate incidents: April 12, May 8, May 13, and May 27, 2021. These four incidents demonstrate Trans Mountain continued to undertake clearing activities without adequate supervision of personnel, or adequate control and coordination of operational activities which resulted in real and potential harm to the environment.

Conclusion:

Trans Mountain Pipeline ULC is required under the OPR to have a management system that establishes and implements process for supervising all project personnel and coordinating and controlling the work and operational activities of all contractors working on its behalf, such that they can perform their duties in a manner that protects the environment.

The incidents described above demonstrate that Trans Mountain Pipeline ULC's supervision of project personnel was not adequate to ensure they performed their duties in a manner that protected the environment and has failed to meet the obligations under section 6.5(1)(k) of the OPR. My reasonable grounds for belief can be summarized as follows:

- a. On May 8, 2021, at Trans Mountain Spread 5B, buffer flagging was placed on the ground by a Trans Mountain contractor and not re-established pursuant to Trans Mountain procedures. This resulted in unauthorized clearing by a Trans Mountain contractor inside an established nest buffer and the destruction of an American Robin nest and eggs. During the events leading to the destruction of the American Robin's nest, consultation between the Trans Mountain EI and Trans Mountain RS did not occur as required pursuant to the EFG.
- b. On May 13, 2021, at the Burnaby Terminal, the nesting material of an American Robin was moved by a Trans Mountain contractor without consulting a Trans Mountain RS contrary to the Nest Discovery protocol in the EFG.
- c. On May 27, 2021 an environmental near miss incident occurred on Trans Mountain Spread 7B, CWP-95, when clearing activities were commenced by a subcontractor at the site without a valid migratory bird nest sweep or a preconstruction walk through as required pursuant to new requirements issued on May 20, 2021 and May 9, 2021.

The incident of May 27, 2021, in conjunction with the two prior incidents described, demonstrate that Trans Mountain Pipeline ULC failed to adequately supervise its contractors activities, to ensure they performed their duties pursuant to Trans Mountain policies and procedures and in a manner that protects the environment. This failure resulted in both real and potential harm to the environment.

In addition, the incidents described above demonstrate that Trans Mountain Pipeline ULC did not have adequate oversight for coordinating and controlling the operational activities of people working with or on behalf of the company so that each person is aware of the activities of others and has the information that would enable them to perform their duties in a manner that protects the environment, and has failed to meet its obligations under section 6.5(1)(q) of the OPR. My reasonable grounds for belief can be summarized as follows:

- a. Trans Mountain was advised on March 23, 2021 by ECCC and CWS Biologist that the clearing activities being undertaken had the potential to harm the environment, specifically nesting migratory birds. Then on April 12, 2021, just 20 days later, an Anna's Hummingbird nest was destroyed by Trans Mountain contractors. This was followed by the destruction of a second migratory bird nest and eggs, and two

near miss incidents, over the course of 45 days, between April 13, 2021 and May 27, 2021 and resulted in harm to the environment. These incidents demonstrate that the Trans Mountain Environmental Field Guide - Nesting Bird Risk Assessment was either (i) not adequate to provide personnel with the information they needed to perform their duties to protect the environment or (ii) was not adequately implemented by Trans Mountain.

- b. A lack of contractor awareness of others' activities was demonstrated on May 8, 2021: On this date, on Trans Mountain Spread 5B, buffer flagging was placed on the ground by a Trans Mountain contractor and not re-established again by that contractor pursuant to Trans Mountain requirements (to flag the location of the buffer for the clearing contractor). This resulted in the unauthorized clearing by another Trans Mountain contractor inside an established nest buffer and the destruction of an American Robin nest and eggs and harm to the environment. In addition, consultation between the Trans Mountain EI and Trans Mountain RS did not occur as required pursuant to the EFG.
- c. On May 27, 2021, a lack of adequate oversight for coordinating and controlling the operational activities of personnel is exemplified by the environmental near miss which occurred on Trans Mountain Spread 7B, CWP-95; when clearing activities were commenced by a subcontractor after Trans Mountain provided a safe work agreement to the contractor. The safe work agreement *included tree falling/clearing* as one of the planned activities for the day on (CWP-95). Trans Mountain indicated the safe work agreement was not intended to authorize a scope of work. However, the contractor performed the work, and did so without the required mitigations in place, including a daily nest sweep and non-intrusive monitoring of the clearing by a Trans Mountain RS.
- d. Trans Mountain demonstrated a lack of adequate oversight for coordinating and controlling the operational activities of personnel by the decision to implement the additional mandatory mitigation measures, including the completion of daily nest sweeps and non-intrusive monitoring of clearing activity during the migratory bird window by a Trans Mountain RS on Spread 7B only, when clearing activities were occurring *across the project* during the migratory bird nest window.
- e. Trans Mountain's messages to its contractors about environmental controls were inconsistent and demonstrate inadequate control and coordination of operational activities. The Trans Mountain EFG provided specific descriptions of environmental flagging. However, photos provided to the CER depict three different types of buffer flagging; none of which match what was described in the EFG. The EFG provides direction to Trans Mountain contractors to understand their duties and responsibilities related to nesting migratory birds. The inconsistent description and application of environmental controls across the TMEP demonstrates that Trans Mountain failed to provide adequate oversight of operational activities and provide the information that would enable personnel to perform their duties in a manner that protects the environment.
- f. Trans Mountain committed to updating the Environmental Field Guide - Nesting Bird Risk Assessment (EFG) during the company-wide Environment Stand Down: Migratory Birds held on May 18, 2021 and this update was not completed until June 22, 2021. This update took 5 weeks and was only completed after prompting by the CER. The EFG is a document used to disseminate information for the purposes of coordinating and controlling and defining the roles of key personnel related to assessing the risk of disturbing nesting migratory birds and the implementation of related mitigation measures. Consequently, a 5-week delay in updating the EFG in the middle of the migratory bird nest window, which occurs at the same time every year, is not reasonable. An imminent hazard to the environment had been identified but was not addressed in an imminent manner. Trans Mountain failed to provide the information to

personnel in sufficient time to enable personnel to perform their duties in a manner that protects the environment.

The incident of May 27, 2021, in conjunction with the three prior incidents described, demonstrate that Trans Mountain Pipeline ULC did not have adequate oversight of the process for coordinating and controlling the operational activities of people working for or on behalf of the company to ensure the protection of the environment.

Based on the above, I believe that Trans Mountain Pipeline ULC did violate sections 6.5 (1)(k) and 6.5(1)(q) of the OPR and hereby issue this Notice of Violation.

Section 3 – Penalty Calculation / Calcul des sanctions

A) Baseline Penalty (Gravity Level = 0) / Sanction de base (cote de gravité = 0) <i>Refer to AMP Regulations, Subsection 4(1) / Voir le Règlement, paragraphe 4(1)</i>									
Category / Catégorie	Individual / Personne physique			Any Other Person / Autre Personne					
Type A	<input type="checkbox"/> \$1,365			<input type="checkbox"/> \$5,025					
Type B	<input type="checkbox"/> \$10,000			<input checked="" type="checkbox"/> \$40,000					
B) Applicable Gravity Value / Cote de gravité globale applicables <i>(Refer to AMP Regulations, Subsection 4(2) / Voir le Règlement, paragraphe 4(2))</i>				Gravity Level					
				Mitigating / Attenuer		Aggravating / Aggravantes			
				-2	-1	0	+1	+2	+3
<input type="checkbox"/> Other violations in previous seven (7) years / Autres violations commises au cours des sept (7) dernières années Not applicable				--	--	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
<input checked="" type="checkbox"/> Any competitive or economic benefit from violation / Avantages concurrentiels ou économiques découlant de la violation				--	--	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	--
<p>There are economic benefits realized by Trans Mountain resulting from the violation(s) in minimizing or attempting to avoid costly delays to the Trans Mountain Expansion Project (TMEP). Trans Mountain made submissions to the Environmental Protection Tribunal of Canada (EPTC) when seeking a review of the Compliance Order issued by ECCC to stop work until August 20, 2021, that quantified the cost to the company of delays on the TMEP, at the time related to the April 12, 2021 incident.</p> <p>Trans Mountain made a submission to the EPTC regarding the cost of delays: “..., the Compliance Order has already resulted in real costs to TM associated with standing down its workforce and rescheduling activities. These costs are in the hundreds of thousands to potentially in excess of a million dollars.”</p> <p>Trans Mountain’s submissions to the EPTC also explained that the clearing activities related to that incident were initially planned for outside the migratory bird nesting window, but due to multiple other factors the tree clearing activities were undertaken within the sensitive migratory bird nesting window. As stated in an affidavit filed to the EPTC: “For the watercourse crossings on the Site, 2.5 hectares of trees in a densely forested area must first be cleared. This tree clearing was originally scheduled to be performed outside of the migratory bird nesting window ;however, tree clearing was delayed as a result of several factors ,including:(a) a protracted dispute launched by the City of Burnaby over the need for permits under the City of Burnaby Tree Bylaw;(b) protestors constructing tree sits and occupying the area for extended periods has delayed construction due to past incidents of trespass, vandalism, harassment, interference with buffers and other destructive activities;(c)a voluntary Project-wide safety standdown from December</p>									

2020 to February 2021;(d)the need to plan around several other wildlife restricted activity periods including in-stream work windows; and (e)other necessary construction schedule adjustments given the complexity of the Project.”

Trans Mountain’s submissions to the EPTC also detail what a month’s delay to the Project In-service Date costs, in terms of lost earnings to TM: “The direct financial harm to TM and third parties from potential delays to the Project construction schedule associated with the Compliance Order is enormous. To TM alone, each month of delay to the Project In-Service Date results in lost earnings of approximately 100 million dollars and millions of dollars in excess capital costs.”

<input checked="" type="checkbox"/> Reasonable efforts to mitigate/reverse violation’s effect/reverse violation’s effect / Efforts raisonnables déployés pour atténuer ou annuler les effets de la violation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	--
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Some efforts were made to mitigate further destruction or harm. However, with respect to these types of incidents, destroyed nests cannot be mitigated or reversed. A project-wide meeting was held with Trans Mountain and contractor management, after the destruction of 2 nests, to stress the importance of nesting bird mitigations. After this meeting, new mandatory mitigation measures for clearing activity during the migratory bird nesting window were introduced. These measures were specific to Spread 7B and were not implemented project wide.

Trans Mountain’s messaging to personnel with respect to buffers across the TMEP was not (i) accurate and was not (ii) consistent with photos of buffers in the field (provided to the CER) which impeded Trans Mountain’s ability to provide field personnel with the information required in order perform their duties in a manner that protects the environment. Trans Mountain could have demonstrated reasonable efforts to mitigate further harm to the environment by promptly updating the EFG. However, the company took 5 weeks to update the EFG, in the middle of the migratory bird nest window. Further, the company did not complete updates to the EFG until prompted to do so by the CER Inspection Officer.

<input checked="" type="checkbox"/> Negligence on part of person who committed violation / Négligence de la part de la personne ayant commis la violation	--	--	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	--
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Trans Mountain has not demonstrated adequate due diligence in the supervision, control and coordination of its contractors during the clearing activities, to enable them to perform their duties in a manner that protects the environment. This failure resulted in both real and potential harm to the environment: On March 23, 2021, Trans Mountain was advised by ECCC/CWS that the clearing activities being undertaken were high-risk and should be halted to avoid harm to nesting migratory birds. A nest was destroyed on April 12, 2021, and on May 8, 2021 and there were 2 near misses after May 8th. The high-risk clearing activity continued until an Order was issued on June 3, 2021.

In addition, when an imminent hazard to the environment was identified Trans Mountain did not reasonably address the imminent risk; as the company took 5 weeks to update the EFG, in the middle of the migratory bird nest window.

Trans Mountain’s messaging to personnel with respect to buffers across the TMEP was also not (i) accurate and was not (ii) consistent with photos of buffers in the field (provided to the CER) which impeded Trans Mountain’s ability to convey to field personnel the information required in order perform their duties in a manner that protects the environment. All of these actions contributed to the serious near miss incident on May 27, 2021.

<input checked="" type="checkbox"/> Reasonable assistance to the Board with respect to violation / Collaboration raisonnable avec l’Office en ce qui a trait à la violation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
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Trans Mountain provided reasonable assistance. Trans Mountain Pipeline ULC met with CER Inspectors as requested, answered IR questions and came into compliance after the Order was issued.

<input type="checkbox"/> After becoming aware of the violation, promptly reported violation to the Board / La rapidité avec laquelle, après avoir pris connaissance de la violation commise, la violation a été signalée à l'Office	<table border="1"> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>--</td> </tr> </table>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--		
Not applicable							
<input checked="" type="checkbox"/> Steps taken to prevent reoccurrence of violation / Mesures prises pour prévenir les récidive	<table border="1"> <tr> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>--</td> </tr> </table>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--		
<p>The CER recognizes that Trans Mountain issued communications, held a meeting to review procedures in place and some new mitigations were added on specific spreads of the TMEP, but not on all spreads project wide. Some steps were taken, however, the EFG which applied to the TMEP, was not updated until late June 2021, after prompting by the CER.</p>							
<input type="checkbox"/> For Type B violations, whether the violation was primarily reporting/record-keeping failure / Dans le cas d'une violation de type B, la violation est reliée principalement à la production de rapports ou à la tenue des dossiers	<table border="1"> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td>--</td> <td>--</td> </tr> </table>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	--	--
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	--	--		
Not applicable							
<input checked="" type="checkbox"/> Any other aggravating factors in relation to risk of harm to people or environment / Autres facteurs aggravants pouvant causer du tort sur les personnes ou à l'environnement	<table border="1"> <tr> <td>--</td> <td>--</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>	--	--	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
--	--	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
<p>Clearing activities have a high probability to negatively impact nesting migratory birds. On March 23, 2021, a CWS Biologist advised that clearing activities would likely result in disturbance or destruction of nesting migratory birds. Clearing activities continued across the TMEP, with no project wide changes; until a CER Order halted clearing activities. It then took 5 weeks for Trans Mountain to make updates to the EFG during the migratory bird nesting window, and only after prompting by the CER Inspection Officer.</p>							
<p>C) Total Gravity Value / Cote de gravité globale +4 <i>(adjustments made for gravity values in B) based on mitigating or aggravating factors applied / rajustements apportés aux cotes de gravité en B) en fonction des facteurs atténuants ou aggravants appliqués)</i></p>							
<p>D) Daily Penalty / Sanctions quotidiennes \$ 88,000 <i>(baseline penalty adjusted for the final gravity level / sanction de base d'après la cote de gravité)</i></p>							
<p>E) Number of Days of Violation / Durée de la violation (If more than one day, justification must be provided / si plus d'une journée, prière de justifier) Not applicable</p> <p>Notes to explain decision to apply multiple daily penalties, or "Not applicable" / Notes pour expliquer la décision d'appliquer des sanctions multiples quotidiennes, ou «sans objet».</p> <p>Not applicable</p>							

Section 4 – Total Penalty Amount / Montant total de la sanction

Note: The total penalty amount shown is based on the period described in section one above. If compliance has not been achieved, a subsequent Notice of Violation may be issued.
Le montant total de la sanction est calculé d'après la période décrite dans la première section. Si la situation n'a pas été rétablie, un autre Procès-verbal pourrait être envoyé.

Total Penalty Amount / Montant total de la sanction **\$ 88,000**

Section 5 – Due Date / Date limite

(30 days from receipt of Notice of Violation / 30 jours à compter de la réception du Procès-verbal)

Due Date / Date limite March 26, 2022

Keith Landra
[REDACTED]

Designated Officer pursuant to ss. 116(2) of the CER Act
Administrative Monetary Penalties

Fonctionnaire désigné sous l'alinéa 116(2) de la LRCE
Sanctions administratives pécuniaires

Notes

You have the right to make a request for a review of the amount of the penalty or the facts of the violation, or both, within 30 days after the Notice of Violation was received.

If you do not pay the penalty nor request a review within the prescribed period you are considered to have committed the violation and you are liable for the penalty set out in the Notice of Violation. The penalty is due on the date indicated above.

The unpaid penalty amount is a debt due to the Crown and may be recovered by collection procedures stipulated in the Financial Administration Act.

The information regarding the violation may be posted on the CER website:

- a) 30 days from the date this Notice of Violation was received; or
- b) upon issuing a decision following a Request for Review.

To Make Payment:

You may remit your fee payment by Electronic Funds Transfer (EFT) or by cheque payable to the order of Receiver General for Canada.

EFT payments can be arranged by contacting the Director of Financial Services, Monday to Friday, from 09:00 to 16:00 Mountain Time:

Telephone: 403-919-4743 / 800 899-1265

Fax: 403-292-5503 / 877-288-8803

Cheques should be made out to the Receiver General for Canada and mailed to:

Canada Energy Regulator
Attention: Finance
210-517 10 Ave SW
Calgary AB T2R 0A8

Your completed *Payment* form shall be enclosed with your payment.

Notes

Vous disposez de 30 jours après la signification du Procès-verbal pour demander une révision du montant de la sanction, ou les faits rapportés, ou les deux.

Si les sanctions ne sont pas acquittées et qu'aucune révision n'est demandée, vous êtes considérés comme coupable de la violation et vous devez payer les sanctions précisées dans le Procès-verbal. Les sanctions sont payables à la date indiquée ci-dessus.

Un défaut de paiement constitue une créance envers l'État et peut être recouvré en utilisant tous les recours prévus dans la Loi sur la gestion des finances publiques.

L'information concernant la violation pourrait également être affichée sur le site Web de la RCE:

- a) 30 jours après la date de réception du Procès-verbal, ou
- b) dès qu'une décision a été rendue à la suite d'une Demande de révision.

Paiement:

Vous pouvez payer le montant dû par transfert électronique de fonds (TEF) ou par chèque établi à l'ordre du Receveur général du Canada.

Pour se prévaloir du service de transfert électronique, communiquer par téléphone avec le Directeur, Service des finances, du lundi au vendredi, de 9 h à 16 h, heure des Rocheuses :

Téléphone: 403-919-4743 / 800-899-1265

Télec. : 403-292-5503 / 877-288-8803

Les chèques doivent être établis à l'ordre du Receveur général du Canada et postés à l'adresse suivante:

Régie de l'énergie du Canada
Attention: Finance
210-517 10 Av SO
Calgary AB T2R 0A8

Le formulaire de *paiement* dûment rempli doit accompagner le paiement.