



**ASSEMBLY OF FIRST NATIONS
BACKGROUND/CONTEXTE
ASSEMBLÉE DES PREMIÈRES NATIONS**

50, RUE O'CONNOR STREET
SUITE/BUREAU 200
OTTAWA ON K1P 6L2
(613) 241-6789 telephone / téléphone (613) 241-5808 fax /

**AFN Responds to Proposed Designation of the West Coast Oil Pipeline as a
Project of National Interest Under the *Building Canada Act***

On September 18, 2026, the AFN responded to a federal Notice published in the Canada Gazette, Part I, Volume 160, Number 31 on August 1, 2026, regarding the proposed designation of the West Coast Oil Pipeline (WCOP) as a “project of national interest” under the *Building Canada Act*.

The proposed designation of the WCOP engages the Crown’s constitutional and international law obligations respecting consultation, accommodation, consent and other legal obligations to First Nations.

AFN’s response includes constructive suggestions for a change in approach. Within the constraints of the very limited information available about this project, the AFN’s response identifies concerns and red flags, particularly pre-determined outcomes by approving projects at the start of the process, before or without consultation and without identifying and meeting applicable consent obligations.

KEY CONCLUSION

Until recommendations can be properly considered and resolved in an open and transparent way, the AFN respectfully requested no national interest designation be given to this project. The Crown must respect the governance processes of affected First Nations and its consultation and consent obligations to First Nations, which are procedural legal safeguards under Treaty, the Constitution and international law.

The AFN supports economic development that respects First Nations rights. Projects built with the free, prior and informed consent of First Nations are more durable, face fewer legal challenges, and provide greater certainty for investors and all Canadians.

AFN RESOLUTIONS

First Nations-in-Assembly have established mandates to guide the AFN submission, focusing on:

- Any federal reforms that weaken environmental protections, compress timelines, limit consultation, or circumvent free, prior and informed consent.
- Full implementation of free, prior and informed consent and respect for First Nations’ right to self-determination and our governance systems.
- Requirements for Canada to consult and cooperate directly with First Nations before identifying, selecting, or advancing any project of national interest.
- Upholding the *UN Declaration* as a minimum legal standard for projects designated in the national interest

- Calls for Canada and provinces to refrain from entering pipeline agreements or memoranda of understanding before obtaining the free, prior and informed consent of all impacted rights and title holders, and support for First Nations' rejection of oil pipelines through British Columbia's coastal territories.

CONSTRUCTIVE AFN SUGGESTIONS

First Nations directly affected by the proposed project will determine their own positions and approaches. The AFN does not seek to replace those. The objective is to ensure time, information, resources and conditions exist for First Nations to exercise their rights and make informed decisions. Constructive AFN suggestions for this project include:

1. The comment period closed on September 18, 2026. Defer any designation decision and reopen engagement for a period sufficient for affected First Nations to assess the proposal and related projects before determining their own positions.
2. Provide complete, current, project-specific information and resources to enable affected First Nations to undertake their own assessments of the proposed routes, potential impacts, and implications for their lands and waters.
3. Establish meaningful engagement and decision-making protocols directly with affected First Nations before any designation decision is made, including processes that respect First Nations' own governance systems as well as free, prior and informed consent requirements.
4. Ensure any designation or process under the *Building Canada Act* is fully consistent with the *UN Declaration*, the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIPA), section 35 of the *Constitution Act, 1982*, and First Nations' own laws and decision-making processes.

WHAT DESIGNATION MEANS

If designated, the WCOP would be added to Schedule 1 of the *Building Canada Act* by Order in Council, effectively approving the project at the outset. The responsible Minister could then alter or accelerate requirements under the *Impact Assessment Act*, *Fisheries Act*, *Canadian Navigable Waters Act* and *Species at Risk Act*, with a single conditions document targeted for September 2027.

As the first project proposed for designation under the *Building Canada Act*, the WCOP will set the national standard for how First Nations' rights are treated in every future designation.

RED FLAGS

The Canada Gazette process is an inadequate way to designate projects of national interest, particularly since so little is known about what this project is. The honour of the Crown means consultation with First Nations cannot be narrowly scoped to regulatory comments alone.

With limited information available, the federal government is proposing to pre-determine outcomes by approving projects at the start of a process and without appropriate consultation.

With the lack of project-specific information, several red flags stand out, particularly related to:

Predetermined Timelines	Exclusion of Related Projects	Regulatory Thresholds
Equity Involvement	Free, Prior and Informed Consent	Community Capacity

Predetermined Timelines

A project of this magnitude plainly has the potential to adversely affect established and asserted Aboriginal and treaty rights across a vast geography. Alberta has identified 104 potentially impacted First Nations across British Columbia (85) and Alberta (19).

The scope of these matters demonstrates why a comment window of fewer than seven weeks cannot capture the breadth of engagement the honour of the Crown demands, specifically related to regulatory review, impact assessment, environmental impact, compensation and equity interest.

The Implementation Agreement for the November 2025 Canada-Alberta MOU establishes a commitment to pursue national interest designation by October 1, 2026, and subsequent milestones to issue a conditions document by September 1, 2027.

These provisions establish a defined pathway and timeline before consultation with affected First Nations is complete. Any predetermined timeline principally designed to attract investment subordinates the honour of the Crown to commercial imperatives.

Once designated, many environmental assessments and permitting reviews that ordinarily provide forums for dialogue and accommodation are bypassed or deemed complete.

Combined with limited engagement, these predetermined milestones create a reasonable apprehension that key decisions have already been made, and that First Nations' input cannot meaningfully influence the outcome.

Exclusion of Related Projects

The WCOP is being advanced alongside other related and impactful proposals, including:

- Roberts Bank Terminal 2, a proposed container terminal at Delta B.C., that has also been referred to the Major Projects Office for potential listing under the *Building Canada Act*, and the pipeline linking to that terminal.
- The Pathways Project, a carbon capture and storage initiative backed by a group of major oil and gas companies called the Oil Sands Alliance, is explicitly linked to the WCOP through the Major Projects Office, which states that advancement of the WCOP is dependent on the advancement of the Pathways Project.

Considering these approvals separately amounts to project splitting, which artificially reduces the perceived cumulative impact but does not reduce the actual impact on First Nations or the environment.

These related approvals must be considered cumulatively and treated as one project. First Nations, and all Canadians, cannot meaningfully assess the WCOP in isolation from these related

proposals. Time is needed for affected First Nations to identify the full scope of linked projects, evaluate their cumulative effects, and develop informed positions on the entire undertaking. Alberta's submission relies on Trans Mountain baseline data that is roughly 10 years old, for a pipeline approximately 40% larger. A federal review panel has already found that the linked Roberts Bank Terminal 2 would cause significant adverse and cumulative effects on endangered Southern Resident Killer Whales, of which only 74 remain, in the Fraser River Estuary, a critical hub for Pacific salmon.

Regulatory Thresholds

Whether the WCOP is assessed under the *Impact Assessment Act*, *Canadian Energy Regulator Act*, Alberta or BC regimes, thresholds for First Nations consultation and involvement must be equivalent to, and as robust as, those under the *Impact Assessment Act*.

Specifically, First Nations must be able to conduct their own assessments, and decision-makers must meaningfully consider and honour the findings of those assessments.

Equity Involvement

The Trans Mountain pipeline has not delivered on Canada's pledge that First Nation ownership "could be 25%, 50%, or even 100%." Today, the sale process has stalled. Communities have waited over 7 years without a formal deal. Negotiations with over 120 potentially impacted First Nation groups yielded little progress.

Proponents relying on Trans Mountain as a precedent for First Nations participation in the WCOP is concerning. The Trans Mountain experience demonstrates that compressed and inadequate consultation processes lead to legal challenges, project delays, and erosion of trust.

An adequate extension of the comment period, together with binding and enforceable commitments on Indigenous equity and participation, including First Nations equity participation, revenue sharing and procurement guarantees (not aspirational pledges) is necessary to avoid repeating those failures in connection with the WCOP.

Free, Prior and Informed Consent

The proposed designation also engages Canada's obligations with respect to the standard of free, prior and informed consent, which contemplates an iterative process of genuine dialogue in which affected First Nations have sufficient time, information, and resources to consider the implications of a proposed measure and to make decisions through their own governance processes.

A compressed, administratively constrained comment window does not afford First Nations the opportunity to provide, or to withhold, meaningful and informed consent. The Government of Canada has given First Nations fewer than seven weeks, from August 1 to September 18, 2026, to prepare written submissions on the designation of the WCOP as a project of national interest.

This is inadequate given the potential for WCOP to significantly affect the rights of affected First Nations in a manner that is inconsistent with their inherent jurisdiction, their constitutionally protected rights, and the need to secure their free, prior and informed consent.

The period is also inadequate for First Nations to conduct independent technical analyses, consider the cumulative, legal, and interjurisdictional impacts of the proposed project, and undertake the community consultations and governance-based decision-making required to develop informed positions on a proposal of this magnitude.

The AFN opposes any formulation, such as “seek to obtain consent,” that dilutes the standard of free, prior and informed consent, and supports mechanisms allowing First Nations to pause, extend or modify timelines as required to uphold it.

Capacity Constraints Facing First Nations

Canada has limited First Nations to fewer than seven weeks for the preparation of written submissions on the designation of the WCOP as a project of national interest. This timeline does not account for the capacity constraints facing many First Nations or the need to obtain legal advice, engage Elders, Knowledge Keepers, technical advisors, and communities, and make decisions through their own governance processes. Canada must provide dedicated capacity funding, independent legal and technical resources, and timelines set by First Nations’ own governance processes. The AFN is coordinating with the BC Assembly of First Nations and the Assembly of Treaty Nations in Alberta to support affected Nations.

Conclusion

Alberta has proposed two potential routes for the WCOP. The proposal contemplates a 1,250 km interprovincial pipeline along the Trans Mountain Expansion route to transport up to 1 million barrels of crude oil per day from Bruderheim, Alberta to Roberts Bank in Tsawwassen territory in Delta, BC.

Since Alberta’s submission does not specify the exact route and relies entirely on previous studies, consultation and negotiations from the TMX construction, it is unclear how affected First Nations can fully understand the potential implications of this project for their lands, waters, and health, including specific marine impacts.

An assessment of the project’s ability to “advance the interests of Indigenous Peoples” is therefore being sought without providing updated studies and information for and by First Nations on what the project is and isn’t.

The AFN holds significant concerns regarding the adequacy of the engagement and decision-making framework contemplated by the designation process and regarding the compatibility of the proposed timeline with Canada’s constitutional and statutory obligations to First Nations.

First Nations, which hold constitutionally protected rights, must have a decision-making role in projects within their territories according to their own processes and institutions, rather than being confined to participation within Crown-designed regulatory systems.

The AFN’s participation in this process does not constitute consent and does not discharge the Crown’s duty to consult and accommodate. The AFN reserves all rights and remedies.

The AFN’s September 18 response addressed several procedural rights and process concerns. The AFN will continue to speak to the Crown’s legal obligations to First Nations. The AFN is calling on Canada to withhold any national interest designation for the WCOP until affected First Nations have completed their own governance processes and the Crown has fully discussed with First Nations: a) the details of the scope and content of its legal obligations under Treaty, the Constitution and international law to First Nations and b) developed joint plans to fully meet those obligations.