

October 8, 2014

Sent via email

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Attention: Honourable Mary Polak

Re: Park Use Permit 106496

We write on behalf of the Wilderness Committee and the Canadian Parks and Wilderness Society (the “Societies”) regarding Park Use Permit 106496 (the “Permit”). The Societies’ position is that the Permit was issued without lawful authority. As such, the Societies request that the Honourable Minister immediately revoke the Permit. In addition, the Societies request that any evidence obtained under this illegally-issued permit not be used in Trans Mountain/Kinder Morgan’s current application (Applicant’s reference: APL-BCMOE-TERA-00009) to amend the boundaries of four protected areas.

As of November 15, 2013, when the permit was issued, the *Park Act* provided no authority to issue a park use permit that authorized feasibility studies for pipelines. The Permit purports to allow Trans Mountain/Kinder Morgan to enter into several BC parks for the apparent purpose of conducting feasibility studies related to the National Energy Board hearings on the Trans Mountain/Kinder Morgan pipeline expansion project. This type of pipeline study could only be authorized after s. 9.3 of the *Park Act* was brought into force.

Prior to the enactment of section 9.3, the *Park Act* provided that a park use permit could only be issued for “study purposes” where, in the view of the Minister, such a permit was “necessary for the preservation or maintenance” of the park’s recreational values. The Permit issued to Trans Mountain/Kinder Morgan was not for “study purposes” deemed by the Minister to be “necessary

for the preservation or maintenance of the park's recreational values". Therefore, the *Park Act* as it read on November 15, 2013 did not provide legal authority for the permit.

Indeed, the Honourable Minister Polak acknowledged on March 24, 2014 that a major reason for the addition of section 9.3 was that "the granting of the permits as we have done likely would not stand the test of a judicial review, and therefore, we need to amend the *Park Act* to ensure that we can continue on with what we have been doing but with the statutory authority ..."

Section 9.3 of the *Park Act* was not in force on November 15, 2013 and there is nothing in the provision which retroactively provides legal authority for the Permit.

The Permit does not expire until December 31, 2018 and presents an ongoing affront to the legislative regime governing park use permits. Our clients therefore request that the Honourable Minister Polak revoke the Permit.

Of additional concern to the Societies is that the Ministry is currently considering a request from Trans Mountain/Kinder Morgan under the Park Boundary Adjustments Policy to amend the boundaries of four protected areas. We understand that the request is based in part on evidence gathered under the illegally issued Permit. Accordingly, we request that the Adjustment request be rejected on grounds that key evidence was improperly obtained or, in the alternative, that the evidence gathered under the permit should not be relied upon in the Adjustment request. The use of illegally obtained evidence in this politically sensitive process would greatly undermine the credibility of any decision to amend park boundaries.

We ask that the Honourable Minister provide her response by not later than October 31, 2014.

Sincerely,



Morgan Blakley
Barrister and Solicitor



Andrew Gage
Barrister and Solicitor