# Enbridge Northern Gateway Pipelines: A Dead-End Investment

## Introduction

Enbridge has been in the controversial spotlight over the last couple of years. As the proponent of the Northern Gateway pipeline project to transport tar sands to a port in Kitimat, British Columbia, where it would be loaded onto oil tankers to access Asian markets, the company has faced fierce opposition. Controversy increased when federal Minister Joe Oliver called those against Enbridge's proposal "radicals" the day before the federal Joint Review Panel hearings began on January 10th, 2012<sup>1</sup>. The open letter helped nationalize the issue and create awareness of the controversial proposal across the country.

When the US National Transportation Safety Board released its report on how Enbridge mishandled their Kalamazoo spill in July 2012, opposition to the proposed project only increased in British Columbia. The provincial NDP officially opposes the project and the BC Liberals have laid out five conditions for support, including revenue sharing and better safety standards. An election will occur in BC in May 2013, approximately six months prior to when the Joint Review Panel releases its recommendations.

Given that Northern Gateway would introduce 225 to over 400 oil tankers a year to BC's northern inside coastal waters for export, Coastal First Nations declared a tanker ban in 2010. The proposed route is known for its storms, high waves and rocky shores. Currently no oil tankers ply these waters.

Over 100 First Nations have signed the "Save the Fraser Declaration" that bans tar sands from being transported over the Fraser River watershed. Northern Gateway's project would cross nearly 800 rivers and streams, including the salmon-bearing watersheds of the Fraser and Skeena.

Opposition to Northern Gateway includes Municipalities, churches, teachers, First Nations, fishers and Conservative voters. The largest financial institution based in British Columbia, VanCity Credit Union, divested its shares in Enbridge given that it no longer meets its Corporate Social Responsibility criteria.

Northern Gateway is a high-risk project that is unlikely to ever proceed, given the political risks and opposition associated with the project. A legal case against the company from at least one First Nation is guaranteed.

Energy stock experts at CIBC World Markets said Northern Gateway faces "ever-increasing political risk" and has no better than a 50/50 chance of being built before the end of the decade.

"I personally don't think Northern Gateway will go through anytime soon or if it ever will. There's just too much politics in the soup and there are too many environmental concerns in the soup and there's aboriginal rights in the soup and that makes for a pretty unsavory soup"<sup>34.</sup>

- Roger McKnight, senior petroleum adviser at Oshawabased En-Pro International Inc. This briefing is an update to our 2010 "Enbridge Northern Gateway Pipelines: Community Opposition and Investment Risk"<sup>2</sup>. It will highlight some of the increased opposition, plus political and reputational risks associated with the Northern Gateway proposal. Investors should be questioning the business case for Enbridge continuing to pursue this dead-end development.



## **First Nations Legal Risk**

British Columbia is unique in Canada in that the majority of First Nations have constitutionally-protected Aboriginal Title to their territories, which includes the right to make decisions as to how their lands and waters are used, in addition to other Aboriginal rights<sup>3.</sup>

Several First Nations, including the Haisla, Gitga'at, Gitxaala, Wet'suwet'en<sup>4</sup>, Nadleh Whut'en, Nak'azdli and Takla Lake, have publically stated (via the Joint Review Panel or in the media) that neither the Crown nor the established assessment process for Enbridge's project have adequately met their duty to consult and accommodate, or to respected their Aboriginal Rights and Title. Some First Nations participating in the federal review process for Northern Gateway, including the Gitxaala, have also filed questions around constitutional infringements regarding the project as protected under section 35 of the Constitution Act, 1982<sup>5</sup>.

Several First Nations have sent signals that they are more than willing to go to court over Northern Gateway given the threats to their cultures, livelihoods and sustenance. As former Vice President of aboriginal and community partnerships for Enbridge Northern Gateway, Roger Harris stated, "Enbridge has set themselves up for a legal quagmire a lot worse than they ever considered"<sup>6</sup>.

## From Transcript of Enbridge AGM 2012

Chief Na'Moks, Enbridge Inc. shareholder:

#### "

I can state that the last time we went to court was for 20 years. It took that long and we won. We're a very patient people. Are (Enbridge's) investors that patient? So my question is simply that, will (Enbridge) tell the investors the risks that are involved, how long their money would be tied up? Because this is only a proposed project, and we refuse this proposal" 35

#### "The chiefs rejected the Enbridge agreement on January 17, after several meetings and discussion," Beverley Clifton Percival, a negotiator with the Gitxsan Treaty Society, said in an interview. "They stepped away from the agreement. Enbridge knows that. We have not had any contact from Enbridge since that time and the chiefs' direction has not changed <sup>1136</sup>.

## **First Nations Traditional Laws**

In March 2010, the Coastal First Nations declared an oil tanker ban in their traditional territories<sup>7</sup>. Since 2010, more than 100 First Nations have signed the <u>Save</u> <u>the Fraser Declaration</u>, a formal legal document banning tar sands oil pipelines and tar sands oil tankers in the Fraser River watershed area of British Columbia, which is in the Gateway's path<sup>8</sup>. The Yinka Dene Alliance, who have taken the lead on the declaration, organized a Freedom Train across the country to the Enbridge Annual General Meeting in Toronto in May 2012. They obtained over 15,000 signatures in support of their Declaration<sup>9</sup>.

As Chief Jackie Thomas of Saikuz has said, "we are the unbreakable wall<sup>10</sup>". Despite the opposition, Enbridge has stated that it has received equity agreement deals with 60 per cent of First Nations along the proposed route (and beyond – they extended the boundaries to 80 kms on either side of the pipeline to try to seek additional support)<sup>11</sup>. However, the only two BC nations who have publically announced their deals faced huge controversies. After Enbridge announced an equity deal with the Gitxsan Treaty Office (GTO) in December 2011, the Gitxsan nation immediately denounced the deal and dismissed those who signed it<sup>12</sup>. A blockade was set up in front of the GTO and steps have been made to bring unity in the community with opposition to Northern Gateway acting as the foundation. When the Metis Nation of BC announced their equity deal, four members of their executive team immediately resigned, and the BC Metis Federation publically declared their opposition to the project<sup>13</sup>. Enbridge refuses to disclose the others, which has led to doubts of First Nations support<sup>14</sup>.

#### **Opposition and Reputational Damage**

Enbridge's largest oil spill in the history of the US Midwest dumped over 3 million litres into the Kalamazoo River in Michigan on July 25, 2010. To date, they have spent over \$800 million in clean-up costs. It took nearly two years for the river to be re-opened to the public. The U.S. National Transportation Safety Board (NTSB) released its report this July on Enbridge's handling of the oil spill. The report concluded that Enbridge knew about defects in its line for five years and neglected to deal with them. The company took over 17 hours to respond to alarm bells and are quoted as having a "culture of deviance" in the control room<sup>15</sup>.

Enbridge reacted to the backlash from the US NTSB report on Kalamazoo with a \$5 million dollar ad campaign in British Columbia and a promise of putting \$500 million more into safety measures for their Northern Gateway pipeline should it be approved. This type of response from Enbridge only increased opposition, leading to polls that show only 7 per cent "strongly support"<sup>16</sup> the proposed project. Vancouver Sun columnist Vaughn Palmer shared his experience of seeing the Enbridge ads at the movie theatre: "here's the thing: the audience booed the pro-pipeline pitch and did so with considerable enthusiasm<sup>17</sup>".

Partly due to the Kalamazoo tar sands oil spill in Michigan, Enbridge was dropped from the Dow Jones Sustainability Index in September 2011<sup>18</sup>. The largest financial institution based in BC, VanCity, decided to divest from Enbridge in August 2012. Vancity Investment Management said Enbridge no longer met its criteria for socially responsible investments<sup>19</sup>. Investors who integrate sustainability considerations into their portfolios should take these into account.

Barbara Yaffe, Vancouver Sun columnist:

"If Enbridge has not yet got the message, it needs to be told: Its proposal to build the Northern Gateway pipeline through B.C. is dead. The company, in the best interests of its shareholders, should withdraw its proposal and go back to the drawing board<sup>"37</sup>.

"Learning about Enbridge's poor handling of the rupture, you can't help but think of the Keystone Kops," Deborah Hersman, NTSB's chair, said in her opening remarks at Tuesday's hearing. "Why didn't they recognize what was happening? What took so long"<sup>38</sup>?



Art Sterritt, Executive Director of BC's Coastal First Nations alliance:

"Enbridge ignores the opposition. And we understand now why they do: the Prime Minister has told them he's going to deliver this. This gives them the confidence to keep going"<sup>36</sup>.

Likewise, the opposition of British Columbians, which polls suggest is well above fifty per cent, gives First Nations the confidence to contemplate not only lawsuits, but blockades. The province, which is a steward of the world's longest coastline and its largest temperate rainforest, is not likely to yield without a fight<sup>39</sup>.

Opposition to the project has led several municipalities to pass resolutions against Enbridge. Along the proposed route, the communities of Prince Rupert, Terrace, Smithers, Fort St. James, Skeena-Queen Charlotte Regional District, Kitimat-Stikine Regional District, and four communities on Haida Gwaii have all passed resolutions against the Northern Gateway proposal. Other BC communities that have done the same include Nelson. North Saanich, Gabriola and other Gulf Islands. The Union of BC Municipalities has passed resolutions in favour of a legislated tanker ban for Canada's north Pacific coast, and opposing Enbridge Northern Gateway. They are voting on a resolution in September 2012 against increases in oil tanker traffic on the west coast of BC, which is likely to pass.

Faith groups have also come out opposed to Enbridge's project<sup>20</sup>. After the Open Letter from federal Minister Oliver, the Anglican Bishops of British Columbia and Yukon issued a statement questioning the integrity of the federal review process for Northern Gateway. The diocese of New Westminster of the Anglican Church of Canada declared its outright opposition to Northern Gateway, and is looking into excluding Enbridge stock from the diocese's investment portfolio.

A group representing 28 Presbyterian churches in BC's Lower Mainland wrote a letter to Prime Minister Stephen Harper that accuses the government of weakening environmental reviews and demonizing people who oppose pipeline projects as radicals. Recently, the United Church passed a resolution recognizing First Nations opposition and opposing both the Enbridge Northern Gateway and Kinder Morgan TransCanada pipelines. It also encourages its members to divest from Enbridge.

Unions have also expressed opposition to Enbridge's project. The United Fisheries and Allied Workers Union have been vocal and put forward evidence for the federal Joint Review Panel. The Alberta Federation of Labour are opposed because the shipment of raw bitumen means the shipment of jobs overseas. The BC Teachers Federation passed a resolution to divest its pension funds from Enbridge. The Kitimat-Terrace and District Labour Council summarizes their environmental policy as: "We want jobs but not at any cost", and they are "opposed to the Enbridge pipeline and its connected tanker traffic"<sup>21</sup>.

The Communications Energy and Paperworkers Union (CEP), the Canadian Autoworkers Union (CAW), the BC Teachers' Federation, the United Fisherman and Allied Workers' Union-CAW, and the Canadian Union of Public Employees BC (CUPE BC) have all endorsed an action called "Defend Our Coast" in Victoria<sup>22</sup>. On October 22nd, people will participate in a mass sit-in against tar sands tankers and pipelines at the Legislature in Victoria.

Many residents along the proposed route have promised to "do whatever it takes" to stop Northern Gateway, including standing in front of bulldozers<sup>23</sup>. The opposition over Northern Gateway has been labeled several times in the media as "bigger than Clayoquot Sound"<sup>24</sup>, referring to the controversies in the 90s around logging old-growth coastal forest in British Columbia. Logging proposals led to thousands protesting in the small town of Tofino with hundreds getting arrested.



**Political Risk** 

While there is little chance of a legislated oil tanker ban for Canada's north Pacific coast under a Harper majority government, the political risk now lies in British Columbia.

Enbridge CEO Patrick Daniel acknowledged this risk at their annual general meeting in Toronto, May 9, 2012:

Nikki Skuce, ForestEthics, Senior Energy Campaigner: "Okay. So can you just clarify? Do you -- does Enbridge see that there is potential political risk in terms of the BC provincial elections and the timing of that?"

Patrick Daniel, Enbridge Inc. CEO: "Yes, we do. We recognize that, for example, right now we don't have clear support from the British Columbia government. And the NDP have indicated that they would be opposing Gateway so we do recognize that risk, yes" <sup>35</sup>.

British Columbia can put a number of hurdles onto the regulatory front that would increase costs to Enbridge both through delays and actual costs<sup>25</sup>.

Adrian Dix, leader of the BC NDP, submitted a letter to the Joint Review Panel stating their reasons for opposing Enbridge Northern Gateway<sup>26</sup>, including concerns about oil tanker traffic, wild salmon watersheds, First Nations Rights and Title, and climate impacts. The BC NDP has assembled a legal team to build strategies to prevent the project from being built<sup>27</sup>. In August 2012, they announced that they would give notice to the Federal Government upon getting elected to get out of the Environmental Assessment Equivalency Agreement<sup>28</sup>. In other words, they would take back some of the review process, causing further project delays, and have a greater voice in the final decision on whether Northern Gateway should proceed or not.

When the US NTSB put out its report, Premier Christy Clark responded by calling the company's actions "disgraceful". She said: "If they think they're going to operate like that in British Columbia, forget it"<sup>29</sup>. A week later, the BC Liberals laid out their conditions for approval, including demanding British Columbia gets its "fair share"<sup>30</sup>. According to the government, British Columbia would receive only 8 per cent of the pipeline revenue while assuming all the marine risks and more than half the terrestrial risks. This demand in particular, was met with hostility from both Alberta Premier Redford and the Harper Government<sup>31</sup>.

The opposition from British Columbia has led the Federal Government, a cheerleader of the project, to become more subdued<sup>32</sup>. Partly due to Enbridge's lobbying efforts, the Conservative government gutted the Fisheries Act, Canadian Environmental Assessment Act, and amended the National Energy Board Act, so that the Cabinet now makes the final decision on Joint Review Panel hearings<sup>33</sup>. However, the political risks to the Conservative government in British Columbia are high. Many analysts agree that the Harper Government would stand to lose its majority government in 2015 if he tried to push the pipeline through despite opposition.

#### Summary

Doing business on the west side of the Rockies is unique. The majority of First Nations hold Title and Rights to their unceded territories, and a strong determination to govern and protect their territories according to their own laws. Decades have gone into protecting parts of the coast known as the Great Bear Rainforest. Enbridge's Northern Gateway project would introduce over 225 oil tankers a year to this ecologically rich region. Residents in the Northwest have developed a culture and economy around wild salmon. Enbridge's Northern Gateway project would cross five major salmon rivers and hundreds more streams and tributaries of those rivers. The project would also lead to expansion in the tar sands which is currently growing at an unsustainable pace and scale.

On top of the legal, political and liability risks associated with this project, Enbridge is also exposing itself to reputational risks. Opposition is so strong to Northern Gateway that the company is being targeted in various media, at its annual conventions, and in its other corporate divisions. Investors should be asking Enbridge to analyze and outline how they plan to mitigate their risk exposure from this Northern Gateway pipeline.

Enbridge's Northern Gateway project is currently undergoing a federal Joint Review Panel process to assess whether the project is in Canada's national interest. Over 4,000 people signed up to speak at community hearings, and thousands more submitted written comments into the process. The Panel is expected to wrap-up hearings by April 2013, and have a final recommendation to the Federal Government by the end of that year. At the moment, Enbridge has no secured shipping contracts for its proposed mega-project.

Given all the obstacles and exposure Northern Gateway continues to create, what are some alternative directions that the company can move in? How much are they willing to continue to risk of their CSR reputation and corporate values in this project? How much shareholder equity will Enbridge spend for a project that will never go ahead? What is the threshold that investors are willing to endure?

#### Citations

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<sup>2</sup> http://forestethics.org/downloads/enbridge-investor-brief-2010

<sup>3</sup> Examples include Delgamuukw v. British Columbia [1997] 3 SCR 1010. Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73 at para 20 and 67. For more information, review West Coast Environmental Law's Legal backgrounder: The Crown's approach to First Nations consultation on the Enbridge Gateway Pipeline.

<sup>4</sup> Available on the NEB's public record for this project (<u>https://www.neb-one.gc.ca/ll-eng/livelink.exe?func=ll&objld=631808&obj</u> <u>Action=Open</u>). Eg. Para 1018: CHIEF JOHN RIDSDALE: "...The Wet'suwet'en need to announce that our participation is under protest in absence of an EA participation agreement and consultation agreement with the Crown to address the project's impacts on our Aboriginal Rights and Title."

<sup>5</sup> Gitxaala written submission to the NEB. https://www.neb-one.gc.ca/ll-eng/livelink.exe?func=ll&objld=630163&objAction=Open <sup>6</sup> http://insideclimatenews.org/news/20120727/first-nations-british-columbia-northern-gateway-pipeline-oil-sands-dilbit-enbridgecanada-supreme-court-china?page=show

<sup>7</sup> http://wcel.org/media-centre/media-releases/coastal-first-nations-tanker-ban-creates-new-legal-risks-and-uncertainty <sup>8</sup> savethefraser.ca

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<sup>11</sup> "Northern Gateway: Enbridge objects to questions about potential conflicts over pipeline", By Sheila Pratt, Edmonton Journal, September 21, 2012

http://www.edmontonjournal.com/news/edmonton/Northen+Gateway+Enbridge+objects+questions+about/7282007/story.html <sup>12</sup> "Gitxsan insists Enbridge deal never had its support", By Wendy Stueck, The Globe and Mail, Published Thursday, Jun. 07 2012. <u>http://www.theglobeandmail.com/news/british-columbia/gitxsan-insists-enbridge-deal-never-had-its-support/article4240937/</u>

<sup>13</sup> "Enbridge deal divides Metis", <u>Lauren Benn - Terrace Standard</u>, June 19, 2012. http://www.terracestandard.comnews/159314105.html

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<sup>15</sup> "Pipeline Rupture and Oil Spill Accident Caused by Organizational Failures and Weak Regulations", National Transportation Safety Board, July 10, 2012. http://www.ntsb.gov/news/2012/120710.html

<sup>16</sup> http://www.livingoceans.org/sites/default/files/media/uploads/LOS\_pipeline-phone-poll-results\_sept2012.pdf

<sup>17</sup> Source: "Enbridge pipeline doomed to be non-starter", Vaughn Palmer, Vancouver Sun, July 11, 2012 <u>http://www.vancouversun.</u> <u>com/technology/Enbridge+pipeline+doomed+starter/6915608/story.html#ixzz26CbdwXfp</u>

<sup>18</sup> <u>http://www.sustainability-index.com/djsi\_pdf/news/PressReleases/SAM\_Presentation\_110908\_Review11\_ADDS\_DELS\_final.pdf</u>
 <sup>19</sup> Enbridge Holdings Divested From IA Clarington Inhance SRI Funds. August 22, 2012.

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<sup>20</sup> "Churches speaking out on Northern Gateway pipeline project", Canadian Press. August 6, 2012

<sup>21</sup> Letter from John Jensen, Kitimat-Terrace and District Labour Council, Terrace, BC

<sup>22</sup> defendourcoast.ca

<sup>23</sup> "I am prepared to do as others have done before me in our communities and stand on the line to prevent any machinery moving onto the site," said Haisla elder Gerald Amos.

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Founded in April 2012, ForestEthics Advocacy is a non-profit society in Canada devoted to public engagement, outreach, and environmental advocacy - including political advocacy. We secure large-scale protection of endangered forests and wild places and transform environmentally destructive resource-extraction industries.



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