

**PUBLIC
INQUIRY
ANTI-
ENERGY
CAMPAIGNS**

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July 30, 2021

Honourable Sonya Savage
Minister of Energy
324 Legislature Building
10800-97 Avenue NW
Edmonton, Alberta T5K 2B6

Dear Minister Savage:

As Commissioner of the Alberta Public Inquiry into Anti-Alberta Energy Campaigns, I am pleased to submit my report herewith.

I am honoured that you chose me to conduct this important work on behalf of the government and the citizens of Alberta. While it has been a challenging assignment in many ways, I have no regrets whatsoever about taking it on. The Inquiry revealed important issues of which the government and Albertans should be aware. I hope that this report will provide a lens into these issues and the related public policy implications, and that it will not only stimulate dialogue but more importantly, that it will stimulate action.

My report details six recommendations intended to advance these public policy issues. My hope is that the government, industry, business and economic development associations, public policy organizations, environmental organizations, academics and others will move these recommendations forward. I stand ready to assist in that regard, in any way possible, as I see these issues as being critical to the prosperity of Albertans, now and into the future.

As is always the case when one takes on a significant project, one of the most satisfying elements is meeting and dealing with the people with whom you work and engage. I want to thank all the people who so willingly gave of their time, their knowledge and their opinions in the interviews I conducted. This was a diverse group of people with different backgrounds, experience and perspectives. You helped me to better understand the energy industry, its relationships with various stakeholders, environmental issues and the ways in which Albertans with their ingenuity, entrepreneurial spirit and passion for the province can seize the opportunities and tackle the challenges we face.

I would also like to thank all those individuals and organizations who made submissions throughout the Inquiry, including through the formal processes of the Participants for Commentary and Participants for Response phases.

The input through these interviews and submissions provided me with the background and information that helped me frame the recommendations.

I cannot express adequately, my sincere thanks to my professional colleagues who assisted me and supported the Inquiry in so many ways.

Dave Mann has led this project for Dentons and has been fully committed to it for the past two years; he has been primarily responsible for directing the extensive research that was required and has provided me throughout with excellent advice and counsel, without which this detailed report would not have been possible. He has been ably supported by a deeply talented Dentons team.

Bob Taylor directed the Deloitte Forensics team that delved into the complex and extensive volume of material required to produce Deloitte's comprehensive report which has been vital in identifying the flow of foreign funding into Canada for charitable, environmental and anti-Alberta resource initiatives. Bob too has been supported by an incredibly talented and capable team that has drawn on the extensive resources of the Deloitte firm.

David Wachowich of Rose LLP team was Independent Inquiry Counsel, who very ably and successfully defended me as Commissioner in the Injunction Application and the Judicial Review. David and his outstanding team have been invaluable in providing me with excellent advice on a variety of matters throughout the Inquiry.

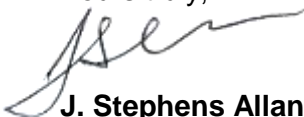
Alan Boras the Inquiry's communications consultant has provided exemplary advice and service to the Inquiry over the past two years. He has always been available on short notice and has been enormously supportive of me in my work.

I would also like to acknowledge and thank the Government of Alberta for providing administrative support services to me throughout the past two years, which have helped reduce the costs that otherwise would have been incurred and have allowed me to oversee a more efficient Inquiry process.

Each one of the individuals identified above and the members of their teams, worked incredibly hard throughout the entire process. It required personal and professional sacrifices that no one could have imagined at the outset. Their commitment to the task was extraordinary. They are outstanding professionals that I was lucky to have on my team. My sincere thanks to each and every one of them.

I am happy to make myself available at any time to discuss the contents of this report and to do anything I can to provide assistance in advancing the recommendations.

Yours truly,



J. Stephens Allan

Commissioner, Public Inquiry into Anti-Alberta Energy Campaigns



Report of the Public Inquiry into Anti-Alberta Energy Campaigns

July 2021

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Part I – Executive Summary

PART I **EXECUTIVE SUMMARY**

A. INTRODUCTION

1. By an Order in Council issued by the Government of Alberta on July 4, 2019 I was appointed Commissioner to inquire into the role of foreign funding, if any, in anti-Alberta energy campaigns.
2. Since it was unknown at the time of my appointment what, if anything, this Inquiry may discover I was to provide an interim report to the Minister on January 31, 2020. I did provide such a report, with the recommendation that, based on my preliminary research, this Inquiry should continue.
3. Since January 31, 2020 the terms of reference under which I serve have been amended on five separate occasions (taken together, the “**Terms of Reference**”).¹ One amendment was to address the role which the term “dissemination of misleading or false information” would play in this Inquiry. The other four amendments extended the time and budget available to this Inquiry.
4. Public hearings associated with public inquiries are both costly and lengthy. That would undoubtedly be so in the present case given the multitude of complex issues arising over an elongated period of time. The time and cost would certainly be well beyond the resources afforded to this Inquiry.
5. To address these concerns I adopted what could be described as a “hearing by correspondence” process. After an initial period where the Inquiry invited submissions from the public, further engagement was pursued with those thought to have an important perspective to share with the Inquiry (known as the “**Submissions for Commentary**” stage).
6. Separately, I created a process known as “**Submissions for Response**” that would afford parties that were potentially the subject of an adverse finding made by the Inquiry an opportunity to respond to such findings. This was an important step to ensure that principles of procedural fairness were observed and parties had an opportunity to respond to potential findings the Inquiry may make.
7. In addition to the receipt of submissions, this Inquiry also conducted significant research, including: (a) open-source research; (b) over 100 interviews; (c) commissioned a number of reports; and (d) a review of other investigations in other jurisdictions into similar campaigns or alleged campaigns as required by section 2(2) of the Terms of Reference, including: (i) “*Background to ‘Assessing Russian Campaigns and Intentions in Recent US Elections’ The Analytic Process and Cyber Incident Attributions*”, (2017) Office of the Director of National Intelligence of the U.S., (ii) “*Russian Attempts to Influence U.S. Domestic Energy Markets by Exploiting Social Media*”, (2018) U.S. House of Representatives Committee on Science, Space and Technology Majority Staff Report, and (iii) “*The Chain of Environmental Command: How a Club of Billionaires and Their Foundations Control the Environmental Movement and Obama’s EPA*”, (2014) U.S. Senate Committee on Environment and Public Works Minority Staff Report. While the Inquiry also had the right to subpoena people and records, the Inquiry has not pursued

¹ To see the Terms of Reference in their entirety, please see Appendix A

that avenue – in large part due to the time and cost involved in such pursuit, particularly as many of the parties involved are not primarily located in Alberta.

8. While the Inquiry has conducted significant research, all findings in this Report are based solely on the evidence contained in this Report.
9. The Terms of Reference provide that I am to inquire into the role of foreign funding, if any, in anti-Alberta energy campaigns and make such findings and recommendations as I consider advisable. To this end I have primarily focused on a) anti-Alberta energy campaigns; and b) foreign funding, along with other relevant observations, to reach my findings and related recommendations.
10. The Terms of Reference also call for me to submit my Report to the Minister of Energy by July 30, 2021. This is the Executive Summary of my Report.
11. The Executive Summary follows the organization of my Report, and begins by considering a campaign I refer to as the “Tar Sands Campaign” as well as specific tactics that may be used to directly or indirectly delay or frustrate the development of Alberta’s oil and gas resources (**Part II**). I then proceed to define the criteria that constitute participation in an anti-Alberta energy campaign and consider evidence related to organizations that I find have participated in anti-Alberta energy campaigns, foreign organizations that have provided funding to such organizations, and organizations that participate in a practice I refer to as “re-granting” (**Part III**). Following this analysis, I consider more generally matters pertaining to foreign and government funding in the charitable and not for profit sectors in Canada (**Part IV**), economic consequences of the loss of oil and natural gas resources (**Part V**), and the implementation of campaigns by environmental non-governmental organizations more broadly (**Part VI**). My Report concludes by addressing some specific topics raised by organizations who participated in the Participant for Response phase of the Inquiry (**Part VII**) before concluding with my recommendations (**Part VIII**).

B. ANTI-ALBERTA ENERGY CAMPAIGNS

(a) *Introduction*

12. The Terms of Reference define an “anti-Alberta energy campaign” as follows:

“anti-Alberta energy campaign’ means attempts to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and the transportation of those resources to commercial markets, by any means, which may include, by the dissemination of misleading or false information”
13. I issued a Ruling on Interpretation of the Terms of Reference (attached as Appendix B) wherein I interpreted the term “anti-Alberta energy campaign”. As set out in that Ruling, I find that an anti-Alberta energy campaign is a campaign that involves attempts to frustrate the development of Alberta’s oil and gas resources in a broad and general sense. I find that attempts at frustration of the development of Alberta’s oil and gas resources in a broad and general sense may be a stated objective of a party, or may manifest itself through repeated opposition to attempts to develop Alberta’s oil and gas resources or opposition to a particular project in furtherance of an intention of opposing development of Alberta’s oil and gas resources in a broad and general sense. I find

that the term “anti-Alberta” refers to Alberta as a geographic modifier, and should not import any connotation that opposition to oil and gas development in Alberta is “against Alberta” or its interests in any sense.

14. I have also made it clear throughout my Report that I do not find that participation in an anti-Alberta energy campaign is in any way improper or constitutes conduct that should in any way be impugned, nor do I find that it indicates a party is “pro” or “anti” Albertan.
15. Rather, I interpret my mandate as being to make Albertans aware of these campaigns and to present recommendations for addressing public policy issues arising from these campaigns and the foreign funding related thereto.

(b) ***The Tar Sands Campaign***

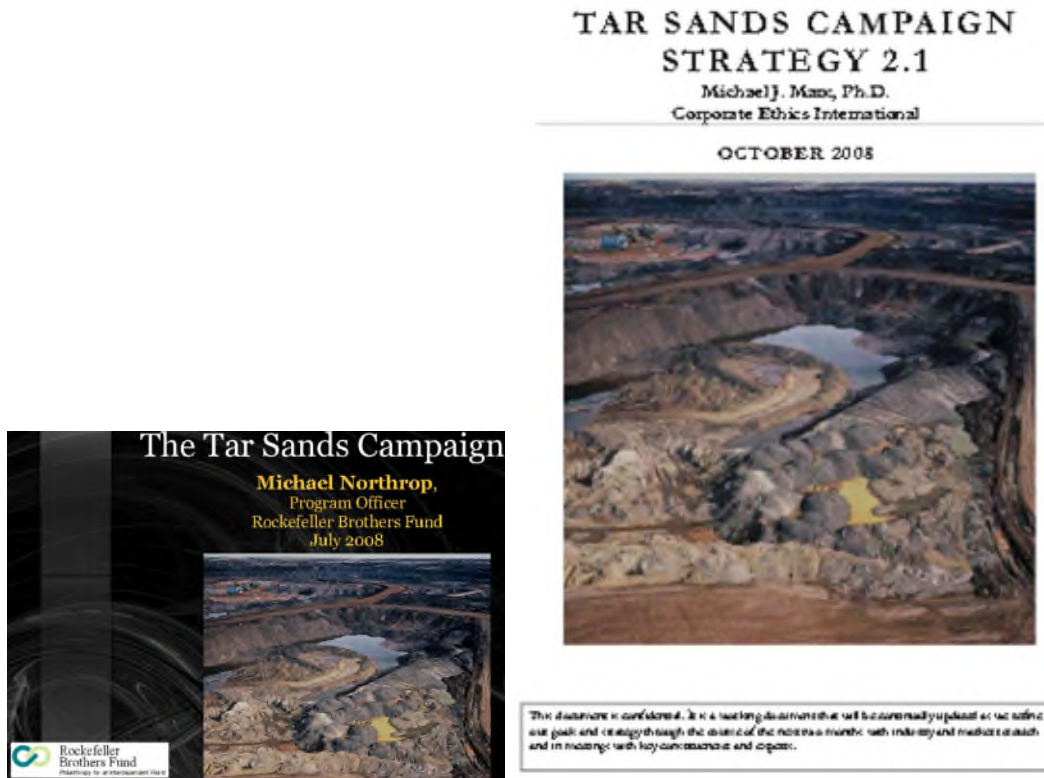
16. Beginning in 2006, the concept of a “Tar Sands Campaign” emerged that was specifically targeted against the oil sands of Northern Alberta.
17. It was during the summer of 2006 at the Smithsonian Folklife Festival in Washington D.C., Alberta’s exhibit on the National Mall included a giant 180-tonne dump truck – similar to those used in the oil sands, which was commented upon by the NRDC’s head of its Canadian Campaign:²

It was a pivotal moment. When you bring a tar sands dump truck to the National Mall in Washington DC, it was like bringing the tar sands into our [own] back yard. For the environmental groups [in D.C.], it was a moment of it sort of being, “They’ve brought this fight to us.”



²“How an Alberta PR stunt backfired in the U.S., sparking a decade of oilsands opposition”, J. Fekete and C. Varcoe, Postmedia News, July 7, 2016. <https://nationalpost.com/news/canada/a-decade-of-bitumen-battles-how-10-years-of-fighting-over-oilsands-affects-energy-environment-debate-today> .

18. Foundational documents for the Tar Sands campaign from 2008 outline various aspects of the contemplated campaign, including its structure, its tactics, its funding, and references to the larger movement of which the Tar Sands Campaign would form a part.



19. The 2008 foundational documents for the Tar Sands Campaign are reviewed in more detail later in this Report. The commentary of structure, however, is worth repeating here. It provides:

“This is a large, complex campaign with a number of different entities: corporate, governmental, community, educational and non-governmental organizations. It also has a number of strategic tracks that need to be well-integrated. It is critical that the campaign have some type of coordinating structure to insure that all groups and strategic tracks are connected. This coordinating structure also needs some authority to direct funds to high priority campaigns quickly. While NGOs generally prefer a network structure that allows for maximum communication, and minimal centralized control, foundations investing most heavily in the campaign have a vested interest in exercising some control over the process.

We have developed a hybrid campaign structure that allows for both NGO and funder preferences. Within this structure, NGOs involved in the campaign work together to determine their strategic plan and funding priorities.

The Coordination Center *shall remain invisible* to the outside and to the extent possible, staff will be “purchased” from engaged organizations.”³ [italics is from original text].

20. Documents contemplating the Tar Sands Campaign describe a number of tactics to advance the contemplated campaign, including grassroots campaigns, the development of documentaries and research papers, divestment campaigns, direct action and citizen engagement, land conservation initiatives, litigation and political activism, and achieving legal precedents based on the rights of First Nations people. I considered these types of tactics, as well as a number of other tactics that could be used to directly or indirectly delay or frustrate the development of Alberta’s oil and gas resources, each of which I can summarize as follows:

A. **Grassroots campaigns-** Multi-media are discussed in relation to the Tar Sands Campaign, and can also be observed in other efforts to delay or frustrate the development of Alberta’s oil and gas resources. These campaigns may employ messaging that is repeated, including through traditional media outlets, and often draws upon research reports prepared and/or promoted by various participants in such campaigns.

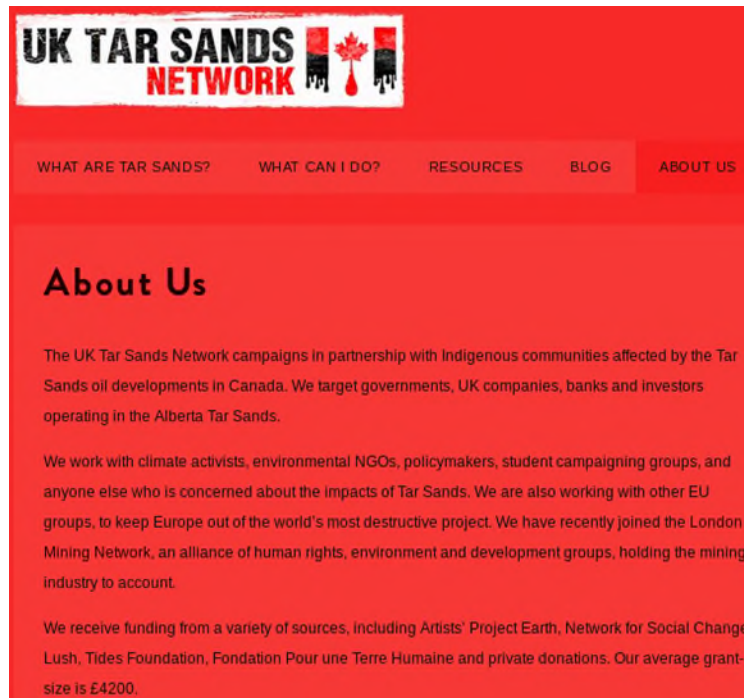
I have identified a number of campaigns that originated from specialists that spread negative messaging targeted at not only Alberta’s ‘Tar Sands’ but also against travel to Alberta and against various proponents of, consumers or service providers to Alberta’s fossil fuel industry. I can summarize them as follows:

(1) **Rethink Alberta-** a comprehensive multi-media campaign designed to discourage tourists from visiting Alberta until the expansion of the “tar sands” was restricted and Alberta committed to clean up and phase out existing operations.

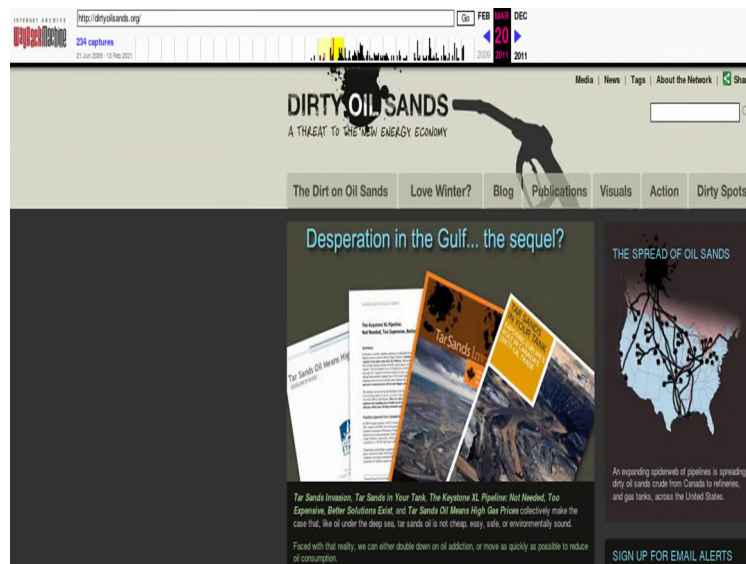


(2) **UK Tar Sands Network-** this project is active to this day and encourages a number of actions on the part of individuals, financial institutions and EU governments to block “tar sands” development.

³ The Corporate Ethics Document. Page 13.

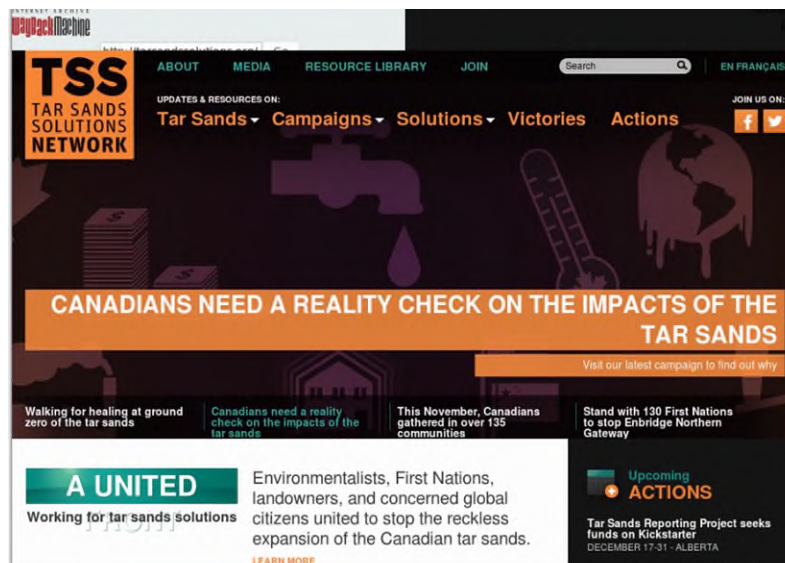


- (3) **Dirty Tar Sands Network-** a collaboration of a number of ENGOs for the purpose of disseminating information advocating for a halt to the expansion of the “tar sands”, resisting the construction of pipelines and refineries, and encouraging corporate consumers to refuse the purchase of “tar sands” oil.



- (4) **Tar Sands Solutions Network-** is made up of numerous organizations (members), including many I have found to be Participants, as well as First Nations groups collaborating to stop the expansion of the ‘tar sands’, resist the construction of pipelines and refineries, employ land use tactics to block Alberta

oil from accessing markets, and advance divestment tactics focused on financial institutions and insurance companies.



(5) Letter Writing Campaigns – Included four “open” letters:

(I) The “ENGO Open Letter” – a letter signed by 58 ENGOs representing “millions of Americans” was an open letter to “leading North American companies” to encourage them to reduce or eliminate the use of ‘tar sands’ oil;

(II) The “EDC Letter” – a letter signed by some 53 ENGOs “representing over 2 million people to “order” Economic Development Canada, a federal Crown Corporation to end all support of fossil fuels;

(III) The “Obama Letter” – a letter signed by seven ENGOs discouraging President-Elect Obama from supporting Alberta’s oil sands and “not to backslide into a relationship based on dirty oil”; and

(IV) The “ENGO Declaration – an open letter signed by 33 Canadian and U.S. ENGOs seeking :”a moratorium on expansion of tar sands development and halt further approval of infrastructure that would lock us into using dirty liquid fuels from sources such as tar sands...”.

- A. **Documentaries**- I identified 8 documentary films released between May 2009 and September 2011 critical of the “tar sands”.
- B. **Research Papers** - I identified certain “research papers” authored or co-authored by organizations I found to be Participants in anti-Alberta energy campaigns, which are highly critical of oil sands development and the transportation of oil sands oil.
- C. **Divestment Campaigns** - There have been general divestment campaigns targeting financial institutions, investors, endowment funds and insurance companies, where they are pressured to curtail their support of, investments in, or services provided to the fossil

fuel industry. Since this movement began in 2012, proponents claim that the movement has achieved over 1000 divestments representing \$8 trillion of investments. My report details a number of these campaigns that target supporters of the development of fossil fuels, and 7 divestment campaigns specifically targeting divestments related to the Alberta oilsands.

- D. **Direct Action and Citizen Engagement-** Civil disobedience is a tactic that has been used in anti-Alberta energy campaigns and continues to be employed by opponents of the transportation of Alberta oil and gas. Perhaps the most notorious civil disobedience campaign against the fossil fuel industry was the national rail blockade that occurred in February 2020, but frequent demonstrations aimed at stopping the Trans Mountain Pipeline continue to occur on a regular basis.
- E. **Land Conservation** – My Report details several land conservation initiatives that were originally created (generally within the past 20 years) to protect large sections of forests and ocean but are then leveraged by ENGOs to block oil and gas infrastructure development, including oil sands mines and pipelines.

The development of these land conservation areas is noteworthy in a number of respects:

- (1) They all trace their origins, directly or indirectly, to Agenda 21 – a treaty emerging out of the 1992 United Nations Environmental summit to which Canada is a signatory – that focuses on sustainable development.
- (2) Of note, the stakeholders who reside on and make their living from these lands are often not at the table in the early stages of these initiatives.
- (3) There is an inherent tension between land conservation and resource development. Both are important, as is the management of the interaction between these two objectives.
- (4) There has been significant foreign funding directed to the creation of some of these conservation areas.
- (5) The Tar Sands Campaign provided that part of the campaign strategy was to “land-lock the tar sands so their crude could not reach the international market.”
- (6) These conservation initiatives have effectively ring-fenced Alberta - the Great Bear Rainforest and Tanker-ban to the west, the Mackenzie Valley Five-Year Action Plan to the north west, and the Boreal Forest to the north east.

Highlights of these land conservation initiatives are as follows:

- (7) *The Mackenzie Valley Five-Year Action Plan* – The plan was developed around the same time as The Mackenzie Valley Gas Project- a proposal to develop three natural gas fields in or near the Mackenzie Delta with pipelines connecting to Northern Alberta which was first filed with the National Energy Board (NEB) in

June, 2003. In October, 2003, the Northwest Territories Protected Areas Strategy issued its “Mackenzie Valley Five-Year Action Plan (2004-2009)- Conservation Planning for Pipeline Development”.

The Action Plan became a rallying cry for opponents of the Project, which included a number of ENGOs, many of whom were identified by me to be Participants. Despite this, the NEB approved the Project on the basis it was satisfied the proponent was committed to working with the appropriate authorities to conform with land use plans.

In 2018, Imperial oil announced cancellation of the Mackenzie Gas Project noting significant delays in the regulatory process (with associated cost increases) and low natural gas prices, all of which made the project economically unviable.

- (8) *The Great Bear Rainforest* - The Tar Sands campaign background documents singled out the Northern Gateway Pipeline project, which was launched by Enbridge in 2004 as a target to be blocked.

The protection of this geographical area of BC was conceived and branded by a small group of environmentalists as the Great Bear Rainforest in 1995. In 1996, representatives of the Province of BC, industry, environmentalists and others began working on land and resource management plans for the Central and North Coast regions of BC and produced reports and recommendations for land use in the area in 2004 and 2005.

Part III of the report provides details from many of the Participants advocating that a pipeline should not be constructed through the Great Bear Rainforest.

In early 2016, the Great Bear Rainforest Order was finalized based on recommendations for land use in the so called “Great Bear” region, which were developed by a coalition of ENGOs, (several of which I found to be Participants) and forest products producers.

In April of 2016, Prime Minister Trudeau declared that the Great Bear Rainforest was no place for a crude oil pipeline. In November 2016, the Federal Cabinet cancelled the Northern Gateway project, noting that the joint review panel considering evidence on the pipeline project received evidence on the “unique and irreplaceable nature of the ecosystem of the Great Bear Rainforest.” It noted however, that in its report recommending approval of the Northern Gateway project, the joint review panel did not make any findings about the “unique and irreplaceable” nature of the Great Bear Rainforest.

- (9) *West Coast Oil Tanker Ban* - The federal government commenced an ocean management strategy in 2002, one of the outcomes ultimately of which was a Pacific North Coast Integrated Marine Area Plan (PNCIMA), the planning for which was launched in 2009. The PNCIMA process drew in a number of ENGOs, many of which I found to be Participants, who advocated for the integration of the

Great Bear Rainforest with the ocean management plan and advocated as well for a tanker ban.

Part III of my report provides details of many Participants advocating for a Tanker Ban prior to the passage of Bill C-48. In announcing the Bill, The Minister noted the connection of the Tanker Ban to the Great Bear Rainforest and commented that it was “complementary and consistent with these efforts to protect one of the world’s few remaining temperate rainforests.”

- (10) *Boreal Forest Initiative* - While leveraging the Great Bear Rainforest and the related Tanker Ban was one of the means to advance blockage of the transportation of Alberta’s oil and gas to the West Coast, the Boreal Forest initiative was similarly leveraged to block or curtail infrastructure development to the North. Greenpeace described the Canadian Boreal Forest Agreement as the “giant, oversized child of the Great Bear Rainforest agreement, which is considered the global hallmark of conservation agreements”.

The Canadian Boreal Forest Agreement was a product of and was signed by a number of funders, many of which were U.S based and ENGOs, but did not include any government, community or Indigenous groups as signatories, making it void of any sanction by democratically elected authorities.

Nonetheless protection of the Boreal Forest was frequently cited by numerous Participants in objecting to oil and gas infrastructure projects.

- (11) *Wetlands Restoration Program* – The background documents supporting the Tar Sands Campaign comment on the strategy to use “consultation processes...to force the adoption of more stringentland protections. Outcomes may include land set-asides for conservation.”

The development of the Wetland Replacement Program (WRP) began in 2005 and ultimately included a “wetland mitigation decision framework” that provided a hierarchy for addressing impacts to wetlands associated with a given development. Essentially, this means that when wetlands are disturbed by development, mitigation is required by replacing the wetlands or paying a fee, based on the land being disturbed.

I could not find an instance where this program has been abused and where it has stopped development. In fact, Alberta’s conservation record is something to be celebrated and strong partnerships have been forged between conservation organizations and industry.

It should be recognized an inherent tension between land conservation and resource development surfaced during the development of the WRP – evidence of the competing goals in play and highlighting this as an area of risk, where all such programs should be monitored to ensure an appropriate balance between conservation and economic development.

- F. **Litigation** - In alignment with the Tar Sands campaign, several ENGOs actively encourage interventions and citizen objections in the regulatory process for pipeline and oil sands mine proposals. These campaigns are often aided by “ecolawfirms” that, while having the status of registered charities, either represent ENGOs or some First Nations groups in their opposition to – or directly advocate in their own right – against the development of fossil fuels.

Other examples of litigation which advance anti-Alberta energy campaigns include:

- (1) **Public Trust Lawsuits** - Our Children’s Trust of Colorado facilitated a lawsuit in October 2019, on behalf of the children from most Canadian Provinces and Territories, against the federal government for among other things, supporting the development, extraction and transportation of fossil fuels, and alleging damages to the health and safety of youth from climate events said to be caused by the policies and actions of the federal government. It is the third lawsuit of this nature in Canada, and one of many examples brought against various governments around the globe.
- (2) **Failure to Disclose Climate Risk** - Another form of litigation being advanced in the U.S. but targeting among others, Exxon Mobil (“for its oil sands assets in Alberta”) is based on an alleged failure to disclose climate change risk and is similar to the basis for litigation against tobacco companies. The action against Exxon Mobil by the Attorney General of New York was unsuccessful but aided by a social media campaign known as “#Exxonknew and similar lawsuits against Exxon Mobil being advanced by Attorneys General in six other U.S. States has garnered significant media attention.

My research indicated there are some 1,700 cases involving climate litigation throughout the world but time and resources did not permit an exploration of all of them.

- G. **First Nations** - Many First Nations communities are located on or adjacent to lands that present economic development opportunities. First Nations also have unique legal rights that often place them in the centre of debates between opponents and proponents of development projects. ENGOs and many Indigenous spokespeople leverage these special rights of First Nations to oppose pipelines and oil and gas development while other First Nations leaders decry the opportunities threatened or lost by the failure of infrastructure projects to proceed. This creates serious divisions between various First Nations communities and within communities and to further compound the problem, the multi-media campaigns noted above, often lead to the incorrect impression by many Canadians that First Nations communities are universally opposed to oil and gas development and pipelines.

In my review of these complex First Nations issues, it is noteworthy that I found that foreign funding of some \$102 million was directed to First Nations environmental initiatives, projects and programs for the period 2003-2019. Due to the complex nature of

First Nations issues, I did not investigate on a granular level the disposition of these funds.

- H. **Political Activism** – I have identified several instances of attempts to influence decision makers in a manner that could constitute an attempt to directly or indirectly delay or frustrate the development of Alberta’s oil and gas resources.

(c) ***Participation in an anti-Alberta energy campaign***

21. In Part III I consider evidence in respect of organizations to determine whether they are a “Participant”, “Funder”, or “Re-Granter”, as I define those terms in this Report. I have concluded there are twenty-one Participants, thirteen Funders, and two Re-Granters. Detailed analysis with respect to each Participant, Funder, and Re-Granter is found under separate headings in Part III.

C. **FOREIGN FUNDING**

22. At the outset of this Inquiry Deloitte Forensic Inc. (“**Deloitte**”) was retained to assist me in reviewing the nature and extent of foreign funding, if any, of anti-Alberta energy campaigns, and whether grants or funding from any level of Canadian government was made available to Canadian organizations found to be involved in anti-Alberta energy campaigns. The results of Deloitte’s review are set forth in a report they provided to me on May 27, 2021, attached as Schedule “F” to this Report (the “**Deloitte Report**”).
23. Part IV of my Report includes commentary and analysis on the Deloitte Report. The Deloitte Report considered some 200,000 documents and 200 organizations. Among the documents considered by the Deloitte Report were source documents utilized by Vivian Krause in her analysis of foreign funding issues. While Deloitte reviewed these source documents, their review was done independently, and also included review of a significant number of documents and information sources in addition to the source documents from Ms. Krause. The Deloitte Report provides a detailed reference to their methodology and the documents and sources reviewed.
24. My review of the Deloitte Report in Part IV facilitates a consideration of issues pertaining to foreign and government funding more broadly. The matters discussed in this section include that foreign funding of Canadian charities generally, is significant and continues to grow. Annual foreign funding of Canadian charities increased from \$812 million in 2010 to \$2.4 billion in 2018, an increase of more than 200% in nine years.

Foreign funding of Canadian Charities			
Tax Year	Registered Charities	Foreign Funding	Annual % change
2010	84,137	\$812,178,523	n/a
2011	82,848	\$1,172,692,796	44%
2012	84,897	\$1,230,659,796	5%
2013	83,466	\$1,359,365,332	10%
2014	84,521	\$1,669,895,929	23%
2015	84,442	\$1,841,787,364	10%
2016	84,457	\$2,090,414,484	13%
2017	84,181	\$2,319,367,314	11%
2018	84,323	\$2,439,935,132	5%
Total	n/a	\$14,936,296,670	

25. The Deloitte Report also concluded that:
- B. Foreign funding reported by Canadian charities for “environmental initiatives” for the period 2003-2019 was \$925 million.
 - C. Foreign funding of “Canadian-based environmental initiatives”, such as anti-pipeline campaigns, that remained in the U.S. for the period 2003-2019, was \$352 million.
 - D. Total foreign funding, therefore, of “Canadian-based environmental initiatives” was \$1.28 billion for the period 2003-2019.
 - E. Based on word search criteria, grant descriptions totaling \$54.1 million were specifically prescribed for “anti-Alberta resource development activity”.
26. I note that foreign funding of Canadian-based environmental initiatives is likely understated for a number of reasons summarized in Part IV.
27. I was ultimately not able to trace with precision the quantum of foreign funding applied to anti-Alberta energy campaigns. This is due in large part to the fungible nature of money - once funds are deployed to an organization in some manner, they are deployed to advance the mission and campaigns of the organization, which are often varied and complex, and cannot be readily traced to any particular activity or initiative.
28. To make such findings, the Inquiry would have had to examine grantors and recipients under oath as part of a detailed process of tracing funds from grantors to recipients. To conduct such an “audit”, with detailed precision concerning the exact flow of funds, was not the purpose of this Inquiry and, in any event, is beyond its capacity as a provincial inquiry with limited resources.

29. Further, I interpret the Terms of Reference as not requiring me to determine the total quantum of foreign funding of anti-Alberta energy campaigns. Rather, I interpret the Terms of Reference as requiring me to determine the role of foreign funding, if any, in anti-Alberta energy campaigns.
30. Ultimately, the difficulties caused in understanding what portion of foreign funding, and likewise domestic funding, is directed towards any particular activity has informed my recommendations that greater transparency is required in respect of funding in the charity/non-profit sector.
31. Of substantive and significant importance for Albertans and Canadians to note, is the large quantum of foreign funding flowing into Canada for whatever purpose, and which has the potential to influence matters of public interest to Albertans and Canadians. As such, there are important public policy implications to this, which may require greater regulatory and governance oversight, transparency and accountability as detailed in my Recommendation #1.
32. As required by the Terms of Reference, I have also summarized findings with respect to government funding (from federal, provincial/territorial, and municipal/regional levels) received by those Canadian entities I have found are Participants. While not all Canadian Participants received government funding, I did identify approximately \$145 Million in government funding provided to certain Canadian Participants over the period reviewed, as further detailed in Part IV. I have not been able to determine whether any government funding went to fund specific anti-Alberta energy campaigns, and do not make a finding that any portion of government funds has been directed to such campaigns.

D. ECONOMIC CONSEQUENCES OF THE LOSS OF OIL AND NATURAL GAS RESOURCES

33. Part V of my report considers generally the economic impact of the challenges faced by Alberta's oil and gas industry, whether Anti-Alberta energy campaigns have played a role, and concludes that for a variety of reasons the industry has generally encountered difficult economic circumstances.
34. While anti-Alberta energy campaigns may have played a role in the cancellation of some oil and gas developments, I am not in a position to find that these campaigns alone caused project delays or cancellations. There is no doubt that these campaigns have occurred in an environment of reduced investment in oil and gas projects, at least since 2014 when global oil prices fell by almost half and other economic factors were at play. Much of the reduced investment is therefore due to natural market forces, but anti-Alberta energy campaigns have played a role. Many ENGOs have taken credit for the success of their efforts in the cancellation of a number of projects, including Keystone XL, the Teck Frontier Oilsands Mine, the Northern Gateway Pipeline, Energy East, Statoil's Corner Oil Sands Project, and Shell's Carmon Creek Oil Sands Project, and many ENGOs remain determined to stop the Trans Mountain Pipeline, Enbridge's Line 3 and Enbridge's Line 5.
35. Ultimately, the precise value of economic loss is impossible to determine and is a combination of many complex factors, including price differentials, curtailed production, and cancelled projects. The economic consequences Alberta and Canada face with the loss of the Alberta oil and gas industry cannot be ignored in considering the issues this Inquiry raises and the recommendations I have been invited to make. In particular, it is important to note that without the prosperity that

comes with the economic development of oil and gas, investment in our energy future will be compromised, including innovation for cleaner processes and the development of alternative energy sources.

E. THE BROADER CAMPAIGN

36. Part VI provides some general and conceptual commentary regarding the operations and interactions of certain foundations and organizations.
37. Generally, networks of ENGOs seem to work in concert with each other in a collaborative manner to advance what effectively is a movement. As one commentator noted:
38. In short, the movement will be stronger and more effective when you understand your role in the movement, you communicate it, strengthen it, and synergize with it... We each need to know and focus on our niche.⁴
39. As another commentator noted:
- “The mistake Vivian Krause and Premier Kenney make is thinking that it’s one campaign. It’s not...It’s dozens of campaigns. If it’s anything, it’s a movement of movements.”⁵
40. The movement and the organizations that are part of it appear to function much like an industry unto themselves, attracting various sources of funding and employing large personnel and capital to promote their objectives.

I accept that many of the ENGOs are driven by an honest concern about the threats of climate change. However, like any business, ENGOs are also focused on their own financial sustainability. Trends emerge, markets change and financial sustainability is ensured by adapting to make your product attractive on an ongoing basis. Many of them have had a history of moving from cause to cause, from salmon farming, to forestry, to water, to oil and gas, to agriculture. There is no doubt these are all important issues to humanity, but these organizations sustain and grow themselves and their management with brilliant marketing campaigns. They are highly effective fundraisers and marketers.

41. They are adept at focusing on high-profile causes where they believe they can have an impact; this in turn provides justification for donor support and helps ensure their ongoing existence.
42. Perhaps in large part of the need to sustain themselves I noted that much of the communication from ENGOs reinforces what Hans Rosling in his book “Factfulness”, calls the “Urgency Instinct”.

⁴ “Prepare Your Non-Profit Organization to Help Create a Wave of Positive Change”, M. Raynolds, PhD, The Muttart Foundation, 2013 at p 28.

⁵ <https://www.ctvnews.ca/business/alberta-to-hold-2-5-million-public-inquiry-into-funding-for-oil-and-gas-foes-1.4495264?cache=ztdsfbgaznqc%3Fautoplay%3Dtrue%3Fclipid%3D1930113>

“We do not seem to have a similar instinct to act when faced with something that is far off in the future. In fact, in the face of future risks, we can be pretty slothful.

The attitude towards future risk is a big problem for activists who are working on long timescales. How can they wake us up? How can they galvanize us into action? Very often, it is by convincing us that uncertain future risk is actually a sure immediate risk, that we have a historic opportunity to solve an important problem and it must be tackled now or never: that is by triggering the urgency instinct.”

43. He goes on to say, that “Climate change is way too important a global risk to be ignored or denied, and the vast majority of the world knows that. But it is also way too important to be left to sketchy worst-case scenarios and doomsday prophets.”
44. This tactic of communicating through extremism has the potential to seriously undermine positive outcomes. The environmental movement can be given credit for raising the issue of climate change on the national agenda. But I am concerned the discussion has become polarized and paralyzed to the extent it is nearly impossible to raise questions or make suggestions that don’t align with the agenda of the ENGOs, which is often supported by the media.

F. PARTICIPANT FOR RESPONSE MATTERS

45. Part VII considers certain comments and concerns that were raised by a number of Participants for Response in their submissions to the Inquiry. Among the common matters addressed in this section, several merit express comment at this time as they may provide clarification that will be of assistance in considering the balance of this Report.
46. Several participants expressed a view that equated participating in an “anti-Alberta energy campaign” with being “anti-Albertan”. I reiterate, as I have done in the Ruling on Interpretation and throughout this Report, that in no way does participating in an anti-Alberta energy campaign indicate that an organization has acted in a manner that is illegal, improper, or otherwise impugnable, nor does it mean the organization is “against Alberta” in some manner.
47. Several participants expressed the view that this Report should have addressed the science pertaining to climate change. As has been previously clarified, this Report does not address issues pertaining to climate change. While such issues are surely of importance, and deserving of robust public discourse, they simply are not within the scope of matters that the Terms of Reference require this Inquiry to address. Providing insight on the role of foreign funding, if any, in anti-Alberta energy campaigns does not require commentary on issues of climate change, and meaningfully addressing such issues was not within the capabilities or resources of this Inquiry.
48. Finally, several participants expressed concern that this Report, and the Inquiry itself, might have a chilling effect on freedom of expression, assembly, and association, particularly as those rights and freedoms pertain to matters of resource development. Freedom of expression, assembly, and association are fundamental freedoms enjoyed in Canada. They are constitutionally enshrined and necessary for the effective functioning of our society. Nothing in this Report should be taken as in any way seeking to limit these important rights and freedoms, including as such

rights and freedoms may be exercised with respect to matters pertaining to the development of Alberta's oil and gas resources.

49. Indeed, the recommendations made in this Report call for greater transparency for the purpose of encouraging more open and transparent dialogue on matters of importance to foster the effective exercise of freedom of expression, assembly, and association, and not for the purposes of stifling the ability of parties to exercise these fundamental rights and freedoms.

G. RECOMMENDATIONS

50. Through all of my reading, research, informal interviews and the formal input from the Inquiry's engagement processes, I have developed six key recommendations. These recommendations are not focused on seeking retribution, attaching blame or seeking damages from anyone; rather they are oriented to the future. They address public policy initiatives that I believe will help Albertans come together and move forward constructively to continue to make a positive contribution to Canada building on our natural resources, our ingenuity and our entrepreneurial spirit.

51. The recommendations are as follows:

Recommendation 1- Transparency and Accountability

Develop standards for not-for-profit/charitable organizations and public institutions that provide a level of consistency and a more level playing field with the corporate sector, in terms of transparency, accountability and governance.

Rationale: The charitable/not-for-profit sector is significant within the Canadian economy and society. It attracts large donations, domestic and foreign, from public and private foundations, governments, and individuals that can influence public policy. Regulatory and governance oversight of the sector must be enhanced to ensure full and open disclosure that informs and protects Canadians.

Recommendation 2 – First Nations

Create an opportunity for meaningful dialogue among First Nations communities and between First Nations communities and other Albertans and Canadians to advance understanding and Reconciliation with a focus on economic development and opportunities to achieve greater prosperity for Indigenous peoples and Canada as a whole.

Rationale: Many First Nations communities are located on or adjacent to lands that present economic development opportunities. First Nations communities also have unique legal rights that often place them in the centre of debates and disputes between opponents and proponents of development projects. There is a need for meaningful and open dialogue to allow First Nations communities to explore economic development opportunities for their people, while balancing their strong commitments and history of protecting the land and the environment.

Recommendation 3 - Science, Technology and Innovation

Undertake a highly focused initiative, similar to Alberta’s historically successful Alberta Oil Sands Technology and Research Authority (AOSTRA), that maximizes collaboration, alignment and investment by all stakeholders in advancing Alberta as an international leader in energy science, technology and innovation to produce low-cost, low carbon energy supplies and technologies for the world.

Rationale: The public discourse surrounding oil and gas and the development of Canada’s energy resources has been one-sided and mostly focused on the negative elements of a fossil fuel economy. Fossil fuels will be part of the international energy mix for decades to come and Alberta has been a world leader in innovation, not only of fossil fuels but of all forms of energy. Alberta can and should contribute to climate change solutions around the world, capitalizing on our strong history of science, technology, ingenuity and entrepreneurship.

Recommendation 4 – Reliable Information

Invest in and support the collaborative development of a methodology, including governance oversight, to establish world-class best practices, standards, and processes for the measurement, accumulation and reporting of GHG emissions data.

Rationale: Different countries, and even different resource developers within each country, have varying standards and processes for measuring and reporting on GHG emissions, yet accurate and meaningful GHG reporting is critical to tackling climate change. Alberta has the opportunity to be a world leader in developing GHG measurement standards and processes.

Recommendation 5 – Natural Resource Development Strategy

Provide a mandate to the Business Council of Alberta to engage with the Business Council of Canada and together lead a national effort to develop a Natural Resource Development Strategy for Canada.

Rationale: Canada’s economic history is based on the responsible development of our abundant natural resources and exporting them to international markets. Currently, there is a divergence of focus among key stakeholders that is preventing Canada from fully seizing on its opportunities.

Recommendation 6 – Rebrand Canadian Energy

Create a new brand for Canadian Energy. Develop in collaboration with industry, and with the direction and advice of marketing and communications experts, a long-term strategy built on a vision of being a global leader in lower carbon energy and climate solutions, while emphasizing the importance of energy in creating a high quality of life and a prosperous future for people everywhere. In so doing, recognize Alberta’s reputation for innovation and ingenuity, and underscore Alberta’s strong record of protecting its lands and nature.

Rationale: As noted, the public discourse on energy and the environment in Canada has been one-sided. Complete information, while it may be available, has not been well or fully communicated. Canadians want to ensure a clean environment, as well as prosperity, for generations to come, but they need complete and reliable information to allow them to become energy literate. The five recommendations preceding this will form a foundation for better, more complete information for Canadians, which needs to be communicated effectively and professionally.

Part II – Anti-Alberta Energy Campaigns

PART II

ANTI-ALBERTA ENERGY CAMPAIGNS

A. INTRODUCTION AND DEFINITION OF ANTI-ALBERTA ENERGY CAMPAIGN

52. The Terms of Reference provide that I am to inquire into the role of foreign funding, if any, in anti-Alberta energy campaigns. As such, a threshold issue is to define an “anti-Alberta energy campaign” and determine whether I am able to identify any campaigns that meet this definition.

53. “Anti-Alberta energy campaign” is a defined term in the Terms of Reference:

“‘anti-Alberta energy campaign’ means attempts to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and the transportation of those resources to commercial markets, by any means, which may include, by the dissemination of misleading or false information”

54. I issued a Ruling on Interpretation of the Terms of Reference wherein I interpreted the term “anti-Alberta energy campaign”. As set out in the Ruling on Interpretation of the Terms of Reference, I find that an anti-Alberta energy campaign is a campaign that involves attempts to frustrate the development of Alberta’s oil and gas resources in a broad and general sense. I find that attempts at frustration of the development of Alberta’s oil and gas resources in a broad and general sense may be a stated objective of a party, or may manifest itself through repeated opposition to attempts to develop Alberta’s oil and gas resources or opposition to a particular project in furtherance of an intention of opposing development of Alberta’s oil and gas resources in a broad and general sense. I find that the term “anti-Alberta” refers to Alberta as a geographic modifier, and should not import any connotation that opposition to oil and gas development in Alberta is “against Alberta” or its interests in any sense.

55. Having defined an “anti-Alberta energy campaign” I wish to be clear that I do not find that participation in an anti-Alberta energy campaign is in any way improper or constitutes conduct that should be in any way impugned.

56. In keeping with the Terms of Reference, I have examined work completed by other investigations in other jurisdictions into similar campaigns. In addition to those reports specifically cited in the Terms of Reference, I have reviewed the works of a number of researchers (including Ms. Vivian Krause), publicly available material, government reports, conducted over 100 interviews, and commissioned three reports.⁶

57. My work has identified, through evidence that will be described in this Report, the existence of multiple “anti-Alberta energy campaigns” based upon my interpretation of the Terms of Reference. Among these campaigns, there are a number of campaigns that are specifically directed at Alberta’s oil sands and which were either commenced or seized upon in the same

⁶ The three commissioned Reports were the subject of comment in the Participation for Commentary phase of this Inquiry and included: (a) “Background Report on Changes in the Organization and Ideology of Philanthropic Foundations with a Focus on Environmental Issues as Reflected in Contemporary Social Science Research”, B. Cooper; (b) “Foreign Funding Targeting Canada’s Energy Sector”, EnergyInDepth; and (c) “A New Global Paradigm: Understanding the Transnational Progressive Movement, the Energy Transition and the Great Transformation Strangling Alberta’s Petroleum Industry”, T. Nemeth.

period as a coordinated effort by a handful of organizations. I refer to this campaign as the “Tar Sands Campaign”. I note at the outset that use of the terms “Tar Sands”, “Tar Sands Campaign”, or similar terms are used within many of the documents I will review and refer to below. In the context of any particular document, these terms must be understood as they are defined in the particular document, and not as referring to the “Tar Sands Campaign” as I define and describe it. I will expressly specify instances where I find that a document’s reference to a “Tar Sands Campaign” refers to the same “Tar Sands Campaign” as I have defined that term in this Report.

58. I will proceed to describe the Tar Sands Campaign, its origins, goals, and the strategy and tactics it employs.

B. THE “TAR SANDS CAMPAIGN”

(a) *Background*

59. There are two documents from 2008 that appear to set out the vision and structure of the Tar Sands Campaign and provide essential context to understanding the Tar Sands Campaign. These documents came to the attention of the Inquiry through internet searches done in the preliminary stages of the Inquiry. I have seen these documents referred to numerous times in many contexts throughout the course of this Inquiry, and as I will go on to find in this report, have also observed instances of the implementation of the strategies and tactics described in these documents. As such, I find that these documents are a reliable articulation of the vision, strategy, and tactics of the campaign I refer to as the Tar Sands Campaign.

(i) “The Tar Sands Campaign” - July 2008

60. One of the earliest articulations of the “The Tar Sands Campaign” is a power point presentation entitled “*The Tar Sands Campaign*”, dated July 2008, jointly sponsored by Rockefeller Brothers Fund, Corporate Ethics International, the Pembina Institute, and National Resources Defence Council (“**NRDC**”).⁷ It is unclear who the presentation was originally designed for. I refer to this presentation as the “RBF Document”. The RBF Document is attached to this Report as Schedule “A”.
61. The document is broken into four sections to address the “significant global threat” of the oil sands; namely: (A) the introduction (by Rockefeller Brothers Fund); (B) the strategy and structure of a “*Tar Sands Campaign*” (by Corporate Ethics International); (C) “*Tar Sand & the Canadian Context*” (by the Pembina Institute); and (D) “*Drawing a Line in the Sand on the Canadian Tar Sands: U.S. Campaign Strategies*” (by NRDC). Each section contains concepts and strategies described in more detail in this Report.

(ii) “Tar Sands Campaign Strategy 2.1” - October 2008

62. This is the most detailed of the early Tar Sands Campaign material, prepared by Corporate Ethics International (a contributor to the RBF Document). It is unclear who the document was prepared for, and why it is referenced as version “2.1” (although perhaps building off of the RBF

⁷ “The Tar Sands Campaign”, Michael Northrop, Program Officer, Rockefeller Brothers Fund, July 2008 (the “**RBF Document**”).

Document). While the document purports to be a “working document that will be continually updated” I could not find any subsequent versions of the document.⁸ I refer to this document as the “Corporate Ethics Document”. The Corporate Ethics Document is attached to this Report as Schedule “B”.

63. I will refer to these two documents – the RBF Document and the Corporate Ethics Document - as the “**Background Documents**” throughout this Report.

(b) ***Origins of the Tar Sands Campaign***

64. The evolution of the Tar Sands Campaign mirrors the development of the industry. Notwithstanding that commercial development of the oil sands began in the 1960s, oil sands didn’t seem to catch international attention outside of the immediate industry until the United States’ Energy Information Administration (EIA) recognized Oil Sands as a sustainable reserve in 2003.⁹
65. International attention was pursued at the time by the Federal government. In trips to Washington, London, and the G8 Summit in St. Petersburg, in July of 2006, then Prime Minister Stephen Harper had branded Canada as an “energy superpower”.¹⁰
66. Around the same time, here in Alberta the Pembina Institute was beginning to work on the environmental implications of the oil sands as early as the mid-1990s. The Executive Director of the Pembina Institute from February 1, 2004 to January 1, 2012, recalls that period as follows:¹¹

The Pembina Institute has been working on the environmental implications of the oilsands since the mid-1990’s. In the 1990’s, the pace of oilsands development was slow. Our strategy was simple: proactively work with companies to negotiate environmental improvements one project at a time to continuously raise the bar for the next project...

But when the oilsands boom started around 2000, our capacity to keep pace was overwhelmed...The boom forced us to change our strategy and tactics...

It was a time when there was minimal awareness among the public and the majority of policy makers of the environmental challenges related to developing the oilsands resource. As a result, one of our 2005 and 2006 strategic objectives was to ensure “the vast majority of media stories on the oilsands include a mention of growing environmental concerns.”

⁸ “Tar Sands Campaign Strategy 2.1”, Michael J. Marx, Ph.D., Corporate Ethics International, October 2008 (the “**Corporate Ethics Document**”).

⁹ That’s not to say that the oil sands weren’t already the attention of local focus. They were. See, for example, “*Comprehensive Report – The Oil Sands: A New Energy Vision for Canada*”, The National Task Force on Oil Sands Strategies of the Alberta Chamber of Resources, Spring of 1995.

¹⁰ <https://www.theglobeandmail.com/news/world/pm-brands-canada-an-energy-superpower/article1105875/>

¹¹ M. Raynolds, “*Prepare Your Non-Profit Organization to Help create a Wave of Positive Change*”, The Muttart Foundation, (2013)

As a start, we compiled our environmental concerns and solutions into a significant report entitled *Oilsands Fever: The Environmental Implications of Canada's Oilsands Rush*. Published in the fall of 2005, we utilized this report to attract the attention of the media, policy makers, and other environmental NGO's. When government or industry spoke at a conference, we made every effort to be an invited speaker. When we could determine that the provincial government was involved in a significant event in Washington D.C., we made the same trip and did the rounds on Capitol Hill. By the end of 2006, we had put oilsands onto the environmental radar: rarely did a media story, even in the business section, not mention [*sic*] growing environmental concerns. And probably most importantly in this stage, we had attracted the attention of some of the largest environmental organizations and funders across North America...

We were directly credited with much of our work, driving over 4000 media hits annually (over 10 a day). But many times we used the very powerful tactic of encouraging and enabling others to tell the story without any attribution back to ourselves.

67. Throughout 2005 and 2006 the Pembina Institute had published a number of reports related to environmental concerns surrounding the oil sands,¹² but was not alone in attracting the attention of large environmental organizations. During the summer of 2006 at the Smithsonian Folklife Festival in Washington D.C., Alberta's exhibit on the National Mall included a giant 180-tonne dump truck – similar to those used in the oil sands, which was commented upon by the NRDC's head of its Canadian Campaign: ¹³

It was a pivotal moment. When you bring a tarsands dump truck to the National Mall in Washington, D.C., it was like bringing the tar sands into our [own] backyard. For the environmental groups in D.C., it was a moment of it sort of being, "They've brought this fight to us."

68. NRDC is listed as a contributor to the RBF Document.
69. Development of the Oil Sands was now clearly on the international map and by March of 2007 the Standing Committee on Natural Resources had released its Report on sustainable development of the Oil Sands to Parliament.¹⁴ The report concluded:¹⁵

¹² See, for example, (a) D. Woynillowicz, C. Severson-Baker, and Marlo Reynolds, November 2005. "*Oil Sands Fever – The Environmental Implications of Canada's Oil Sands Rush*"; <https://www.pembina.org/reports/OilSands72.pdf>; (b) M. Bramley, 2005, "*The Case for Deep Reductions: Canada's Role in Preventing Dangerous Climate Change – An investigation by the David Suzuki Foundation and the Pembina Institute*", (https://www.pembina.org/reports/Case_Deep_R_E.pdf); (c) M. Bramley, D. Neabel, and D. Woynillowicz, November 2005, "*The Climate Implications of Canada's Oil Sands Development*", <https://www.pembina.org/reports/oilsands-climate-implications-background.pdf>; (d) M. Reynolds, September 2006, "Industry and Government Accountability in the Oilsands", https://www.pembina.org/reports/Oilsands_PCP_Marlo_Edm.pdf; and (e) M. McCulloch, M. Reynolds, and R. Wong, October 2006, "*Carbon Neutral 2020 – A Leadership Opportunity in Canada's Oil Sands*", https://www.pembina.org/reports/CarbonNeutral2020_Final.pdf.

¹³ "*How an Alberta PR stunt backfired in the U.S., sparking a decade of oilsands opposition*", J. Fekete and C. Varcoe, Postmedia News, July 7, 2016. <https://nationalpost.com/news/canada/a-decade-of-bitumen-battles-how-10-years-of-fighting-over-oilsands-affects-energy-environment-debate-today> .

¹⁴ "*The Oil Sands: Toward Sustainable Development*" Standing Committee on Natural Resources, March 2007".

¹⁵ *Ibid*, at 53.

The oil sands are an important economic and strategic advantage for Canada. The development of the industry has had positive economic repercussions in Alberta and, indeed, elsewhere in Canada. The rapid expansion of oil sands campaigns, however, has also given rise to a number of important challenges. Concerns about cost increases, labour shortages, greenhouse gas emissions, the growing use of precious natural gas, water use, cumulative environmental impacts and social impacts, have yet to be adequately addressed by the relevant levels of government.

It is clear to this Committee that stakeholders, including the federal government, must focus their efforts to address these important issues. A “business-as-usual” approach to the development of the oils sands is not sustainable. The time has come to begin the transition towards a clean energy future.

The development of the oil sands is a great Canadian technological and economic achievement. With the right mix of innovative policies and technologies, Canada could harness the energy that the oil sands offer and minimize the social and environmental impacts of oil sands campaigns, thus making the oil sands part of a clean energy future.

At the same time as non-governmental organizations who focus on environmental issues (“**ENGOS**”) were noticing the oil sands, international foundations were organizing around the climate change movement and concluding that substantial investment must be made. A collection of foundations published a report concluding:¹⁶

... additional funding of about \$600 million is needed annually to implement Design to Win’s strategies.

We recommend, in the broadest of terms, a three-part menu of investments:

1. Support existing NGOs with deep knowledge of local conditions and needed strategies; cultivate new organizations where necessary.
2. Create nation-specific expertise to facilitate grant making. Organizations that have the local capacity and expertise are needed to oversee highly leveraged, strategic interventions.
3. Build International Best Practice Centers for critical “don’t lose” sectors to accelerate the diffusion of knowledge and innovation, either by establishing new institutions or linking existing organizations in loose networks.

70. I find that during this 2005-2007 period a pattern was beginning to emerge: foundations were looking to strategically deploy their grant funds, Canadian ENGOS like Pembina and the David

¹⁶ “*Design to Win – Philanthropy’s Role in the Fight Against Global Warming*,” California Environmental Associates, August, 2007 (at pages 8-9). Sponsored by the David and Lucile Packard Foundation, the Doris Duke Charitable Foundation, Energy Foundation, Joyce Foundation, Oak Foundation, and the William and Flora Hewlett Foundation. <https://www.climateworks.org/wp-content/uploads/2007/08/Design-to-Win.pdf>

Suzuki Foundation were collaborating their focus on the oil sands,¹⁷ and foundations like The Oak Foundation and the Hewlett Foundation were assisting Pembina in the production of Pembina's review of oil sands' GHG emissions in light of Canada's Kyoto obligations.¹⁸

71. By 2008, the RBF Document and the Corporate Ethics Document had been developed and later that year a meeting reportedly took place near a mall in Minneapolis¹⁹ where a number of organizations, including NRDC and Corporate Ethics, began the implementation of the strategies outlined in the Background Documents.

(c) ***Components of the Tar Sands Campaign***

(i) Goals of the Campaign

72. The Background Documents lists a short, mid, and long term goal for the campaign, summarized as follows: ²⁰

- A. short-term: change the debate;
- B. mid-term: moratorium; and
- C. long-term: new energy paradigm.

(ii) Network of Organizations

73. The Corporate Ethics Document provides that:

This is a large, complex campaign with a number of different entities: corporate, governmental, community, educational and non-governmental organizations. It also has a number of strategic tracks that need to be well-integrated. It is critical that the campaign have some type of coordinating structure to insure that all groups and strategic tracks are connected. This coordinating structure also needs some authority to direct funds to high priority campaigns quickly. While NGOs generally prefer a network structure that allows for maximum communication, and minimal centralized control, foundations investing most heavily in the campaign have a vested interest in exercising some control over the process.

We have developed a hybrid campaign structure that allows for both NGO and funder preferences. Within this structure, NGOs involved in the campaign work together to determine their strategic plan and funding priorities.²¹

¹⁷ See, for example, M. Bramley, 2005, "The Case for Deep Reductions: Canada's Role in Preventing Dangerous Climate Change – An investigation by the David Suzuki Foundation and the Pembina Institute", (https://www.pembina.org/reports/Case_Deep_R_E.pdf).

¹⁸ D. Woyntonowicz, C. Severson-Baker, and M. Raynolds, November 2005. "Oil Sands Fever – The Environmental Implications of Canada's Oil Sands Rush"; <https://www.pembina.org/reports/OilSands72.pdf>. (page iv).

¹⁹ "How the American environmental movement dealt a blow to Alberta's oilpatch", A. Panetta, CBC News, Nov 18, 2019. <https://www.cbc.ca/news/world/paralyze-oilsands-plan-keystone-pipeline-1.5356980>.

²⁰ The RBF Document. Page 15. The Corporate Ethics Document. Page 6.

²¹ The Corporate Ethics Document. Page 13.

74. With this preamble, the Corporate Ethics Document then describes a proposed structure, summarized as:²²

- A. The Lead Coordinator;
- B. The Deputy Coordinators of U.S. and Canada;
- C. The Media coordinators of U.S. and Canada; and
- D. The Tar Sands Campaign Steering Committee (to be comprised of the three roles described in A and B, above).

75. Of further note is the comment that:²³

The Coordination Center *shall remain invisible* to the outside and to the extent possible, staff will be “purchased” from engaged organizations. [italics is from original text]

76. The Corporate Ethics Document describes a structure where there exists:²⁴

- A. a core group of participants heavily involved through an elongated period of time (the Lead Coordinator, Deputy Coordinators of U.S. and Canada, Media Coordinators of U.S. and Canada, and a “Tar Sands Campaign Steering Committee”);
- B. a funding apparatus largely supported by foundations through the charitable/not-for-profit sector; and
- C. a fluid network of ENGOs that would undertake and provide services in furtherance of the aims of the campaign.

(iii) Funding the Tar Sands Campaign

77. The Background Documents contemplate a coordinated campaign financed by funding from foundations²⁵ through to leading U.S. and Canadian ENGOs.²⁶

78. A separate budget attachment is referenced in the Corporate Ethics Document which I have been unable to locate. While budget amounts are unavailable, the summary of priority spending outlined in the Background Documents can be summarized as follows:

- A. Campaign infrastructure;
- B. U.S./Canada Infrastructure Groups – to fund: (1) legal challenges to delay approval for infrastructure; (2) organizing challenges; (3) U.S. midwest strategy analysis; (4) Canadian

²² The Corporate Ethics Document. Page 13 ff.

²³ The Corporate Ethics Document. Page 13.

²⁴ The Corporate Ethics Document. Page 13.

²⁵ The RBF Document. Pages 12, 22, and 23.

²⁶ The Corporate Ethics Document. Pages 13 and 15.

strategy analysis; and (5) research to support legal Challenges (including to "... mobilize public opinion");

- C. U.S./Canada policy work – to fund efforts to generate public pressure on the federal governments;
- D. U.S./Canada Markets/Finance Work – to fund: (1) to promote/support legislation for low carbon fuel standards in the U.S.; (2) to promote/support legislation for low carbon fuel standards in Canada (particularly in B.C. and Ontario); (3) targeting Shell and Total to bring pressure on Canada; and (4) discouraging lending and investments in oil sands ("banks and major institutions ...will also be stigmatized").
- E. Communications Work – to fund: (1) framework/messaging to "... [frame] our solutions in a way that promotes new thinking and put our opponents on the defensive"; (2) shared educational tools (eg. a "Tar Sands website"); (3) celebrity engagement; and (4) buying media coverage.²⁷

C. **STRATEGY AND TACTICS OF THE TAR SANDS CAMPAIGN**

(a) **Strategy**

79. It is helpful to understand the strategies that the authors of the Background Documents suggested be employed to advance the Tar Sands Campaign. The Tar Sands Campaign described in the Background Documents advances on five tracks, as follows:

- A. stop/limit pipeline and refinery expansion;
- B. force tar sands water, toxics and land reform;
- C. significantly reduce future demand for tar sands oil;
- D. leverage the tar sands debate for policy victories in the U.S. and Canada; and
- E. generate unity around the fuels endgame.

80. Each of these tracks is summarized below.

A. *Track A - Stop/Limit Pipeline and Refinery Expansion.*

81. The Corporate Ethics Document lays out this aspect of the strategy as follows: ²⁸

In Canada, First Nations can challenge the construction of pipelines across their traditional territories and prevent pipelines from crossing their reserves...In U.S. and Canada, grassroots opposition in jurisdictions where refineries are being proposed can sway elected officials. Scientific research documenting potential violations or risks of air

²⁷ The Corporate Ethics Document. Page 15 ff.

²⁸ The Corporate Ethics Document. Page 7.

and water quality, threats to critical habitats, or incursions on culturally sensitive lands will be critical. When all else fails, legal challenges to environmental impact statements and violations of local, state, or federal laws have shown their potential already through recent challenges ...

B. Track B - Force Tar Sands Water, Toxics, and Land Reform

82. This track is described by the Corporate Ethics Document as:²⁹

The strategy is to use scientific studies, permitting and consultation processes, and Aboriginal and non-Aboriginal legal challenges to both drive the debate inside and outside Alberta about the impacts of the industry – and thereby to de-legitimize the status quo - and to force the adoption of more stringent water, toxics and land protections. Outcomes may include closed loop water systems, “dry” tailings methods, and significant land set-asides for conservation. The debate about the issues will show Albertans that the system is broken and weaken the ability of the Alberta Government to rally the flag by invoking the ghosts of the Canadian National Energy Policy.

Once these reforms are adopted the cost of doing business in the tar sands will be raised, thereby making tar sands exploitation less economically attractive. We need to document the inadequate supply of water for these operations and to use this to support legal challenges which could result in legal decisions that slow down tar sands development. First Nations may have water rights that are being violated and a potentially strong case...

C. Track C - Significantly Reduce Future Demand for Tar Sands Oil

83. This track is described by the Corporate Ethics Document as focussing more on large consumers:³⁰

This is not the standard markets strategy that seeks to gain contract cancellations. Instead, this aspect of the campaign targets large corporate, state, and federal fuel customers with the goal of converting them to advocates of legislation that penalizes and limits future tar sands demand. There are three aspects to this strategy which essentially entail sending a market signal that tar sands oil will be penalized for its high life-cycle carbon content. The first aspect is the adoption of legislation ... The second aspect of this strategy is to convert large corporate, governmental, and institutional fuel customers into advocates for this legislation, and public opponents of tar sands fuel expansion. The third aspect of this strategy is to identify and advocate alternatives which would make tar sands fuel unnecessary... All of these initiatives can be used to maintain a steady drumbeat of news in Alberta and Canada that major reform of the tars sands industry must take place and that there is a limited future for tar sands oil in the new energy paradigm.

²⁹ The Corporate Ethics Document. Page 8.

³⁰ The Corporate Ethics Document. Page 10.

D. *Track D - Leverage the Tar Sands Debate for Policy Victories in the U.S. and Canada*

84. This track is described in the Corporate Ethics Document with reference to various NGOs:³¹

The NGOs involved in this campaign must define the terms of the debate, elevate the visibility of the debate, and broaden the allied constituencies engaged in this debate. This requires developing educational media (e.g., DVDs, pamphlets) and distributing them widely among relevant constituencies. It means utilizing well established earned media tactics to reach a broader public audience (e.g., high visibility direct actions, grassroots organizing, creative media demonstrations, alternative media viral efforts, celebrity spokespersons). It also means engaging in outreach to various networks of NGOs engaged in different aspects of climate change work to make sure their literature, demands, and policy recommendations cover tar sands (e.g., 1Sky, which like many NGOs focuses largely on coal). In the U.S., NGOs such as the state Public Interest Research Groups (PIRGs) and Sierra Club that engage in lobbying campaigns will be essential partners. In Canada, we need to focus on media framing and citizen engagement in relevant geographic areas such as Ontario and Quebec where support for climate laws is strong though as yet un-mobilized, and which have seen a downturn in manufacturing due in part to the impact of tar sands oil on the Canadian dollar. These are provinces that decision makers care about most. Finally, there is an opportunity to embarrass Canada on the climate front by conducting outreach on the tar sands in Europe whose diplomats are strong on international climate cooperation. Hooks exist to do this given the role of Shell and French oil giant Total in the tar sands.

E. *Track E - Generate Unity Around the Fuels Endgame*

85. This track is described in the Corporate Ethics Document as follows:³²

We need to be able to advocate an alternative fuel paradigm that is realistic, affordable, and environmentally and socially acceptable. The solution needs to be crafted in a manner that it can be framed persuasively when comparing it to the existing paradigm. It needs to have short-term, mid-term, and long-term transition components. There are a number of studies and reports on the future of transportation and how we phase out of our dependence on oil. We need groups like the Pembina Institute in Canada and Energy Foundation in the U.S. to pull together these proposals into a coherent framework and plan. We need to recognize that part of the solution may be behavioral (e.g., transitioning commuters from cars to car pool, buses, and mass transit), technological (carbon capture and sequestration, plug-in hybrid cars, natural gas vehicles, mass transit), and economic (zero emission buildings that free up natural gas for transportation, tapping domestic natural gas reserves to use for transportation). Once we reach agreement on the plan, we need to promote it aggressively throughout all aspects of the campaign. We need celebrity, scientific, government, and industry advocates and we

³¹ The Corporate Ethics Document. Page 11.

³² The Corporate Ethics Document. Page 12.

need to make sure that this plan is part of all major state, provincial, and federal legislative initiatives around global warming.

(b) ***Tactics***

86. The Corporate Ethics Document references controlling *the terms of the debate*, and the *energy paradigm*, at least twenty times and mentions a number of techniques designed to achieve these ends. I refer to these techniques as tactics of the Tar Sands Campaign.
87. My review of the Background Documents found references to a number of tactics, including (i) grassroots campaigns,³³ (ii) research,³⁴ (iii) target[ing] the financial community,³⁵ (iv) direct actions and citizen engagement,³⁶ (v) achieving legal precedents for Aboriginals,³⁷ (vi) land conservation,³⁸ (vii) litigation,³⁹ and (viii) political activism.⁴⁰ I describe my understanding of each of these tactics below.

(i) Grassroots Campaigns

88. The Corporate Ethics Document urges:

... NGOs involved in this campaign must define the terms of the debate, elevate the visibility of the debate, and broaden the allied constituencies engaged in this debate. This requires developing educational media (e.g., DVDs, pamphlets) and distributing them widely among relevant constituencies. It means utilizing well established earned media tactics to reach a broader public audience (e.g., high visibility direct actions, grassroots organizing, creative media demonstrations, alternative media viral efforts, celebrity spokespersons).⁴¹

89. The Corporate Ethics Document similarly urged its “Communications Group” to:

... focus on framing the debate, branding the campaign, and defining the terms of the debate. It is a meta-campaign effort in that its work creates the context in which the other three groups operate. It also works to leverage the achievements of the other three groups to elevate the debate, evolve the framing, and negatively brand tar sands oil.⁴²

³³ The Corporate Ethics Document. Page 7.

³⁴ The Corporate Ethics Document. Pages 8 and 9.

³⁵ The Corporate Ethics Document. Page 13.

³⁶ The Corporate Ethics Document. Page 11.

³⁷ The Corporate Ethics Document. Page 8.

³⁸ The Corporate Ethics Document. Page 8.

³⁹ The Corporate Ethics Document. Page 7.

⁴⁰ The RBF Document. Page 28.

⁴¹ The Corporate Ethics Document. Page 11.

⁴² The Corporate Ethics Document. Page 14.

All to “achieve the short-term goal, we need to generate a great deal of media attention on the shortcoming and risks associated with tar sands oil development and consumption.”⁴³

90. It is helpful to understand this tactic in the context of advocacy campaigns more generally. I have found that a paper entitled “*Networked Change in Canada*”,⁴⁴ which draws on the authors’ earlier, U.S. publication entitled “*Networked Change: How progressive campaigns are won in the 21st Century*”⁴⁵ (together, “**Networked Change**”) provides helpful context to understanding advocacy campaigns generally, and in particular in setting out the strategies and practises that made some of the most successful advocacy campaigns work. I found in particular that Networked Change in Canada provides a helpful insight into the construction of advocacy campaigns.
91. In completing their analysis, the authors’ studied 54 campaigns (46 U.S. and eight Canadian),⁴⁶ including campaigns that focussed on social causes, campaigns by corporations, campaigns of political entities, as well as campaigns of ENGOs.
92. Networked Change refers to a “directed-network campaigning model” which is comprised of four principles:
- A. “Opening to grassroots power”;
 - B. “Building network hubs”;
 - C. “Frame a compelling cause”;
 - D. “Run with focus and discipline”.⁴⁷
93. In addressing these four guiding principles Networked Change points out that the first two principles speak to the “networking” aspect surrounding the cause while the last two principles speak to the framing, management and execution of the campaign. Moreover, Networked Change says, that if properly constructed and executed models can be created that “achieves high impact and force amplification in today’s challenging advocacy landscape”.⁴⁸

⁴³ The Corporate Ethics Document. Page 6.

⁴⁴ Networked Change in Canada, T. Liacas & J. Mogus, Broadbent Institute & NetChange, April, 2017. See also: https://www.broadbentinstitute.ca/networked_change_in_canada.

⁴⁵ “Network Change: How progressive campaigns are won in the 21st Century”, J. Mogus & T. Liacas, A NetChange Consulting Report, 2016. See also <http://netchange.co/networked-change> (formerly at <https://sustainabilitynetwork.ca/wp-content/uploads/2016/10/NetChange-NetworkedChange-2016-1.pdf>).

⁴⁶ Networked Change in Canada, T. Liacas & J. Mogus, Broadbent Institute & NetChange, April, 2017. See also: https://www.broadbentinstitute.ca/networked_change_in_canada. Page 6.

⁴⁷ Networked Change in Canada, T. Liacas & J. Mogus, Broadbent Institute & NetChange, April, 2017. See also: https://www.broadbentinstitute.ca/networked_change_in_canada. Page 13.

⁴⁸ Networked Change in Canada, T. Liacas & J. Mogus, Broadbent Institute & NetChange, April, 2017. See also: https://www.broadbentinstitute.ca/networked_change_in_canada. Page 13.

94. Networked Change goes on to describe a number of specific concepts that may be employed in advocacy campaigns. I have found it helpful to review these to gain understanding in how advocacy campaigns may work:

A. “gathering ideas and content from your crowd”:⁴⁹

In Canada: ACORN Canada explicitly involves its grassroots members in policy design by canvassing low-income community members, door to door, on their key priorities. OpenMedia, for its part, has refined the art of digital crowdsourcing and has built a process that involved thousands of Canadians in the collaborative planning of a digital rights policy. During the Quebec student strike, key decisions were arrived at through arduous and extensive open consultations with student association members. Black Lives Matter-Toronto, Idle No More and the Canadian Tar Sands Campaign have all sourced creative ideas, artwork and multimedia content from their supporters, who are responsible for the iconography and some of the key communications elements of these campaigns.

B. framing campaigns in an open way that can be appropriated by all – “#Hashtag, not brand”:⁵⁰

In Canada: With the overarching goal of slowing climate change by blocking new bitumen transport infrastructure, the Canadian Tar Sands Campaign was conceived as a strategy rather than a single branded campaign. This approach allowed nodes of the network to appropriate the naming and framing of regional campaigns across Canada in a way that best inspired local constituencies to join in and lead.

C. “Deliberately working to maintain a strong and vibrant multi-group network that advances your campaign”:⁵¹

⁴⁹ Networked Change in Canada, T. Liacas & J. Mogus, Broadbent Institute & NetChange, April, 2017. See also: https://www.broadbentinstitute.ca/networked_change_in_canada.. Page 16.

⁵⁰ Networked Change in Canada, T. Liacas & J. Mogus, Broadbent Institute & NetChange, April, 2017. See also: https://www.broadbentinstitute.ca/networked_change_in_canada.. Page 20.

⁵¹ Networked Change in Canada, T. Liacas & J. Mogus, Broadbent Institute & NetChange, April, 2017. See also: https://www.broadbentinstitute.ca/networked_change_in_canada.. Page 21.

In Canada: With a network of more than 60 groups of all structures and sizes, the Canadian Tar Sands Campaign faced major challenges fighting the oil industry and federal government. To make the sum of the network greater than its parts, a central coordination team provided strategy and coordination, resources, media and digital communications support to all groups in the network. Shared infrastructure, including online platforms, conference calls and occasional in-person meetings, has ensured that information flows among all groups and that energies are directed towards common goals. In addition, the strategic leadership and resource management at the centre of this network gave the combined efforts a significant boost.

Elsewhere: Using the same approach as the Tar Sands Campaign, 350.org has managed a diverse international network of self-starting and self-organizing local groups that mobilize around various climate-related campaign moments. A similar approach to network coordination is also used to hold together the constellation of local groups that have formed around the #FightFor15 campaign.

- D. “Working intersectionally [*sic*] to include diverse voices and communities in the movement you are building”:⁵²

Elsewhere: To re-boot, the climate movement in the U.S. and Canada organizers knew they had to go well beyond core supporter groups in the environmental sector to build greater legitimacy and power. The network

that successfully fought to stop Keystone XL in the U.S. and the tar sands in Canada ended up including groups as diverse as Native Americans (First Nations in Canada) and ranchers, united by common concerns. Large intersectional networks are also being built by the climate movement, through the larger notion of “climate justice” and the #FightFor15, which has found common ground with the Occupy Wall Street and U.S. Black Lives Matter movements.

- E. choosing “fights that can and need to be won”:⁵³

⁵² Networked Change in Canada, T. Liacas & J. Mogus, Broadbent Institute & NetChange, April, 2017. See also: https://www.broadbentinstitute.ca/networked_change_in_canada. Page 22.

⁵³ Networked Change in Canada, T. Liacas & J. Mogus, Broadbent Institute & NetChange, April, 2017. See also: https://www.broadbentinstitute.ca/networked_change_in_canada. Page 24 and 25.

In Canada: When choosing postal banking as their focus, the CUPW and CPAA unions not only elected to campaign on an issue that affected the economic concerns of many rural and low-income Canadians, they also picked a policy battle that was considered winnable by analysts. In the fight against climate change, the Tar Sands Campaign strategically focused on blocking local oil transport infrastructure as a mobilization goal that was eminently more achievable for Canadians than a broader goal of reducing emissions at the global level.

F. oppositional framing – defining “heroes and villains”: ⁵⁴

In Canada: For the duration of the Conservative Party reign, Stephen Harper and his government were ready villains that, through their consistently polarizing legislation, gave multi-issue progressive campaigners such as Leadnow their driving force. For the Tar Sands Campaign, it was Harper’s too-close connection to Big Oil that supporters unrelentingly highlighted. For the CUPW-CPAA and ACORN Canada’s campaigns, big banks and payday lenders are pitted against the interests of low-income Canadians. During the Quebec student strike, the fight ultimately opposed students and the Quebec Liberal Party, which played the role of repressive authority figure and standard-bearer of austerity economics at the same time.

G. telling “your story through multiple media at once”: ⁵⁵

In Canada: The campaign to stop the growth of Canada’s tar sands set up high-level mainstream PR, a digital communications strategy targeting alternative media and a network-based content sharing approach that engaged partners including NGOs and First Nations.

H. “Play[ing] the long game and be resourced for the challenge at hand”: ⁵⁶

⁵⁴ Networked Change in Canada, T. Liacas & J. Mogus, Broadbent Institute & NetChange, April, 2017. See also: https://www.broadbentinstitute.ca/networked_change_in_canada.. Pages 26 and 27.

⁵⁵ Networked Change in Canada, T. Liacas & J. Mogus, Broadbent Institute & NetChange, April, 2017. See also: https://www.broadbentinstitute.ca/networked_change_in_canada.. Pages 27 and 28.

⁵⁶ Networked Change in Canada, T. Liacas & J. Mogus, Broadbent Institute & NetChange, April, 2017. See also: https://www.broadbentinstitute.ca/networked_change_in_canada.. Page 32.

In Canada: Kicking off their campaign in 2008, as Canada's unconventional oil production was beginning to ramp up considerably, strategists behind the Canadian Tar Sands campaign knew there would be no easy or immediate victories and therefore prepared for a fight that would last for many years.

95. I understand that the concept of “grassroots campaigns” described as a tactic in the Corporate Ethics Document would include a campaign that employed the types of campaigns and strategies that are described in the Networked Change document.
96. In addition to the foregoing, use of the media also appears to form a part of the “grassroots campaign” tactic. The Corporate Ethics Document states that the Tar Sands Campaign will raise the negatives by pursuing, among other things, “**Feature stories** in high visibility media will also be critical for telling the negative story. Generating a negative media profile for tar sands oil is a critical part of the change strategy.” **[emphasis included]**.⁵⁷
97. The Corporate Ethics Document goes on to speak of generating a great deal – or “steady drumbeat” – of media at three different points⁵⁸ and includes, as part of the campaign’s structure, U.S. and Canadian Media Coordinators who “... will be responsible for working with media directors of the involved organizations in their country to develop strong messaging and to create and seize media opportunities. They will direct media opportunities to the appropriate groups.”⁵⁹
98. Moreover, the use of DVD or video distribution also appears to form part of the “educational media” that can be part of a “grassroots campaign” tactic. The Corporate Ethics Document states that, to “elevate the visibility of the debate”, ENGOs must develop “educational media (e.g., DVDs, pamphlets) and distribut[e] them widely among relevant constituencies”.⁶⁰ Later, the Corporate Ethics Document provides that “we need a brief, but powerful DVD that quickly tells the story of how tar sands oil not only harms the environment and downstream communities, but defeats our global warming efforts in other areas.”⁶¹
99. A section on “Celebrity Engagement” then follows, where the Corporate Ethics Document envisions a variety of celebrities, like “Nobel Prize winners”, “business leaders”, and “movie and music celebrities whose opinions and ‘mediagenics’ influence the public and attract the media”.⁶²
100. I also understand that the concept of “grassroots campaigns” could involve the use of the media, DVD/videos, or celebrity engagement in this manner.

(ii) Research

⁵⁷ The Corporate Ethics Document. Page 4.

⁵⁸ The Corporate Ethics Document. Pages 6, 8, and 10.

⁵⁹ The Corporate Ethics Document. Page 13.

⁶⁰ The Corporate Ethics Document. Page 11.

⁶¹ The Corporate Ethics Document. Page 16.

⁶² The Corporate Ethics Document. Page 17.

101. The Corporate Ethics Document states that:⁶³

[t]here are a number of ways to raise the negatives that this campaign will pursue. Research is being conducted on the huge volumes of water consumed, poisoned, and released into waterways. Reports are being released on the divergence between public opinion and government policy as well as the health and environmental impacts.

102. Other parts of the Corporate Ethics Document raise similar points:

[s]cientific research documenting potential violations or risks of air and water quality, threats to critical habitats, or incursions on culturally sensitive lands will be critical” in stopping infrastructure expansions;⁶⁴

strategy is to use scientific studies ... to both drive the debate inside and outside Alberta about the impacts of the industry – and thereby to de-legitimize the status quo...;⁶⁵

... sound scientific evidence will provide grounds for the denial of necessary permits ...;⁶⁶

We need ... scientific ... advocates and we need to make sure that this plan is part of all major state, provincial, and federal legislative initiatives around global warming;⁶⁷ and

Research to Support Legal Challenges. This is an expensive element of the campaign, but it is the area where we document the environmental and health violations of existing laws. It is also where we document the dangers of tar sands operations, and where we mobilize public opinion against these operations.⁶⁸

(iii) Targeting the Financial Community

103. The Corporate Ethics Document speaks to targeting the financial community through the development of divestment campaigns as well, providing:

The combined effect is a rise in costs and uncertainties, which in turn, reduce the attractiveness of these projects for companies themselves, investor and financiers. Once we have begun to achieve successes, we need a credible independent analysis of the financial risks associated with tar sands and we need to target the financial community.⁶⁹

And goes on to provide:

⁶³ The Corporate Ethics Document. Page 4.

⁶⁴ The Corporate Ethics Document. Page 7.

⁶⁵ The Corporate Ethics Document. Page 8.

⁶⁶ The Corporate Ethics Document. Page 9.

⁶⁷ The Corporate Ethics Document. Page 12.

⁶⁸ The Corporate Ethics Document. Page 15.

⁶⁹ The Corporate Ethics Document. Page 13.

Banks and major institutional investors supporting tar sands will also be stigmatized.⁷⁰

104. In this Report, I refer to this tactic both as “targeting the financial community” and “divestment campaigns”.

(iv) Direct Action and Citizen Engagement

105. The Corporate Ethics Document encourages ENGOs involved in The Tar Sands Campaign to: ⁷¹

...define the terms of the debate, elevate the visibility of the debate, and broaden the allied constituencies engaged in this debate. This requires developing educational media (e.g., DVDs, pamphlets) and distributing them widely among relevant constituencies. It mean utilizing well established earned media tactics to reach a broader public audience (e.g., high visibility direct actions, grassroots organizing, creative media demonstrations, alternative media viral efforts, celebrity spokespersons).

106. The document provided earlier:⁷²

Universities are also targets ...because they are recruiting grounds for young activists who can be incorporated into the larger campaign.

107. In trying to understand the type of campaigns that would constitute “direct actions and citizen engagement” I found it helpful to review the report issued by the RCMP in January 2014 entitled “Critical Infrastructure Intelligence Assessment – Criminal Threats to the Canadian Petroleum Industry”, a copy of which is attached as Schedule “C” to this Report (the “**RCMP Report**”).

108. The RCMP Report was: ⁷³

... in support of the Government of Canada’s (GoC) strategy to ensure critical infrastructure resiliency...

The key findings of the report included:

- The Canadian petroleum industry is requesting government approval to construct many large petroleum projects which, if approved, will be situated across the country;
- There is a growing, highly organized and well-financed, anti-Canadian petroleum movement, that consists of peaceful activists, militants and violent extremists, who are opposed to society’s reliance on fossil fuels;
- The anti-petroleum movement is focused on challenging the energy and environmental policies that promote the development of Canada’s vast petroleum resources...

⁷⁰ The Corporate Ethics Document. Page 16. See also The RBF Document, at page 45

⁷¹ The Corporate Ethics Document. Page 11.

⁷² The Corporate Ethics Document. Page 10.

⁷³ The RCMP Report. Page 1.

109. The RCMP Report was helpful in understanding some of the campaigns that might constitute “direct actions and citizen engagement”, however many of the types of campaigns described in the RCMP Report likely fall on an extreme of the spectrum of campaigns captured by “direct actions and citizen engagement”. I understand that while the campaigns described in the RCMP Report would constitute a subset of instances of the “direct actions and citizen engagement” tactic, there would be many other examples of activity that fall into the “direct actions and citizen engagement” tactic that do not rise to the level of conduct described in the RCMP Report.

(v) Achieving Legal Precedents for First Nations

110. The Corporate Ethics Document identifies the unique position occupied by First Nations on a number of occasions, including the following:

- A. In Canada, First Nations have the power to challenge the Enbridge pipeline across British Columbia (BC) and the MacKenzie pipeline on the grounds of Aboriginal rights and land claims.⁷⁴
- B. There are a number of ways to stop infrastructure expansions. In Canada, First Nations can challenge the construction of pipelines across their traditional territories and prevent pipelines from crossing their reserves. The proposed pipelines must cross dozens of First Nation territories.⁷⁵
- C. The strategy is to use...Aboriginal and non-Aboriginal legal challenges to both drive the debate inside and outside Alberta about the impacts of the industry – and thereby de-legitimize the status quo – and to force the adoption of more stringent water, toxics and land protections.⁷⁶

111. In summary, the Corporate Ethics Document proposes working with Indigenous groups to assert their unique constitutional rights as a basis to challenge infrastructure projects in Canada and to compel heightened protections for the environment. This effort is identified as being particularly suited for challenging pipelines given that the then proposed pipeline routes crossed numerous reserves and traditional territories.

112. I would be remiss if I did not acknowledge that any consideration of efforts by First Nations peoples to exercise, seek recognition of, or defend their legal rights is extremely complex and nuanced. I do not find that any efforts by First Nations to exercise, seek recognition of, or defend their legitimate legal rights discloses that any such First Nation has participated in an anti-Alberta energy campaign.

113. The Corporate Ethics Document sets out the leveraging of First Nations legal rights by non-First Nations groups seeking to oppose development of oil and gas resources generally as a tactic of the Tar Sands Campaign. Accordingly, analysis of this tactic in this report proceeds from the basis of attempting to identify instances where such groups may be seeking to leverage First

⁷⁴ The Corporate Ethics Document. Page 7.

⁷⁵ The Corporate Ethics Document. Page 7.

⁷⁶ The Corporate Ethics Document. Page 8.

Nations legal rights for their own ends, and not on any First Nations seeking to advance their legal rights themselves.

(vi) Land Conservation

114. The Corporate Ethics Document provides that one of the “strategic tracks that seem to hold the greatest potential to achieve our immediate goals of... achieving a slow down and eventual moratorium on new tar sands development.” is to “[f]orce tar sands water, toxics and land reforms...”⁷⁷
115. The objectives of land conservation, the Corporate Ethics Document goes on to say, include achieving “large landscape conservation gains”.⁷⁸ The strategy, according to the Corporate Ethics Document, is to use scientific studies, permitting and consultation processes to, among other things, force the adoption of more stringent land protections. The “significant land set-asides for conservation”⁷⁹ will, according to the authors, raise the cost of doing business for oil sands companies, making resource production less economically attractive.
116. It is helpful to understand this tactic in the context of land-use issues more generally. In this regard I have found it helpful to review the development of land-use considerations in Canada, including the framework to address the inherent conflicts between land conservation and resource development.
117. In 1992 the United Nations Conference on Environment and Development – sometimes referred to as the 1992 Earth Summit – adopted “Agenda 21”, describing it as follows:

Agenda 21 is a comprehensive plan of action to be taken globally, nationally and locally by organizations of the United Nations System, Governments, and Major Groups in every area in which human impacts on the environment.⁸⁰

118. Agenda 21 is divided into four sections – “Social and Economic Dimensions”, “Conservation and Management of Resources for Development”, “Strengthening the Role of Major Groups”, and “Means of Implementation”. The “Conservation and Management of Resources for Development” section generally advocated an integrated approach to the planning and management of land resources, providing in paragraph 10.3 of the document:

“Land resources are used for a variety of purposes which interact and may compete with one another; therefore, it is desirable to plan and manage all uses in an integrated manner... Integrated consideration facilitates appropriate choices and trade-offs, thus maximizing sustainable productivity and use. Opportunities to allocate land to different uses arise in the course of major settlement or development projects or in a sequential fashion as lands become available on the market. This in turn provides opportunities to

⁷⁷ The Corporate Ethics Document. Page 7

⁷⁸ The Corporate Ethics Document. Page 8

⁷⁹ The Corporate Ethics Document. Page 8.

⁸⁰ <https://sustainabledevelopment.un.org/index.php?page=view&nr=23&type=400&menu=35>

support traditional patterns of sustainable land management or to assign protected status for conservation of biological diversity or critical ecological services”.⁸¹

119. The tension between what the preceding extract describes as allocating “land to different uses” in “the course of major settlement or development projects or in sequential fashion as lands become available on the market” in order to support “traditional patterns of sustainable land management” or “assign protected status” and developing the oil and gas industry is self evident.
120. The inherent tension between conservation and development is further strained by additional factors, such as the introduction of more constituents (and their respective agendas) joining the debate and the increasing demand for additional protected areas. Both of these factors have occurred in respect of Agenda 21.
121. The first factor – introducing more constituents to the debate – occurred in Agenda 21 itself.
122. The “Strengthening the Role of Major Groups” section of Agenda 21 advocated for the commitment and genuine involvement of all social groups. Among the groups specifically outlined were non-governmental organizations, providing, in part:

STRENGTHENING THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS:
PARTNERS FOR SUSTAINABLE DEVELOPMENT

Basis for action

Non-governmental organizations play a vital role in the shaping and implementation of participatory democracy. Their credibility lies in the responsible and constructive role they play in society. Formal and informal organizations, as well as grass-roots movements, should be recognized as partners in the implementation of Agenda 21. The nature of the independent role played by non-governmental organizations within a society calls for real participation; therefore, independence is a major attribute of non-governmental organizations and is the precondition of real participation.⁸²

123. The latter factor – being the increasing demand for additional protected areas – occurred in a progression of events, starting in 2010.
124. The Convention on Biological Diversity, signed by 150 countries at the Rio Earth Summit (including Canada⁸³) is described as a “practical tool for translating the principles of Agenda 21 into reality ...”⁸⁴ By 2010, the Conference of the Parties to the Convention on Biological Diversity adopted the “Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets” which, among other things, called for Parties to conserve at least 17 per cent of terrestrial and inland

⁸¹ United Nations Sustainable Development, Agenda 21, PDF p. 85, United Nations online: <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>.

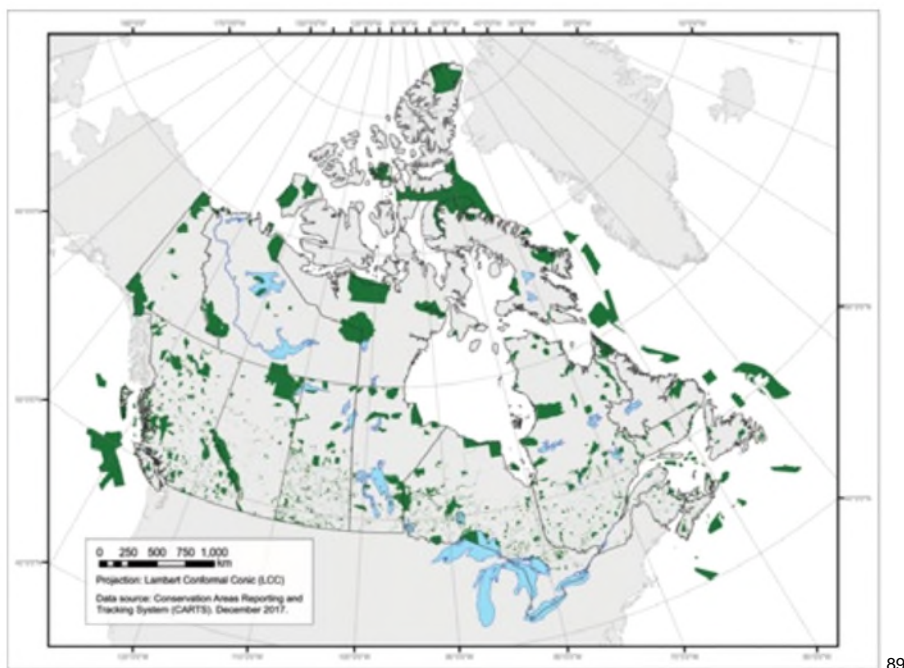
⁸² United Nations Sustainable Development, Agenda 21, PDF p. 282, United Nations online: <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>.

⁸³ <https://www.cbd.int/information/parties.shtml>

⁸⁴ Convention on Biodiversity, online: <https://www.cbd.int/convention/>.

water areas through systems of protected areas and other effective area-based conservation measures.⁸⁵

125. In 2015, Canada's federal, provincial, and territorial governments developed a number of goals and targets, known as the 2020 Biodiversity Goals and Targets for Canada.⁸⁶ Target 1, established through that initiative, is substantially the same as Aichi Target 11 and calls for conserving at least 17% of terrestrial areas and inland water and 10% of marine and coastal areas by 2020 ("**Coastal Target 1**"). At the time the federal government came up with this land conservation target, it stressed that "collaboration is key", and established a working group of federal, provincial and territorial deputy ministers to develop a plan to outline how jurisdictions can contribute to Canada's 17% by 2020 target.⁸⁷
126. Progress in achieving Canada Target 1 was relatively slow. By the end of 2017, approximately 10.5 percent of Canada's terrestrial area (land and freshwater) was formally protected by the federal, provincial, or territorial governments. Three years later, Canada had conserved approximately 12.5% of its land and freshwater and was on track to miss Canada Target 1.⁸⁸



⁸⁵ Convention on Biodiversity, Strategic Plan for Biodiversity 2011-2020 and the Aichi Targets, PDF p. 2online: <https://www.cbd.int/doc/strategic-plan/2011-2020/Aichi-Targets-EN.pdf>.

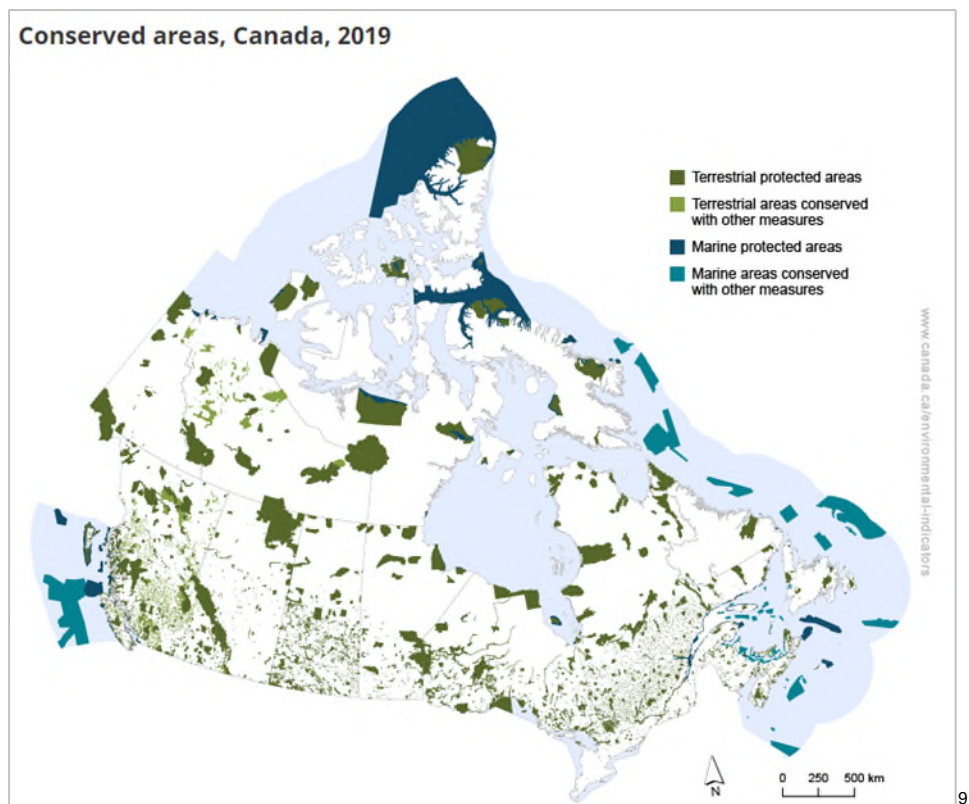
⁸⁶ Government of Canada, 2020 Biodiversity Goals and Targets for Canada, online: <https://www.canada.ca/en/parks-canada/news/2016/12/2020-biodiversity-goals-targets-canada.html>.

⁸⁷ Government of Canada, 2020 Biodiversity Goals and Targets for Canada, online: <https://www.canada.ca/en/parks-canada/news/2016/12/2020-biodiversity-goals-targets-canada.html>.

⁸⁸ Pathway to Canada Target 1, online: <https://www.conservation2020canada.ca/home>.

⁸⁹ Map of Canada's protected areas contributing to Target 1 (December 2017). Source: One With Nature: A Renewed Approach to Land and Freshwater Conservation in Canada (online:

127. In the 2019 Canadian federal election, the Liberal Party of Canada pledged “more conservation” and announced that, if re-elected, it would “move forward with an ambitious plan to conserve 25% of Canada’s land and 25% of Canada’s oceans by 2025, working toward 30% of each by 2030.⁹⁰ As a point of reference, conserving 30% of Canada’s land and inland waters would encompass an area the size of British Columbia, Alberta, Saskatchewan and Manitoba.



128. Unlike the initial 17% conservation targets, the 25% and 30% targets, announced by the Prime Minister one day before appearing at a climate change rally attended by Swedish activist Greta Thunberg, do not appear to have any basis in targets or initiatives sanctioned by the international community as, for example, with the Aichi Targets.⁹² Additionally, whereas Canada Target 1 was developed through a collaborative process with substantial input from provinces and territories, this Inquiry did not find evidence that the Trudeau government consulted with provinces and territories in developing the 25% by 2025 or 30% by 2030 plans. Indeed, several government of Canada websites appear to have simply updated the Canada Target 1 objectives to reflect the new commitments made by Prime Minister Trudeau in the 2019 federal election. The apparent lack of involvement of the provinces in developing these objectives is noteworthy given: (A) the

<https://static1.squarespace.com/static/57e007452e69cf9a7af0a033/t/5c9cd18671c10bc304619547/1553781159734/Pathway-Report-Final-EN.pdf>. Page 27.) <https://www.conservation2020canada.ca/home>).

⁹⁰ Liberal Party of Canada, online: <https://liberal.ca/our-platform/more-conservation/>

⁹¹ Map of Canada’s protected areas contributing to Target 1 (December 2019). Source: <https://www.canada.ca/en/environment-climate-change/services/environmental-indicators/conserved-areas.html>.

⁹² <https://www.cbc.ca/news/politics/liberal-park-conservation-trudeau-2019-1.5297893>

constitutional responsibility of the province for the management and sale of public lands; and (B) the fact that the provinces were partners in developing the initial 17% target.

129. I do not in any way suggest that land conservation is not an important pursuit. It is. It can also directly or indirectly frustrate the development of Alberta's oil and gas industry or the delivery of Alberta's oil and gas resources to commercial markets. It is the role of our federal and provincial regulatory agencies to find a balance between these inherently competing and complex interests. That is not to say, however, that land-use programs are not leveraged in the debate over finding that balance.

(vii) Litigation

130. One of the stated components of the Background Documents' conception of the Tar Sands Campaign was to utilize the legal process to achieve a variety of its objectives. Throughout the Background Documents there are references to legal challenges as ways to increase the costs to the industry,⁹³ "to force government and corporate decision-makers to take steps that raise the costs of production"⁹⁴, to "achieve legal precedents for Aboriginal and Non-Aboriginal litigants that are relevant for blocking tar sands expansion and forcing remediation"⁹⁵, and to fuel "a steady drumbeat of media about problems and solutions".⁹⁶ The RBF Document includes "legal suits" as one of its budget components.⁹⁷

131. The Corporate Ethics Document states:⁹⁸

The strategy is to bring multiple actions in Canadian provincial and federal courts in order to obtain injunctions and decisions that will put companies and investors on notice that a critical input may be at risk. Decisions in the provincial and federal courts could ultimately lead to precedent setting challenges at the Supreme Court of Canada. Similarly, sound scientific evidence will provide grounds for the denial of necessary permits from the Alberta Energy Resources Conservation Board, the Alberta Utilities Commission, Alberta Environment, the federal Department of Fisheries and Oceans and the federal Department of Transport, and failing this, support legal actions to force these denials.

(viii) Political Activism

⁹³ The Corporate Ethics Document. Page 3.

⁹⁴ The Corporate Ethics Document. Page 4.

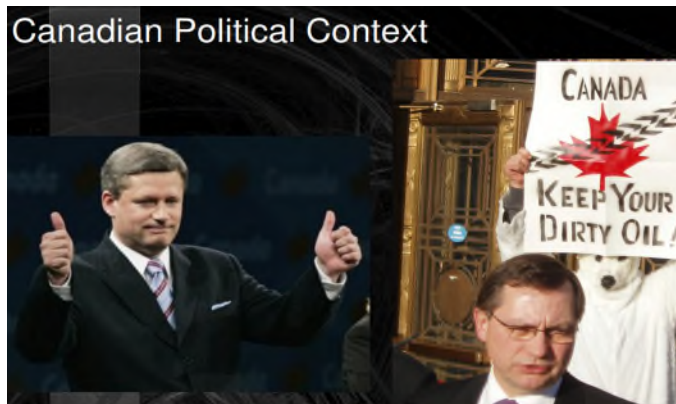
⁹⁵ The Corporate Ethics Document. Page 8.

⁹⁶ The Corporate Ethics Document. Page 8.

⁹⁷ The RBF Document. Page 24.

⁹⁸ The Corporate Ethics Document. Page 9.

132. The Background Documents both make reference to the political climate in Canada. The RBF Document says its “Theory of Change” is to, among other things, “enroll key decision makers”⁹⁹ and features the following slide:¹⁰⁰



133. The Corporate Ethics Document picks up on this notion to “Enroll key decision makers while isolating opponents”, going on to say:¹⁰¹

We will win this campaign when we recruit a critical mass of these decision makers to agree to slow down, cut-back, and eventually stop the flow of tar sands oil altogether.

134. A tactic emerges in the Background Documents to achieve greater influence in the political sphere. Later in the Corporate Ethics Document, for example, under “Goals of this Campaign”, it states¹⁰²:

We believe this can be achieved through a combination of cap and trade legislation to internalize carbon costs, carbon taxes, large government investments in clean energy technology development, incentives for energy conservation, and rapid deceleration of deforestation.

D. THE TAR SANDS CAMPAIGN IS AN ANTI-ALBERTA ENERGY CAMPAIGN

135. Upon this review of the Background Documents, in particular their objectives, I am satisfied that the Tar Sands Campaign, as contemplated by the authors of the Background Documents, brought into practice what would constitute an anti-Alberta energy campaign. In particular, the goal of a moratorium on the development of Alberta’s oil sands and the efforts prescribed to achieve that goal meet the requirements of broad and general opposition to the development of Alberta’ oil and gas industry.

136. I now turn to a consideration of the advocacy and oppositional tactics proposed by the Background Documents for the Tar Sands Campaign, which I find helpful in understanding

⁹⁹ The RBF Document. Page 14.

¹⁰⁰ The RBF Document. Page 28.

¹⁰¹ The Corporate Ethics Document. Page 5.

¹⁰² The Corporate Ethics Document. Page 6.

opposition to the development of Alberta's oil and gas industry. To be clear, an organization that employs one of these tactics may not by this alone be a participant in the Tar Sands Campaign. Similarly, an organization may also be found to be participating in an anti-Alberta energy campaign without necessarily being a participant in the Tar Sands Campaign. Additional evidence would be required in both situations to lead to that conclusion.

137. Where such additional evidence exists, I have set it out in my additional analysis in this Report.

E. ANTI-ALBERTA ENERGY CAMPAIGNS STRATEGIES, TACTICS, AND PROGRAMS

138. I turn now to describe certain advocacy and opposition efforts (some of which for the purposes of identification fall into the categories described in the Background Documents) that have been used by organizations I will later find participated in anti-Alberta energy campaigns.

139. The advocacy and opposition efforts I describe in some cases directly oppose the development of Alberta's oil and gas resources and in others do so indirectly or have an ancillary effect of opposing the development of Alberta's oil and gas resources. Indeed, opposition to the development of Alberta's oil and gas resources may be only a result, and not the desired goal, of some of the advocacy and opposition efforts I describe, or may be one goal among many of such advocacy and opposition efforts.

140. As will be seen below, I have not found participation in any particular advocacy or opposition effort is, in and of itself, sufficient to establish participation in an anti-Alberta energy campaign, and in making the determination of whether an organization has participated in an anti-Alberta energy campaign have considered the totality of a constellation of evidence pertaining to an organization.

(a) ***Grassroots Campaigns***

141. In the course of my research, I have identified several media programs that exemplify the type of "grassroots campaigns" I have described above. I will review each of them below.

(i) Rethink Alberta

142. On July 14, 2010 Corporate Ethics International issued a news release announcing its "Rethink Alberta" campaign. The release read:

CALGARY, July 14 /CNW/ - With the Calgary Stampede underway, billboards asking Americans to rethink their travel plans to Alberta rolled out across four major US cities today (cities that bring the most US tourists annually to Alberta) marking the first wave of a multi-year ad campaign aimed at revealing Alberta to be one of the world's dirtiest destinations.

The billboards by San Francisco-based Corporate Ethics International (the same group behind the Ava-Tar-Sands ad endorsing an Oscar for James Cameron) and which works with multiple environmental groups, including Friends of the Earth, Earthworks, Rainforest Action Network and ForestEthics, compare Alberta's Tar Sands with the BP oil spill in the Gulf.

"Alberta can't destroy an area the size of England by producing the world's most polluting oil and still be known for Banff," said Dr. Michael Marx, executive director of Corporate Ethics. "There is another oil disaster going on in Alberta every day and as more Americans become aware of it we believe they'll be less willing to support the province with their tourist dollars."

The first phase of the campaign consists of large (street-level) billboards in Denver, Portland, Seattle and Minneapolis, Google ads paired with key Alberta names and places like Banff, flash banner ads on high traffic tourism sites like Priceline.com and Discovery.com, a web site - rethinkalberta.com - and mail-outs to US tourism operators that specialize in Alberta tourism and professional associations that hold annual conferences in Alberta.

The next wave of the ad campaign will be launched in two weeks across the UK. The entire release and billboards can be found at <http://corpethics.org/article.php?id=3951>

For further information: For further information: Michael Marx, executive director Corporate Ethics, (415) 659 0531, (415) 238 9977 (cell)

143. The Corporate Ethics International website ran a similar message:

Corporate Ethics INTERNATIONAL

BUSINESS ETHICS
NETWORK

STRATEGIC
CORPORATE
INITIATIVE

BIG BOX
CAMPAIGN

CLIMATE
COLLABORATION

TAR SANDS
CAMPAIGN



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[Home](#) » [Projects](#) » [Tar Sands Campaign](#) » [ReThink Alberta](#)

ReThink Alberta

The Re-Think Alberta Campaign that CEI is leading is an effort to inform tourists, business leaders, and others that Alberta is not what it pretends to be. It sells itself as the home to Banff and Lake Louise while it destroys a forest and eco-system the size of Michigan to extract the most polluting and toxic oil on earth. Worse, it is the fastest source of greenhouse gas emissions in Canada, which threatens the very forests and glaciers that have made Alberta special.

The Re-Think Alberta Campaign will use billboards in major US cities. It will also target those cities and the UK with on-line banner and flash ads for major tourist sites, Google Adwords, mailings to professional organizations that might hold conferences in Alberta, as well as mailings to US and UK tourist agencies. Our goal is to wake up the tourism industry in Alberta to the fact that tar sands are a threat to theirs and our future-both an environmental and a reputational threat.

Tell Alberta's Tourism Division that you will not visit Alberta until they stop the expansion of the tar sands and negotiate with environmental and First Nations groups to clean up and phase out existing operations.



to help stop the dirtiest oil on earth

Recent Articles

About the Tar Sands [07.12.10]

The Alberta Tar Sands have been called "the most destructive energy project on earth." They are the second largest reserve of oil in the world next ... [Read More]

What Goes Into (And Comes Out of) A Barrel Of Tar Sands Oil [07.09.10]

As the Gulf disaster continues to unfold, people are looking at alternatives. Canada's Minister of the environment has been pitching the Alberta oil ... [Read More]

'We Got that Deleted': Canada's Oil Sands Lobby Twisting Washington's Arm [06.30.10]

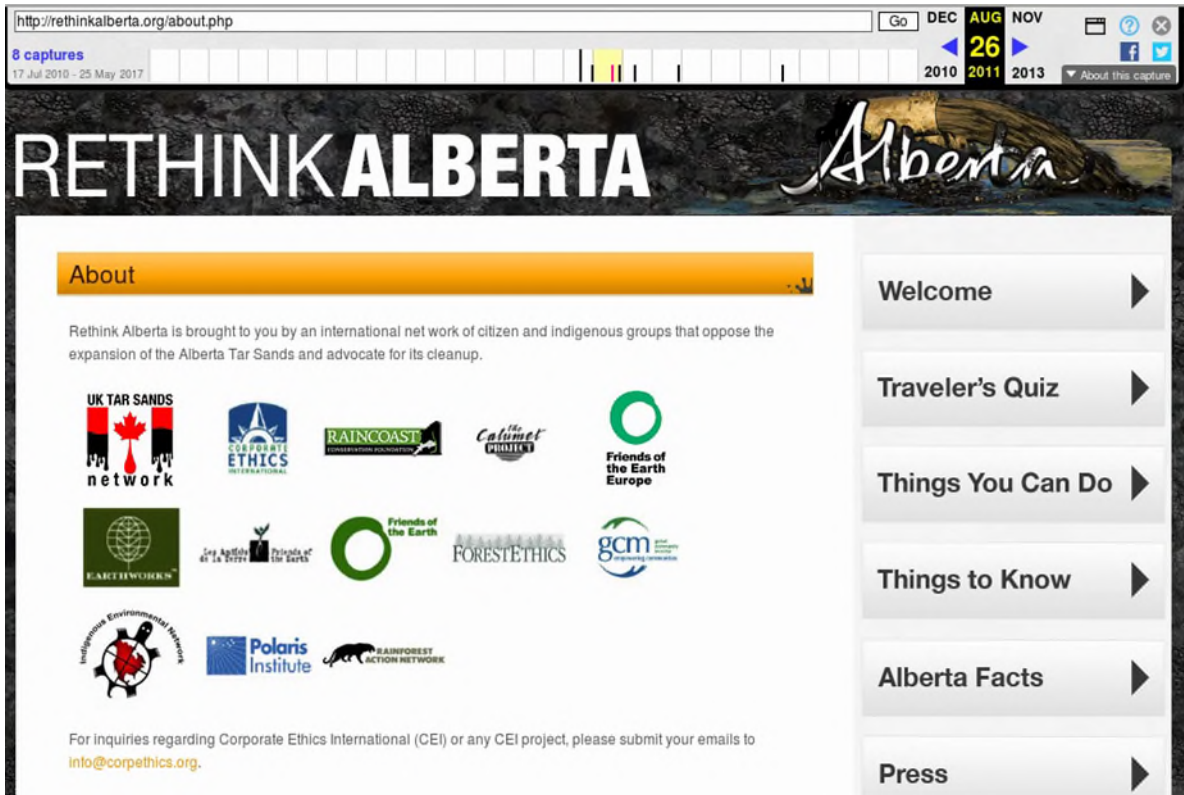
As U.S. senators debate some of the most sweeping climate change laws in American history, a powerful lobbying effort led by Canadian officials and ... [Read More]

Tar Sands Poised to Become the Next Fossil Fuels Disaster [06.28.10]

If we could go back in time before the BP Deepwater Horizon rig exploded on April 20, what would we learn? What steps would have helped avert what is ... [Read More]

144. Remnants of the "Rethink Alberta" website, which is no longer active, included a list of its sponsors...¹⁰³:

¹⁰³ <https://web.archive.org/web/20110826024719/http://rethinkalberta.org/about.php>



145. A quiz ...¹⁰⁴



146. And a pledge ...¹⁰⁵

¹⁰⁴ <https://web.archive.org/web/20100723141840/http://rethinkalberta.org/quiz.php>

¹⁰⁵ <https://web.archive.org/web/20100723141825/http://rethinkalberta.org/do.php>

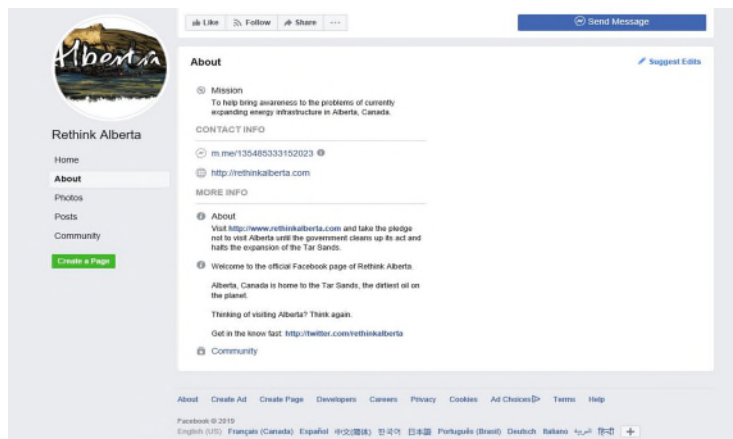
Take the Pledge:

Take the pledge not to visit Alberta and tell your friends and family to do the same.

I pledge not to visit the province of Alberta until the Alberta Government does the following:

- a. Halts the expansion of the Tar Sands.
- b. Stops spending millions of dollars on public relations campaigns designed to keep the United States addicted to dirty Tar Sands oil.
- c. Takes meaningful steps to transition its economy away from dirty Tar Sands oil to clean energy alternatives.

147. The campaign also maintained a Facebook page –¹⁰⁶



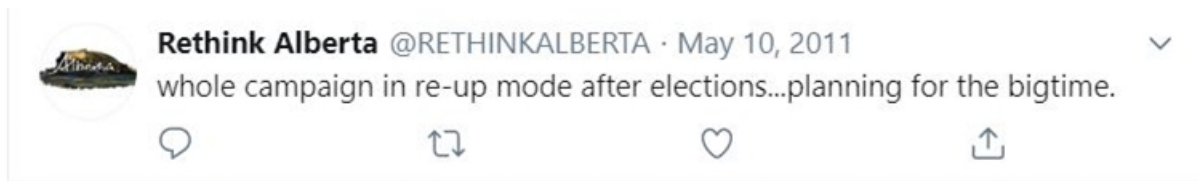
148. And a twitter feed ...¹⁰⁷

¹⁰⁶ https://www.facebook.com/pg/Rethink-Alberta-135485333152023/about/?ref=page_internal

¹⁰⁷ <https://twitter.com/rethinkalberta>

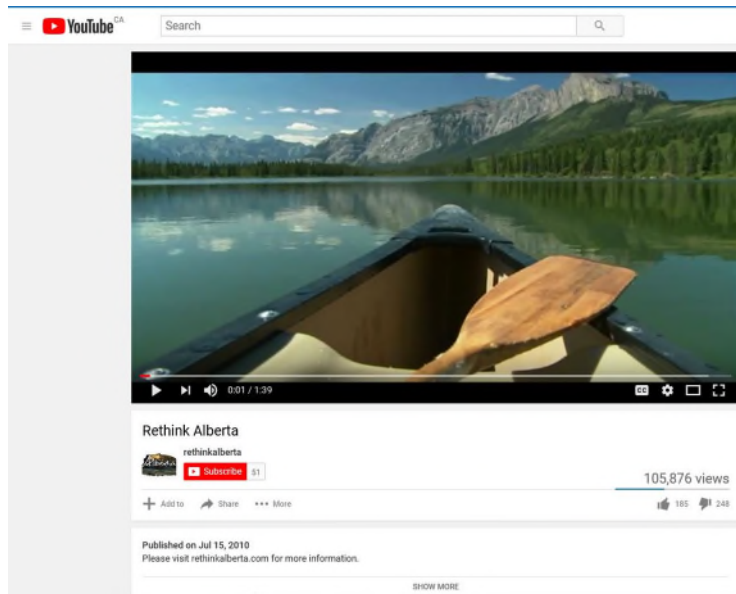


149. With an active tweeting program ...



150. And a YouTube site ...¹⁰⁸

¹⁰⁸ <https://www.youtube.com/watch?v= dpOzvmBj8k&feature=youtu.be>



151. The campaign launched in the United Kingdom a month later with an op-ed appearing in The Guardian. It began as follows¹⁰⁹:

¹⁰⁹ <https://www.theguardian.com/environment/cif-green/2010/aug/18/canada-tar-sands-rethink-alberta>

The Guardian

Think twice about visiting Canada until it abandons tar sands destruction

The Alberta tar sands are an inefficient way of producing oil and leave permanent scars on hundreds of miles of landscape

Kenny Bruno

Wed 18 Aug 2010 12:15 BST



If you're still planning your summer holiday, don't be fooled by Canada's green image and Alberta's famed Rocky Mountains. Canada is the surprising home to the most destructive project on Earth, the Alberta tar sands.

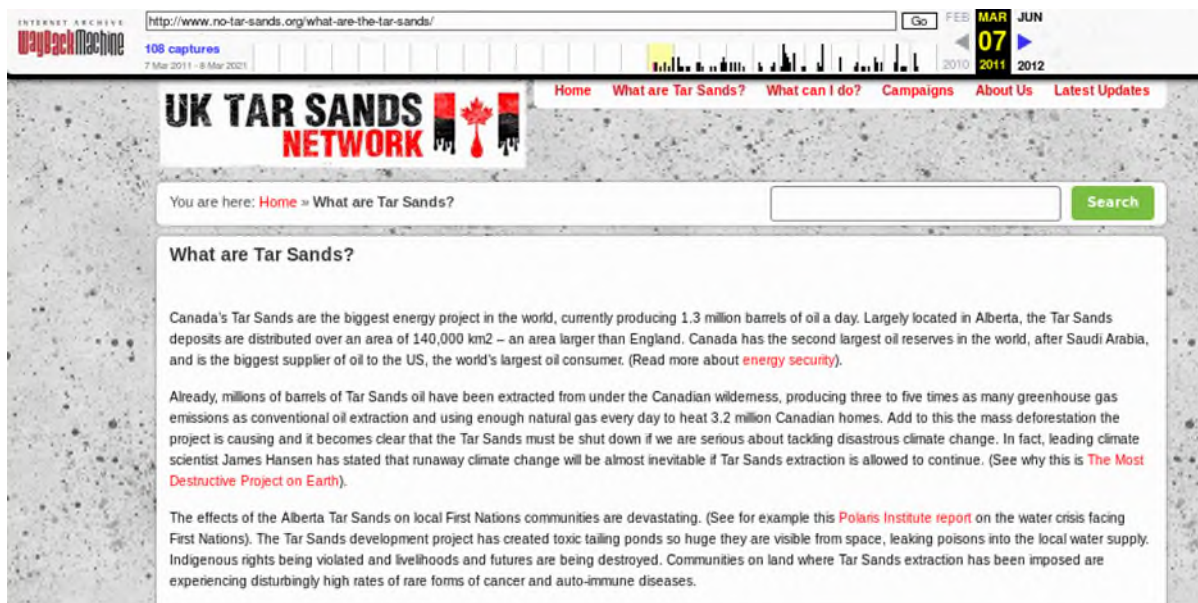
Today, Corporate Ethics International is launching an advertising campaign to encourage the British people to scrutinise what's going on in Alberta.

152. The article articulates a general sentiment of objecting to the development of Alberta's oil and gas resources stating, for example, that "The British people now have the opportunity to take their own stand against the tar sands travesty, by pledging not to visit Alberta" and "If industry gets its way, the expansion of the tar sands will continue, and petrol and diesel derived from bitumen will flood into Europe. If we don't stop them, you will be putting oil from tar sands in your tank within a year or two."
153. This evidence establishes that the "ReThink Alberta" campaign was aimed at influencing the Government of Alberta to restrict the expansion of Alberta's oil sands and phase out existing operations. This is supported in particular by the statements on the "ReThink Alberta" website and Corporate Ethics websites that expressly seek to discourage people from visiting Alberta until the Alberta Government "halts the expansion of the Tar Sands" and "stop the expansion of the tar sands...[and] clean up and phase out existing operations". I find that "ReThink Alberta" was a

means which could have been used to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta's oil and gas resources and/or the transportations of those resources to commercial markets.

(ii) UK Tar Sands Network

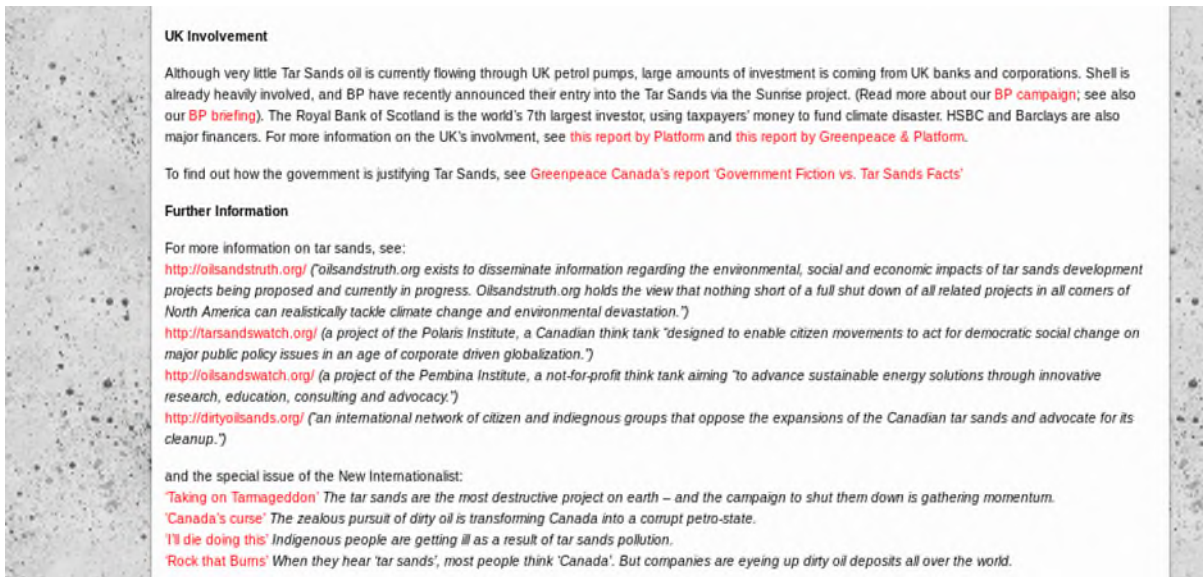
154. In 2010 the UK Tar Sands Network was emerging in the UK. A webpage from its website in March of 2011 elaborates on its campaigns:¹¹⁰



155. The page continues:¹¹¹

¹¹⁰ <https://web.archive.org/web/20110307011759/http://www.no-tar-sands.org/what-are-the-tar-sands/>

¹¹¹ <https://web.archive.org/web/20110307011759/http://www.no-tar-sands.org/what-are-the-tar-sands/>



156. A page from the network's website from June of 2011 outlines further initiatives undertaken by the network:¹¹²



157. One of the referenced campaigns on this webpage is the “Keep Europe out of the Tar Sands” campaign,¹¹³ which, among other things: (a) seeks “to encourage the UK government to join the

¹¹² <https://web.archive.org/web/20110614235412/http://www.no-tar-sands.org/>

¹¹³ <https://web.archive.org/web/20110816150322/http://www.no-tar-sands.org/campaigns/ceta/>, See also https://web.archive.org/web/20111208232145/http://www.no-tar-sands.org/wp-content/uploads/2010/12/NTSN_Brief-CETA-web.pdf

rest of the EU in banning Tar Sands,' by signing a petition to that effect; (b) urges the Fuel Quality Directive to include "Tar Sands oil"; (c) suggests BP, Total, and Shell should divest from the Tar Sands, all of which I find to be anti-Alberta energy campaigns.

158. The UK Tar Sands Network continues to this day, introducing the tar sands as follows:¹¹⁴

¹¹⁴ <https://www.no-tar-sands.org/what-are-tar-sands/>



WHAT ARE TAR SANDS?

WHAT CAN I DO?

RESOURCES

BLOG

ABOUT US

What are tar sands?

Canada's tar sands are the **biggest energy project in the world**, currently producing 1.9 million barrels of oil a day. Largely located in Alberta, the tar sands deposits are distributed over an area of 140,000 km² – an area larger than England. Canada has the **third largest oil reserves in the world**, after Saudi Arabia and Venezuela, and is the biggest supplier of oil to the US, the world's largest oil consumer. Tar sands deposits also exist outside of Canada.

Climate impact

Already, millions of barrels of tar sands oil have been extracted from under the Canadian wilderness, producing **three to four times more greenhouse gas emissions** than conventional oil extraction and using **enough natural gas every day to heat three million Canadian homes**. Add to this the mass **deforestation** the project is causing and it becomes clear that the tar sands must be shut down if we are serious about tackling disastrous climate change. In fact, leading climate scientist James Hansen has stated that **runaway climate change will be inevitable** if tar sands extraction is allowed to continue as planned. Unsurprisingly, tar sands development has been labelled "the Most Destructive Project on Earth". More climate facts -

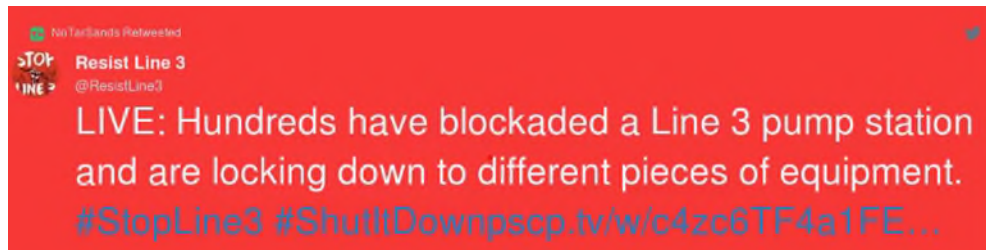
Effects on Indigenous communities

The impact of the Alberta tar sands on local First Nations communities is devastating. Tar sands developments create toxic tailings ponds so huge they are visible from space, which leak poisons into the local water supply. Tar sands developments scar sacred territories, disturb traditional cultural practices and **undermine constitutionally-enshrined treaty rights**. Communities are experiencing disturbingly high rates of **rare cancers and auto-immune diseases**.

UK involvement

Although very little tar sands oil is currently flowing through UK petrol pumps, large amounts of investment are coming from UK banks and corporations. **Shell** is already heavily involved, and **BP** has recently announced its entry into tar sands extraction via the Sunrise project. The Royal Bank of Scotland is the **world's 7th largest investor**, using taxpayers' money to fund climate disaster. HSBC and Barclays are also major financiers. Under the direction of BP, Shell and the Canadian government, the **UK government is currently stalling climate legislation** that would discourage the import of tar sands oil to the EU. Meanwhile, refining company Valero is already planning how it will bring tar sands oil to the UK.

159. This particular webpage goes on to provide links to other websites critical of Alberta’s oil sands and a blog that disseminates articles on a variety of topics, including, for example, a blockade related to Line 3.¹¹⁵



160. I also note that the UK Tar Sands Network:

- A. is referenced as one of the organizations that supported the “Rethink Alberta” campaign and opposed “the expansion of the Alberta Tar Sands and advocate for its cleanup”;¹¹⁶
- B. was the subject of a grant from the Tides U.S Foundation to PLATFORM in 2011 for \$25,000 USD for “funding for the UK Tar Sand Network”¹¹⁷; and
- C. received funding from the Tides U.S Foundation as follows:

Year	Amount (USD)	Description
2012	\$15,000	For research and education on dirty fuels ¹¹⁸
2012	\$7,800	Tar Sands, Climate Change, and the Future of Fuel project ¹¹⁹
2013	\$12,000	Stop Shell and Keep Tar Sands Out of Europe project ¹²⁰
2013	\$30,000	UK Tar Sands Network’s research and education on dirty fuels ¹²¹
2014	\$15,500	For work to stop tar sands expansion ¹²²

¹¹⁵ <https://www.no-tar-sands.org/blog/>

¹¹⁶ <https://web.archive.org/web/20110826024719/http://rethinkalberta.org/about.php>.

¹¹⁷ Tides Foundation Form 990 for the 2011 calendar year Schedule F Part II page 12 of 15.

¹¹⁸ Tides Foundation Form 990 for the 2012 calendar year Schedule F Part II page 123 of 131 PDF.

¹¹⁹ Tides Foundation Form 990 for the 2012 calendar year Schedule F Part II page 127 of 131 PDF.

¹²⁰ Tides Foundation Form 990 for the 2013 calendar year Schedule F Part II, Line 1 page 77 of 228 PDF.

¹²¹ Tides Foundation Form 990 for the 2013 calendar year Schedule F Part II, Line 1 page 62 of 228 PDF.

¹²² Tides Foundation Form 990 for the 2014 calendar year Schedule F Part II page 56 of 228 PDF. See also Line 44 of Schedule 10 to the Deloitte Report.

161. PLATFORM is listed as one of the organizations involved with the UK Tar Sands Network¹²³ and co-authored a report with Oil Change International in February of 2008 entitled “BP and Shell: Rising Risks in Tar Sands Investments”.¹²⁴ The article is a general review of the oil sands and BP and Shell’s involvement in the oil sands and, among other things, calls into question the companies’ “tar sands strategies” and that the “development of new tar sands projects should be halted”.¹²⁵
162. Oil Change International, in turn, not only co-authored the “BP and Shell: Rising Risks in the Tar Sands Investments” paper, but received funding in 2009 for \$34,259.32 (\$30,000 USD) for “Tar Sands Campaign”. An acknowledged contributor to the report is Kenny Bruno, who was the International Program Director of Oil Change International from 2007-2008 and subsequently joined Corporate Ethics International to “coordinate the US side of the Tar Sands Campaign” from August 2009 to December, 2011¹²⁶, authoring the op-ed in the Guardian discussing the “Re-think Alberta campaign discussed above.
163. This evidence establishes that the “UK Tar Sands Network” campaign was expressly advocating to block the tar sands by a number of techniques, including seeking to influence (a) individuals to exert pressure on corporations operating in the Alberta oil sands, (b) banks that fund campaigns in the Alberta oil sands, and (c) governments to impose fuel quality standards that would serve to block the import of oil and gas from Alberta to the UK, all as set forth on the web pages reproduced above. The campaign also: (i) supported the “ReThink Alberta” campaign; (ii) received funding to provide “education on dirty fuels”, stopping Shell, and advancing the “Keep[ing] Tar Sands Out of Europe project”; and (iii) provided on its website a platform to disseminate messaging from other, related websites and blogs bearing similar messaging as what is espoused on the UK Tar Sands Network website. I find that the “UK Tar Sands Network” was a means which could have been used to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportations of those resources to commercial markets.
- (iii) Dirty Oil Sands Network
164. The Corporate Ethics website housed a page entitled “No Tar Sands Coalition”¹²⁷ which invites readers to go to “dirtyoilsands.org” for “an overview of the tar sands issue” and then lists “just some of the groups engaged in the campaign to stop the expansion of the tar sands and phase them out...” The UK Tar Sands Network discussed above also directs visitors to its webpage to go to “dirtyoilsands.org.”

¹²³ <https://web.archive.org/web/20110307011712/http://www.no-tar-sands.org/about/>

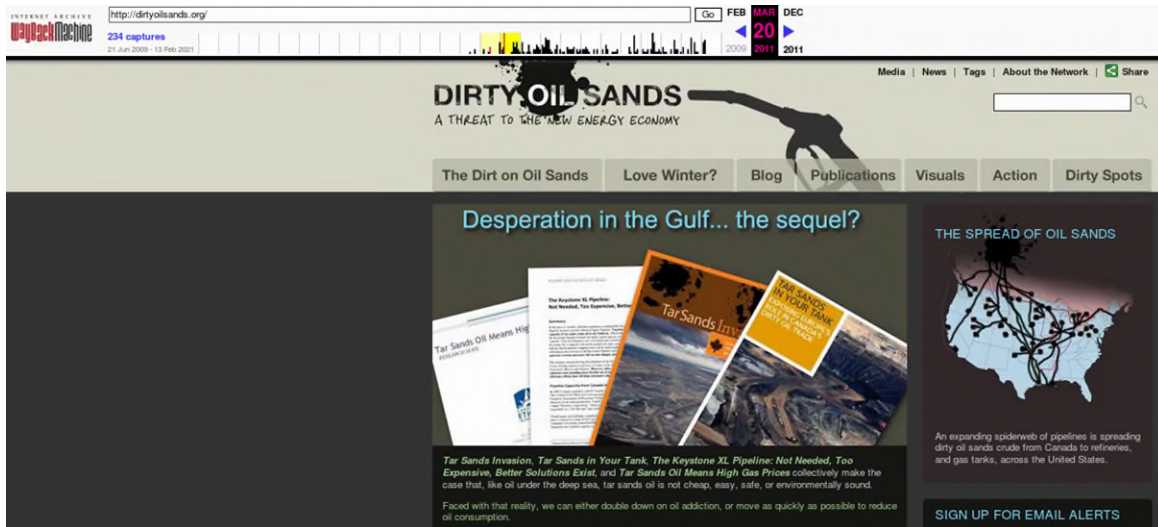
¹²⁴ https://issuu.com/platform-london/docs/rising_risks_in_tar_sands_investments_final. See also: <http://priceofoil.org/content/uploads/2011/05/RisingRisks.pdf>.

¹²⁵ https://issuu.com/platform-london/docs/rising_risks_in_tar_sands_investments_final. Page 3. See also: <http://priceofoil.org/content/uploads/2011/05/RisingRisks.pdf>. Page 3.

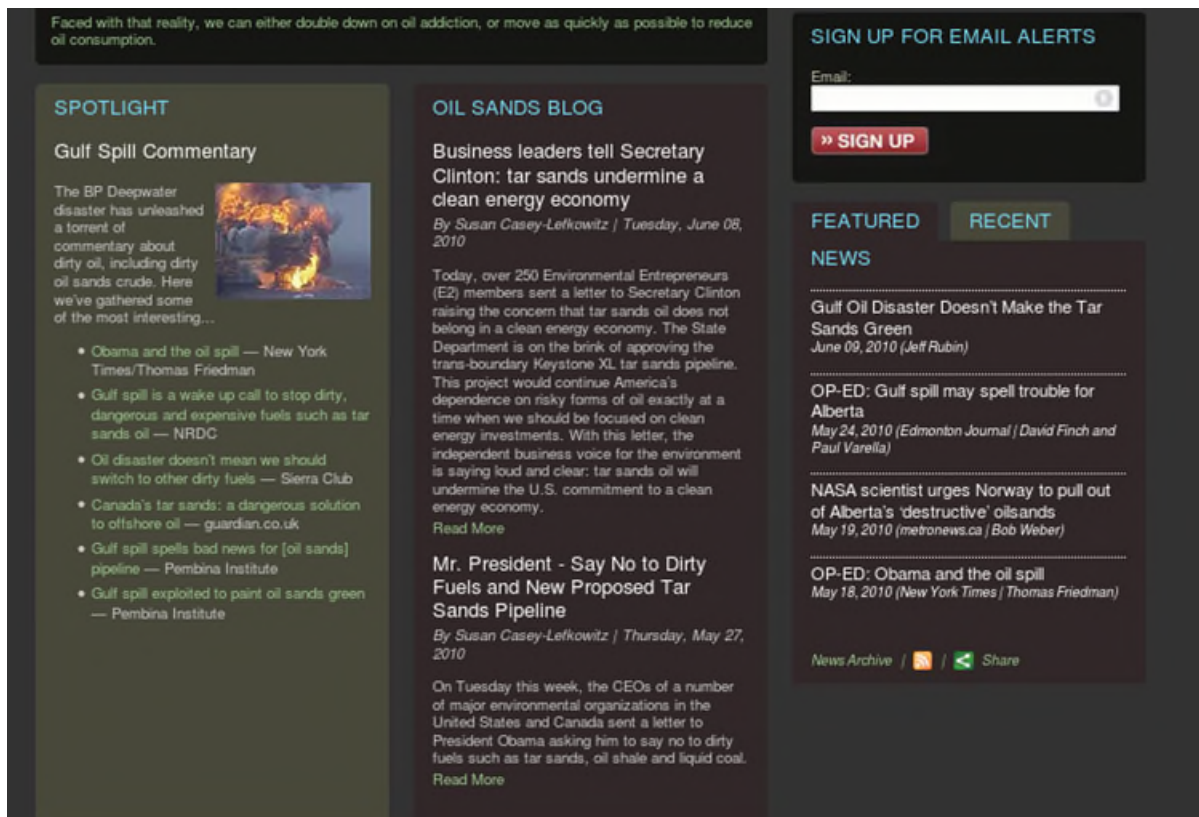
¹²⁶ <https://www.linkedin.com/in/kenny-bruno-9626815>. According to the Corporate Ethics website, Mr. Bruno continues to consult with Corporate Ethics to the current time: <https://corpethics.org/about/>.

¹²⁷ <https://web.archive.org/web/20100714080115/http://www.corpethics.org/section.php?id=371>

165. “dirtyoilsands.org” is the website of the “Dirty Oil Sands Network”. In June of 2010 “Dirtyoilsands.org” home page provided:¹²⁸



166. and continued:



¹²⁸ <https://web.archive.org/web/20100620130932/http://dirtyoilsands.org/>

167. The site, which byline reads “a threat to the new energy economy”, houses a number of features, including:
- A. A collection of four reports, as follows:
- (1) “Tar Sands Invasion – How Dirty and Expensive Oil from Canada Threatens America’s New Energy Economy”¹²⁹ that proposes “Solutions for Stopping the Tar Sand Invasion” as: (a) stopping expansion of tar sand oil production in Canada’, (b) building no more tar sands pipelines and refineries in the U.S., (c) continue to reduce demand for oil as a transportation fuel, (d) not spending taxpayer dollars on buying tar sands oil, (e) eliminating tar sands oil subsidies and financing, and (f) adopting corporate policies that say no to tar sands oil;¹³⁰
 - (2) “Tar Sands in your Tank – Exposing Europe’s Role in Canada’s Dirty Oil Trade”¹³¹ that objects generally to the EU’s import of oil produced from Alberta’s oil sands, making frequent reference to the “destructive” nature of oil sands projects, targeting specific organizations for their participation in the oil sands, and advocating for fuel quality standards that would prohibit the importation of oil produced from Alberta’s oil sands;¹³²
 - (3) “The Keystone XL Pipeline: Not Needed, Too Expensive, Better Solutions”¹³³ that generally objects to further pipeline capacity being constructed from Alberta’s oil sands; and
 - (4) “Tar Sands Oil Means High Gas Prices”¹³⁴ that suggests high costs of production in the oil sands and excess pipeline capacity will not lower gasoline prices in the US.

¹²⁹ Tar Sands Invasion – How Dirty and Expensive Oil from Canada Threatens America’s New Energy Economy”, May 2010, Corporate Ethics International, Earthworks, NRDC, and Sierra Club. See also <https://web.archive.org/web/20100613052629/http://dirtyoilsands.org/files/TarSandsInvasion-FINAL-low.pdf>

¹³⁰ Tar Sands Invasion – How Dirty and Expensive Oil from Canada Threatens America’s New Energy Economy”, May 2010, Corporate Ethics International, Earthworks, NRDC, and Sierra Club. See also <https://web.archive.org/web/20100613052629/http://dirtyoilsands.org/files/TarSandsInvasion-FINAL-low.pdf>. See Page 8.

¹³¹ “Tar Sands in your Tank – Exposing Europe’s Role in Canada’s Dirty Oil Trade”, May 2010, Greenpeace and PLATFORM. See also: <https://web.archive.org/web/20111221074930/http://www.greenpeace.org.uk/files/pdfs/tar-sands-in-your-tank.pdf>

¹³² “Tar Sands in your Tank – Exposing Europe’s Role in Canada’s Dirty Oil Trade”, May 2010, Greenpeace and PLATFORM. See also: <https://web.archive.org/web/20111221074930/http://www.greenpeace.org.uk/files/pdfs/tar-sands-in-your-tank.pdf> . See Pages 4 and 6, among others.

¹³³ “The Keystone XL Pipeline: Not Needed, Too Expensive, Better Solutions”, Plains Justice Policy Brief. See also: <https://web.archive.org/web/20100613052714/http://dirtyoilsands.org/files/PlainsJustice-KXLnotNeeded.pdf>

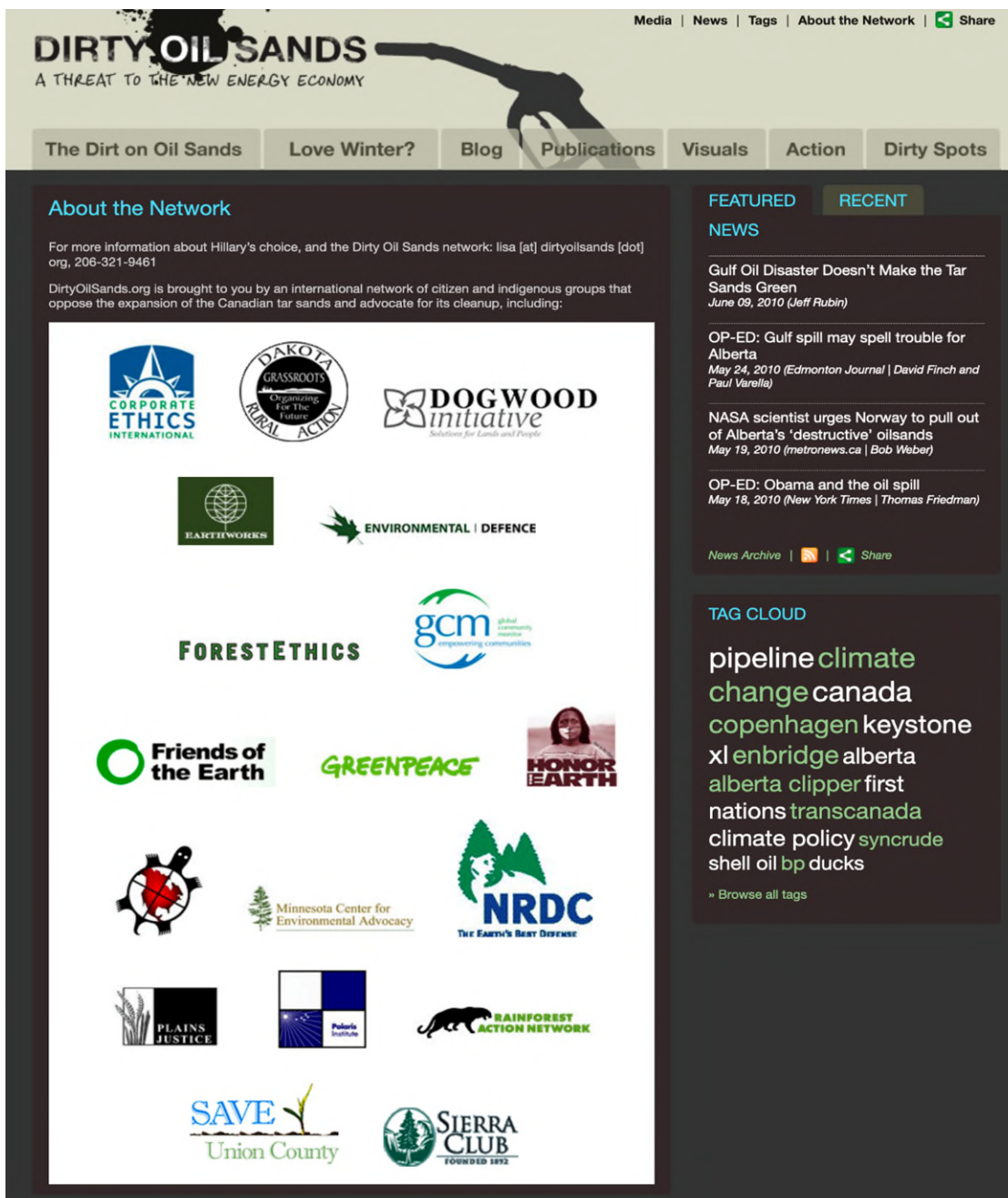
¹³⁴ “Tar Sands Oil Means High Gas Prices”, June 2010, Corporate Ethics International. See also <https://web.archive.org/web/20100613053737/http://dirtyoilsands.org/files/CEI-TarSandsMeansHigherOilPrices.pdf>

- B. A “Oil Sands Blog” written – at times – by a representative of NRDC, which features articles describing letter writing initiatives urging then President Obama¹³⁵ and Secretary Clinton¹³⁶ to stop using “tar sands oil”.
 - C. A sign-up platform facilitating the dissemination of e-mail alerts circulating the blogs discussed above, along with other articles generally related to negatives surrounding the development of Alberta’s oil sands.
168. The Dirty Oil Sands Network website also provides a description “About the Network”, as follows:¹³⁷

¹³⁵ [https://web.archive.org/web/20100613084957/http://dirtyoilsands.org/files/LETTER -
Green Group Dirty Fuels Letter to Obama 20100525.pdf](https://web.archive.org/web/20100613084957/http://dirtyoilsands.org/files/LETTER-_Green_Group_Dirty_Fuels_Letter_to_Obama_20100525.pdf)

¹³⁶ https://web.archive.org/web/20100613052745/http://dirtyoilsands.org/blog/article/business_leaders_tell_secretary_clinton_tar_sands_undermine_a_clean_energy/

¹³⁷ <https://web.archive.org/web/20100613052116/http://dirtyoilsands.org/about>. See also The Corporate Ethics Document. Page 15.



169. This evidence establishes that the “Dirty Oil Sands Network” campaign was expressly advocating: (a) to stop the expansion of the tar sands; (b) resist the construction of any further pipelines and refineries; (c) curb the demand for, and purchase of, tar sands oil; and (d) adopt corporate policies that do not support tar sands oil. Moreover, the website - and the blog and alert platforms on the website - provided a mechanism to disseminate this advocacy, including the reports and blogs discussed in detail above. I find that the “Dirty Oil Sands Network” was a means which could have been used to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportations of those resources to commercial markets.

(iv) Tar Sands Solutions Network

170. In the course of my research I also became aware of the “Tar Sands Solutions Network.” In 2013 the “tarsandssolutions.org” website described the network as “a united front working for tar sands solutions” and, further, that:

“Our focus is **stopping the expansion of the Canadian tar sands and its infrastructure of pipelines and tankers**, growth that is out of control and happening without consistent care, oversight, or debate.

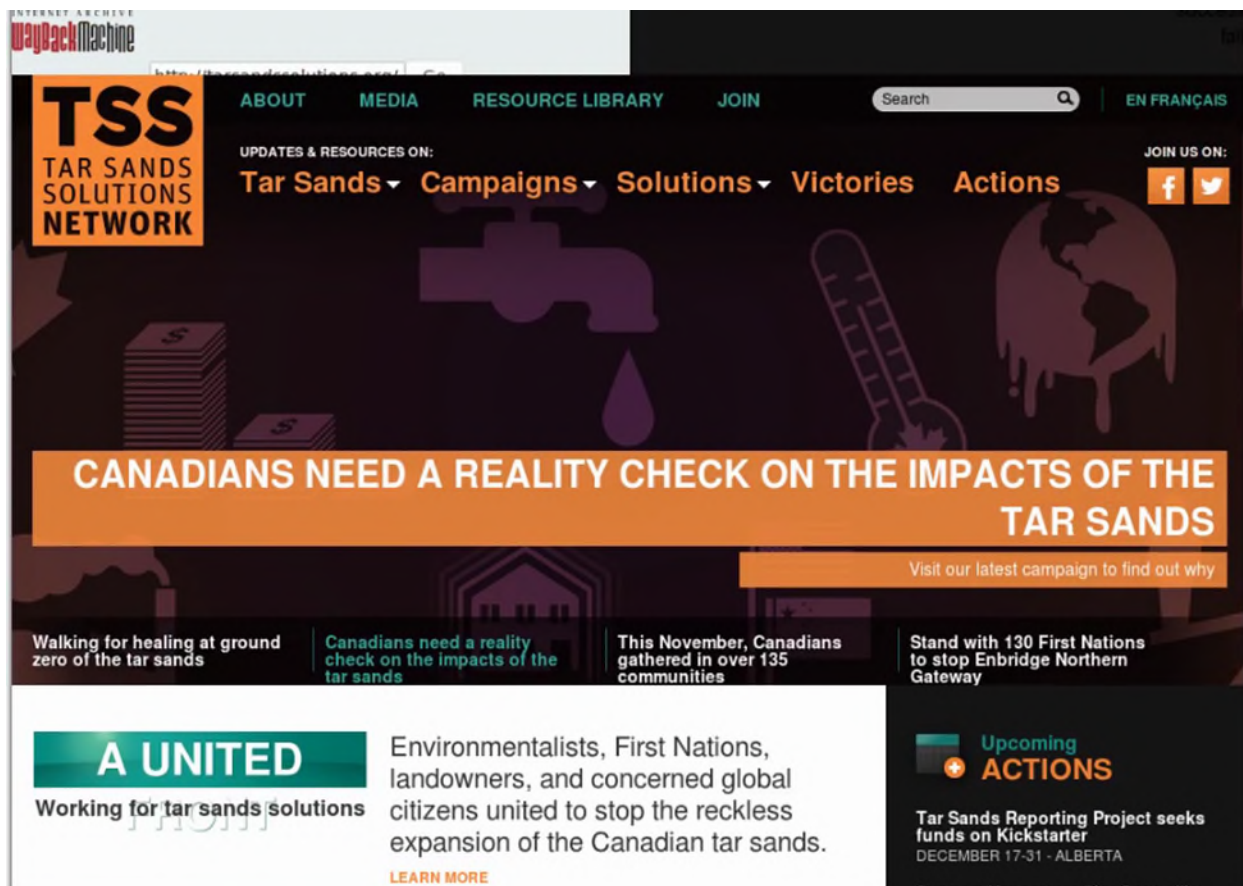
The power our network brings to its members is:

- A space to aggregate and amplify diverse tar sands and pipeline campaigns
- The ability to highlight key campaigns and moments and share successes
- Access to insights and data for the diverse array of groups, big and small that work on the campaigns
- An accessible resource of key reports, images, maps, fact sheets in one central location¹³⁸
[Emphasis from original]

171. In 2013 the main webpage provided as follows:¹³⁹

¹³⁸ <https://web.archive.org/web/20130609131111/http://tarsandssolutions.org/about/>

¹³⁹ <https://web.archive.org/web/20131219052902/http://tarsandssolutions.org/>



172. The foregoing webpage also featured a list of upcoming events, thumbnail articles, tweets from the Tar Sands Solutions Network twitter account, a resource library, and an invitation for visitors to subscribe to the network's newsletter, called "The Dirt".
173. The Tar Sands Solutions Network website also featured pages dedicated to various topics, including:¹⁴⁰

¹⁴⁰ <https://web.archive.org/web/20131205171453/http://tarsandssolutions.org/tar-sands/>



174. This particular page continued with a general overview, as follows:

What's the Problem with the Tar Sands?



Canada's tar sands are the biggest industrial project on earth, and the pace and scale of industry's continued plans for expansion is astonishing.

In northern Alberta, mostly foreign-owned oil companies are aggressively extracting bitumen from tar sands, which they turn into one of the dirtiest and most destructive forms

of energy on the planet. In the process, they are creating serious social, economic and environmental problems in Alberta, North America and all over the world.

Climate, air and water impacts

Tar sands development releases an inordinate amount of climate-warming greenhouse gases into the atmosphere. The front line of a new era of carbon intensive "extreme energy", if we extract all the known tar sands oil the Earth's temperatures will rise substantially, leading to complete climate catastrophe.

Development also pollutes the land, air, and water with dangerous levels of toxic chemicals in northern Alberta and along leak-prone pipeline routes that carry this highly corrosive cargo through communities and waterways across North America.

Wildlife and human rights impacts

Tar sands development infringes on the constitutional rights of aboriginal peoples that have lived in the Northern Alberta region for millennia, destroying wildlife habitat, polluting air and water with toxins and carcinogens, and rendering traditional food sources – such as caribou and fish – extinct or inedible.

It also obliterates forests, rivers and wetlands from an area the size of Florida, destroying an internationally recognized ecosystem and reducing the amount of habitat available for a number of sensitive and endangered wildlife species. Expansion puts major populations of caribou, songbirds, and fish at risk of extirpation.

Threats to economy and democracy

Tar sands development has hurt Canada's economic diversity and threatens its future prosperity. It has also turned one of the world's most respected nations into a petro-state that muzzles scientists, guts environmental legislation at the behest of oil companies, clamps down on public participation, and bullies other nations attempting to reduce greenhouse gas emissions.

Preventing the expansion of the tar sands, and eventually phasing this dirty source of energy out of use, is the only way to reduce our reliance on yesterday's fossil fuel economy and build a responsible and sustainable clean energy future for our children and grandchildren.

175. Each item listed in the drop-down menu above takes the reader to a page on that particular topic. I found the page entitled "Land & Species Impacts" helpful in understanding the views of this network. The page provided, in part:¹⁴¹

¹⁴¹ <https://web.archive.org/web/20130915010054/http://tarsandssolutions.org/tar-sands/land-species-impacts/>

Home / Tar Sands /

LAND & SPECIES IMPACTS

Tar sands development disturbs a staggering amount of pristine boreal forest, creates giant toxic lakes that will be left behind, and will kill millions of songbirds, fish and caribou.

Vast open-pit mines, and the proliferation of roads, pipelines and well sites have already removed tens of thousands of acres of wetlands and forest, and fragmented or destroyed wildlife habitat. If tar sands expansion plans are realized, it will forever undermine the ecological health of 140,000 square kilometres of boreal forest, an area the size of Florida and 20 per cent of Alberta's land base.

OVERVIEW:

Tar sands expansion degrades the health of 20% of Alberta's land

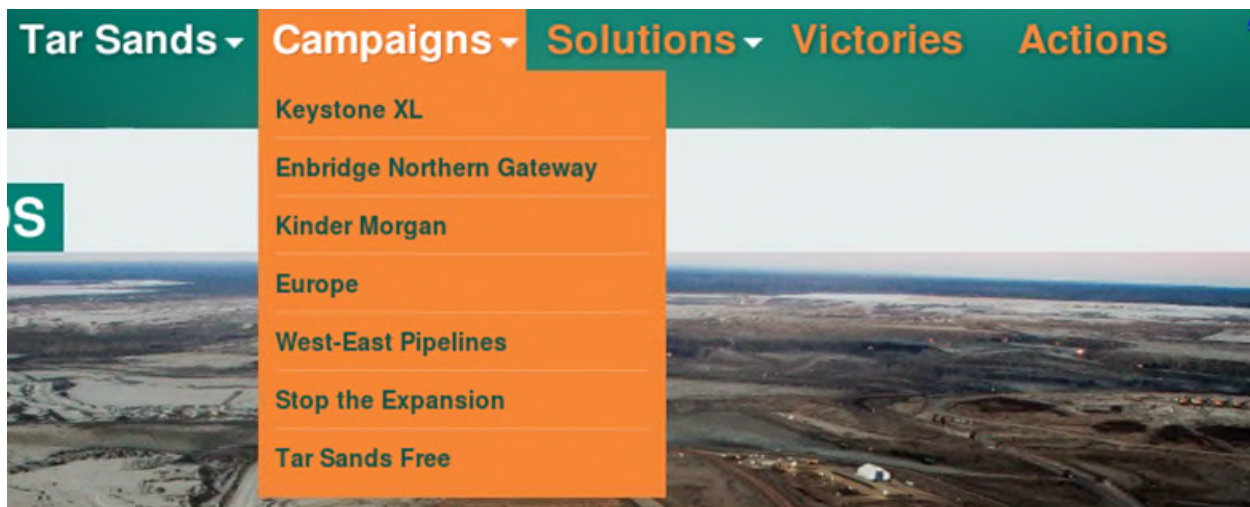
KEY ISSUES:

- Only 0.15% of disturbed land has ever been "reclaimed"
- Caribou and multiple bird species will be extirpated

CURRENT STATUS:

Federal and Provincial protection laws are inadequate and sensitive ecosystems are being destroyed

176. I also found the drop-down bar under "Campaigns" helpful in my review. It revealed seven different campaigns, as follows:



177. The overview of "Campaigns" provides further insight into the campaigns advocated by the Tar Sands Solutions Network.¹⁴² The page provides, in part:

¹⁴² <https://web.archive.org/web/20130915005610/http://tarsandssolutions.org/campaigns/>

Campaigns

The enormous negative impacts of tar sands development – to the climate, the environment, and communities – has sparked unprecedented opposition from millions of people in North America and around the world. While it includes environmental organizations who've been working for years, today the movement includes scientists, Nobel laureates, women's groups, First Nations, landowners, ranchers, and politicians.

In short, we have become one of the biggest social movements of our time.

Tar sands campaigns are focused on stopping pipelines and other infrastructure, getting regions and companies to commit to get tar sands out of their fuel supply and investments, and campaigns going to the source to stop further expansion in Alberta.

Pipelines and infrastructure

The rapid expansion of tar sands development, which is set to triple by 2030, has created a mad rush to build a web of more and bigger pipelines across North America to export tar sands oil to Europe and Asia. Opponents are working hard to ensure that massive investments in new pipelines, oil terminals and supertankers do not lock us into another century of dirty oil consumption.



The greenhouse gas emissions associated with the production, transportation and combustion of tar sands oil will push us over the edge toward catastrophic climate change, and the inevitable pipeline leaks and tanker spills of harmful tar sands crude put people, communities and ecosystems at risk wherever they carry their dangerous cargo.

Tar Sands Free

It's becoming widely known that oil from Canada's tar sands is more destructive, polluting, and carbon intensive than nearly all other energy sources. That's why a growing number of universities, churches, city and municipal governments and some of North America's largest socially responsible corporations have joined a series of campaigns to get tar sands out of their fuel supply, or divest from oil companies whose core business model will lead to the destruction of the earth's climate.

From Seattle, Washington to Burlington, Vermont to the entire European Community, institutions, companies and progressive governments understand the serious problems with producing, transporting and using tar sands oil and how that stands in the way of climate progress.

Stopping tar sands expansion



Tar sands development is massive and growing at an unbelievable pace. More than 100 projects are active with 100 more in the works, as the oil industry implements its plan to destroy an area the size of Florida and triple oil production by 2030. If these expansion plans are realized,

they will destabilize the global climate, further devastate First Nations people and their traditional lands, pollute land and water, and lock us into a fossil fuel based future that will undermine Canada's economic diversity and well-being.

That's why First Nations, environmentalists and a growing collection of scientists, politicians and community leaders have stood up to stop the expansion of Alberta's tar sands and encourage Canadians to invest in the economic and employment benefits of a clean energy economy.

As this section illustrates, people are working together to stop the growth of the tar sands industry and build a better, cleaner, saner future. What many people may not realize is that we are making progress faster than anyone could have hoped, and on the horizon is a world in which our children can live Tar Sands Free.

178. Each item listed in the drop-down menu above takes the reader to a page on that particular campaign. I found the page entitled "Northern Gateway" of note in respect of its focus on the

Great Bear Rainforest and “super tankers larger than the Exxon Valdez”.¹⁴³ The page provided, in part:

Home / Campaigns /

ENBRIDGE NORTHERN GATEWAY

If approved, Enbridge's Northern Gateway pipeline would run west from the Alberta tar sands to the port of Kitimat, British Columbia. The pipeline would cross 800 critical salmon-bearing streams and terminate in the heart of the world-renowned Great Bear Rainforest, where hundreds of super tankers larger than the Exxon Valdez would transport heavy tar sands oil through the world's fourth most dangerous waterway.

As a result, Northern Gateway has sparked fierce and unprecedented opposition from citizens, First Nations and communities of all political stripes, because it poses such unacceptable risks to the environment and local economies of B.C.

OVERVIEW:
New twin pipeline from Alberta to Kitimat, BC

KEY PROBLEMS:

- Crosses over 800 salmon streams
- Ends in heart of Great Bear Rainforest
- 400 Super tankers through world's 4th most dangerous waterway

CURRENT STATUS:
National Energy Board recommendation expected Dec 2013. Harper Government to make final decision

179. In addition to the campaigns listed on the drop-down bar above, a new campaign was being launched by the Tar Sands Solutions Network in May of 2013 known as the “Oil Sands Reality Check”¹⁴⁴. A statement on the website provides, in part:

“Canadians need a reality check on tar sands

...

That's why 8 of our partners joined academics, scientists, economists and other environmental organizations to launch TarSandsRealityCheck.com, a one-stop free shop for the 25 most important facts about the tar sand [sic] to counter the high-level pro-oil sands lobbying ongoing in Canada, the United States and Europe around the Keystone XL tar sands pipeline, and Europe on the Fuel Quality Directive.

...

The digital campaign launches the same day Prime Minister Stephen Harper is expected in New York to address the Council of Foreign Relations and promote the tar sands and the Keystone XL tar sands pipeline. It also comes just days after the Canadian government launched a new website as part of its massive pro-tar sands PR campaign.

...

¹⁴³ <https://web.archive.org/web/20131210162008/http://tarsandssolutions.org/campaigns/enbridge-northern-gateway>

¹⁴⁴ <https://web.archive.org/web/20130615122651/http://tarsandssolutions.org/member-blogs/canadians-need-a-reality-check-on-tar-sands>

TarSandsRealityCheck.com was designed for the public, media, politicians and the environmental community. The website's sleek visual format allows facts to be shared easily across social networks."

180. The "TarSandsRealityCheck" website provided as follows, but I was not able to find any live links from the page.¹⁴⁵

OIL SANDS REALITY CHECK ABOUT | PARTNERS

Climate Economy Human Rights Land & Species Air & Water

The Canadian oil sands, also known as the tar sands, is the largest industrial project on earth, yet few Canadians are aware of the rapid pace of growth and its impacts on our environment, economy, and society.

Canada needs a reality check on oil sands expansion.

CLICK TO GET A REALITY CHECK

181. The Tar Sands Solutions Network is made up of organizations and First Nations working on tar sands and pipeline campaigns in Canada, the United States and Europe. The member groups are listed on the Tar Sands Solutions Network website.¹⁴⁶

¹⁴⁵ <https://web.archive.org/web/20130611153329/http://oilsandsrealitycheck.org/>

¹⁴⁶ <https://web.archive.org/web/20130915004856/http://tarsandsolutions.org/about/network-members>

182. On a separate page on the website the “Steering Committee” is described.¹⁴⁷ The Steering Committee “reviews and decides the editorial direction of content posted onto this website.” The steering committee included, among others: (a) the cofounder and senior director of Equiterre, Steven Guilbeault; (b) a representative of Environmental Defence Canada; (c) a representative of Sisu Institute; (d) Cameron Fenton; (e) Kenny Bruno; (f) a representative of Greenpeace Canada; (g) a representative of Oil Change International; (h) Tzeporah Berman; and (i) cofounder of 350.org, Bill McKibben.
183. This evidence establishes that the “Tar Sands Solutions Network” campaign was expressly advocating a series of campaigns aimed at: (a) stopping the expansion of the tar sands; (b) resisting the construction of any further pipelines and refineries; (c) curbing the demand for, and purchase of, oil sands oil; (d) utilizing land-use programs like the Boreal Forest, the Great Bear Rainforest, and the Tanker-ban to impair the efforts of getting oil sands production to commercial markets; and (e) advancing divestment tactics against those involved in the extraction of oil from Alberta’s oil sands. Moreover, the website - and the blog, twitter feed, and newsletter platforms on the website, provided a mechanism to disseminate this advocacy. I find that the “Tar Sands Solution Network” was a means which could have been used to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportations of those resources to commercial markets.

(v) Letter Writing Campaigns

184. During the course of my review I became aware of two letters that may have provided further means to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportations of those resources to commercial markets.
185. In the first letter, dated July 2, 2013, 58 ENGOs sent an open letter to “Leading North American Companies”. The letter was “on Tar Sands – an Extreme, Dirty Fuel Source” and reads as follows:

The undersigned organizations, representing millions of North Americans, are writing to urge you to distance your company from tar sands, one of the most environmentally destructive industrial developments in the world today, and to increase the efficiency of your vehicle fleet and shipping operations. A number of companies have already committed to reduce or eliminate tar sands from their fleet fuel. We believe that North America’s biggest companies and oil consumers have a key role to play in limiting the market for this extreme, dirty fuel.

The tar sands industry is pursuing numerous pipeline proposals to increase access to US refineries and the international market. While tar sands production is currently at about 2 million barrels a day, the industry is pushing for a staggering increase of more than three times that level by 2030 if we do not find ways to significantly decrease demand.

¹⁴⁷ <https://web.archive.org/web/20131209025725/http://tarsandssolutions.org/about/steering-committee>

Leading companies have set goals to reduce carbon emissions because of the recognition that the fuels they burn are threatening the Earth's climate, our economy, and the future our children will inherit. And yet extracting and upgrading a barrel of tar sands oil generates up to three times more greenhouse gas emissions than extracting a barrel of conventional oil. Boreal forests, like the one that covers the tar sands of Alberta, Canada, capture and store almost twice as much carbon as do tropical forests. Relying on this higher-carbon fuel will undermine carbon reduction investments companies have made.

Leading companies have also set goals to reduce water consumption, prevent water pollution, and address deforestation. And yet the tar sands industry in Canada hopes to subject an area of wetlands and forests the size of Florida to some of the most destructive open-pit mining and drilling practices on earth [*sic*]. Existing operations draw more than 349 million cubic meters of water per year and are projected to triple in the next two decades. Ninety percent of this water is then relegated to 'open pit' tailings ponds, containing ammonia, cyanide, arsenic, and other toxins. These ponds discharge up to three million gallons of effluent into the Athabasca watershed every day.

Leading companies have made a public commitment to the health and well-being of the communities where they operate and serve customers. And yet, physicians in Indigenous communities near tar sands extraction sites have reported unusually high rates of certain types of cancers. In order to be transported via pipeline, tar sands bitumen must be diluted with toxic hydrocarbons and pumped at high temperature and pressure, which strains pipelines. Tar sands pipelines carry tar sands products across thousands of waterways in dozens of states and provinces, putting drinking water for tens of millions of North Americans at risk. As we've seen recently in Mayflower, Arkansas and in Michigan's Kalamazoo river, tar sands spills are even more difficult to clean up than conventional oil spills and pose unique risks to water resources.

Leading companies are reducing their oil consumption as a way to reduce costs and carbon emissions. Approximately 40 percent of US carbon emissions from fossil fuels are the result of our dependence on oil. Given the threats to our climate, air quality, and security, all companies must escalate these efficiency efforts. Huge gains can be made using existing technology and strategies, such as plug-in and hybrid vehicles, more efficient diesel vehicles, aerodynamics, advanced tires, anti-idling programs, driver training, and telematics. Shifting to rail, reducing packaging, right-sizing, and reducing empty loads are important strategies that many shippers are employing and should scale up.

We hope you will join a growing number of companies in both slashing oil consumption in your shipping and vehicle fleet and in reducing or eliminating reliance on tar sands. The latter is achieved by working with your fuel and transportation providers to source fuel from refineries that do not process tar sands, wherever possible. Your company's

leadership on these issues will be welcome news for consumers and will help secure a safer future. ¹⁴⁸

186. I will refer to this letter as the “**ENGO Open Letter**” for the balance of this Report when I review it in the context of the particular participants discussed in more detail below.

187. In the second letter, dated December 21, 2020, over 50 ENGOs called upon Export Development Canada (“**EDC**”), a Crown corporation, and its governing federal Minister, the Minister of Small Business, Export Promotion and International Trade, to stop its support for the fossil fuels industry. While the letter did not specifically mention Alberta’s oil sands, it did speak of all fossil fuels in Canada, providing:

As 53 organizations representing over 2.0 million people, we call on the Government of Canada to immediately order EDC to align its business with Canada’s climate commitments. This means ensuring that EDC ends all support for fossil fuels...¹⁴⁹

188. I will refer to this letter as the “**EDC Divestment Letter**” for the balance of this Report when I review it in the context of particular participants discussed in more detail below.

(b) **Documentaries**

189. In the course of my research, I have identified eight documentaries released between May of 2009 and September of 2011 that exemplify the type of documentary films that form part of a “grassroots campaign” I have described above in connection with the Tar Sands Campaign.

190. Where appropriate I will address particular documentaries below, in connection with organizations involved in the production of the documentary.

(c) **Research**

191. In the course of my research I have identified a number of research papers either authored or co-authored by organization I have found to be participants in anti-Alberta energy campaigns later in this Report, as follows:

192.

Organization	<u>Total Number of Papers Authored or Co-Authored</u>
CorpEthics	3
NRDC	18
Stand.earth	5

¹⁴⁸

https://web.archive.org/web/20130829060500/http://www.sierraclub.org/pressroom/downloads/Tar%20Sands_letter-0701.pdf

¹⁴⁹ <https://cela.ca/wp-content/uploads/2021/01/CSO-Letter-Export-Development-Canada-Dec-2020.pdf>

350.org	2
Oil Change International	23
Pembina	7
Greenpeace Canada	7
Equiterre	7
Western Canada Wilderness Committee	1
Sierra Club Canada	7
Environmental Defence Canada	14

193. I have reviewed each of these papers in the context of each of the “participants” listed later in Part III of this Report and provided my findings related to how such papers were used by them as a means to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportations of those resources to commercial markets..
194. More generally, however, I do note that over the course of approximately 2 years surrounding the Corporate Ethics Document, there are at least twelve papers produced that closely mirror campaigns described in the Corporate Ethics Document on:
- (1) “...the dirtiest, most energy intensive of all fossil fuels”¹⁵⁰ – “*Canada’s Toxic Tar Sands: The Most Destructive Project on Earth*”, February 2008, Environmental Defence Canada;¹⁵¹
 - (2) “Companies like British Petroleum ... and Shell have ... sensitivity to their brand image”¹⁵² – “*BP and Shell: Rising Risks in Tar Sands Intervention*”, September 2008, Greenpeace UK, Platform, Oil Change International;¹⁵³
 - (3) “We need to document the inadequate supply of water ...”¹⁵⁴ – “*11 Million Litres A Day – The Tar Sands’ Leaking Legacy*”, December 2008, Environmental Defence Canada;¹⁵⁵

¹⁵⁰ The Corporate Ethics Document, page 2.

¹⁵¹ <https://environmentaldefence.ca/report/report-canadas-toxic-tar-sands-the-most-destructive-project-on-earth/>

¹⁵² The Corporate Ethics Document, page 5.

¹⁵³ <http://priceofoil.org/content/uploads/2011/05/RisingRisks.pdf>

¹⁵⁴ The Corporate Ethics Document, page 9.

¹⁵⁵ <https://environmentaldefence.ca/report/report-11-million-litres-a-day-the-tar-sands-leaking-legacy/>

- (4) “Outcomes may include ... significant land set-asides for conservation.”¹⁵⁶ – “*Danger in the Nursery: Impact on birds of tar sands oil development in Canada’s Boreal forest*”, December 2008, Boreal Songbird Initiative, NRDC, and the Pembina Institute;¹⁵⁷
- (5) “... we need to focus on ... citizen engagement in relevant geographic areas such as Ontario”¹⁵⁸ – “*Freedom from dirty oil: Ontario’s Tar Sands Decision*”, January 2009, Environmental Defence Canada and Forest Ethics;¹⁵⁹
- (6) “The Alberta Government ... must be pressured to change and ultimately isolated from the emerging mainstream consensus through this campaign.”¹⁶⁰ – “*Divided we fall: the Tar Sands vs The Rest of Canada*”, May 2009, Environmental Defence Canada, Equiterre, and Forest Ethics;¹⁶¹
- (7) “... this campaign has much larger strategic implications for the entire global warming effort.”¹⁶² – “*Dirty Oil: How the tar sands are funding the global climate crisis*”, September 2009, Greenpeace;¹⁶³
- (8) “... we need to target the financial community.”¹⁶⁴ – “*Financing of Fossil Fuels and Renewable Energy by Canadian Banks*”, September 2009, Rainforest Action Network;¹⁶⁵
- (9) “The ultimate targets for this strategic track are the decision makers who make climate policy in Canada”¹⁶⁶ – “*Climate Leadership – Final Report on an Economic Study of Greenhouse Gas Target and Policies for Canada*”, October 2009, Pembina Institute and David Suzuki Foundation;¹⁶⁷
- (10) “This aspect of the campaign involves generating public pressure on the federal government to enforce existing regulations which to date it has been reticent to do.”¹⁶⁸ – “*Watered Down: Overcoming Federal Inaction on the Impact of Oil Sands Development to Water Resources*”, November 2009, Environmental

¹⁵⁶ The Corporate Ethics Document, page 8.

¹⁵⁷ <https://www.borealbirds.org/publications/danger-nursery-impact-birds-tar-sands-oil-development-canada%E2%80%99s-boreal-forest>

¹⁵⁸ The Corporate Ethics Document, page 11.

¹⁵⁹ <http://mediatoil.ca/Search/getpdf/1001>

¹⁶⁰ The Corporate Ethics Document, page 5.

¹⁶¹ <http://mediatoil.ca/Search/getpdf/1000>

¹⁶² The Corporate Ethics Document, page 6.

¹⁶³

https://web.archive.org/web/20120503214856/http://www.greenpeace.org/canada/Global/canada/report/2009/9/tar_sands_report.pdf

¹⁶⁴ The Corporate Ethics Document, page 13.

¹⁶⁵ https://web.archive.org/web/20100613115231/http://dirtyoilsands.org/files/profundo_bank_report.pdf

¹⁶⁶ The Corporate Ethics Document, page 11.

¹⁶⁷ <https://web.archive.org/web/20110727171715/http://pubs.pembina.org/reports/climate-leadership-report-en.pdf>

¹⁶⁸ The Corporate Ethics Document, page 16.

Defence Canada, Pembina Institute, Polaris Institute, Sierra Club of Canada, Water Matters Society of Alberta, and Alberta Wilderness Association;¹⁶⁹

- (11) “*U.S Federal Policy Work*. This aspect of the campaign is dedicated to lobbying for legislation to support an alternative energy ... as well as any legislation that complicates the importation of tar sands oil... It is also for lobbying against legislation that would facilitate tar sands oil importation.”¹⁷⁰ – “*Comments to the White House regarding the EISA Section 933 Energy Security Report to Congress*”, December 2009, Corporate Ethics International, Sierra Club, Greenpeace;¹⁷¹
- (12) “The Keystone pipeline in the U.S. must cross several states and jurisdictions where challenges will be made.”¹⁷² – “*Say no to Tar Sands Pipeline – Proposed Keystone XI Project Would Deliver Dirty Fuel and High Costs*” March 2010, NRDC.¹⁷³

(d) ***Divestment Campaigns***

195. Campaigns levelled against finance and insurance companies that supported Alberta oil and gas development seemed to start in earnest in 2012. One of the main proponents of this movement was an organization known as 350.org, which is discussed later in this Report.¹⁷⁴
196. 350.org claims to have sparked the movement in 2012 and since then claims to have achieved over 1,000 divestments, representing just under \$8 trillion of investments.¹⁷⁵ The divestment program uses celebrity endorsements, and targets special interest groups.¹⁷⁶
197. When asked what sparked the initial idea of asking institutions to drop their investments in fossil fuels, 350.org responded:
- ... [the] somewhat obscure report from a London-based think tank, Carbon Tracker Initiative. It showed that these companies had far, far more carbon in their reserves than any scientist thought we could ever burn. Both of us thought: viewed this way these are

¹⁶⁹ <https://web.archive.org/web/20111121215453/http://www.water-matters.org/docs/watered-down.pdf>

¹⁷⁰ The Corporate Ethics Document, page 16.

¹⁷¹

https://web.archive.org/web/20100613115158/http://dirtyoilsands.org/files/CommentsToWH_EISA933_CEI_SC_GP.pdf

¹⁷² The Corporate Ethics Document. Page 5.

¹⁷³ https://web.archive.org/web/20100613114953/http://dirtyoilsands.org/files/NRDC_KeystoneXL_FINAL.pdf

¹⁷⁴ Interview of May Boeve, founding member of 350.org, by Heather Smith. “*How 350.org went from “strange kid” to head of the green class*”, H. Smith, The Grist, February 5, 2014. <https://grist.org/climate-energy/how-350-org-went-from-strange-kid-to-head-of-the-green-class>.

¹⁷⁵ B. McKibben, “*At last, divestment is hitting the fossil fuel industry where it hurts*”. The Guardian, December 16, 2018. <https://www.theguardian.com/commentisfree/2018/dec/16/divestment-fossil-fuel-industry-trillions-dollars-investments-carbon>

¹⁷⁶ B. McKibben, “*At last, divestment is hitting the fossil fuel industry where it hurts*”. The Guardian, December 16, 2018. <https://www.theguardian.com/commentisfree/2018/dec/16/divestment-fossil-fuel-industry-trillions-dollars-investments-carbon>

rogue companies, trying to profit off unfathomable destruction. Since we'd both been active in the anti-apartheid divestment movement a generation earlier, we figured maybe it might be appropriate here.¹⁷⁷

198. Drawing off of campaigns like OccupyWallStreet¹⁷⁸ and Desmond Tutu's efforts against apartheid by shifting towards the finance community, the "De-investment campaign" began. Later in 2012 350.org garnered further attention through an op-ed written by its founder, Bill McKibben, and published in Rolling Stone magazine.¹⁷⁹ What followed was a series of campaigns, including "DotheMath",¹⁸⁰ "StopFundingfossilFuels",¹⁸¹ "Keepitinthground",¹⁸² "DivestmentStudentNetwork",¹⁸³ "Breakfree",¹⁸⁴ "Gofossilfree",¹⁸⁵ and "MovementforBlackLives"¹⁸⁶ that all advocated divestment from the fossil fuels industry generally.
199. Divestment campaigns in respect of a particular industry provide, by their very nature (namely discouraging investment in organizations involved in that particular industry), a means to frustrate the development of that industry.
200. In addition to the more general campaigns referenced above, I have identified divestment campaigns that have specifically referenced Alberta's oil and gas industry. I will describe each of these divestment campaigns below.
- A. ***InsuringCoalNoMore*** – In 2017 the "Unfriend Coal" campaign asked 25 leading insurance companies around the world to stop underwriting coal, divest their assets from the coal sector, prepare longer-term plans to exit other fossil fuels, and scale up their support of clean energy solutions. Under the banner of "InsuringCoalNoMore the campaign issued a "scorecard" in respect of this campaign.¹⁸⁷ The report goes on to mention that all known fossil fuel reserves, including tar sands, "need to remain in the ground".¹⁸⁸ Later editions of the report expand the focus on "Tar Sands Insurance" and

¹⁷⁷ "Bill McKibben on Investing in "nothing that burns", Corporate Knights, A. Vasil, May 2, 2019, at page 2. See also: <https://www.corporateknights.com/channels/responsible-investing/ga-money-talk-bill-mckibben-15568031/>, at page 2.

¹⁷⁸ <http://tarsandsaction.org/page/7/>. See final entry – "...Invites Occupy Wall Street to join Keystone XL Protest..."

¹⁷⁹ "Global Warming's Terrifying New Math", July 19, 2012, B. McKibben, Rolling Stone. See <https://www.rollingstone.com/politics/politics-news/global-warmings-terrifying-new-math-188550/>

¹⁸⁰ <https://math.350.org/>

¹⁸¹ <http://stopfundingfossils.org/>

¹⁸² <https://web.archive.org/web/20180517220420/http://keepitinthground.org/>

¹⁸³ <http://www.studentsdivest.org/>

¹⁸⁴ <https://350.org/press-release/a-global-wave-of-actions-to-break-free-from-fossil-fuels-begins/>

¹⁸⁵ <http://gofossilfree.org/>

¹⁸⁶ <https://350.org/350-org-endorses-the-movement-for-black-lives-platform/>

¹⁸⁷ <https://unfriendcoal.com/wp-content/uploads/2017/11/UnfriendCoal-Insurance-Scorecard.pdf>

¹⁸⁸ *Ibid.* Page 14.

describe efforts where the campaign “called on the insurance industry to stop underwriting and divest from the tar sands sector.”¹⁸⁹

I note how this divestment initiative began in respect of the coal industry and within a period of three years included insurance companies involved in the oil sands industry. This is consistent with the Corporate Ethics Document that envisioned the inclusion of “tar sands messaging” in “large coalitions campaign messaging” including coal.¹⁹⁰

- B. **Reclaim Finance** – This is another divestment campaign that originated with coal but moved to “stop the expansion of fossil fuels”¹⁹¹ utilizing research, engagement, and campaigning.¹⁹² It also includes “tar sands” and advocates its readers to “act now” and say “No to expansion”, highlighting negatively financial institutions that finance and insure new fossil fuel production projects.¹⁹³
- C. **Banking on Climate Change: Fossil Fuel Finance Report Card 2019** – This publication is a review of 33 global banks and criticism of their support of the fossil fuel industry (including specifically the oil sands).¹⁹⁴
- D. **SumOfUs** – SumOfUs is a community of people from around the world committed to curbing the growing power of corporations.¹⁹⁵ The SumOfUs website runs online petitions against a number of Alberta oil and gas projects, including:
- (1) calling on insurers such as Lloyd’s of London, AIG, Liberty Mutual, Zurich, and Chubb to withdraw their support of the Trans Mountain Pipeline;¹⁹⁶
 - (2) calling on President Obama to reject the “Keystone XL tar sands pipeline project”;¹⁹⁷and
 - (3) urging the Canadian Federal government to apply the “new assessment regulations” to the Teck Frontier mine.¹⁹⁸

¹⁸⁹ Insuring Coal No More – The 2018 Scorecard; <https://waterkeeper.org/wp-content/uploads/2018/11/Scorecard-2018-report-US-print-version.pdf>, at page 6. Insuring Coal No More – The 2019 Scorecard; <https://insureourfuture.co/wp-content/uploads/2019/12/2019-Coal-Insurance-Scorecard-soft-version-2.pdf>, at page 6.

¹⁹⁰ The Corporate Ethics Document. Page 11.

¹⁹¹ <https://reclaimfinance.org/site/en/stop-expansion-fossil-fuels/>

¹⁹² <https://reclaimfinance.org/site/en/our-project/>

¹⁹³ <https://reclaimfinance.org/site/en/stop-expansion-fossil-fuels/>

¹⁹⁴ https://www.ran.org/wp-content/uploads/2019/03/Banking_on_Climate_Change_2019_vFINAL1.pdf

¹⁹⁵ <https://www.sumofus.org/about/>

¹⁹⁶ <https://actions.sumofus.org/a/lloyd-s-of-london-don-t-insure-the-leaky-trans-mountain-pipeline>

¹⁹⁷ <https://actions.sumofus.org/a/tar-sands-spill>

¹⁹⁸ <https://actions.sumofus.org/a/canada-do-proper-climate-tests-and-an-indigenous-rights-review-on-teck-tar-sands-mine>

The SumOfUS website also raised money to “support Indigenous led resistance to the tar sands” involving the Teck Frontier mine and energy participants Exxon-Mobil, Suncor, and Shell, generally.¹⁹⁹

- E. ***Insure our Future*** – Insure our Future runs a campaign against Lloyd’s of London, accusing it of being a “hypocrite”²⁰⁰ and urging Lloyd’s not to insure tar sands projects, including Trans Mountain. Its position is summarized as follows:²⁰¹

The Insure Our Future network is demanding that
Lloyd’s (and its members) must:

- **Stop insuring new coal projects and coal companies**
- **Stop insuring tar sand projects and companies**

- F. ***Stopthemoneypipeline*** - A stated coalition of organizations, the Stopthemoneypipeline campaign seeks to stop the flow of oil by demanding that “banks, asset managers, insurance companies and institutional investors stop funding, insuring and investing in climate destruction” and target specific entities in the lending, insurance, and asset manager industries for supporting fossil fuels projects.²⁰² Liberty Mutual Insurance is specifically identified for insuring Trans Mountain and Keystone pipelines.²⁰³ A campaign directed at Enbridge’s Line 3 pipeline replacement targeted banks such as Royal Bank of Canada, Bank of Montreal, Scotiabank, HSBC, among others for their roles in the projects.²⁰⁴ Stopthemoneypipeline advocates the movement of funds away from institutions that invest in or insure fossil fuel companies and their projects to institutions engaging with renewable energy sources through a campaign called “Move Your Money”.²⁰⁵
- G. ***DivestInvest*** – A stated network of organizations, DivestInvest advocates the divestment from fossil fuels generally with corresponding investment in sustainable energy sources and climate solutions, referred to as “divest-invest”. *DivestInvest* includes advocacy efforts directed at charitable and other foundations, termed *DivestInvest Philanthropy*. A 2017 report by *DivestInvest Philanthropy* and *Europeans for DivestInvest*,²⁰⁶ described the “divest-invest” pledge and advocated:

¹⁹⁹ <https://actions.sumofus.org/a/tar-sands-resistance>

²⁰⁰ What is Lloyd’s of London and How Does it Help Fuel the Climate Crisis?”, L. Keenan, Insurer Our Future, August, 2020, at page 3. See also https://insureourfuture.co/wp-content/uploads/2020/08/Insure-Our-Future-Lloyd_Report_Fall-2020_Final.pdf.

²⁰¹ Ibid. Page 1.

²⁰² <https://stopthemoneypipeline.com/about-2/>

²⁰³ <https://stopthemoneypipeline.com/about-2/> ; https://docs.google.com/forms/d/e/1FAIpQLSdjaJWbH_OqvsMvwrEGCUGdvnTmNA4jB3rWskFitwz3OiKHA/viewform

²⁰⁴ <https://stopthemoneypipeline.com/line3/>

²⁰⁵ <https://stopthemoneypipeline.com/move-your-money/>

²⁰⁶ “Divest-Invest Philanthropy – Doing Good. Performing Better. Beat your Benchmarks. Beat Climate Change.” C. Vondrich, E. Dorsey, J. Nicholas, S. Ferguson, T. Harrison. <https://www.divestinvest.org/wp-content/uploads/2017/09/2017-DIP-Briefing-Case-Studies.pdf>.

“To Divest-Invest is to pledge, over five years, to sell holdings of fossil fuel shares and invest instead in climate solutions...”²⁰⁷

...

Divestment is only one half of the equation. All members of Divest-Invest Philanthropy also pledge to invest at least 5% of their portfolio in climate solutions, broadly defined...”²⁰⁸

...

It is no longer an ethical choice to continue to invest in fossil fuel companies whose business model requires wrecking the planet and its people...”²⁰⁹

And specifically referenced Alberta’s oil sands.²¹⁰

201. In each of the divestment campaigns I have reviewed above there is an attempt to frustrate the development of Alberta’s oil and gas resources in a broad and general sense. In particular, I found it especially persuasive that each of these campaigns involved not only a general objection to any investment in the fossil fuels industry, but in each campaign specific references were made to discourage investment in Alberta’s oil sands. This was in addition to each campaign making repeated or general objections to a particular participant operating in, or supporting a participant operating in, the oil sands. I am satisfied by this evidence that each of these divestment campaigns was used as a means to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportations of those resources to commercial markets.

(e) ***Direct Actions and Citizen Engagement***

202. In the course of my research I have identified incidents of using civil disobedience as a tactic in opposition to the development of oil and gas.

²⁰⁷ “Divest-Invest Philanthropy – Doing Good. Performing Better. Beat your Benchmarks. Beat Climate Change.” C. Vondrich, E. Dorsey, J. Nicholas, S. Ferguson, T. Harrison. <https://www.divestinvest.org/wp-content/uploads/2017/09/2017-DIP-Briefing-Case-Studies.pdf>. Page 10.

²⁰⁸ “Divest-Invest Philanthropy – Doing Good. Performing Better. Beat your Benchmarks. Beat Climate Change.” C. Vondrich, E. Dorsey, J. Nicholas, S. Ferguson, T. Harrison. <https://www.divestinvest.org/wp-content/uploads/2017/09/2017-DIP-Briefing-Case-Studies.pdf>. Page 11.

²⁰⁹ “Divest-Invest Philanthropy – Doing Good. Performing Better. Beat your Benchmarks. Beat Climate Change.” C. Vondrich, E. Dorsey, J. Nicholas, S. Ferguson, T. Harrison. <https://www.divestinvest.org/wp-content/uploads/2017/09/2017-DIP-Briefing-Case-Studies.pdf>. Page 20.

²¹⁰ “Divest-Invest Philanthropy – Doing Good. Performing Better. Beat your Benchmarks. Beat Climate Change.” C. Vondrich, E. Dorsey, J. Nicholas, S. Ferguson, T. Harrison. <https://www.divestinvest.org/wp-content/uploads/2017/09/2017-DIP-Briefing-Case-Studies.pdf>. Pages 16 and 38.

203. As early as 2012, ForestEthics (now Stand.earth) reported in the campaigns section of its Form 990 U.S. tax filing that it “helped organize the largest act of Canadian civil disobedience in the history of the pipeline fight.”²¹¹
204. In the fall of 2017, it became apparent that some of the organization behind the Trans Mountain demonstrations was carried out under a program known as the “Kinder Morgan Action Hive Proposal” (the “**Hive Proposal**”), which is discussed in more detail below.
205. Construction of the Trans Mountain Pipeline (TMX) is proceeding, however, activists continue to protest in an effort to stop its construction. In a February 19th protest, demonstrators gathered outside the offices of AIG in Vancouver, one of the insurers of the project. Some of the protesters were aggressive and fought with police and damaged property. Several arrests were made.²¹²
206. On March 3rd, a group of demonstrators blocked an intersection and prevented access to Vancouver’s port. Several arrests were made in this instance as well.²¹³
207. At the beginning of May, protesters were arrested for blocking access to key bridges in Vancouver.²¹⁴
208. Extinction Rebellion is also involved in the organization of civil disobedience for projects such as Trans Mountain and Coastal Gas Link.²¹⁵ On November 17, 2020 they issued a press release stating:

Pipeline opponents are again setting up rail blockades in Vancouver. In solidarity with calls to action by land defenders from the Wet’suwet’en and Secwepemc nations, demonstrators will block a rail line that runs directly parallel to the Trans Mountain Expansion route in Burnaby near the intersection of North Road and the Transcanada [sic] Highway on Tuesday November 17th at 7 AM. The route regularly ships oil by rail. The demonstration will be non-violent and peaceful.

“This is a reminder to the colonial state and the crown corporation that people won’t hesitate to resume the tactic of railway blockades if this pipeline isn’t cancelled immediately. The government isn’t doing what it takes to protect Canadians from the climate crisis, and it continues to take land away from Indigenous peoples for dangerous fossil fuel development without consent. We are choosing civil disobedience because the government is breaking the social contract. The trans-mountain expansion will contribute

²¹¹ ForestEthics 2012 Form 990 “Return of Organization Exempt From Income Tax” under section 501 (c) of the International Revenue Code. See also https://www.stand.earth/sites/default/files/ForestEthics-990-2012_0.pdf ..

²¹² <https://bc.ctvnews.ca/multiple-protesters-arrested-at-downtown-vancouver-anti-pipeline-demonstration-1.5317004>

²¹³ <https://www.rcinet.ca/en/2021/03/04/indigenous-anti-pipeline-protest-ends-peacefully-in-vancouver/>

²¹⁴ <https://www.cbc.ca/amp/1.6012688>, <https://bc.ctvnews.ca/police-arrest-climate-activists-planning-tp-protest-on-lions-gate-bridge-1.5411902>

²¹⁵ <https://www.facebook.com/xrvanbc/posts/coastal-gaslinks-final-technical-data-report-for-the-pipeline-they-plan-to-build/514755795900344/>.

to a crisis that threatens death by starvation of hundreds of million around the world” said volunteer spokesperson, Zain Haq.^{216 217}

209. The “tactic of railway blockades” referenced in the quotation above brings to mind one of the most significant acts of civil disobedience in recent history - the rail blockades that occurred in February and March of 2020 halting passenger and freight traffic across the country.
210. The following Statement was issued by the Business Council of Canada in reference to the blockades:
- A. Our rail network underpins the Canadian economy by delivering products across the country and, ultimately, to global markets. Illegal rail blockades are impacting businesses, communities and citizens that depend on timely rail services. The longer this continues, the more significant the impact will be on middle class and all Canadians whose livelihoods depend on people and goods moving freely across the country. We urge all levels of government to work together to bring an immediate end to the blockades.²¹⁸
211. The CEO of the Canadian Manufacturers and Exporters estimated that \$425 million in goods were being stranded each day by the shutdown.²¹⁹
212. There is also significant action currently occurring in the US focused on halting the construction of the approved Enbridge project, Line 3.²²⁰
213. I have reviewed each of the programs outlined above and find that each advanced a general opposition to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportations of those resources to commercial markets and, in deploying these means in this manner.

(f) ***Land Conservation***

(i) Introduction

214. As described above, there is an inherent tension between land conservation programs and oil and gas development. Agenda 21 brought this tension into focus and a tactic that emerges in the Tar Sands Campaign is to leverage land-use conservation efforts in the furtherance of anti-

²¹⁶ Extinction Rebellion Vancouver press release, Nov 17, 2020:

<https://m.facebook.com/xrvanbc/photos/a.271971100178816/684167152292540/?type=3>.

²¹⁷ Zain ul-Haq, the voluntary spokesman for Extinction Rebellion, is a member of the International Socialists and will be speaking in a mini-conference session: Capitalism, Covid and Climate Chaos (<https://www.facebook.com/socialistca/photos/zain-ul-haq-is-a-vancouver-organiser-with-extinction-rebellion-xr-part-of-the-ac/10158694902449722/>), themes that recurred in this Inquiry on more than one occasion.

²¹⁸ <https://thebusinesscouncil.ca/publication/statement-by-goldy-hyder-on-the-rail-blockades-impacting-canadians-across-the-country/>

²¹⁹ <https://globalnews.ca/news/6568323/cn-rail-layoffs-supply-chain-industries/>

²²⁰ <https://www.stopline3.org>

Alberta energy campaigns by seeking to utilize the granting of protection or special status to certain geographic areas to delay or frustrate the development of Alberta's oil and gas resource.

215. In considering this tactic, I am mindful of a reference Corporate Ethics International provided on an early version of its website to the overlap between the "Tar Sands Campaign" and two major land projects – the "Great Bear Rainforest Campaign" and the "Boreal Forest Initiative".²²¹ The webpage provided, in part:

Tar Sands Campaign

The campaign to mitigate the damage and stop the expansion of the tar sands is a joint project of the No Tar Sands Campaign network. Their mission is to accelerate the transition to clean and sustainable energy in Canada and the US by forcing the mitigation of existing tar sands operations, and to stop their expansion and begin their phase out over the next several decades.

The No Tar Sands Campaign is now 18 months old, although some of its member organizations have been working on this issue longer. Several of the groups that comprise the network have worked together in previous successful campaigns, most notably the Great Bear Rainforest Campaign and the Boreal Forest Initiative.

216. A 2010 report elaborates on this connection, providing, in part:²²²

Understanding the flow of money in the oil sands campaign requires a clear understanding of the strategy and structure of the oil sands campaign itself, especially its connection to the International Boreal Conservation Campaign.

Boreal Campaign

The International Boreal Conservation Campaign is a project of the Pew Charitable Trusts. The architect of the campaign is Michael Marx, who was chief strategist at the Rainforest Action Network (RAN) when the Pew Charitable Trust's Joshua Reichert asked him to develop a strategy to achieve a massive and lasting preservationist goal. |

The campaign began in the late 1990s and the first stage of the campaign ended May 18, 2010. The first stage focused on the operations of the forest and paper industry in Canada; the second stage will focus on oil sands and climate change.

217. It was not the first forestry campaign for the author of the Corporate Ethics Document, whose previous work involved tropical timber practises.²²³

²²¹ <https://web.archive.org/web/20100714063349/http://www.corpethics.org/section.php?id=365>

²²² "Background Brief: Funding Overview for Oil Sands Activism", Stratfor, August 2010, J de Feo.

²²³ <https://www.greenbiz.com/article/ten-lessons-corporations-working-activists>

218. In practice major land conservation efforts have had clear impacts on major energy projects, and have frustrated the development of Alberta's oil and gas resources.

219. I have identified such land conservation programs, which I describe in the following sections.

(ii) The Mackenzie Valley Gas Project

220. As I noted above, the Mackenzie Valley pipeline, which was to form part of the Mackenzie Gas Project, was specifically referenced in the Corporate Ethics Document, as follows:

Objectives: Delay or block the expansion or development of key pipelines and refineries so that the tar sands industry and Alberta and Canadian government realize that they must negotiate a moratorium on new tar sands operations. In Canada, First Nations have the power to challenge the Enbridge pipeline across British Columbia (BC) and the Mackenzie [*sic*] pipeline on the grounds of Aboriginal rights and land claims.²²⁴

221. The Mackenzie Gas Project was a proposal to develop three natural gas fields and to transport the natural gas and natural gas liquids to southern markets in Alberta in pipelines buried 60 to 90 centimetres below the surface. The gas fields—Niglintgak, Taglu, and Parsons Lake— are in or near the Mackenzie Delta. The key parts of the project were:

- A. at least 28 natural gas wells, drilled from six well pads, and other production facilities in the three fields;
- B. the Mackenzie Gathering System consisting of 190 kilometres of pipelines that take the natural gas from the fields to the Inuvik Area Facility for processing;
- C. a 457 kilometre long, 250 millimetre (10 inch) diameter pipeline to carry natural gas liquids from the Inuvik Area Facility to the existing crude oil pipeline at Norman Wells; and
- D. the 1196 kilometre long, 750 millimetre (30 inch) diameter Mackenzie Valley Pipeline carrying natural gas from the Inuvik Area Facility to northwestern Alberta.²²⁵

222. Proponents of the Mackenzie Gas Project filed their preliminary information package with the NEB on June 18, 2003.²²⁶ By April of 2004 an arrangement was in place that saw the coordination of two regulatory review processes – one by the NEB and one by the “Joint Review

²²⁴ The Corporate Ethics Document. Page 7.

²²⁵ https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90550/338535/338661/659850/658356/A27695%2D1_NEB_%2D_Reasons_for_Decision_%2D_Mackenzie_Gas_Project_%2D_GH%2D1%2D2004%2C_Volume_1.pdf?nodeid=658357&vernum=-2. See page 6.

²²⁶ https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90550/338535/338661/659850/658356/A27695%2D3_NEB_%2D_Reasons_for_Decision_%2D_Mackenzie_Gas_Project_%2D_GH%2D1%2D2004%2C_Volume_2.pdf?nodeid=658255&vernum=-2. Page 21.

Panel” (which was, itself, the consolidation of the federal environmental assessment process with review processes required by other jurisdictions) – required to have the Project approved.²²⁷

223. On October 31, 2003 the Northwest Territories Protected Areas Strategy (“**NWT PAS**”) issued its “Mackenzie Valley Five-Year Action Plan (2004-2009) – Conservation Planning For Pipeline Development” (the “**Action Plan**”).²²⁸ The Executive Summary of the Action Plan provided, in part:

With the increasing pace and scale of development in the NWT, it is becoming more challenging to meet the federal and territorial governments’ commitments to developing our northern resources in a sustainable manner. In particular, the Mackenzie Valley is under increasing development pressure. The proposed Mackenzie Valley Pipeline is moving closer to becoming a reality and, if approved, will be the largest energy development project in the Northwest Territories and one of the largest in Canadian history.

...

This development presents both major challenges and opportunities for the conservation of ecological and cultural values. To achieve a long-term balance of ecological, cultural and economic values in the Mackenzie Valley, a network of culturally significant and ecologically representative protected areas must be reserved prior to or concurrently with the development of the pipeline.²²⁹

224. The Action Plan was developed and promoted by the NWT PAS partnership, a partnership of representatives from all eight regional Aboriginal organizations, the territorial and federal governments, the oil & gas and mining industries, and northern-based environmental non-government organizations.²³⁰
225. The joint federal-provincial review panel conducting the environmental assessment for the Mackenzie Gas Project considered, among other things, the potential for that Project to impact conservation and protected areas.²³¹ While the Project proponent committed to participating in the NWT PAS through CAPP and to providing information to the NWT PAS on future

²²⁷ https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90550/338535/338661/659850/658356/A27695%2D3_NEB_%2D_Reasons_for_Decision_%2D_Mackenzie_Gas_Project_%2D_GH%2D1%2D2004%2C_Volume_2.pdf?nodeid=658255&vernum=-2.
Page 21.

²²⁸

http://web.archive.org/web/20061013210902/http://www.wwf.ca/AboutWWF/WhatWeDo/Initiatives/RESOURCES/PDF/MV_five_year_plan.pdf

²²⁹

http://web.archive.org/web/20061013210902/http://www.wwf.ca/AboutWWF/WhatWeDo/Initiatives/RESOURCES/PDF/MV_five_year_plan.pdf. Page 2.

²³⁰

http://web.archive.org/web/20050411033037/http://www.wwf.ca:80/AboutWWF/WhatWeDo/Initiatives/RESOURCES/PDF/MV_brochure.pdf

²³¹ Joint Review Panel for the Mackenzie Gas Project, Foundation for a Sustainable Northern Future: Report of the Joint Review Panel for the Mackenzie Gas Project, Volume II, December 2009, online: <https://reviewboard.ca/registry/eir0405-001>, (“Mackenzie Gas Report”), Chapter 11, PDF p. 31ff.

development plans,²³² those commitments did not appear to satisfy other participants before the Joint Review Panel. WWF-Canada, for example, “commented extensively” on what it considered to be the limited progress made in establishing permanent protection, management and monitoring of a system of protected areas (the NWT PAS’s goals).²³³ Other participants, such as the Sierra Club of Canada, advocated to the Joint Review Panel that development rights should be withdrawn in areas of conservation interest or concern.²³⁴ Many participants made recommendations to the joint review panel on conditions to address these perceived concerns. As summarized by the Joint Review Panel:

In its closing remarks to the Panel, CPAWS suggested that current commitments by the governments who were parties to the NWT-PAS and the Five-Year Action Plan were insufficient to meet the timelines it established. Accordingly, CPAWS recommended to the Panel that it recommend in its Report that the entire network of culturally significant and ecologically representative protected areas in the Mackenzie Valley, as laid out in the Five-Year Action Plan, be required prior to Project approval.

A number of other participants, including the Sahtu Renewable Resources Board, WWF-Canada, the Canadian Arctic Resources Committee, and Dennis Bevington, MP, Western Arctic, proposed similar versions of this recommendation. WWF-Canada recommended that, as a condition of Project approval, the Panel should request the federal government to permanently protect all candidate protected areas under interim withdrawal, and provide interim protection for all candidate protected areas and areas of interest currently identified by communities in the 16 ecoregions of the Five-Year Action Plan. WWF-Canada also recommended that the federal government immediately impose a moratorium on any new industrial allocations for exploration and development in the 16 ecoregions of the Mackenzie Valley until such time as the Five-Year Action Plan was fully implemented and comprehensive long-term land use plans were completed and approved.²³⁵

226. Intervenors introduced the Action Plan in the NEB approval proceedings on the basis that the Action Plan should be implemented “...in advance of pipeline completion, should be a fundamental condition in the certificate of approval (if the project is approved)”,²³⁶ and others opposed the approval on the basis of the “transformative effect of the Mackenzie Gas Project on the Mackenzie Valley and northern Alberta... [including] emissions resulting from upstream (other gas fields) and downstream (tar sands developments)...”.²³⁷
227. The Mackenzie Gas Project Joint Review Panel recommended Project approval on a number of conditions, including several conditions related to supporting the NWT PAS and the Action

²³² Mackenzie Gas Report, PDF p. 33

²³³ Mackenzie Gas Report, PDF p. 40.

²³⁴ *Ibid.*

²³⁵ Mackenzie Gas Report, PDF p. 40.

²³⁶ https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90550/338535/338661/343078/343032/343026/WWF-1_-_Intervention_-_A0L5Y5.pdf?nodeid=343027&vernum=-2. Page 2.

²³⁷ https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90550/338535/338661/343078/345969/345781/SCC-1_-_Intervention_-_A0L6I3.pdf?nodeid=345782&vernum=-2. Page 2.

- Plan.²³⁸ In their formal joint response to the Mackenzie Gas Report, the governments of Canada and the Northwest Territories acknowledged the importance of implementing the NWT PAS.²³⁹ The Government Response accepted the Joint Review Panel Recommendations with respect to the NWT PAS and the Action Plan, or accepted their intent.
228. For its part, the NEB did not impose any conditions related to the NWT PAS or the Action Plan when approving the Mackenzie Valley Pipeline, noting instead their satisfaction that the proponent had provided reasonable assurances that it was working with the appropriate authorities to conform with land use plans.²⁴⁰
229. In 2018, Imperial Oil announced the cancellation of the Mackenzie Gas Project.²⁴¹ In doing so, it noted significant delays in the regulatory approval process (with associated cost increases) and low natural gas prices made the project economically unviable.²⁴²
230. I do not for a moment suggest that the Action Plan conservation program is not a valuable and important conservation initiative. That does not mean, however, that at the same time the program may not – as the Terms of Reference provide – “directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and the transportation of those resources to commercial markets, by any means”. The inherent nature of this conflict between a conservation program and the development of Alberta’s oil and gas industry may have the effect of casting a conservation program such as the Action Plan as an anti-Alberta energy campaign in a broad and general sense. Whether the circumstances surrounding a particular event exacerbate or mitigate this conflict is something I will review in more detail when it arises in this Report.
231. Generally speaking, however, and noting the connections among: (a) the Tar Sands Campaign objective of obstructing critical oil sands infrastructure using land conservation methods (including the specific reference to the Mackenzie Valley project), (b) the contemporaneous establishment of legal protections for the newly-proposed project, developed in part through the efforts of ENGOs, several of which were expressly referenced as allies in the Corporate Ethics Document, and (d) reliance on those branding efforts and legal protections to oppose and, ultimately, kill the Mackenzie Valley Project – a specific target identified in the Corporate Ethics Document, I find that the Mackenzie Valley Action Plan land conservation program was a means which could have been used to directly or indirectly delay or frustrate the timely, economic, efficient and responsible

²³⁸ See Recommendations 11-1 to 11-6, PDF pp. 56-58.

²³⁹ Governments of Canada and the Northwest Territories, The Mackenzie Gas Project – Governments’ Response to Joint Review Panel Report, 15 November 2010, online: <https://reviewboard.ca/registry/eir0405-001>, (“**Government Response**”) PDF p. 3.

²⁴⁰ NEB Reasons For Decision – Mackenzie Gas Project, GH-1-2004, Volume 2, online: https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90550/338535/338661/659850/658356/A27695-3_NEB_-_Reasons_for_Decision_-_Mackenzie_Gas_Project_-_GH-1-2004%2C_Volume_2.pdf?nodeid=658255&vernum=-2, PDF p. 107.

²⁴¹ Imperial Oil, Mackenzie Gas Project Participants End Joint Venture, online: <https://news.imperialoil.ca/news-releases/news-releases/2017/Mackenzie-gas-project-participants-end-joint-venture/default.aspx>.

²⁴² Walter Strong, Mackenzie Valley Pipeline Project Officially One for the History Books, 28 December 2017, CBC News online: <https://www.cbc.ca/news/canada/north/mackenzie-valley-gas-project-no-more-1.4465997>.

development of Alberta's oil and gas resources and/or the transportations of those resources to commercial markets.

(iii) The Great Bear Rain Forest

232. Enbridge formally launched the Northern Gateway Pipeline ("**Northern Gateway**") a twin pipeline system that would transport diluted bitumen from Bruderheim, AB to Kitimat, BC and return diluent (a key ingredient in diluting bitumen for transport via pipeline) from Kitimat back to Bruderheim in 2004.²⁴³ The Corporate Ethics Document repeatedly singles out the "proposed Enbridge pipeline" as a target to be "blocked."²⁴⁴ As Corporate Ethic's website originally described it "[f]rom the very beginning, the campaign strategy was to land-lock the tar sands so their crude could not reach the international market".²⁴⁵
233. I have found it particularly useful to review an autobiography published by Tzeporah Berman.²⁴⁶ The conceptual birth of the Great Bear Rain Forest was documented as follows:

They had us put a map of BC on the wall and point out the places we'd campaigned, then asked us what we wanted to do next ... I took a big green marker and drew a circle around everything that was left. It was an area that went from halfway up British Columbia to Alaska. At the time the area was known as the "mid-coast timber supply area.

Several months later Valerie Karen, Ian and I were in San Francisco trying to meet with U.S. groups. We were sitting around at dinner one night at a cheap Italian restaurant with a bottle of great wine, writing potential names for the land ... Having learned the lessons of how much more attractive puffins were than sand eels, I knew we needed a name that was iconic and create an image in people's minds. We needed a name that immediately defined the area. We wanted the next Amazon. We wanted people to hear the name and be mad as hell that anybody could turn it into toilet paper.

Ian is a scientist, he knew the area best and kept insisting, "It's got to have 'bear' in it. This is the last stronghold for large mammals, for grizzly bears and Kermode bears-the spirit bear." Ian made it clear that this wasn't just about saving the forest but about creating a conversation about how to interact with some of the most important wilderness areas left on the planet. We agreed to use the spirit bear as the icon in the campaign. We named it the Great Bear Rainforest.²⁴⁷

²⁴³ Enbridge Northern Gateway Pipelines, Application for the Northern Gateway Project – Volume 1, PDF p. 59, May 2010, online: https://www.ceaa.gc.ca/050/documents_staticpost/cearef_21799/43499/Volume_1_-_Overview_and_General_Information.pdf.

²⁴⁴ Corporate Ethics Document, PDF p. 5.

²⁴⁵ <https://web.archive.org/web/20160524083428/https://corpethics.org/the-tar-sands-campaign>

²⁴⁶ Ms. Berman is the former co-director of Greenpeace International's Global Climate and Energy Program, and co-founder of ForestEthics (now Stand.earth). In 2016 she was appointed by Premier Notley to co-chair the Oil Sands Advisory Working Group and in 2019 Ms. Berman received the Climate Breakthrough Project Award, which included \$2 million USD to create global strategies on climate change. See: <http://www.tzeporahberman.com/biography.html>

²⁴⁷ *This Crazy Time*, T. Berman (2012), Vintage Canada, p. 128.

234. The events described in the above quotation took place in 1995. In 1996, representatives from First Nations situated along the British Columbia Coast, the Province of British Columbia (the “Province”), industry, environmentalists, and others began working on land and resource management plans (“LRMP”) for the Central and North Coast regions of British Columbia.²⁴⁸
235. Participants at each of those LRMP planning tables met for over two years before producing reports with recommendations in 2004 and 2005.²⁴⁹ Following several years of “government-to-government” discussions with the relevant First Nations, the provincial government entered into “Sustainable Land Use Planning Agreements” with a number of First Nations.²⁵⁰ A news release dated February 7, 2006 from the Province of B.C. confirmed that certain ENGOs were “intimately involved in building this collaborative solution for more than five years. These organizations are expressing strong support for the land use decisions reached between First Nations and the Province and are looking forward to its on-the-ground implementation”.²⁵¹ The same news release was referenced in the “Related work”/ “Central Coast and North Coast Land and Resource Management Plans (Coast Land Use Decision)” section of PNCIMA – an initiative leading to the Tanker Ban that is discussed later in this Report.²⁵² The objectives and principles outlined in those agreements were translated into Ministerial Orders by 2007.²⁵³
236. Following a review of the implementation of ecosystem-based management land use objectives in the Great Bear Rainforest, a coalition of NGOs, many of whom are identified in the Background Documents, and forest products producers released a number of recommendations for future management of the Great Bear Rainforest.²⁵⁴ These recommendations were incorporated into new draft land use objectives, which were finalized in the Great Bear Rainforest Order and took effect by January 2016.²⁵⁵

²⁴⁸ Great Bear Rainforest – Coast Land Use Decision Update, Province of British Columbia, online: <<https://www2.gov.bc.ca/gov/content/industry/crown-land-water/land-use-planning/regions/west-coast/great-bear-rainforest>>.

²⁴⁹ Great Bear Rainforest – Coast Land Use Decision Update, Province of British Columbia, online: <<https://www2.gov.bc.ca/gov/content/industry/crown-land-water/land-use-planning/regions/west-coast/great-bear-rainforest>>.

²⁵⁰ Great Bear Rainforest Legal Direction & Agreements, Province of British Columbia, online: <https://www2.gov.bc.ca/gov/content/industry/crown-land-water/land-use-planning/regions/west-coast/great-bear-rainforest/great-bear-rainforest-legal-direction-agreements> .

²⁵¹ https://archive.news.gov.bc.ca/releases/news_releases_2005-2009/2006AL0002-000066.htm

²⁵² <https://web.archive.org/web/20120126013234/http://www.pncima.org/site/how/related-initiatives.html>

²⁵³ <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/great-bear-rainforest/gbr-agreement-highlights>

²⁵⁴ <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/great-bear-rainforest/gbr-agreement-highlights>

²⁵⁵ Great Bear Rainforest Agreement Highlights, Province of British Columbia, online: <<https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/great-bear-rainforest/gbr-agreement-highlights>>; Public input sought on the Great Bear Rainforest, British Columbia Ministry of Forests, Lands Natural Resource Operations and Rural Development, online: <<https://news.gov.bc.ca/releases/2015FLNR0117-000840>> See also, Joint Solutions Project, Coast Forest Conservation Initiative, online: <http://www.coastforestconservationinitiative.com/_About/joint_solutions.html>.

237. The publicity surrounding the project was growing. Indeed, in April of 2016 Prime Minister Trudeau publicly declared, in response to a question about potential alternative routes that the Northern Gateway Project could take:
- I'm not going to speculate on hypothetical routes. What I will say is the Great Bear Rainforest is no place for a pipeline, for a crude pipeline ...²⁵⁶
238. Seven months later, in November of 2016, the federal Cabinet cancelled the Northern Gateway Project. In doing so, the federal Cabinet expressly noted that the joint review panel considering the Northern Gateway Project received evidence on the “unique and irreplaceable nature of the ecosystem of the Great Bear Rainforest”.²⁵⁷ It is important to note that, in their report recommending that the Northern Gateway Project be approved, the joint review panel did not make any findings about the “unique and irreplaceable” nature of the Great Bear Rainforest.²⁵⁸
239. As a practical matter, and consistent with the strategies proposed in the Corporate Ethics Document, the Great Bear Rain Forest initiative was a major land conservation initiative – advanced with significant influence from environmental organizations, that ultimately provided the political cover to deny the required Cabinet approval for Northern Gateway.
240. As with my review of the Mackenzie Valley Gas Project, I do not for a moment suggest that the Great Bear Rainforest conservation program is not a valuable and important conservation initiative. That does not mean, however, that at the same time the program may not – as the Terms of Reference provide - “directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and the transportation of those resources to commercial markets, by any means”. The inherent nature of this conflict between a conservation program and the development of Alberta’s oil and gas industry may have the effect of casting a conservation program such as the Great Bear Rainforest as an anti-Alberta energy campaign in a broad and general sense. Whether the circumstances surrounding a particular event exacerbate or mitigate this conflict is something I will review in more detail when it arises in this Report.
241. Generally speaking, however, and noting the connections among: (a) the Tar Sands Campaign’s objective of obstructing critical oil sands infrastructure using land conservation methods; (b) the branding of the “Great Bear Rain Forest” for marketing purposes; (c) the establishment of legal protections for the newly-branded forest in part through the efforts of ENGOs, several of which were expressly referenced as allies in the Corporate Ethics Document; and (d) reliance on those branding efforts and legal protections as political cover to effectively kill the Northern Gateway Project – a specific target identified in the Corporate Ethics Document, I find that the Great Bear Rain Forest land conservation program provides a means which could be used to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of

²⁵⁶ <https://nationalpost.com/news/politics/trudeau-says-rainforest-no-place-for-pipelines-as-enbridge-eyes-alternative-endpoints-for-gateway>

²⁵⁷ Order In Council PC 2016-1047, 25 November 2016, online: <https://orders-in-council.canada.ca/attachment.php?attach=32747&lang=en>.

²⁵⁸ Considerations – Report of the Joint Review Panel for the Enbridge Northern Gateway Project Volume 2, December 2013, online: [https://www.ceaa.gc.ca/050/documents_staticpost/cearef_21799/97178/Considerations_-_Report_of_the_Joint_Review_Panel_for_the_Enbridge_Northern_Gateway_Project_\(Volume_2\).pdf](https://www.ceaa.gc.ca/050/documents_staticpost/cearef_21799/97178/Considerations_-_Report_of_the_Joint_Review_Panel_for_the_Enbridge_Northern_Gateway_Project_(Volume_2).pdf).

Alberta's oil and gas resources and/or the transportations of those resources to commercial markets.

(iv) West Coast Oil Tanker Ban

242. The Corporate Ethics Document discusses the need to transport oil to Asia in the context of blocking the oil sands.²⁵⁹ The RBF Document similarly references tanker traffic for export to China.²⁶⁰ The original Corporate Ethics website also provides that “[f]rom the very beginning, the campaign strategy was to land-lock the tar sands so their crude could not reach the international market”.²⁶¹
243. It is in this context that I undertook a review of the oil tanker moratorium that imposed a legislative barrier on shipping any crude oil or refined products off of the northern coast of British Columbia, thereby frustrating efforts to get Alberta's oil and gas resources to commercial markets.
244. At about the same time as the Great Bear Rainforest protections were evolving, on September 10, 2015 Justin Trudeau announced that he would implement a tanker ban on the northern coast of B.C.²⁶² Shortly after his election on November 4th of that year, he appointed Marc Garneau Minister of Transport with the mandate to “formalize the moratorium on crude oil tanker traffic on British Columbia's North Coast”.²⁶³
245. Whether a moratorium on tanker traffic existed prior to the recent enactment of *The Oil Tanker Moratorium Act*, S.C., c. C-26 (the “**Tanker Ban**”), is not clear.²⁶⁴ Regardless, it seems settled that there is a voluntary arrangement between the Canadian and U.S. Coast Guards to establish a “Tanker Exclusion Zone” in the area, which was honoured by the U.S. and – by default because there have been no Canadian tankers in the area - Canada.²⁶⁵
246. The federal government released its ocean management strategy in the 2002 document entitled “Canada's Oceans Strategy: Our Oceans, Our Future – Policy and Operational Framework for Integrated Management of Estuarine, Coastal and Marine Environments in Canada” (the “**Ocean**

²⁵⁹ The Corporate Ethics Document. Page 7.

²⁶⁰ The RBF Document. Page 11.

²⁶¹ <https://web.archive.org/web/20160524083428/https://corpethics.org/the-tar-sands-campaign>

²⁶² “Trudeau announces plan to protect Canada's oceans”, Liberal Party of Canada, online: <<https://liberal.ca/trudeau-announces-plan-to-protect-canadas-oceans/>>

²⁶³ <https://pm.gc.ca/en/mandate-letters/2016/08/19/archived-minister-fisheries-oceans-and-canadian-coast-guard-mandate>

²⁶⁴ For a history of the Federal and Provincial history respecting tanker traffic, see D. Burse & C Teal, “Proposed Oil Tanker Moratorium Act – A brief look at the History of the Moratorium” [https://www.bennettjones.com/Publications%20Section/Articles/Proposed%20Oil%20Tanker%20Moratorium%20Act%20A%20Brief%20Look%20at%20the%20History%20of%20the%20Moratorium?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration].

²⁶⁵ “Safe routing, reporting and restrictions for vessels”, Transport Canada, online: <<https://tc.canada.ca/en/marine-transportation/marine-safety/safe-routing-reporting-restrictions-vessels>> . See map showing voluntary tanker exclusion zone and moratorium area, “Oil tanker moratorium on British Columbia's North Coast”, Transport Canada, online: <<https://tc.canada.ca/en/marine-transportation/marine-safety/oil-tanker-moratorium-british-columbia-s-north-coast>>

Strategy”).²⁶⁶ The Ocean Strategy recommended a framework that would see an “Integrated Management” body comprised of “both governmental and non-governmental representatives with interests in a given ocean space.”²⁶⁷

247. The principle of Integrated Management was expounded upon by the federal government in its 2005 “Canada’s Oceans Action Plan”,²⁶⁸ which commented on the background to the initiative as follows:

The principle of Integrated Management was first agreed to at the 1992 United Nations Conference on Environment and Development, which recognized the long term value of sustainable development. Canada, by signing the “Agenda 21” commitments, joined the global community in supporting action. Canada has taken some significant steps to move toward the protection of the ecosystem and increased resource management capability. Through the *Oceans Act* and supporting policy direction, we have agreed ...²⁶⁹

248. The Action Plan also identified five regions for Integrated Management. The Pacific North Coast region was the only region identified for British Columbia’s coast, and became known as the Pacific North Coast Integrated Marine Area Plan (“**PNCIMA**”).²⁷⁰

249. The PNCIMA planning process was formally launched at the PNCIMA Forum in March, 2009.²⁷¹ The PNCIMA initiative explored ways to coordinate with other planning processes and initiatives, its website further providing:

A variety of land use plans provide direction on the use and allocation of resources in coastal BC. Participants in the planning processes recognized that upland campaigns could potentially have a major bearing on the marine environment, and agreed that more comprehensive integrated marine use planning should be undertaken following completion of regional land use plans. Furthermore, a number of the resulting land use agreements included requirements for nearshore and foreshore marine planning adjacent to new terrestrial protected areas.

Strategic land use plans that are adjacent to the PNCIMA planning area include:

- Central Coast and North Coast Land and Resource Management Plans (Coast Land Use Decision)
- Haida Gwaii Strategic Land Use Agreement

²⁶⁶ <https://waves-vagues.dfo-mpo.gc.ca/Library/264678.pdf>.

²⁶⁷ <https://waves-vagues.dfo-mpo.gc.ca/Library/264678.pdf>. Page 6.

²⁶⁸ <https://waves-vagues.dfo-mpo.gc.ca/Library/315255e.pdf>.

²⁶⁹ <https://waves-vagues.dfo-mpo.gc.ca/Library/315255e.pdf>. Page 8.

²⁷⁰ <https://waves-vagues.dfo-mpo.gc.ca/Library/315255e.pdf>. Page 15.

²⁷¹ <https://web.archive.org/web/20101202001700/http://www.pncima.org/site/when.html>

- Vancouver Island Regional Land Use Plan.”²⁷²
250. The Central Coast and North Coast Land and Resource Management Plans are the precursors to the Great Bear Rainforest program discussed earlier in this Report.
251. In my review of the PNCIMA program, I found:
- A. ENGOs advocating for an “EBM [Ecosystem-based management] framework” which, in turn, “needs to have a spatial component for implementation”²⁷³ which is consistent with the development of protected areas under the Ocean Strategy.²⁷⁴
 - B. ENGO’s advocating for the consideration of their “[e]xisting work”²⁷⁵, which includes numerous reports advocating for the integration with the Great Bear Rain forest,²⁷⁶ banning campaigns in the area,²⁷⁷ and advocating a tanker ban.²⁷⁸
 - C. A link on the PNCIMA website to the website of a number of ENGOs, including those found later in this Report to have participated in anti-Alberta Energy campaigns.²⁷⁹
 - D. ENGOs leveraging the PNCIMA program to advance a tanker ban and objecting to the Enbridge pipeline, where they “launched a media campaign to raise awareness about the urgent need to develop networks of MPAs in PNCIMA” as they addressed:

“...the threat of oil tankers sailing the shores of the Great Bear Rainforest loomed larger as energy industry giant Enbridge launched a \$100 million sales pitch to sell the benefits of its Northern Gateway pipeline and tanker project to northern British Columbia communities. If the project proceeds over half a million barrels of crude oil a day will flow from

²⁷² <https://web.archive.org/web/20101202001530/http://www.pncima.org/site/how/related-initiatives.html>.

²⁷³ IOAC Comments on Issue Outputs & Tasks, February 2011, at pages 1-3 [26-27].
<https://web.archive.org/web/20120126003024/http://www.pncima.org/media/documents/pncima-publications/issue-outputs-and-tasks-with-review.2.pdf>.

²⁷⁴ <https://waves-vagues.dfo-mpo.gc.ca/Library/264678.pdf>. Pages 27 and 36.

²⁷⁵ IOAC Comments on Issue Outputs & Tasks, February 2011, at page 13 [37].
<https://web.archive.org/web/20120126003024/http://www.pncima.org/media/documents/pncima-publications/issue-outputs-and-tasks-with-review.2.pdf>.

²⁷⁶ See, for example, A New Climate for Conservation, Sierra Club BC;
<https://www.wcel.org/sites/default/files/publications/New%20Climate%20for%20Conservation%20-%20Nature%2C%20Carbon%20and%20Climate%20Change%20in%20British%20Columbia%20-%20Executive%20Summary.pdf>, at pages 18 ff.

²⁷⁷ See, for example, “Blue Carbon – British Columbia”, Sierra Club BC”; see also
https://web.archive.org/web/20110905010949/http://www.sierraclub.bc.ca/quick-links/publications/seafood-oceans-1/Blue%20carbon%20bc%20report%20final_web.pdf at page 3.

²⁷⁸ See, for example, “Cleaning up our Ocean – A report on pollution from shipping-related sources in the Pacific North Coast Integrated Management Area (Pncima) on the British Columbia Coast,” David Suzuki Foundation, Sierra Club BC, and Living Oceans;
https://web.archive.org/web/20120203183706/http://www.davidsuzuki.org/publications/downloads/2009/pollution_report_web.pdf, at page 33.

²⁷⁹ <https://web.archive.org/web/20120105230217/http://www.pncima.org/site/document-library.html>.

Alberta's tar sands to the coast where will it be loaded onto 225 tankers every year that will ply the dangerous North Coast waters.

The Energy Program worked to get the federal government's upcoming environmental assessment of Northern Gateway pipeline to consider the long-standing moratorium on tankers on the North and Central Coast. We also want the government to consider that the pipeline would enable the tar sands to expand by 30 percent; they are already the fastest growing source of greenhouse gases in Canada."²⁸⁰

E. That on November 25, 2010 the Gordon and Betty Moore Foundation was to fund up to \$8.3 million for the PNCIMA initiative in the form of a grant to Tides Canada.²⁸¹

252. Earlier in 2010 the Coastal First Nations had issued its "Coastal First Nations Declaration",²⁸² stating, among other things:

As Nations of the Central and North Pacific Coast and Haida Gwaii, it is our custom to share our wealth and live in harmony with the broader human community. However, we will not bear the risk to these lands and waters caused by the proposed Enbridge Northern Gateway pipeline and crude oil tanker traffic.

...

Therefore, in upholding our ancestral laws, rights and responsibilities, we declare that oil tankers carrying crude oil from the Alberta Tar Sands will not be allowed to transit our lands and waters.²⁸³

253. By September of 2011 the federal government had decided to withdraw its support of the PNCIMA, reportedly because it believed PNCIMA was too heavily influenced by US-funded environmental groups.²⁸⁴

254. On February 15, 2017 the Minister of Fisheries and Oceans, B.C.'s Minister of Forests, Lands and Natural Resource Operations; Coastal First Nations; and North Coast Skeena First Nations Stewardship Society, jointly announced endorsement of the PNCIMA Plan.²⁸⁵ I note that the announcement pointed out that the PNCIMA Plan supported Canada's Oceans Protection Plan, which was mentioned, along the PNCIMA Plan, in the senate hearings considering the Tanker ban, which I now consider.

255. In his testimony to the Standing Senate Committee on Transport and Communication justifying the Tanker Ban, Marc Garneau, then Minister of Transport, gave four reasons for the legislation –

²⁸⁰ https://web.archive.org/web/20101206211700/http://www.livingoceans.org/files/PDF/LOS_2009_report.pdf

²⁸¹ <https://web.archive.org/web/20120112155647/http://www.pncima.org/site/news/1284765914.html>

²⁸² <https://dogwoodbc.ca/news/coastal-first-nations-declare-ban-on-tankers/>

²⁸³ <https://www.wcel.org/blog/why-harpers-shot-pncima-also-hit-enbridge-foot>

²⁸⁴ <https://www.bclocalnews.com/news/feds-pull-out-of-pncima/>.

²⁸⁵ <https://www.dfo-mpo.gc.ca/oceans/management-gestion/pncima-zgicnp-eng.html>

(A) protection of “these waters” from a crude oil spill; (B) the unusually pristine environment and unique ecological features of the region; (C) the navigational risks of this particular coastline; and (D) “a clearly stated desire on the part of a majority of coastal Indigenous communities for a formalization of the moratorium in order, among other things, to preserve burgeoning local and sustainable economies as well as a long-standing way of life.”²⁸⁶

256. The Great Bear Rainforest, and specifically the *Great Bear Rainforest (Forest Management) Act* was cited as the primary support for reason (B) above, the Minister stating:

A. Senators, the uniqueness of this environment led the British Columbia government, along with various Indigenous partners, to conclude the 2016 Great Bear Rainforest (Forest Management) Act, which conserves 85 per cent of the forest and 70 per cent of old growth over time, achieving a high level of ecological integrity. This is a truly unprecedented level of protection. Along these lines, one can view Bill C-48, which offers unprecedented levels of protection, as complementary and consistent with these efforts to protect one of the world’s few remaining temperate rainforests.²⁸⁷

257. I also noted that the fourth reason cited by the Minister of Transport- namely the support of the coastal Indigenous communities – was not without controversy and emphasized the point that this legislation had a broad and general effect on the development of Alberta’s oil and gas resources. In this regard I noted the comments of Mr. Dale Swampy, coordinator of Aboriginal Equity Partners, as follows:

A. I think the first and biggest step we have to take is to educate and inform these First Nations who are against tankers, pipelines and terminals that deliver bitumen from the oil sands. I say that because most of them are inundated by foreign-funded environmentalists who did a great job in fearmongering these communities. The first thing they say to these chiefs, councils and community members is, “Don’t meet with these guys because they will tell you lies like you wouldn’t believe.” I take an example of a lot of the community members who weren’t part of the 31 First Nations that are now supporting oil and gas.²⁸⁸

258. As I have mentioned above in the context of other conservation programs, I do not suggest that the Tanker Ban is not a valuable and important conservation initiative. That does not mean, however, that at the same time the program may not – as the Terms of Reference provide - “directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and the transportation of those resources to commercial markets, by any means”. The inherent nature of this conflict between a conservation program and the development of Alberta’s oil and gas industry may have the effect of casting a conservation program such as the Tanker Ban as an anti-Alberta energy campaign in a broad

²⁸⁶ The Standing Senate Committee on Transport and Communications, Evidence, Ottawa, Wednesday, March 20, 2019. , online: ,<https://www.sencanada.ca/en/Content/SEN/Committee/421/trcm/48ev-54616-e->.

²⁸⁷ The Standing Senate Committee on Transport and Communications, Evidence, Ottawa, Wednesday, March 20, 2019, online: ,<https://www.sencanada.ca/en/Content/SEN/Committee/421/trcm/48ev-54616-e->. See Page 5.

²⁸⁸ The Standing Senate Committee on Transport and Communications, Evidence, Ottawa, Wednesday, March 20, 2019, online: ,<https://www.sencanada.ca/en/Content/SEN/Committee/421/trcm/48ev-54616-e->. See Page 29.

and general sense. Whether the circumstances surrounding a particular event exacerbate or mitigate this conflict is something I will review in more detail when it arises in this Report.

259. Generally speaking, however, and noting the connections among: (a) the Tar Sands Campaign objective of obstructing access to Asian markets; (b) the political background to the Tanker Ban; (c) the partial reliance on the development of the Great Bear Rainforest program which I earlier found to be a means available to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta's oil and gas resources and/or the transportation of those resources to commercial markets; (d) certain of the evidence presented to the standing senate committee on transport and communications; and (e) the general effect of a ban on oil tankers to the delivery of Alberta's oil and gas resources to commercial markets, I find that the Tanker Ban provides a means which could be used to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta's oil and gas resources and/or the transportations of those resources to commercial markets.

(v) Boreal Rainforest Initiative

260. A program of similar effect exists regarding land conservation initiatives across the north of Canada in what is known as the Boreal Forest. As Greenpeace points out on their website:

For you older folks or students of history, think of the Canadian Boreal Forest Agreement as the giant, oversized child of the Great Bear Rainforest Agreement which is today considered the global hallmark of conservation agreements.²⁸⁹

261. As stated in the Corporate Ethics Document:

If we can obtain legal injunctions blocking new development, force increased public relations, require pollution abatement and immediate remediation, delay and ultimately stop approvals of pipelines and new refineries, these all combine to raise costs...and uncertainties. *If we can also achieve large forest carbon offsets in the form of protected areas previously scheduled for harvest in the boreal forest, this is a huge ancillary benefit of this campaign.*²⁹⁰ [emphasis added]

and later:

There are a number of NGOs involved in this campaign and funding to support their work is considered a very high priority. In Canada, ... Canadian Boreal Initiative ... are all key players. In the U.S., ... Boreal Songbird Initiative ... are the leading national groups with a host of regional groups playing an indispensable role to block specific infrastructure projects.²⁹¹

Both of the highlighted organizations play a role in Boreal conservation that I will reference in more detail below.

²⁸⁹ <https://www.greenpeace.org/usa/canadian-boreal-forest-agreement/>

²⁹⁰ The Corporate Ethics Document. Page 12.

²⁹¹ The Corporate Ethics Document. Page 15.

262. The boreal forest is also mentioned in the RBF Document²⁹², and the original Corporate Ethics website, which suggests that the development of Alberta's oil sands "would require the destruction of a native boreal forest the size of Florida".²⁹³

263. The evolution of conservation efforts in the Canadian boreal forest traces its roots back to the 1992 Rio Earth Summit²⁹⁴ and gained traction in 2000 with the involvement of The Pew Charitable Trusts. Pew Environmental Group provided:

264. SAVING CANADA'S BOREAL FOREST

...

The opportunity to protect this important part of Earth's remaining wilderness will not last forever. Global demand for timber, minerals, energy and water resources threaten the future of Canada's boreal forest. Logging already consumes more than 4,000 acres per day, totaling an area larger than the state of Delaware every year. Booms in mining, oil and gas threaten even more. Unless it is protected, most of Canada's boreal wilderness could be gone in a generation.

Beginning in 2000, the Pew Environment Group launched an international campaign to protect Canada's boreal forest from destructive development.

...

By 2013, we hope to secure protective measures covering most of the remainder of this billion-acre forest, making it by far the world's largest forest conservation area. Canada's boreal forest is a global treasure. Conserving it is a global responsibility.²⁹⁵

265. The Canadian Boreal Initiative (the "CBI") was established in 2003 - "following earlier work by the Canadian Boreal Trust" – and worked "in partnership with a broad range of groups, stakeholders, and experts across the country."²⁹⁶ The Pew Environmental Group, part of The Pew Charitable Trusts (a 501(c)(3) foundation), supported the CBI.²⁹⁷

²⁹² The RBF Document. Page 39.

²⁹³ <https://web.archive.org/web/20160524083428/https://corpethics.org/the-tar-sands-campaign>

²⁹⁴ See, for example, Appendix A, from "From the Ground Up: The Story of the Canadian Boreal Forest Agreement", D. Riddell, J.W. McConnell Family Foundation, Canada, April 2014. https://www.researchgate.net/publication/303328044_From_the_Ground_Up_The_Story_of_the_Canadian_Boreal_Forest_Agreement?enrichId=rgreq-7526f1e961ec0ba64c3bee5768df4b4c-XXX&enrichSource=Y292ZXJQYWdIOzMwMzMzMyODA0NDtBUozNjMyMzk0MzlwNDg2NDNAMTQ2MzYxNDQzNzU0Nw%3D%3D&el=1_x_3&_esc=publicationCoverPdf. See also, "The Last Frontier Forests: Ecosystems & Economies on the Edge", M. Strong, World Resources Institute, 1997[<https://pdf.wri.org/lastfrontierforests.pdf>.], pages 2 and 19-22.

²⁹⁵ <https://www.pewtrusts.org/-/media/assets/2008/boreal-forest-fact-sheet.pdf>

²⁹⁶ https://web.archive.org/web/20030609204335/http://www.borealcanada.ca/about_cbi_e.cfm

²⁹⁷ <https://web.archive.org/web/20110711005706/http://www.pewenvironment.org/about-us/our-story/> . See also https://web.archive.org/web/20070630084337/http://www.borealcanada.ca/about_cbi_e.cfm

266. On December 1, 2003 the CBI released the Boreal Forest Conservation Framework (the “**Boreal Framework**”).²⁹⁸ The Boreal Framework was “developed in concert with leading conservation organizations, resource companies and First Nations” - known as the “**Boreal Leadership Council**”.²⁹⁹
267. The work of the CBI was carried forward by the International Boreal Conservation Campaign. (“**IBCC**”).³⁰⁰ The IBCC “was initiated by The Pew Charitable Trusts and operates as a partnership of Pew, The William and Flora Hewlett Foundation, Ducks Unlimited Incorporated, the Gordon and Betty Moore Foundation, Ducks Unlimited Canada, the Indigenous Leadership Initiative, the Canadian Parks and Wilderness Society [CPAWS], the Boreal Songbird Initiative, and the Boreal Leadership Council.”³⁰¹
268. The IBCC houses the Boreal Leadership Council secretariat and “works with members to turn the Framework principles into action, expand endorsement of the Framework in key sectors and influence important policy outcomes.”³⁰²
269. The Boreal Framework was issued “to inform a dialogue with governments and other stakeholders about how to secure the long-term future of Canada’s Boreal Forest.”³⁰³ The Framework’s goal is, among other things, to protect at least 50% of the Boreal Rain Forest, which they designate as 574 million hectares (1.4 billion acres) running across the top of Canada from the Yukon/U.S. border to Newfoundland.³⁰⁴ The Framework goes on to say that “[n]ew protected areas should exclude industrial development such as ... new roads, and oil and gas while accommodating campaigns such as traditional hunting, fishing and gathering.”³⁰⁵ Certainly an objective of funders such as Pew Environment Group, the Hewlett Foundation, and the Moore Foundation was that the Framework would protect the boreal forest from “[m]ining for oil, natural gas, gold, diamonds and uranium” including “Alberta’s tar sands, used to make synthetic oil, are strip-mined from a region that could eventually rival the size of Florida”.³⁰⁶
270. In addition to producing the Framework, the IBCC remained active in a number of initiatives, including organizing a petition that was signed by 1500 scientists and delivered to unspecified “Canadian Government Leaders” in May of 2007.³⁰⁷

²⁹⁸ https://web.archive.org/web/20070630084337/http://www.borealcanada.ca/about_cbi_e.cfm

²⁹⁹ https://web.archive.org/web/20070630084337/http://www.borealcanada.ca/about_cbi_e.cfm

³⁰⁰ <http://borealcanada.ca/>

³⁰¹ <http://borealcanada.ca/>

³⁰² <https://www.borealbirds.org/sites/default/files/publications/Framework-ENG.pdf>. Page 2.

³⁰³ <http://www.borealbirds.org/sites/default/files/publications/Framework-ENG.pdf> . Page 3.

³⁰⁴ <https://www.borealbirds.org/sites/default/files/publications/Framework-ENG.pdf>. Pages 3 and 6.

³⁰⁵ <https://www.borealbirds.org/sites/default/files/publications/Framework-ENG.pdf>. Page 6.

³⁰⁶ <https://www.pewtrusts.org/en/research-and-analysis/articles/2011/02/16/success-story-keeping-the-earth-cool-canadas-boreal-forest>

³⁰⁷ Boreal Songbird Initiative, 1,500 Scientists Worldwide Call for Protection of Canada's Boreal Forest, 14 May 2007, online: <https://www.borealbirds.org/announcements/1500-scientists-worldwide-call-protection-canadas-boreal-forest>.

271. On May 18, 2010 the IBCC achieved another milestone with the execution of “The Canadian Boreal Forest Agreement”.³⁰⁸ The agreement was signed by:

...Canadian Parks and Wilderness Society..., David Suzuki Foundation, The Nature Conservancy, The Canadian Boreal Initiative, Ivey Foundation, Pew Environmental Group International Boreal Conservation Campaign, ForestEthics, Canopy (Note: on April 17, 2013... formally withdrew...), Greenpeace (Note: on December 6, 2012... formally withdrew...)³⁰⁹

along with a number of Forest Producers and the Forest Products Association of Canada.

272. According to one of the signatories, the Canadian Boreal Forest Agreement was:

CBFA is designed to protect 72 million hectares (more than 170 million acres—an area the size of Texas), and to provide global recognition and support for corporate partners participating in the agreement.

“The importance of this Agreement cannot be overstated,” said Lazar. “FPAC member companies and their ENGO (environmental non-governmental organization) counterparts have turned the old paradigm on its head. Together we have identified a more intelligent, productive way to manage economic and environmental challenges in the boreal that will reassure global buyers of our products’ sustainability.”

“The Canadian Boreal Forest Agreement we helped broker this year is a classic example of how the Boreal Framework and our approach can guide conservation policy in practical ways ...³¹⁰

273. The Canadian Boreal Forest Agreement was not without controversy:

A. No government, community, or indigenous groups are signatories to the agreement. Certain First Nations were strongly opposed to the Agreement,³¹¹ including:

- (1) The Nishnawbe Aski Nation (“**NAN**”), which represents 49 First Nations of Treaty 5 and 9 regions encompassing about two-thirds of Ontario. In an open letter to the signatories of the Agreement on February 16, 2011, the NAN called for the immediate termination of the CBFA, stating that they “have taken exception to

³⁰⁸ http://www.hspp.ca/products/Fibre/CBFAAgreement_Full_NewLook.pdf.

³⁰⁹ “From the Ground Up: The Story of the Canadian Boreal Forest Agreement”, D. Riddell, April, 2014, J.W. McConnell Family Foundation, Canada; https://www.researchgate.net/publication/303328044_From_the_Ground_Up_The_Story_of_the_Canadian_Boreal_Forest_Agreement Endnote 3.

³¹⁰ <https://www.pewtrusts.org/en/research-and-analysis/articles/2011/02/16/success-story-keeping-the-earth-cool-canadas-boreal-forest>

³¹¹ The David Suzuki Foundation issued an apology to the Boreal Chiefs of B.C. on July 8, 2010. Reproduced in Appendix E of “Neoliberal conservation: Legitimacy and exclusion in the Canadian Boreal Forest Agreement”, S. Kittmer, Carleton university, 2013. https://curve.carleton.ca/system/files/etd/4542b4a1-1795-4a67-a478-97f6291be57a/etd_pdf/1318b81a9f9f3921ef275ac2934f39be/kittmer-neoliberalconservationlegitimacyandexclusion.pdf.

the CBFA being negotiated in secret, without any form of involvement or even notice to [NAN] despite the fact that it is proposing to regulate ... 11.8 million hectares ... subject to Aboriginal and Treaty rights ..." and continuing that "[w]e can only characterize it as an international disgrace and tragedy, similar in its moral dimension to the worst excesses of the Canadian colonial past. The boreal forest agenda, including the CBFA, is being undertaken devoid of respect for Indigenous Peoples' rights."³¹²

- (2) The Assembly of First Nations, a Canada-wide organization, passed a consensus resolution on December 16th, 2010³¹³ resolving among other things to:

Condemn the disrespectful manner in which the Canadian Boreal Forest Agreement was negotiated by the Environmental Non-Government Organizations (ENGOS) and Forest Products Association of Canada (FPAC) and hereby reject and demand the termination of the Canadian Boreal Forest Agreement and declare that the Agreement shall be of no force and effect within the traditional territory or resource management area of any First Nation.

- (3) Algonquin Nation Secretariat observed at the time:³¹⁴

In a lot of ways, I find the environmental groups are using Indigenous peoples" Diabo told Briarpatch. "They're saying, "oh [*sic*] these people need capacity building, they're ignorant, they don't have any understanding of science, that's why you need to fund us, so that we can train them, work with them.' They're using [Indigenous peoples] to get money from foundations and other sources, based on these arguments, which I find very ethnocentric if not racist."³¹⁵

- B. Not all of the parties are legal entities in Canada. As one report noted:

The CBI, together with the Pew Environment Group's International Boreal Conservation Campaign, were major backers of getting the CBFA off the ground. Neither of these groups exist as legal entities in either Canada or the United States, but are instead front groups of a multi-billion dollar charitable foundation — Pew Charitable Trusts — with a

³¹² <http://nan.sims.sencia.ca/upload/documents/pa-open-letter-to-the-cbfa-signatories.pdf>.

³¹³ "Call for National Meeting – Future of the Boreal Forest and Rejection of the Canadian Boreal Forest Agreement" Resolution no. 65/2010, December 14, 15, & 16, 20120, Gatineau, QC. <https://www.afn.ca/uploads/files/sca-res-2010.pdf>.

³¹⁴ "Leak reveals push to win over First Nations on controversial boreal forest pact", Coop media de Montreal, M. Lukacs, October 25, 2010. <http://montreal.mediacoop.ca/story/leak-reveal-damage-control-first-nations-opposition-mounts-cbfa/4945>.

³¹⁵ "Fracturing solidarity – The Canadian Boreal Forest Agreement in Context", D. Paley, March 1, 2011, Briarpatch <https://briarpatchmagazine.com/articles/view/fracturing-solidarity>.

long history of establishing ostensibly environmental organizations to pursue its industry-friendly agenda.

Since the CBI does not exist as a legal entity in Canada, it cannot issue cheques or even run a payroll for its employees. Consequently, funds for the meeting in Prince George were funneled to the CSTC through a donation by Ducks Unlimited to the First Nations Energy and Mining Council of British Columbia.³¹⁶

C. The underlying purpose of the Agreement, where one observer noted:³¹⁷

“The boreal covers an area 13 times the size of California and is one of the best-managed in the world. It is under zero threat of deforestation, so the deal was somewhat like an agreement to protect the sands of the Sahara. Most bizarrely, it excluded aboriginal groups, local communities and even governments. *It was nothing less than an attempt by unelected, mainly U.S.-funded groups to seize control of Canadian environmental policy, and maybe a whole lot more.*” [Emphasis added]

274. The status of the Agreement today is unclear. Two ENGO signatories – Greenpeace and Canopy - withdrew from the agreement in 2012³¹⁸ and 2013³¹⁹, respectively. Litigation followed when Resolute Forest Products, one of the industry signatories to the Agreement, sued Greenpeace over, among other things, breach of the Agreement. To this day the suit continues.³²⁰
275. The IBCC continues to this day, referring to itself as a campaign that, “works directly with dozens of First Nations and collaborates with other Indigenous and environmental NGOs, and organizational and individual partners.”³²¹ According to its website, the IBCC’s “vision for the future” is embodied in the “Boreal Conservation Framework.”
276. As I have mentioned above in the context of other conservation programs, I do not suggest that the protection of the Boreal Forest is not a valuable and important conservation initiative. That does not mean, however, that at the same time the program may not – as the Terms of Reference provide - “directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and the transportation of those resources to commercial markets, by any means”. The inherent nature of this conflict between a conservation program and the development of Alberta’s oil and gas industry may have the effect

³¹⁶ “Fracturing solidarity – The Canadian Boreal Forest Agreement in Context”, D. Paley, March 1, 2011, Briarpatch <https://briarpatchmagazine.com/articles/view/fracturing-solidarity>.

³¹⁷ <https://financialpost.com/opinion/peter-foster-the-boreal-forest-agreement-was-just-an-eco-radical-shakedown-now-thankfully-its-finally-being-killed>.

³¹⁸ <https://news.mongabay.com/2012/12/greenpeace-says-u-s-logging-company-has-broken-landmark-boreal-forest-agreement/>

³¹⁹ <https://us2.campaign-archive.com/?u=0efc2656db2f7d6a79de24ed9&id=ff932d5977>

³²⁰ Resolute Forest Products Inc., et al v. 2471256 Canada Inc., DBA Greenpeace Canada, et al, Ont. S.C. CV-164-13.

³²¹ International Boreal Conservation Campaign, About Us, online: <https://www.borealconservation.org/contact-us>.

of casting conservation programs surrounding the Boreal Forest – like the Boreal Framework, the Canadian Boreal Forest Agreement, and related initiatives (collectively, a “**Boreal Forest program**”) as an anti-Alberta energy campaign in a broad and general sense. Whether the circumstances surrounding a particular event exacerbate or mitigate this conflict is something I will review in more detail when it arises in this Report.

277. Generally speaking, however, and noting the connections among: (a) the Tar Sands Campaign objective of blocking development using protected areas like the boreal forest and referencing existing participant in the Boreal Forest program; (b) the connections drawn to the development of the Great Bear Rainforest program which I earlier found to be a means available to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportation of those resources to commercial markets; (c) participation of funders who, among other things, state an objective of curtailing the development of oil and gas, including Alberta’s oil sands; (d) the somewhat opaque evolution of the organizations developing the Boreal Forest program; and (e) the controversy surrounding the Canadian Boreal Forest Agreement, I find that the Boreal Forest program provides a means which could be used to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportations of those resources to commercial markets.
278. Commentators have also suggested that the Great Bear Agreement and the Boreal Forest Agreement are potential templates for agreements between the environmental community and oil sand producers.³²²

(vi) Wetland Restoration Program

279. Land conservation techniques go beyond land-locking Alberta to the west and to the north. Land replacement programs can also adversely effect Alberta’s oil and gas industry by, as the Corporate Ethics Document points out, “[t]he strategy is to use ... consultation processes ... to force the adoption of more stringent ... land protections. Outcomes may include ... significant land set-asides for conservation.”³²³
280. Shortly after the Corporate Ethics Document, in December of 2008, I found that one of the key IBCC partners, the Boreal Songbird Initiative, collaborated with NRDC and the Pembina Institute, to produce a publication on this issue. The joint publication states, in part:

Tar sands oil development should not be the solution to our fuel needs. Both Canada and the United States have a choice to make between fuels that harm the environment (including damage to critical bird habitat) and clean energy now.

³²² “Offsetting Resistance – The effects of foundation funding and corporate fronts from the Great Bear Rainforest to the Athabasca River”, M. Stainsby and D. Oja Jay, (2009); <http://s3.amazonaws.com/offsettingresistance/offsettingresistance.pdf>

³²³ The Corporate Ethics Document. Page 8.

An immediate solution to the pace of development and to environmental problems relating to tar sands oil development is a moratorium on new projects and project expansions and clean up of existing projects.³²⁴

281. Additional recommendations set out in that report included, among others:
- A. Alberta implement the wetland policy recommended by the Alberta Water Council (discussed further below);
 - B. Alberta should, at a minimum, protect up to 40% of northern Alberta and complete land use planning and an interconnected network of protected areas that include migratory bird habitat for the rest of Alberta; and
 - C. in addition to boreal forest and wetland reclamation, oil companies should establish “biodiversity offsets” that will provide for no net loss of bird habitat (also discussed below).
282. Acknowledgements provided in that report thanked, among others, the Rockefeller Brothers Fund and the Hewlett Fund for helping to fund the project.
283. In this regard I have reviewed the development, implementation, and execution of the wetland restoration program (“**WRP**”) in Alberta.
284. Development of the WRP began in 2005. At that time, the Alberta Water Council established a Wetlands Project Team to develop recommendation for a new wetland policy and corresponding implementation plan for the Government of Alberta.³²⁵ The Wetland Project Team was to comprise nine members – two from industry (mining and agriculture), three from government (first nations, federal, and large urban), two from NGOs (wetland conservation and environmental), and two from the Government of Alberta (one from environment and one from sustainable resource development).³²⁶ Interestingly, the oil and gas sector did not seem to be originally contemplated in the process but, as will be seen below, various participants in that sector did ultimately enter the process. Ultimately, the Wetland Project Team consisted of representatives from industry, municipal and provincial levels of government and an “NGO caucus” comprised of twelve ENGOs.³²⁷

³²⁴ Jeff Wells, Susan Casey-Lefkowitz, Gabriela Chavarria, and Simon Dyer, Danger in the Nursery: Impact on birds of tar sands oil development in Canada’s Boreal forest, December 2008, PDF p. 24, NRDC, online: <https://www.nrdc.org/sites/default/files/borealbirds.pdf>.

³²⁵ <https://www.awchome.ca/projects/wetland-policy-11/>

³²⁶ Alberta Water Council – Wetland Policy Project Team Terms of Reference, June 23, 2005. Page 5. https://www.awchome.ca/_projectdocs/?file=007797bb3429b49f

³²⁷ https://www.awchome.ca/_projectdocs/?file=7860af828fb5b8d7

285. The Wetland Project Team engaged “interested stakeholders”³²⁸ and ultimately, in 2008, made recommendations for the implementation of a new Alberta Wetland Policy.³²⁹
286. The recommendations put forward by the Wetland Project Team and, ultimately, the Wetland Policy adopted by the Government of Alberta in 2013, included a “wetland mitigation decision framework” that provided a hierarchy for addressing impacts to wetlands associated with a given development.³³⁰
287. The hierarchy provided, at its core, that any development that disturbed wetlands should be avoided and, where unavoidable, mitigated and subject to undertaking a wetlands replacement project or paying a fee, based on the land being disturbed.³³¹ The size of the wetland replacement project or fees payable were established by a Directive published by the Alberta Environment and Parks Water Policy Branch. That same Directive prescribed a designated agent to whom wetland replacement fees would be payable.³³²
288. The WRP continues to evolve, with a series of Directives being issued since the original Directive was issued in 2013.³³³
289. The development of the WRP brought into focus the need to balance conservation initiatives with resource development. In particular, near the conclusion of the Wetland Project Team’s work, and prior to it finalizing its recommendations on the new Alberta Wetland Policy, CAPP and the Alberta Chamber of Resources (“ACR”) identified several areas of “great concern” with the recommendations being put forward by the team. Those concerns related to the need for flexibility in how the new Wetland Policy would apply, the potential costs arising from some of the policies, and the importance of grandfathering existing facilities.³³⁴

³²⁸ Alberta Water Council Wetland Policy Project Team – Talking with Albertans About a New Wetland Policy and Implementation Plan: What We Heard Summary, June 3, 2008.

https://www.awchome.ca/_projectdocs/?file=c6ef91317014250c

³²⁹ <https://www.awchome.ca/projects/wetland-policy-11/>. See also:

https://www.awchome.ca/_projectdocs/?file=3f71924d41ee58de

³³⁰ “Alberta Water Council – recommendations for a New Alberta Wetland Policy” (September, 2008). Page iv. See also https://www.awchome.ca/_projectdocs/?file=3f71924d41ee58de, at page iv.

³³¹ Government of Alberta, Alberta Wetland Policy, Alberta Environment and Sustainable Resource Development (September, 2013), online: <https://open.alberta.ca/dataset/5250f98b-2e1e-43e7-947f-62c14747e3b3/resource/43677a60-3503-4509-acfd-6918e8b8ec0a/download/6249018-2013-alberta-wetland-policy-2013-09.pdf>. Page 14.

³³² See, for example, the original Alberta Wetland Mitigation Directive (June, 2015) at pages 4-6 and Schedule 1. [Online: <https://open.alberta.ca/dataset/2e6ebc5f-3172-4920-9cd5-0c472a22f0e8/resource/a80ebba4-a62d-4fba-8fa1-9a814d38cf8d/download/2015-alberta-wetland-mitigation-directive-june-2015.pdf>]. The Directive has been update on numerous occasions since this original Directive (see: <https://open.alberta.ca/publications/9781460130025..>

³³³ See the most recent Alberta Wetland Mitigation Directive (December 1, 2018):

<https://open.alberta.ca/dataset/2e6ebc5f-3172-4920-9cd5-0c472a22f0e8/resource/62b9a6ce-1d5a-4bc8-832e-c818e3e65410/download/alberta-wetland-mitigation-directive-201812.pdf>.

³³⁴ Alberta Chamber of Resources and Canadian Association of Petroleum Producers, Position on Wetland Policy and Implementation Plan, 30 July 2008, Albert Wetland Policy Project Team, online: https://www.awchome.ca/_projectdocs/?file=6e5ae705e32fedf4.

290. The NGO caucus disagreed, providing a submission of its own.³³⁵ To be clear, I make no findings about the merit of either submission, I merely note the conflict as evidence of the competing perspectives involved.

291. As I have mentioned above in the context of other conservation programs, I do not suggest that WRP, or programs akin to the WRP, are not valuable and important conservation initiatives. They are. As can be seen from the exchange of views between CAPP/ACR and the NGO caucus discussed above, however, there is a risk that such programs may – as the Terms of Reference provide - “directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and the transportation of those resources to commercial markets, by any means”. Balance and transparency will be key to managing these conflicts and ensuring that such programs are not treated as a means to advance what could be considered in this Inquiry as an anti-Alberta energy campaign.

(g) ***Litigation***

292. In considering instances of the use of the “Litigation” tactic, I undertook a review of a number of litigation strategies that potentially had the effect of contributing to an anti-Alberta energy campaign and the funding of such strategies. I grouped these strategies into three categories, as follows: (i) challenges to the regulatory process in place to approve various aspects of Alberta’s oil and gas industry; (ii) lawsuits commonly known as “children’s lawsuits” based on the legal doctrine of a “public trust”; and (iii) lawsuits commonly known as “failure to disclose climate change risk” actions. Each of these categories is more specifically reviewed below.

(i) Legal challenges in the regulatory context

293. The Corporate Ethics Document provides that:³³⁶

When all else fails, legal challenges to environmental impact statements and violations of local, state, or federal laws have shown their potential through recent challenges (for example, in Canada the Kearn decision ... evidence their potential for success).

294. I reviewed the approval processes undertaken in respect of nine pipelines and 16 oil sands projects. During the course of my review I became aware of the utilization of tactics designed to ‘amplify’ the objections raised during these approval processes, using letter writing campaigns.

295. I found examples of websites advertising the opportunity to submit letters of comment to the relevant decision-maker on a given project and stressing what the ENGO considers to be potential environmental effects of the project.³³⁷ In some cases, the advocates objecting provide their own forms that members of the public can complete in order to apply to participate, or provide step-by-step instructions for completing forms through the regulator’s website.³³⁸ I also

³³⁵ https://www.awchome.ca/_projectdocs/?file=7860af828fb5b8d7

³³⁶ The Corporate Ethics Document. Page 7.

³³⁷ See, for example, Ecojustice, “Tell the Neb to say no to the Trans Mountain project,” online: <<https://web.archive.org/web/20201108115849/ecojustice.ca/tell-neb-no-to-trans-mountain-project/#newmode-embed-3692-6839.>>

³³⁸ <https://canadians.org/analysis/760-apply-intervene-neb-hearings-energy-east-deadline-apply-march-3>

found examples where template letters were prepared with “sample” arguments and submissions that can be copied directly into the body of a letter of comment.³³⁹

296. I found evidence of such co-ordinated letter writing campaigns beginning in 2011 with the review of the Northern Gateway Project.³⁴⁰ I also found evidence of both letter-writing and intervenor application campaigns in proceedings for the Trans Mountain Expansion Project,³⁴¹ Energy East Project,³⁴² and Trans Mountain Reconsideration.³⁴³ Similarly, federal reviews of the Jackpine Mine Expansion Project and Frontier Oil Sands Mine Project showed evidence of co-ordinated letter writing campaigns.³⁴⁴ Specific to the Line 3 Replacement Project, the Inquiry noted there was evidence of several such campaigns targeting decision-makers in the United States.³⁴⁵
297. In some cases, the author of the template materials offered to serve as the “authorized representative” for the individuals that agreed to participate in the campaigns to apply for intervenor status. Being designated the authorized representative would entitle the designate to communicate with the NEB on behalf of the campaign participant seeking intervenor status. For example, in the step-by-step instructions for seeking intervenor status in the NEB proceeding provided by 350.org, that organization offered to serve as the “authorized representative” for campaign participants and provided the contact information for Mr. Cameron Fenton.³⁴⁶ NEB filings indicate that several hundred campaign participants named Mr. Fenton at 350.org as their authorized representative for those proceedings.³⁴⁷
298. I have reviewed each of the letter writing campaigns discussed above and note that, while each relates to a specific project, these campaigns are repeated in respect of many different projects and directed to the general public, advocating to oppose projects on a broad and general basis and as positioned by the campaigner.

(ii) “Public Trust” lawsuits

299. “Public Trust” lawsuits – also commonly referred to as “Children’s Lawsuits” because they are often brought by children - are based on what is known as the “Public Trust Doctrine”. The Doctrine advances on the theory that common property of a nation are for the benefit of the public

³³⁹ 350.org/step-by-step-ee/.

³⁴⁰

http://web.archive.org/web/20120122195156/salsa.democracyinaction.org/o/281/p/dia/action/public/?action_KEY=8193

³⁴¹ www.wildernesscommittee.org/news/time-have-your-say-kinder-morgan-pipeline.

³⁴² <https://canadians.org/analysis/760-apply-intervene-neb-hearings-energy-east-deadline-apply-march-3>,
<https://canadians.org/energyeast>

³⁴³ See, for example, Ecosocialists Vancouver, “Trans Mountain Pipeline – we are winning! Have your say, one more time (even though it's a tedious process), online: <https://ecosocialistsvancouver.org/article/trans-mountain-pipeline-we-are-winning%C2%A0have-your-say-one-more-time%C2%A0even-though-its-tedious..>

³⁴⁴ See, for example, *Report of the Joint Review Panel, Teck Resources Limited – Frontier Oil Sands Project*, July 25, 2019, 2019 ABAER 008, CEAA Reference No. 65505, para 119; *Report of the Joint Review Panel, Shell Canada Energy – Jackpine Mine Expansion Project*, August 9, 2013, 2013 ABAER 011, CEAA Reference No. 59540, paras 88-91.

³⁴⁵ act.350.org/letter/line3-comment

³⁴⁶ <https://350.org/step-by-step-ee/>.

³⁴⁷ See, for example, CER Filing No. A68981-1, A68954-1, A69015-1, A68971-1, A68575-1.

and the government, as the steward of such property, owes its citizens a duty of care to use such lands (and any resources they may have) in a reasonable manner.³⁴⁸ One of the leading proponents of the doctrine in the context of climate change is the Colorado based “Our Children’s Trust”, who advocates to immediately “cease action supporting industries that extract, process, transport and burn fossil fuels, such as oil, gas, and coal”.³⁴⁹ Our Children’s Trust has advanced actions of this nature in 14 countries, including Canada.³⁵⁰

“We learned it’s not these individual permits that are the problem — the problem is the overall system, and the pattern of government issuing these permits over decades.”
Andrea Rodgers, senior attorney at Our Children’s Trust.³⁵¹

300. The most recent Canadian version³⁵² of the Children’s Lawsuit was brought against the Federal government in the Federal Court in B.C. on October 25, 2019 amidst much publicity (including a press conference)³⁵³ on behalf of children from each Province and Territory (other than Yukon, Newfoundland, P.E.I., and New Brunswick), alleging damages suffered from a number of different climate events (the “**Statement of Claim**”).³⁵⁴ I have attached a copy of the Statement of Claim filed on behalf of the Plaintiffs as Schedule “D” to this Report.

301. The Plaintiffs sue the Defendant federal government for, among other things:

promoting “fossil fuel transport, export and import by approving and regulating interprovincial and international fossil fuel infrastructure, including oil and gas transportation pipelines”;

“...continuing to incentivise fossil fuel exploration, extraction, production and consumption through subsidies to the fossil fuel industry.”

³⁴⁸ See, for example, “*The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*”, J.L.Sax, 68 Mich. L. Rev. 471 (1970), funded, in part, by the Ford Foundation.

³⁴⁹ “*Our Children’s Trust Submission to the United Nations Special Rapporteur on Cultural Rights and Climate Change*” May 2020, Our Children’s Trust, at page 6. See also:
<https://static1.squarespace.com/static/571d109b04426270152febe0/t/5eb20395472e681f59f4fe15/1588724643712/OCT+Submission+to+the+UN+Special+Rapporteur+on+Cultural+Rights+and+Climate+Change.pdf>

³⁵⁰ <https://www.ourchildrenstrust.org/global-legal-actions>.

³⁵¹ “*Young Canadian plan to sue federal government over climate change*”, The Vancouver Star, October 23, 2019.
<https://www.thestar.com/vancouver/2019/10/23/young-canadians-are-suing-their-government-over-climate-change-green-groups-say.html>

³⁵² Lawsuits of a similar nature have also been filed in Ontario and Quebec and remain outstanding. See *Mathur, et al v. Her Majesty the Queen in Right of Ontario*, Ont. S.C., Action #CV-19-00631627 (November 25, 2019) [<http://climatecasechart.com/climate-change-litigation/non-us-case/mathur-et-al-v-her-majesty-the-queen-in-right-of-ontario/>] and *ENvironnement JEUnesse v. Attorney General of Canada*, Que. S.C., Action #500-06-000955-183 (November 26, 2018) [<http://climatecasechart.com/climate-change-litigation/non-us-case/environnement-jeunesse-v-canadian-government/>], respectively.

³⁵³ <https://www.theglobeandmail.com/opinion/article-best-of-luck-to-canadas-kids-fossil-fuel-court-cases-have-yet-to-pay/>.

³⁵⁴ *La Rose, et al. v. Her Majesty the Queen in Right of Canada and the Attorney General of Canada*, action #T-1750-19. See also
<https://static1.squarespace.com/static/571d109b04426270152febe0/t/5db33d55a621353113c8e4e9/1572027734325/Statement+of+Claim+2019+10+25+FINAL.pdf>

providing “direct assistance to the fossil fuel industry in the form of tax deductions and exemptions”;

providing “public finance for fossil fuel exploration”;

“...direct spending on research and development of fossil fuel production and transportation technologies”;

providing financial assistance and/or the provision of market intelligence to GHG-intensive industries; and

“...facilitat[ing] the extraction of bitumen from the Alberta oil sands by providing transport for bitumen to markets” by acquiring the Trans Mountain pipeline.³⁵⁵

302. I have reviewed the Statement of Claim, and the general program surrounding the advancement of so called “Children’s lawsuits” as outlined in the advocacy of Our Children’s Trust, and am satisfied that the objective of their advocacy is to oppose the further development of fossil fuels generally, and that the lawsuits which they advance are designed to pressure governments (both by virtue of the litigation itself and the media that surrounds the litigation) to further such opposition against the development of the fossil fuels industry generally and, in the case of the Statement of Claim, against the development of Alberta’s oil and gas industry in particular.

(iii) “Failure to disclose climate change risk” actions

303. “Failure to disclose climate change risk” is another type of litigation I reviewed.

304. Cases of this nature are based on a theory known as “climate accountability” which traces its origins to tobacco litigation strategies. A meeting was held in La Jolla in 2012 where a number of such strategies were considered³⁵⁶ and “nearly unanimous agreement” was reached “on the importance of legal actions, both in wresting potentially useful internal documents from the fossil fuel industry and, more broadly, in maintaining pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming.”³⁵⁷

³⁵⁵ Ibid. Paragraphs 48-50.

³⁵⁶ Including, for example, claims brought under public nuisance laws, like *Kivalina v. ExxonMobil Corporation, et al*, dismissed in September, 2012: http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2012/20120921_docket-09-17490_opinion.pdf. Similar lawsuits followed against Exxon Mobil Corporation from San Francisco, Oakland, and New York City. All were dismissed (see <https://apnews.com/article/365152873b564c178b99bb7f3eeff32b> and <https://www.reuters.com/article/us-new-york-climatechange-lawsuit/oil-majors-win-dismissal-of-new-york-city-climate-lawsuit-idUSKBN1K931T>, respectively.).

³⁵⁷ “Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control”, Summary of the Workshop on Climate Accountability, Public Opinion, and Legal Strategies, Climate Accountability Institute and Union of Concerned Scientists, La Jolla, CA, June 14-15, 2012. Page 27. See also: <https://www.ucsusa.org/sites/default/files/attach/2016/04/establishing-accountability-climate-change-damages-lessons-tobacco-control.pdf>

305. Of note, the La Jolla workshop also commented that: “State attorneys general can also subpoena documents, raising the possibility that a single sympathetic state attorney general might have substantial success in bringing key internal documents to light.”³⁵⁸
306. By the fall of 2015 an #Exxonknew campaign had emerged,³⁵⁹ calling on the Attorneys General of Iowa,³⁶⁰ Maine,³⁶¹ Maryland,³⁶² New Hampshire,³⁶³ Oregon,³⁶⁴ Vermont,³⁶⁵ Washington,³⁶⁶ New York,³⁶⁷ and the Federal Department of Justice,³⁶⁸ and later, in Minnesota³⁶⁹ to investigate ExxonMobil.
307. A meeting was held in New York in January of 2016 to advance the campaign,³⁷⁰ the agenda of which is reproduced, in part, below:³⁷¹

³⁵⁸ “Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control”, Summary of the Workshop on Climate Accountability, Public Opinion, and Legal Strategies, Climate Accountability Institute and Union of Concerned Scientists, La Jolla, CA, June 14-15, 2012. Page 11. See also: <https://www.ucsusa.org/sites/default/files/attach/2016/04/establishing-accountability-climate-change-damages-lessons-tobacco-control.pdf>.

³⁵⁹ <https://exxonknew.org/#> See also: “Private Funders, Public Institutions: ‘Climate’ Litigation and a Crisis of Integrity”, Government Accountability & Oversight, May, 2021 [online: <https://climatelitigationwatch.org/wp-content/uploads/2021/05/GAO-EPA-CCI-RFF-Climate-Paper.pdf>] at pages 18-21.

³⁶⁰ <https://campaigns.350.org/petitions/investigate-exxon-iowa-attorney-general-tom-miller>

³⁶¹ <https://campaigns.350.org/petitions/investigate-exxon-maine-attorney-general-janet-t-mills>

³⁶² <https://campaigns.350.org/petitions/investigate-exxon-maryland-attorney-general-brian-frosh>

³⁶³ <https://campaigns.350.org/petitions/investigate-exxon-new-hampshire-attorney-general-joseph-a-foster>

³⁶⁴ <https://campaigns.350.org/petitions/investigate-exxon-oregon-attorney-general-ellen-f-rosenblum>

³⁶⁵ <https://campaigns.350.org/petitions/investigate-exxon-vermont-attorney-general-william-h-sorrell>

³⁶⁶ <https://campaigns.350.org/petitions/investigate-exxon-washington-attorney-general-bob-ferguson>

³⁶⁷ <https://insideclimatenews.org/news/05112015/new-york-attorney-general-eric-schneiderman-subpoena-Exxon-climate-documents/>

³⁶⁸ <https://350.org/press-release/environmental-and-civil-rights-leaders-call-on-department-of-justice-to-investigate-exxonmobil-over-climate-deception/>

³⁶⁹ <https://mn350.org/mn-climate-accountability/>

³⁷⁰ <https://freebeacon.com/issues/memo-shows-secret-coordination-effort-exxonmobil-climate-activists-rockefeller-fund/>

³⁷¹ <https://freebeacon.com/wp-content/uploads/2016/04/scan0003.pdf>

From: **Kenny Bruno** <kenny.bruno@verizon.net>
Date: Tue, Jan 5, 2016 at 4:42 PM
Subject: Exxon meeting DRAFT Agenda and logistics
To: Lee Wasserman <lwasserman@rffund.org>, Bill McKibben <bill.mckibben@gmail.com>, Jamie Henn <jamie@350.org>, Rob Weissman <rweissman@citizen.org>, Bill Lipton <blipton@workingfamilies.org>, Dan Cantor <dcantor@workingfamilies.org>, John Passacantando <j.passacantando@gmail.com>, Kert Davies <kertmail@gmail.com>, won@ef.org, SEubanks@bordaslaw.com, lkrarup@vkrf.org, mp@pawalaw.com, bcampbell@cif.org, Stephen Kretzmann <steve@priceofoil.org>, Carroll Muffett <cmuffett@ciel.org>, Naomi Ages <naomi.ages@greenpeace.org>

Dear All,

If you are receiving this message then we believe you are attending the meeting this coming Friday Jan 8 regarding Exxon.

The meeting will take place at:

Rockefeller Family Fund

475 Riverside Dr entrance on Claremont @ 120th St. in Upper Manhattan, 1
Train to 116th St. from Penn Station

Please confirm whether you are attending in person (preferred, of course!) or remotely. If remotely see instructions below.

Here is a DRAFT Agenda, your suggestions are welcome.

DRAFT Agenda

Exxon: Revelations & Opportunities

Friday January 8 11 AM – 3 PM

475 Riverside Dr @ 120th ST Manhattan

10:45: Arrival and Coffee

11:00 – 11:15 Introductions and purpose of the meeting (Lee)

11:15-12:00 – Goals of an Exxon campaign

What are our common goals? Examples include:

- o To establish in public's mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm.
- o To delegitimize them as a political actor
- o To force officials to disassociate themselves from Exxon, their money, and their historic opposition to climate progress, for example by refusing campaign donations, refusing to take meetings, calling for a price on carbon, etc.
- o To call into question climate advantages of fracking, compared to coal.
- o To drive divestment from Exxon.
- o To drive Exxon & climate into center of 2016 election cycle.

308. The entire agenda³⁷² is reproduced as Schedule "E" to this report.

³⁷² <https://freebeacon.com/wp-content/uploads/2016/04/Entire-January-meeting-agenda-at-RFF-1-1.pdf>

309. Meanwhile, in November of 2015 the New York State Attorney General had issued a subpoena seeking documents from Exxon Mobil Corporation³⁷³ and ultimately, in October of 2018, brought a lawsuit against the company - *Attorney General of New York v. Exxon Mobil Corporation* (“**AGNY v. Exxon Mobil**”)³⁷⁴ - for failing to disclose the company’s climate change risk management practices for the period 2007 to 2018 in respect of many of the Company’s projects, including “for its oil sands assets in Alberta, Canada which accounted for as much as 25% of ExxonMobil’s total resources base”³⁷⁵. The suit was ultimately unsuccessful.³⁷⁶
310. While *AGNY v. Exxon Mobil* was unsuccessful, similar lawsuits have been filed against ExxonMobil Corporation by six other Attorneys General - Massachusetts,³⁷⁷ Minnesota,³⁷⁸ Connecticut,³⁷⁹ Rhode Island,³⁸⁰ Delaware,³⁸¹ and the District of Columbia,³⁸². With the exception of the Connecticut complaint, all of the other lawsuits specifically rely on the defendant’s intention to develop reserves in Alberta’s oil sands.
311. I have reviewed *AGNY v. Exxon Mobil*, as well as (a) the matters considered at the La Jolla meeting in 2012, (b) the #Exxonknew website and its advocacy for advancing claims through various offices of Attorneys General, (c) the nature of the lawsuits ultimately brought by the various Attorneys General offices (including their specific mention of Alberta’s oil sands resources), and (d) the agenda of the meeting in New York in January of 2016 (and, in particular, (i) the presence of individuals and organizations mentioned elsewhere in this Report, (ii) the efforts to employ a divestment tactic (which is specifically mentioned in the material discussed above under the tactic of “divestment”), and (iii) its discussion of advancing lawsuits through the “DOJ” and “AGs” when such initiatives were pursued to varying degrees of success). I am satisfied that the #Exxonknew campaign, including the advancement of various lawsuits against Exxon Mobil Corporation and others was a broad and general effort to frustrate the development of Alberta’s oil and gas industry by discouraging investment in Alberta’s oil sands.
312. While I have limited my review to the “Children’s trust” and “#Exxonknew accountability” initiatives, I do not foreclose the possibility that there are other litigation tactics so employed. In

³⁷³ <https://insideclimatenews.org/news/05112015/new-york-attorney-general-eric-schneiderman-subpoena-Exxon-climate-documents/>

³⁷⁴ http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20181024_docket-4520442018_complaint.pdf

³⁷⁵ *People of the State of New York v. Exxon Mobil Corporation*, Index No. 452044/2018, Plaintiff’s Pretrial Memorandum at page 13 of 50. http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2019/20191007_docket-4520442018_memorandum.pdf

³⁷⁶ *People of the State of New York v. Exxon Mobil Corporation*, Index No. 452044/2018. Decision date December 10, 2019. See <https://www.law.nyu.edu/sites/default/files/New-York-Exxon-Ruling.pdf>

³⁷⁷ <https://www.mass.gov/lists/attorney-generals-office-lawsuit-against-exxonmobil>

³⁷⁸ <https://oag.dc.gov/sites/default/files/2020-06/DC-v-Exxon-BP-Chevron-Shell-Filed-Complaint.pdf>

³⁷⁹ <https://portal.ct.gov/-/media/AG/State-v-Exxon-Mobil---Signed-Complaint.pdf>

³⁸⁰ http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20180702_docket-PC-2018-4716_complaint.pdf

³⁸¹ https://www.eenews.net/assets/2020/09/11/document_cw_02.pdf

³⁸² <https://oag.dc.gov/sites/default/files/2020-06/DC-v-Exxon-BP-Chevron-Shell-Filed-Complaint.pdf>

the course of my research I noted that there are over 1700 cases involving climate litigation in the world, but time and resources do not allow me to explore each and every one.³⁸³

(h) **First Nations**

313. Issues surrounding First Nations and resource development are complex and are often misunderstood by various stakeholders and Canadians generally. It is for that reason that this section is presented in a slightly different format, and is somewhat longer than other portions of the report. It is an important story, not only for First Nations peoples but presents a perspective that I, as Commissioner feel is important to be shared with Albertans.
314. Through the course of the Inquiry, I spoke to many First Nations leaders, as well as, academics, industry leaders, and several other individuals, who had observations about First Nations communities through business and personal relationships. As well, I reviewed a number of articles and writings about First Nations involvement with various aspects of resource development. I participated in seminars and presentations with First Nations leaders, interviewed a number of First Nations leaders, and conducted additional research on First Nations issues, as noted throughout the section. Wherever possible, I verified the accuracy of statements made by individuals quoted in this section and confirmed that they continued to stand behind the statement attributed to them.
315. First Nations are seen by many Canadians as speaking with one voice. They are in fact, similar to any other community or group in that they have a diversity of views on many issues. Most often, like every community, their views and the positions taken by them on various issues are dictated by their geographical location and opportunities or challenges that arise therefrom.
316. There are some 643 First Nations in Canada, with different cultures, languages, territories and histories.³⁸⁴ Similar to people in other Canadian geographical regions, they don't always agree; they are at different stages of economic development and have different goals and aspirations.
317. The Indian Resource Council (IRC), is an advocacy organization for 130 First Nations with oil and gas interests mostly in the Western Provinces.³⁸⁵ They work closely with Indian Oil and Gas Canada (IOGC), a federal special operating agency that has a legal responsibility to manage and regulate oil and gas activity on Indigenous lands.³⁸⁶ IRC members have a history with oil and gas developments dating back to the 1930s, continuing through to today, while others have oil and gas rights and the potential to produce significant hydrocarbons in the future.³⁸⁷ IRC members are

³⁸³ <http://climatecasechart.com/climate-change-litigation/about/>

³⁸⁴ <http://www.afn.ca/about-afn/>

³⁸⁵ https://www.youtube.com/watch?v=hr2vA-AKsYA&feature=emb_title, <https://financialpost.com/opinion/indigenous-canadians-want-natural-resources-development-why-arent-we-being-heard>, The National Center for American Indian Enterprises Development, Reservation Economic Summit, March 1-5, 2020; speech by Stephen Buffalo

³⁸⁶ https://www.youtube.com/watch?v=hr2vA-AKsYA&feature=emb_title, <https://financialpost.com/opinion/indigenous-canadians-want-natural-resources-development-why-arent-we-being-heard>, The National Center for American Indian Enterprises Development, Reservation Economic Summit, March 1-5, 2020; speech by Stephen Buffalo

³⁸⁷ https://www.youtube.com/watch?v=hr2vA-AKsYA&feature=emb_title, <https://financialpost.com/opinion/indigenous-canadians-want-natural-resources-development-why-arent-we-being-heard>

- involved in resource development of all kinds, including wind and solar projects. Several First Nations are involved in or are pursuing involvement in pipeline and other resource projects, through direct equity investments or partnerships that create opportunities for revenue, employment, training and education thus increasing opportunities for greater prosperity for their people.³⁸⁸
318. Over the centuries, First Nations people developed their own trading routes and economic networks that sustained them. As Canada developed and grew, First Nations economies were displaced and collapsed. Their traditional forms of governance were disrupted by various policies and legislation, primarily the Indian Act, which many First Nations today view as outdated, colonial and oppressive. Most observers view this system of policies, regulations and legislation as a barrier for indigenous people to gain prosperity.³⁸⁹
319. Stephen Buffalo, President and CEO of the IRC, describes an interesting case study in the economic evolution of First Nations involving the Four Nations near Maskwacis, Alberta. There was a large oil and gas discovery on their lands in the 1940's and production began in the early 1950's. The Nation has received significant royalties from this resource over the years, although production has now ceased after some nearly 70 years of production.
320. Unfortunately, throughout the exploitation of the natural resource, the Nation remained relatively passive participants. They attended occasional meetings with oil companies and the federal government but they were never directly involved; there was no meaningful job training or employment opportunities created. The Nations received regular royalty cheques but they weren't treated as partners.³⁹⁰
321. Mr. Buffalo explains the role of the IOGC, to develop a vision for collective First Nations control and full management of their resources. In the IOGC 2017-2018 Annual Report, it is noted that 25 First Nations produced oil on reserve and 35 First Nations produced natural gas on reserve, from which the IOGC received \$62.6M on behalf of First Nations, including \$49.3M as a result of oil and gas royalties.³⁹¹
322. Mr. Buffalo notes that the oil and gas industry has also recognized its integration with Indigenous groups in Alberta, and across Canada. The Canadian Association of Petroleum Producers

heard, The National Center for American Indian Enterprises Development, Reservation Economic Summit, March 1-5, 2020; speech by Stephen Buffalo

³⁸⁸Gardeners vs Designers, Brian Lee Crowley, page 241-242, irccanada.ca/press-release/open-letter-to-prime-minister-justin-trudeau-globe-and-mail-june-20-2020/, First Nations Engagement in Canada's Energy Economy- Dr. Ken Coates, June 7, 2016, The National Center for American Indian Enterprises Development, Reservation Economic Summit, March 1-5, 2020; speech by Stephen Buffalo

³⁸⁹ Manning Networking Conference 2019. March 22-24/Ottawa- speech by Stephen Buffalo, 6 <https://www.cpac.ca/en/programs/public-record/episodes/65960618/>.

³⁹⁰ Manning Networking Conference 2019. March 22-24/Ottawa- speech by Stephen Buffalo, 5 <https://www.cpac.ca/en/programs/public-record/episodes/65960618/>. First Nations Engagement in Canada's Energy Economy- Dr. Ken Coates, June 7, 2016 at p. 5 <https://s3.amazonaws.com/rgi-documents/627a6a8c9486a7bbf5ce466e0cb29456ec042c0f.pdf>

³⁹¹ Affidavit of Stephen Buffalo, sworn March 11, 2020, filed March 12, 2020 in Ecojustice Canada Society v HMQ Alberta et al, action no. 1901 16255, Exhibit "C", IOGC 2017-2018 Annual Report https://www.pgic-iogc.gc.ca/DAM/DAM-INTER-IOGC/STAGING/texte-text/annual_report_2017_2018_1553019909159_eng.pdf

(CAPP) noted in its 2018 Economic Report *Toward a Shared Future: Canada's Indigenous Peoples and the Oil and Natural Gas Industry*:

- (a) in 2016, Indigenous peoples held 11,900 total jobs in the industry;
- (b) from June 1 to December 31, 2017, industry provided an estimated \$55 million in funding to Indigenous governments;
- (c) between 2015 and 2016, oil and gas producers invested at least \$48.6 million in Indigenous communities; and
- (d) between 2015 and 2016, oilsands operators:
 - (i) spent about \$3.3B on procurement from Indigenous-owned companies; and,
 - (ii) worked with 399 Indigenous companies in 65 Alberta communities.³⁹²

323. Today, many First Nations see enormous opportunities to be participants and true partners in economic development that could provide substantial training and employment opportunities and help to lift their people from poverty. Following are just a few examples where this is already the case:³⁹³:

- A. Onion Lake, Thunderchild and Little Pine in Saskatchewan, where these First Nations have purchased oil and gas leases, expanded production, and developed technical and management capabilities. Onion Lake is the largest oil producing First Nation in Canada with some 400 oil wells and 14,000 barrels per year of production.³⁹⁴
- B. Several indigenous-led groups, are seeking to buy the Trans Mountain expansion in its entirety or as a significant equity partner.³⁹⁵
- C. All 20 First Nations along the Coastal GasLink natural gas pipeline project have signed agreements in support of the project.³⁹⁶

³⁹² Affidavit of Stephen Buffalo, sworn March 11, 2020, filed March 12, 2020 in Ecojustice Canada Society v HMQ Alberta et al, action no. 1901 16255, para 18, Exhibit "E".

³⁹³ See also Canada West Foundation's Energy Innovation Brief on January 25, 2021 which summarizes a number of instances where Indigenous groups across Canada are playing a leading role in the energy sector through partnerships, equity positions, and project development. <https://cwf.ca/research/publications/energy-innovation-brief-issue-11/>

³⁹⁴ First Nations Engagement in Canada's Energy Economy- Dr. Ken Coates, June 7, 2016 <https://s3.amazonaws.com/rgi-documents/627a6a8c9486a7bbf5ce466e0cb29456ec042c0f.pdf>

³⁹⁵ <https://www.cbc.ca/news/politics/trans-mountain-pipeline-covid-pandemic-indigenous-1.5859045>, <https://edmontonjournal.com/news/politics/david-staples-can-kenney-orchestrate-the-one-and-only-huge-move-to-get-oilsands-pipelines-built>

³⁹⁶ <https://www.coastalgaslink.com/sustainability/indigenous-relations/>

- D. The 700 member Fort McKay First Nation near Fort McMurray, owns several companies providing services to the resource sector, employing over 4000 people and generating annual revenues that averaged over \$500 million per year from 2012-2016.³⁹⁷
- E. Natural Law Energy (NLE) a Treaty alliance of Nations from traditional territories of Treaty No. 4, Treaty No.6, and Treaty No. 7, signed a deal with TC Energy Corp. in November, 2020 to invest up to \$1 billion in the Keystone XL Pipeline project as partners.³⁹⁸ Despite the cancellation of Keystone by US President Biden on January 20th, NLE is not ready to give up on the project.³⁹⁹
- F. The Alberta Indigenous Opportunity Corporation (AIOC) is a new Crown Corporation that will provide loan guarantees to First Nations wanting to invest in natural resource projects. In September, 2020 AIOC announced its first loan guarantee to a consortium of six Alberta First Nations to enable their participation in the Cascade Power Project.⁴⁰⁰
- G. Since 2017, the Indigenous Advisory and Monitoring Committee for the Trans Mountain expansion and existing pipeline has been forging new relationships between the government of Canada, the Canadian Energy Regulator and Indigenous communities impacted by the pipeline.⁴⁰¹
- H. The Haisla Nation in B.C. is working towards its own LNG –for-export project, Cedar LNG, which now is in the federal environmental assessment process. And Pieredae Energy’s Goldboro LNG project proposed for Nova Scotia has an agreement with Mi’kmaq Nations.⁴⁰²
324. Of course, First Nations have a well established legal position with respect to Land Rights, through over 300 legal victories. Bill Gallagher, a lawyer practicing in this area of the law stated in a recent article, “...we should be on top of our resources game and economically prosperous. All we have to do is show respect for the rise of native empowerment and cut natives a proper deal, so that our projects become their projects. It’s their traditional land after all and they have 300 legal wins backing their land rights up.”⁴⁰³
325. The above examples, and many more seem to be evidence that those productive partnerships are indeed developing and advancing.

³⁹⁷ First Nations Engagement in Canada’s Energy Economy- Dr. Ken Coates, June 7, 2016, <https://www.fraserinstitute.org/studies/community-capitalism-of-the-fort-mckay-first-nation-case-study>

³⁹⁸ TC Energy and Natural Law Energy sign definitive agreement, EnergyNow Media, November 17, 2020. <https://energynow.ca/2020/11/tc-energy-and-natural-law-energy-sign-definitive-agreement/>

³⁹⁹ <https://www.thestar.com/news/canada/2021/01/21/chief-not-ready-to-give-up-on-keystone-xl.html>

⁴⁰⁰ <https://energynow.ca/2020/09/alberta-indigenous-opportunities-corporation-announces-first-participation-in-cascade-power-project/>

⁴⁰¹ Opinion: How Indigenous perspectives and participation are helping shape a better regulator for Canadian Energy/ Calgary Herald/ December 3, 2020. <https://calgaryherald.com/opinion/columnists/opinion-how-indigenous-perspectives-and-participation-are-helping-shape-a-better-regulator-for-canadian-energy>

⁴⁰² <https://vancouver.sun.com/opinion/karen-ogen-toews-lng-from-canada-a-win-for-all>

⁴⁰³ <http://firstnationsvoice.com/2020/07/30/breaking-300-legal-wins/>

326. Ellis Ross, former Chief of Haisla First Nation and now a Liberal MLA in British Columbia speaks about the benefits to his people of their involvement with the Coastal GasLink project. He says his community has evolved from too many incidences of drug and alcohol abuse and poverty to a culture of jobs, training and economic development. His people are much happier as they have gained greater prosperity.⁴⁰⁴
327. Over the past two decades, First Nations people have found significant employment in the oil and gas sector; the oil sands firms have hired several thousands of indigenous workers directly, as have service companies that support the industry. The natural resource sector and industries supporting the sector have become among the largest employers of indigenous people in Canada and many see that the natural resource economy has emerged as the front line of reconciliation in Canada.⁴⁰⁵
328. In a recent seminar on this subject, Heather Exner-Pirot, a research advisor to the Indigenous Resource Network stated:
- “If you think that you require economic self determination to have political self determination, I don’t think there is a pathway to get that in Canada for Indigenous communities without being fully involved in resource development.”
- ...
- “There is a win-win situation that can be attained if we do this right.” The resource sector is a fundamentally important aspect of the Indigenous economy, she said. There’s no other sector that comes even close to contributing as much to Indigenous communities in terms of jobs, wages, the own source revenues for communities and business development...
- And while the resource sector also offers the highest wages for Indigenous people, the real opportunities are in procurement for Indigenous businesses as “the very best way that you can create good economic circumstances in your communities to increase entrepreneurship and businesses”...⁴⁰⁶
329. To reinforce this statement, Ms. Exner-Pirot advised me of the following, via email⁴⁰⁷:

⁴⁰⁴ Canadian Energy Executive Association, Executive Business Forum, remarks of Ellis Ross, November 18, 2020.

⁴⁰⁵ First Nations Engagement in Canada’s Energy Economy- Dr. Ken Coates, June 7, 2016 at p. 15 <https://s3.amazonaws.com/rji-documents/627a6a8c9486a7bbf5ce466e0cb29456ec042c0f.pdf>, Unearthing Human Resources- Aboriginal Skills Development and Employment in the Natural resource Sector- Ken Coates, Greg Finnegan, Craig Hall and Kelly Lendsay, December 2015, MacDonald Laurier Institute <https://www.macdonaldlaurier.ca/files/pdf/MLIAboriginalResources8-12-15-webready-V2.pdf>.

⁴⁰⁶ Duty to Consult Indigenous Communities Credited With Growth of Resource Industry Partnerships- Elsie Ross, Daily Oil Bulletin, August 24, 2020 <https://www.dailyoilbulletin.com/article/2020/8/24/duty-to-consult-indigenous-communities-credited-wi/?ntoken=DSf5xT%2BmQcfqOI2RozD1E%2F3fyrZJMqVfrmXfiXhuRjJc2LXEMilglolwB4u%2ByhtGa3F2N3DanNLM9ZY739P5DDoOysRr63epsJ%2BohYJu5YoV9OoM7hzmBaiEDbB%2BZcd6ToAWAolT9gWP0zclwPRwoJHI%2B4Hv4a9RNUW3nNzXbY%3D>

⁴⁰⁷ Heather Exner-Pirot email, December 21, 2020.

- A. Indigenous businesses appear to be more than 40 times as likely to be involved in the resource extraction sector than the average Canadian business.⁴⁰⁸
- B. The oilsands stand out as a significant combined purchaser of Indigenous goods and services. Companies generally self-report their indigenous procurement as part of their annual reports, including:
- (1) Suncor has spent over \$6 billion on indigenous procurement since 1999, including \$836 million- or 8% of total spending- in 2019;⁴⁰⁹
 - (2) Cenovus has spent \$2.9 billion since 2009, including \$139 million in 2019;⁴¹⁰
 - (3) CNRL awarded \$550 million in Indigenous contracts in 2019;⁴¹¹
 - (4) Imperial has invested \$2.6 billion with Indigenous businesses since 2009.⁴¹²
- C. Pipeline companies are also significant players in Indigenous procurement and employment, as follows:
- (1) Enbridge spent over \$1 billion between 2014-19 across their liquids pipelines and gas transmission businesses; more than 1100 Indigenous men and women employed on Line 3 Replacement at peak construction (20% of overall workforce); in the course of Enbridge's operations and projects in North America, regularly engage with more than 200 Indigenous communities in Canada.⁴¹³
 - (2) Coastal Gas Link has awarded \$825 million on Indigenous and local contracts and expects to spend \$1 billion by the time the project is complete.⁴¹⁴
 - (3) Trans Mountain when complete, will have generated over \$1 billion in Indigenous-based contracts awards.⁴¹⁵

⁴⁰⁸ Canadian Council of Aboriginal Business (2016). Partnerships in procurement, p. 13 <https://www.ccab.com/wp-content/uploads/2017/12/CCAB-MarineAerospace-Report-1.pdf>. Innovation, Science and Economic Development Canada (2019). Key Small Business Statistics, p 7 [https://www.ic.gc.ca/eic/site/061.nsf/vwapj/KSBS-PSRPE_Jan_2019_eng.pdf/\\$file/KSBS-PSRPE_Jan_2019_eng.pdf](https://www.ic.gc.ca/eic/site/061.nsf/vwapj/KSBS-PSRPE_Jan_2019_eng.pdf/$file/KSBS-PSRPE_Jan_2019_eng.pdf). See also Greg Desjarlais, "Indigenous communities need a strong oil and gas sector, too Globe and Mail (April 25, 2020). <https://www.theglobeandmail.com/opinion/article-indigenous-communities-need-a-strong-oil-and-gas-industry-too/>

⁴⁰⁹ <https://sustainability.suncor.com/en/our-business/supply-chain>

⁴¹⁰ <https://www.cenovus.com/responsibility/indigenous-relations.html>

⁴¹¹ <https://www.cnrl.com/corporate-responsibility/community/community---business-development>

⁴¹² <https://www.imperialoil.ca/en-CA/Sustainability/Indigenous-engagement>

⁴¹³ <https://www.enbridge.com/indigenouinclusion/>

⁴¹⁴ <https://www.coastalgaslink.com/sustainability/indigenous-relations/>

⁴¹⁵ Daily Oil Bulletin. December 21, 2020, Indigenous Opportunities A Legacy of Trans Mountain Expansion <https://www.dailyoilbulletin.com/article/2020/12/21/indigenous-opportunities-a-legacy-of-trans-mountain/?ntoken=aJzHfjgY2t%2FHicyTyX5%2ByayXT4Aw1jMU2o4JefJCUUZQVQCQbk746WBhNss7YNiOt8kjMNEm81TcaXBZPY6uWIVnrWNCoyO23xfQtHkeMnZsHXEGwFw2fIDRKsvPQzxcT3BzXX6Q411JzHDwycHMD5HOqv2aUvxAub5yP%2BcbA%3D>

- D. Based on a 2017 study, the mining and oil and gas sectors are the Canadian industrial sectors that are the most engaged with Indigenous peoples.⁴¹⁶
- E. Most recent data indicate that 38 First Nations had on-reserve oil and gas production. Overall, between 2008/09 and 2018/19, First Nations collected \$1.29 billion for on-reserve production.⁴¹⁷
- F. Based on 2016 Census data, the three top paying sectors for Indigenous employees are oil and gas related. Overall, oil and gas occupations pay Indigenous employees about four times the average wage across all sectors. Indigenous women earned 3-4 times more in wages from occupations in oil and gas than from median wages across all industries. Oil and gas related occupations represent the top six highest paying occupations for Indigenous women in Canada, with pipeline transportation the highest.⁴¹⁸
330. While there has been some success with resource projects advancing in partnership with First Nations, the challenges faced in advancing them are often enormous. Take the case of the Trans Mountain Pipeline (TMX). There were several legal challenges to the pipeline, which appear to have now been foreclosed by the decision of the Supreme Court to deny the appeals of the Squamish Nation, Tsleil-Waututh Nation and Coldwater Indian Band but efforts to stop the project have not ended.
331. “We are extremely disappointed by today’s decision by the Supreme Court of Canada,” said Chief Leah George-Wilson. “This case is about more than a risky pipeline and tanker project; it is a major setback for reconciliation. It reduces consultation to a purely procedural requirement that will be a serious barrier to reconciliation.” In the Media Release, the three First Nations involved in the appeal process vowed to fight on.⁴¹⁹
332. At the same time, 80% of the First Nations in proximity to the Line’s right of way, support the project; 51 First Nations communities have signed comprehensive mutual benefit agreements worth more than \$400 million, including every First Nation with land where the pipeline crosses and 80% of those communities with land in proximity to the pipeline.⁴²⁰
333. Opposition to the TMX, notwithstanding the support for the project from First Nations communities, has nonetheless cited First Nations, with a broad brush, as standing against the development. A visit to the website www.stand.earth indicates:

⁴¹⁶ <https://indigenousworks.ca/sites/ahrc/files/Researching%20Indigenous%20Partnerships%20Assessment.pdf> At p xii.

⁴¹⁷ <https://www.pgic-iogc.gc.ca/eng/1579632009260/1579632089904>

⁴¹⁸ <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/dt-td/Rp-eng.cfm?TABID=2&LANG=E&A=R&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=01&GL=-1&GID=1325190&GK=1&GRP=1&O=D&PID=112128&PRID=10&PTYPE=109445&S=0&SHOWALL=0&SUB=0&Temporal=2017&THEME=124&VID=0&VNAMEE=&VNAMEF=&D1=1&D2=0&D3=0&D4=0&D5=0&D6=0>

⁴¹⁹ <https://twnsacredtrust.ca/media-release-and-legal-backgrounder-first-nations-extremely-disappointed-by-supreme-court-of-canadas-refusal-to-hear-tmx-appeal-but-vow-to-keep-fighting>

⁴²⁰ Manning Networking Conference 2019. March 22-24/Ottawa- speech by Stephen Buffalo
<https://www.cpac.ca/en/programs/public-record/episodes/65960618/>

“590,000 more barrels of tar sands each day. A 700% increase in oil tankers in the Salish Sea. A threat to endangered Orca whales. Locking Canada into a fossil fuel economy. A violation to the climate and to Indigenous Rights.

This is the new Trans Mountain Pipeline project. And it’s why it must not be built.

It’s opposed by millions of people, hundreds of First Nations, and dozens of municipalities, including the cities of Vancouver and Burnaby. Tens of thousands have demonstrated against the Trans Mountain pipeline with over 200 having been arrested.

Justin Trudeau may have bought the Trans Mountain pipeline from Kinder Morgan, but together, we’ll make sure this pipeline expansion will never be built.”⁴²¹

334. Stephen Buffalo commented on TMX shortly after the Federal Court had ordered further consultation with First Nations in 2018:

“The debate over the pipeline expansion has forced First Nations, Metis and Inuit people across Canada to think very hard about where oil and gas development and infrastructure projects fit into their economic and environmental futures. An enormous amount of attention has been paid to the First Nations on the British Columbia coast, who oppose the pipeline or, more accurately, the ocean shipping associated with getting those products to world markets. We recognize and honour their commitment and their world, even if we don’t share particular points of view.

We have heard, also, a great deal from environmentalists, many of whom proudly declare that they are working on behalf of First Nations. We do not need that. They do not speak for all of us. We share the environmentalists’ concerns about the future of our planet, but wonder why they are so determined to undercut the few opportunities we have to enjoy the kind of economic prosperity that non-Indigenous peoples take for granted in this country.”⁴²²

335. On a more recent occasion, speaking at a conference sponsored by the National Center For the American Indian Enterprises Development, Mr. Buffalo said, “I believe we can do both. We can find the balance between the environment and resource development – our Elders have told us this.”⁴²³

⁴²¹ <https://www.stand.earth/people-vs-big-oil/trans-mountain-pipeline>

⁴²² <https://financialpost.com/opinion/we-are-first-nations-that-support-pipelines-when-pipelines-support-first-nations>

⁴²³ The National Center for American Indian Enterprises Development, Reservation Economic Summit, March 1-5, 2020; speech by Stephen Buffalo <https://vod-progressive.akamaized.net/exp=1624669414~acl=%2Fvimeo-prod-skyfire-std-us%2F01%2F4852%2F15%2F399263696%2F1702620035.mp4~hmac=4ae93ac5d31b7c846e4b9d6287602c04df8a3a69801d2c0249a6e5fb06fcc7ff/vimeo-prod-skyfire-std-us/01/4852/15/399263696/1702620035.mp4?filename=Remarks+%7C+Stephen+Buffalo%2C+President+and+Chief+Executive+Officer%2C+Indian+Resource+Council+%28IRC%29.mp4>

336. He also repeated that environmentalists “do not speak for us. We speak for ourselves.”⁴²⁴ He added, “We do not need Hollywood celebrities like Leonardo DiCaprio, Jane Fonda, Neil Young and paid activists to fly in their private jets to remote parts of Canada in order to lecture us on environmental matters. We know what is best for our people, lands, water, animals and our future.”⁴²⁵
337. It seems that every major resource project faces significant challenges such that many don’t proceed, even with strong backing from Indigenous groups. Dale Swampy, President of the National Coalition of Chiefs previously worked for Aboriginal Equity Partners, a group of 31 First Nations and Metis communities which had invested in the Northern Gateway pipeline project.⁴²⁶ The project was estimated to produce \$2 billion in economic benefits including jobs, business opportunities and training but was killed by the federal government. Swampy states that when his group testified in Ottawa in opposition to Bill C-48, the tanker moratorium, Transport Minister Marc Garneau called them “private interests” who were not in the same category as First Nations that were supporting the Bill.⁴²⁷
338. Swampy states, “What I want for my children and grandchildren is what most people want: a good job, a comfortable place to live, and food in the fridge. Sadly, many people on reserve don’t have that. Ottawa never has, and never will be able to provide it. In any case, most Indigenous people don’t want to have to rely on the federal government for their daily needs. For most First Nations, the only solution to on-reserve poverty is participation in natural resource development. Do not deny us our opportunity for well-being and prosperity simply to serve your stereotypes of what Indigenous peoples should be for and against.”⁴²⁸
339. Fourteen First Nations and Metis communities signed participation agreements with Teck Frontier before it withdrew its application for the approval of the \$20.6 billion, 260,000 barrel-per-day

⁴²⁴ The National Center for American Indian Enterprises Development, Reservation Economic Summit, March 1-5, 2020; speech by Stephen Buffalo <https://vod-progressive.akamaized.net/exp=1624669414~acl=%2Fvimeo-prod-skyfire-std-us%2F01%2F4852%2F15%2F399263696%2F1702620035.mp4~hmac=4ae93ac5d31b7c846e4b9d6287602c04df8a3a69801d2c0249a6e5fb06fcc7ff/vimeo-prod-skyfire-std-us/01/4852/15/399263696/1702620035.mp4?filename=Remarks+%7C+Stephen+Buffalo%2C+President+and+Chief+Executive+Officer%2C+Indian+Resource+Council+%28IRC%29.mp4>

⁴²⁵ The National Center for American Indian Enterprises Development, Reservation Economic Summit, March 1-5, 2020; speech by Stephen Buffalo <https://vod-progressive.akamaized.net/exp=1624669414~acl=%2Fvimeo-prod-skyfire-std-us%2F01%2F4852%2F15%2F399263696%2F1702620035.mp4~hmac=4ae93ac5d31b7c846e4b9d6287602c04df8a3a69801d2c0249a6e5fb06fcc7ff/vimeo-prod-skyfire-std-us/01/4852/15/399263696/1702620035.mp4?filename=Remarks+%7C+Stephen+Buffalo%2C+President+and+Chief+Executive+Officer%2C+Indian+Resource+Council+%28IRC%29.mp4>

⁴²⁶ <https://financialpost.com/opinion/indigenous-canadians-want-natural-resources-development-why-arent-we-being-heard>

⁴²⁷ <https://financialpost.com/opinion/indigenous-canadians-want-natural-resources-development-why-arent-we-being-heard>

⁴²⁸ <https://financialpost.com/opinion/indigenous-canadians-want-natural-resources-development-why-arent-we-being-heard>

- project, days before the federal government was going to rule on it. In pulling their application, they cited the debate over climate policy in Canada.⁴²⁹
340. The project would have created 7000 construction jobs and 2500 operating jobs, from which Indigenous communities would have been significant beneficiaries.⁴³⁰
341. The Coastal Gas Link project has support from the elected band members of all twenty First Nations along the route. However, in early 2020, it became national news that a group of Wet'suwet'en hereditary chiefs were opposed to the project, although the elected Council members are in support (this underscores some of the governance challenges in the First Nations communities). In his recent book, *Gardeners vs Designers*, Brian Lee Crowley summarizes this quite well, "The result has been a national campaign – supported by non-Indigenous organizations, environmentalists, and non-Indigenous protesters, many of them not Canadian – complete with barricades, injunctions, conflict, and yet more media reports highlighting Indigenous "opposition" to natural resource development."⁴³¹
342. Despite the efforts of elected Chiefs and Councils to see the project proceed, there have been counter efforts to stop Coastal Gas Link project and other pipeline projects:
- A. Unist'ot'en camp, was established a few years ago, with an intention to block pipeline construction. In a video, the camp founder Freda Husen states, "We decided to start a camp right directly in the path of Enbridge and Pacific Trails pipelines route. We started by putting a log cabin right in the GPS route, and from there we decided we wanted to build a permanent camp. After we put the cabin here in the GPS route of Enbridge and Pacific Trails, they moved their route upstream about a kilometre, kilometre and a half. We were planning to build a pithouse anyways but we decided to put the pithouse in the GPS route of PTP, as well as the permaculture garden to block them."⁴³²
 - B. A website (www.unistoten.camp) presents the background, rationale and purpose of the camp in opposing pipeline developments.
 - C. There is a similar initiative to block the proposed route of the Trans Mountain Pipeline. Several small houses have been built on the proposed pipeline's path by the Tiny House Warriors of the Secwepemc First Nation. A website (www.secwepemculecw.org) explains the background, rationale and purpose of this initiative.
 - D. Naomi Klein, in moderating a panel discussion with Indigenous Land Protectors, explores the economic analysis and strategies behind the Unist'ot'en Camp of the Wet'suwet'en and the Tiny House initiative of the Secwepemc.⁴³³

⁴²⁹ <https://edmontonjournal.com/business/energy/teck-frontier-oilsands-mine-support-alberta><https://nationalpost.com/opinion/don-braid-first-nations-approval-means-nothing-for-frontier-mine-that-was-decade-in-the-making> National Post Feb 24, 2020

⁴³⁰ <https://nationalpost.com/news/federal-liberals-prepare-alberta-aid-package-in-case-teck-oilsands-mine-is-rejected>

⁴³¹ *Gardeners vs Designers*, Brian Lee Crowley p. 244

⁴³² <https://www.resourceworks.com/unistoten>

⁴³³ <https://www.youtube.com/watch?v=UoS1UbY0Mrw>

343. In a March 3, 2020 article in APTN News, Stephen Buffalo stated, “When you see 20 elected Chiefs give the authorization and they want to work, they want to provide that economic opportunity not only for their people and the future of their people, I think that needs to be warranted, you know. I think we have to investigate that thoroughly.”...”The hard part is who’s really pulling the string here?”⁴³⁴
344. Buffalo says he has heard of environmental groups coming on reserve and offering \$300 per person and “\$500 if they’re wearing feathers” to come out and participate in protests.⁴³⁵
345. “We have to make sure we have proper representation because when we do want to fight for our rights, our character is not jeopardized.” He says most of the communities are not trying to be “oil rich tycoons” they’re just trying to tackle issues of poverty, the opioid crisis, missing and murdered Indigenous women and girls.⁴³⁶
346. The National Coalition of Chiefs hosted a conference in November 2019 with 81 Indigenous leaders from across the country and hundreds of representatives of the natural resource sector. At the conference a new group called Indigenous Strong was unveiled, which is meant to mobilize the Indigenous workers in the oil and gas sector. Dale Swampy said support of the sector has always been there but emphasis on the duty to consult with Indigenous communities has changed the conversation.⁴³⁷
347. “We are getting louder now because we are getting tired of a small minority of activists and protesters speaking for all First Nations. Most Indigenous communities are engaged in resource development in one way or another. The energy industry is an important source of jobs and revenues for many First Nations,” said Swampy. He went on, “We want to change the conversation about natural resource development. For many of us, this is the best, even the only, pathway to meaningful economic development and defeating on reserve poverty.”⁴³⁸
348. The National Observer article also quotes Eriel Deranger, executive director of Indigenous Climate Action, and a member of Athabasca Chipewyan First Nation. She did not attend the summit and commented, “It’s disappointing that the Indigenous identity is being leveraged in a way to promote these things that are really counterintuitive to a lot of the positions that our community have taken for decades”. She believes “that support of the sector- especially in light of

⁴³⁴ <https://www.aptnnews.ca/facetoface/energy-sector-advocate-wonders-whos-pulling-the-strings-in-opposing-oil-and-gas-projects-in-canada/>

⁴³⁵ <https://www.aptnnews.ca/facetoface/energy-sector-advocate-wonders-whos-pulling-the-strings-in-opposing-oil-and-gas-projects-in-canada/>

⁴³⁶ <https://www.aptnnews.ca/facetoface/energy-sector-advocate-wonders-whos-pulling-the-strings-in-opposing-oil-and-gas-projects-in-canada/>

⁴³⁷ <https://www.nationalobserver.com/2019/11/06/features/when-it-comes-oil-and-gas-western-canada-it-divides-indigenous-communities-too>

⁴³⁸ <https://www.nationalobserver.com/2019/11/06/features/when-it-comes-oil-and-gas-western-canada-it-divides-indigenous-communities-too>

the effects of climate change is and will have on Indigenous people- “is a side effect of colonization and the ‘erasure of Indigenous values and knowledge system.’”⁴³⁹

349. “As we see the recognition of rights of Indigenous Peoples emerge, what should be happening is, I think, there should be reparations for the losses we’ve incurred – not us brokering deals for future royalties or incentives from the success of these projects. These so-called leaders and chiefs in our communities have got it backwards.”⁴⁴⁰
350. Brian Lee Crowley, who is also the Managing Director of the Macdonald Laurier Institute, expresses the view “The thing to remember, and the evidence bears this out, is that Indigenous communities (like virtually every other community in Canada) have their vocal minorities opposed to development. These expressions of their dissatisfaction are fodder for the media. But these vocal minorities are no more representative of Indigenous Canada than non-Indigenous protesters are of the country as a whole. When we treat aggressive and vocal minorities as though they are speaking for the mainstream of the Indigenous world, those of us who believe that jobs and wealth creation hold the key to the country’s advancement abandon our natural allies and help reinforce a narrative of conflict that is holding a major part of our economy to ransom.”⁴⁴¹
351. Crowley goes on to acknowledge the challenges of First Nations Governance to the effect that Indigenous peoples have suffered from “hundreds of years of marginalization, mistrust and paternalism”.⁴⁴² They are dealing with challenging social issues and trying to ensure they provide basic needs to their people.⁴⁴³ They are dealing with bureaucrats at every level of government with programs and policies that are challenging to navigate.⁴⁴⁴ At the same time, they are “typically intensely democratic with high levels of internal consultation and approval”.⁴⁴⁵ And they are dealing with very complex issues when they are considering investing in a resource project or advocating for one in which they are already involved.⁴⁴⁶
352. “Not surprisingly” says Crowley, “there are occasional disputes. Indigenous leaders often struggle to get consensus or even strong majority support from their membership on major decisions. On high profile issues like pipeline construction, external commentators (such as the environmental movement-----) often intervene in community affairs, adding to the complexity and intensity of the issues.”⁴⁴⁷
353. As already noted, it has been well established that First Nations have a unique legal status in Canada. They must be consulted to obtain Free, Prior and Informed Consent on significant

⁴³⁹ <https://www.nationalobserver.com/2019/11/06/features/when-it-comes-oil-and-gas-western-canada-it-divides-indigenous-communities-too>

⁴⁴⁰ <https://www.nationalobserver.com/2019/11/06/features/when-it-comes-oil-and-gas-western-canada-it-divides-indigenous-communities-too>

⁴⁴¹ Gardeners vs Designers, Brian Lee Crowley p. 244

⁴⁴² Gardeners vs Designers, Brian Lee Crowley p. 244

⁴⁴³ Gardeners vs Designers, Brian Lee Crowley p. 244

⁴⁴⁴ Gardeners vs Designers, Brian Lee Crowley p. 244

⁴⁴⁵ Gardeners vs Designers, Brian Lee Crowley p. 244

⁴⁴⁶ Gardeners vs Designers, Brian Lee Crowley p. 244

⁴⁴⁷ Gardeners vs Designers, Brian Lee Crowley p. 244

- resource projects. This special legal status causes “many different groups to use First Nations interests as vehicles for their own agendas.”⁴⁴⁸ In fact, this was clear from the beginning of the Tar Sands Campaign, as it set out in the Background Documents as one of its tactics, to use First Nations in helping to advance the objectives of the Campaign.
354. Crowley goes on, “To a substantial degree, non-Indigenous Canadians insist on portraying Indigenous aspirations, values and goals in ways that support their own perspectives rather than understanding Indigenous points of view and this is nowhere truer than in environmental matters. On many fronts, the country’s activists continue to “use” Indigenous people to achieve their own ends rather than respecting the right of Indigenous people and their governments to control their own destinies.”⁴⁴⁹
355. The Deloitte report indicates that some \$102 million was paid to First Nations initiatives, organizations, communities or programs from US Foundations for the period 2004-2019. I have reviewed the Deloitte analysis and find the total funding to be accurate. While Deloitte broke their analysis down by major programs and initiatives, I have chosen not to present that information. I am unable to determine at a granular level, exactly who received these funds and the purposes to which they were applied and I do not make any finding in that regard.
356. It may well be that the funds were for projects that were intended to, and in many cases undoubtedly succeeded in helping to advance First Nations on several fronts. However, many indigenous leaders have a different perception of at least some of the funding, and allege that many of the efforts of the ENGOs and their representatives have undermined the opportunities being sought by many First Nations communities.
357. Claudia Cattaneo, a Postmedia journalist who followed energy projects and their challenges for many years, described a campaign involving Martin Louie, hereditary chief of the Nadleh Whut’ en in northcentral British Columbia. He was locked in a battle with Enbridge on Northern Gateway where his objective was to negotiate a better deal for his people. However, according to the Financial Post article, Stand.Earth described Louie as the “poster boy” for Indigenous opposition to the pipeline.⁴⁵⁰
358. Cattaneo described Louie’s experience as indicative of a widening rift between activists and Indigenous communities over natural resources. She describes campaigns that “consistently portray a united Indigenous anti-development front and allies of the green movement, but some Indigenous leaders are becoming alarmed that they could be permanently frozen out of the mainstream economy if resource projects don’t go ahead.”⁴⁵¹

⁴⁴⁸ Gardeners vs Designers, Brian Lee Crowley p. 250

⁴⁴⁹ Gardeners vs Designers, Brian Lee Crowley p. 250

⁴⁵⁰ Claudia Cattaneo, 2018 “Eco-Colonialism: Rift Grows Between Indigenous Leaders and Green Activists”, Financial Post, January 4th <https://financialpost.com/feature/eco-colonialism-rift-grows-between-indigenous-leaders-and-green-activists>

⁴⁵¹ Claudia Cattaneo, 2018 “Eco-Colonialism: Rift Grows Between Indigenous Leaders and Green Activists”, Financial Post, January 4th <https://financialpost.com/feature/eco-colonialism-rift-grows-between-indigenous-leaders-and-green-activists>

359. “They said in interviews they’ve had enough of activists invading their lands, misleading them about their agendas, recruiting token members to front their causes, sowing mistrust and conflict, and using hard-line tactics against those who don’t agree.”⁴⁵²
360. “The best way to describe it is eco-colonialism,” said Ken Brown, a former chief of Klahoose First Nation in southwestern BC.⁴⁵³
361. Blaine Favel, an Indigenous business leader and former Grand Chief of the Saskatchewan Federation of Indigenous Nations also described the intervention of non-Indigenous environmentalists on major resource projects as eco-colonialism.
362. “To Favel, the environmentalists do not support Indigenous people; they only capitalize on those Indigenous people who share their agenda- which is mostly opposition to pipelines and energy development – and ignore, criticize and even, regrettably, intimidate those who adopt a different perspective.”⁴⁵⁴
363. Another Indigenous business leader, Calvin Helin wants to bring jobs to his Lax Kw’alaams First Nation on the Northern B.C. coast but he also describes eco-colonialists blocking his path:

wealthy, big city environmentalists and their allies in the Trudeau government - thwarting the desire for work and for dignity for his old community.⁴⁵⁵

...

These activists are more concerned with land-locking Alberta oil and keeping the donations flowing than they are with supporting environmentally sound projects that will create jobs, he said. “It’s clear to everybody that what this (Trudeau) government is doing is pandering to elitist environmental groups who want to make a park in our backyard. They don’t give a damn about the human cost, the lack of opportunity up there.”⁴⁵⁶

...

⁴⁵² Claudia Catteneo, 2018 “Eco-Colonialism: Rift Grows Between Indigenous Leaders and Green Activists”, Financial Post, January 4th <https://financialpost.com/feature/eco-colonialism-rift-grows-between-indigenous-leaders-and-green-activists>

⁴⁵³ Claudia Catteneo, 2018 “Eco-Colonialism: Rift Grows Between Indigenous Leaders and Green Activists”, Financial Post, January 4th <https://financialpost.com/feature/eco-colonialism-rift-grows-between-indigenous-leaders-and-green-activists>

⁴⁵⁴ Gardeners vs Designers, Brian Lee Crowley p. 252, 2019, Commentary: Charting a Path to Economic Reconciliation with Indigenous Peoples, Macdonald-Laurier Institute (April) <https://www.macdonaldlaurier.ca/charting-path-economic-reconciliation-indigenous-peoples-new-mli-commentary/>

⁴⁵⁵ <https://edmontonjournal.com/business/local-business/david-staples-eco-colonialists-blocking-jobs-and-prosperity-on-first-nations-businessman-says/>

⁴⁵⁶ <https://edmontonjournal.com/business/local-business/david-staples-eco-colonialists-blocking-jobs-and-prosperity-on-first-nations-businessman-says/>

“This whole notion we were this noble Indian looking at the environment, it’s a manufactured idea of Western imperialism. By trying to impose all this crap on our people, this is just a form of colonialism, which I call eco-colonialism.”⁴⁵⁷

364. Earlier in 2020, a United Nations Committee on the Elimination of Racial Discrimination called on Canada to stop construction of the Trans Mountain Pipeline, the Site C dam and the Coastal GasLink pipeline- about \$25 billion in projects.⁴⁵⁸ Chris Sankey, a former councillor with Lax Kw’alaams First Nation was quoted as saying, “They’re trying to dictate to the government how best to treat us, and that’s not right... We need jobs ... we need to build homes, roads, and schools for our kids and care centres for our elders. These projects will help us do that ... Some people want to put us all under one umbrella ... I grew up in poverty and I’m sick of it. That doesn’t mean you let these corporations do whatever they want. You negotiate with them in your own best interests.”⁴⁵⁹
365. Former Chief Ernie Creay, of Cheam First Nation reflects the views of several First Nations Chiefs, when he stated, the “Cancellation of the Trans Mountain pipeline would cost B.C. First Nations hundreds of millions of dollars in benefits, job training, and employment and business opportunities.”⁴⁶⁰
366. “The outcome that we reached in the Mutual Benefit Agreement involved a collaborative process....resulting in training, employment, and contract opportunities for Tk’emlúps te Secwépemc members and compensation for the inequities dating back to 1953,”said former Chief Fred Seymour, Tk’emlúps te Secwépemc First Nation.⁴⁶¹
367. As Trans Mountain continues to proceed, several First Nations Groups are expressing interest in buying a stake in it. The pipeline will pass under the Whispering Pines/Clinton Indian Band near Kamloops BC. Mike LeBourdais, Chief of the Nation, says, “I wanna own this thing.” He believes an ownership interest in the pipeline is a once in a lifetime opportunity. He represents the Western Indigenous Pipeline Group, a coalition of First Nations along the line that would like to purchase a 51% interest. He thinks owning the pipeline would force a fundamental change in relations between First Nations and Ottawa and they would be treated more like equals and part of the Canadian fabric.⁴⁶²
368. “I wouldn’t be talking about how my band needs drinking water. We have bottled water here, we have to pay for bottled water [because] the groundwater isn’t safe to drink – it’s not safe to shower in. So had we the resources, we’d be able to complete our water system.”⁴⁶³

⁴⁵⁷ <https://edmontonjournal.com/business/local-business/david-staples-eco-colonialists-blocking-jobs-and-prosperity-on-first-nations-businessman-says/>

⁴⁵⁸ <https://theprovince.com/news/bc-politics/mike-smyth-not-all-indigenous-leaders-back-un-call-to-stop-b-c-projects>

⁴⁵⁹ <https://theprovince.com/news/bc-politics/mike-smyth-not-all-indigenous-leaders-back-un-call-to-stop-b-c-projects>

⁴⁶⁰ Canada Action, November 25, 2020; 15+ Quotes: Indigenous Support for Trans Mountain Pipeline is Strong! https://www.canadaaction.ca/quotes_first_nation_chiefs_support_transmountain_pipeline

⁴⁶¹ Canada Action, November 25, 2020; 15+ Quotes: Indigenous Support for Trans Mountain Pipeline is Strong! https://www.canadaaction.ca/quotes_first_nation_chiefs_support_transmountain_pipeline

⁴⁶² <https://www.cbc.ca/news/canada/trans-mountain-pipeline-first-nations-purchase-1.5279387>

⁴⁶³ <https://www.cbc.ca/news/canada/trans-mountain-pipeline-first-nations-purchase-1.5279387>

369. A second potential investing coalition is the Iron Coalition which represents some Alberta-based First Nation and Metis communities. The third is Project Reconciliation.⁴⁶⁴
370. Project Reconciliation is making their pitch to as many as 300 First Nations from Saskatchewan, Alberta and B.C. Shane Gottfriedson, former chief of Tk'emlups te Secwepemc First Nations and the B.C. Director of Project Reconciliation says, "We have always been on the short end of the stick... A lot of the resources that leave our territory – we never benefited from those resources. From a business point of view it makes sense to look at economic reconciliation." To him this means focussing on economic sustainability and First Nations creating their own wealth.⁴⁶⁵
371. Chief Lee Spahan of the Coldwater First Nation indicated he did not agree that the project will advance reconciliation. In fact his Nation has sued the government over the pipeline as they believe it puts his community's potable water supply at risk due to the potential of a spill.⁴⁶⁶ Recently, Coldwater reached agreement with Trans Mountain, such that TMX has filed for a route variance around the Coldwater Reserve.⁴⁶⁷
372. On the other hand, LeBourdais, says the best way to make sure it's operated safely, is to own it.⁴⁶⁸
373. Bill Gallagher, the Ontario lawyer who is an expert on the legal power of Indigenous peoples, emphasizes the importance of Indigenous ownership in Trans Mountain to the success of the project.⁴⁶⁹ He observes that "eco-activists" have recognized they have limited pull in stopping pipelines, but First Nations have had great success, so the activists have aligned themselves with Indigenous groups.⁴⁷⁰ This alliance has stopped numerous projects but he observes that it is now harming Indigenous groups.⁴⁷¹
374. He says of Trans Mountain, "This is the project that has to work. If a federally owned pipeline can't accommodate an equity interest with all the First Nations along the right of way, then there's no reason to believe we'll ever get this country up and running."⁴⁷²

⁴⁶⁴ <https://www.cbc.ca/news/canada/trans-mountain-pipeline-first-nations-purchase-1.5279387>

⁴⁶⁵ <https://www.cbc.ca/news/canada/trans-mountain-pipeline-first-nations-purchase-1.5279387>

⁴⁶⁶ <https://www.cbc.ca/news/canada/trans-mountain-pipeline-first-nations-purchase-1.5279387>

⁴⁶⁷ Daily Oil Bulletin. December 21, 2020, Indigenous Opportunities A Legacy of Trans Mountain Expansion <https://www.dailyoilbulletin.com/article/2020/12/21/indigenous-opportunities-a-legacy-of-trans-mountain/?ntoken=OxViY5AmsKDKmBxzmVbQj9vmGXonAjvQV%2BRWwW0nso0gl%2BzYQ8qTqMyIY7beZQimfffmKhYCqJnpEv2EZzcl2wQWFUizO0aTJ1TnzBTO677Tt80lyEli%2FrJrRZerBJHWaU8X6aDBLvlUcN4Z5noicjK8YXP aC2KYdi07RZvEU%3D>

⁴⁶⁸ <https://www.cbc.ca/news/canada/trans-mountain-pipeline-first-nations-purchase-1.5279387>

⁴⁶⁹ <https://edmontonjournal.com/news/politics/david-staples-can-kenney-orchestrate-the-one-and-only-huge-move-to-get-oilsands-pipelines-built>

⁴⁷⁰ <https://edmontonjournal.com/news/politics/david-staples-can-kenney-orchestrate-the-one-and-only-huge-move-to-get-oilsands-pipelines-built>

⁴⁷¹ <https://edmontonjournal.com/news/politics/david-staples-can-kenney-orchestrate-the-one-and-only-huge-move-to-get-oilsands-pipelines-built>

⁴⁷² <https://edmontonjournal.com/news/politics/david-staples-can-kenney-orchestrate-the-one-and-only-huge-move-to-get-oilsands-pipelines-built>

375. Kaella-Marie Earle is a former anti-pipeline activist who is now an advocate for employment, procurement, and mutually beneficial partnerships between the energy industry and Indigenous communities.⁴⁷³ She is Anishinaabe from Wiikwemkoong First Nation and Aroland First Nation and works as an EIT and Construction Project Manager at Enbridge Gas.⁴⁷⁴ Earle also advocates for the recognition of Indigenous law (including comprehensive recognition of human rights of Indigenous communities through UNDRIP) in Canada, specifically in energy.⁴⁷⁵
376. Earle graduated with a chemical engineering degree in the spring of 2020.⁴⁷⁶ She experienced a turning point when she got a co-op education placement from Laurentian University with Enbridge Gas in 2018, where she realized how important the energy transition was to her.⁴⁷⁷ When she was asked during her interview with Enbridge where she saw herself in five years time, she surprised herself by saying she wanted to be an active part of helping define and build a transition to a low carbon economy in the energy industry.⁴⁷⁸ She felt she accomplished more at Enbridge in her sixteen months internship, than she did in her entire history as an anti-pipeline activist.⁴⁷⁹
377. “I found myself in an industry that truly cares about listening to Indigenous people, truly cares about changing to address climate change, and is ready to hear from different people on how to do it, so everyone benefits.” She believes the energy industry and Indigenous people must build partnerships with one another as both groups “need vital things that either party can provide to one another.”⁴⁸⁰

⁴⁷³ EnergyNow Media, August 29, 2020. From pipeline protester to Indigenous energy advisor: the fresh and innovative perspective of Kaella-Marie Earle. (as updated by Ms. Earle 12/20). <https://www.canadianenergycentre.ca/from-pipeline-protester-to-indigenous-energy-advisor-the-fresh-and-innovative-perspective-of-kaella-marie-earle/>

⁴⁷⁴ EnergyNow Media, August 29, 2020. From pipeline protester to Indigenous energy advisor: the fresh and innovative perspective of Kaella-Marie Earle. (as updated by Ms. Earle 12/20). <https://www.canadianenergycentre.ca/from-pipeline-protester-to-indigenous-energy-advisor-the-fresh-and-innovative-perspective-of-kaella-marie-earle/>

⁴⁷⁵ EnergyNow Media, August 29, 2020. From pipeline protester to Indigenous energy advisor: the fresh and innovative perspective of Kaella-Marie Earle. (as updated by Ms. Earle 12/20). <https://www.canadianenergycentre.ca/from-pipeline-protester-to-indigenous-energy-advisor-the-fresh-and-innovative-perspective-of-kaella-marie-earle/>

⁴⁷⁶ EnergyNow Media, August 29, 2020. From pipeline protester to Indigenous energy advisor: the fresh and innovative perspective of Kaella-Marie Earle. (as updated by Ms. Earle 12/20). <https://www.canadianenergycentre.ca/from-pipeline-protester-to-indigenous-energy-advisor-the-fresh-and-innovative-perspective-of-kaella-marie-earle/>

⁴⁷⁷ EnergyNow Media, August 29, 2020. From pipeline protester to Indigenous energy advisor: the fresh and innovative perspective of Kaella-Marie Earle. (as updated by Ms. Earle 12/20). <https://www.canadianenergycentre.ca/from-pipeline-protester-to-indigenous-energy-advisor-the-fresh-and-innovative-perspective-of-kaella-marie-earle/>

⁴⁷⁸ EnergyNow Media, August 29, 2020. From pipeline protester to Indigenous energy advisor: the fresh and innovative perspective of Kaella-Marie Earle. (as updated by Ms. Earle 12/20). <https://www.canadianenergycentre.ca/from-pipeline-protester-to-indigenous-energy-advisor-the-fresh-and-innovative-perspective-of-kaella-marie-earle/>

⁴⁷⁹ EnergyNow Media, August 29, 2020. From pipeline protester to Indigenous energy advisor: the fresh and innovative perspective of Kaella-Marie Earle. (as updated by Ms. Earle 12/20). <https://www.canadianenergycentre.ca/from-pipeline-protester-to-indigenous-energy-advisor-the-fresh-and-innovative-perspective-of-kaella-marie-earle/>

⁴⁸⁰ EnergyNow Media, August 29, 2020. From pipeline protester to Indigenous energy advisor: the fresh and innovative perspective of Kaella-Marie Earle. (as updated by Ms. Earle 12/20).

378. Brian Lee Crowley expresses the view, with which I concur, “....if we truly respect the right and ability of Indigenous peoples to make their own decisions to protect their lands and cultures as they choose to, and if we listen with openness and compassion to Indigenous perspectives, we will quickly conclude that the eco-colonialism of the present-day environmental movement has to be called out for the paternalistic manipulation that it is. Imposing others’ values on Indigenous peoples did not work in the past; it will not be any less destructive today because it is hip and enlightened.....values that are the justification for “fixing” things. Indigenous people don’t need to be “fixed”. They need to have the same resources and the same room to make their own decisions, including their own mistakes and their own successes. Nobody knows who Indigenous people are, what they are, and what they want better than Indigenous people themselves.”⁴⁸¹

(i) ***Political Activism***

379. I found evidence of political activism directed to decision makers in both the U.S. and in Canada.

380. In respect of activism directed at decision makers in the U.S., I have reviewed a letter dated January 13, 2009 written by “several leading environmental non-profits working in Canada and the United States” to President-Elect Barack Obama which provided, in part:

...

While we believe a continental system may have benefits given the integration of the U.S. and Canadian economies, the integrity of such a system would be entirely compromised should it somehow give a “pass” to the production of high carbon oil from the tar sands, which many suspect is the intent of the overture.

Emissions cuts in any credible North American system will need to be deep for all sectors. Placing an extra burden on some sectors in order to allow emissions from the tar sands to grow, or even to stay constant, would not be acceptable on environmental or equity grounds.

While Canada must be advised to get serious about mitigating the worst impacts of the tar sands in the short term, the more exciting conversation lies in how energy trade between the U.S. and Canada can shift to renewable energy and technologies for energy efficiency.

...

We are aware that your transition team is hearing from those who promote tar sands oil (also referred to as “oil sands”) and who attempt to downplay the industry’s impacts or make claims about cleaning it up in the near future. In defining the direction of U.S. energy policy in the coming months, we hope you will bear in mind the following facts:

<https://www.canadianenergycentre.ca/from-pipeline-protester-to-indigenous-energy-advisor-the-fresh-and-innovative-perspective-of-kaella-marie-earle/>

⁴⁸¹ Gardeners vs Designers, Brian Lee Crowley p. 253.

- Producing a barrel of tar sands oil leads to at least three times the emissions as producing a barrel of conventional oil. The tar sands are also the fastest growing source of greenhouse gas pollution in Canada.
- Because only one-fifth of the tar sands deposit is shallow enough to strip mine, emissions per barrel will naturally increase over time as production shifts to deeper deposits and non-mining methods that require more energy in the extraction process.
- In addition to climate change impacts, tar sands production causes widespread landscape destruction and disturbance, the creation of massive toxic tailings lakes that leak into the groundwater, and increasing acid rain. Producing each barrel of tar sands oil by strip mining requires two to four and a half barrels of water, which is placing unprecedented stress on the aquatic systems and water resources in the province of Alberta and other provinces.
- Aboriginal communities in the tar sands region have borne the brunt of local impacts, including the destruction of traditional hunting and fishing areas. They are also deeply concerned about toxic contamination of fish and game, air and water, and possible impacts on their health. Three lawsuits have been filed by Aboriginal communities in tar sands areas to date, with more lawsuits emerging.

Due to such impacts, oil from the tar sands has rightly been labeled “dirty.”

...

The intersection of the economic and environmental crises requires fresh new thinking. Now is the time to green the trade between the world’s largest trading partners, and not to backslide into a relationship based on dirty oil.

381. I will refer to this letter as the “**Obama Letter**” for the balance of this Report when I review it in the context of the particular participants discussed in more detail below.⁴⁸²
382. I also became aware of a second document – entitled “*Declaration of U.S. and Canadian Environmental and Conservation Leaders on U.S.-Canada Cooperation on Climate, Energy, and Natural Areas Conservation*” and dated June 2, 2009 – that called on “the United States and Canada” to, among other things:⁴⁸³

⁴⁸² <https://www.pembina.org/reports/engo-obama-tarsands.pdf>

⁴⁸³ <https://www.pembina.org/reports/us-can-ceo-declaration.pdf>

- **Declare a moratorium on expansion of tar sands development and halt further approval of infrastructure that would lock us into using dirty liquid fuels from sources such as tar sands, oil shale and liquid coal.** Tar sands oil production is the fastest growing source of greenhouse gas pollution in Canada and is having a devastating impact on Boreal ecosystems, migratory birds, and air and water quality. Pollution from production of fuels from tar sands, oil shale and liquid coal undermines gains made through fuel efficiency and other mechanisms meant to reduce greenhouse gas emissions.

and:

- **Protect the North American Boreal Forest as one of the world's last large intact wilderness forests and as a critical global carbon reservoir in its peatlands and forests.**

383. I will refer to this letter as the “**ENGO Declaration**” for the balance of this Report when I review it in the context of the particular participants discussed in more detail below.

384. Focus on decision makers in both the U.S. and Canada was also present on the Corporate Ethics website in 2016, when it commented:⁴⁸⁴

- A. This strategy is successful to this day. All the proposed pipelines in Canada have effectively been blocked, as have those proposed in the U.S. The Keystone XL Campaign became the most well-known of all the pipeline campaigns achieving a remarkable victory when President Obama not only rejected it, but also publicly stated that “some oil has to stay in the ground if we are to avoid the dangers of climate change.”

...

The Tar Sands Campaign ... also played a role in helping to unseat the Conservative Party in Alberta and nationally.

385. Political activism was employed as part of the grassroots campaign tactics discussed in more detail above – particularly in the context of “oppositional framing/defining heroes and villains” where a review of the “Tar Sands Campaign” commented:⁴⁸⁵

- A. In Canada: For the duration of the Conservative Party reign, Stephen Harper and his government were ready villains that, through their consistently polarizing legislation, gave multi-issue progressive campaigners such as Leadnow their driving force. For the Tar Sands Campaign, it was Harper’s too-close connection to Big Oil that supporters unrelentingly highlighted.

386. I find that political activism campaigns provides a means which could be used to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportations of those resources to commercial

⁴⁸⁴ <https://web.archive.org/web/20160524083428/https://corpethics.org/the-tar-sands-campaign>

⁴⁸⁵ “Network Change: How progressive campaigns are won in the 21st Century”, J. Mogus & T. Liacas, A NetChange Consulting Report, 2016. See also <http://netchange.co/networked-change> (formerly at <https://sustainabilitynetwork.ca/wp-content/uploads/2016/10/NetChange-NetworkedChange-2016-1.pdf>.) Page 26.

markets. I will review political activism campaigns in more detail below in respect of individual organizations that may have been involved in such initiatives.

**Part III – Participation in Anti-
Alberta Energy Campaigns**

PART III
PARTICIPATION IN ANTI-ALBERTA ENERGY CAMPAIGNS

A. BACKGROUND AND INTRODUCTION

387. The Terms of Reference provide that I “shall inquire into the role of foreign funding, if any, in anti-Alberta energy campaigns.” As such, I view the first step in my mandate as inquiring into anti-Alberta energy campaigns.
388. The Terms of Reference define an anti-Alberta energy campaign as “attempts to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and the transportation of those resources to commercial markets, by any means, which may include, by the dissemination of misleading or false information”.
389. In the Ruling on Interpretation, I found that an anti-Alberta energy campaign referred to efforts to frustrate the development of Alberta’s oil and gas resources in a broad and general sense, and that such frustration may be the stated objective of a party, or may manifest itself through repeated opposition to attempts to develop Alberta’s oil and gas resources or opposition to a particular project in furtherance of an intention of opposing development of Alberta’s oil and gas resources in a broad and general sense.
390. Accordingly, in determining whether any organization has participated in an anti-Alberta energy campaign, I have found it necessary to consider evidence regarding the campaigns of the organization and evidence that provides some insight and context into what the organization is attempting to accomplish by their actions. In this respect, I have considered on an individual basis the organization’s advocacy, campaigns (which may include participation in the campaigns outlined in Part II), public statements, grants received, and other evidence in respect of the organizations.
391. Where, in weighing the totality of evidence in respect of an organization, I find that on the balance of probabilities the organization has engaged in efforts to frustrate the development of Alberta’s oil and gas resources in a broad and general sense, I will make a finding that the organization has participated in an anti-Alberta energy campaign.
392. In this Report, I refer to entities who I find have participated in an anti-Alberta energy campaign as “**Participants**”.
393. I again clarify that I do not find that participation in any anti-Alberta energy campaign constitutes misconduct on the part of any party that should be viewed as impugnable in any way.
394. I wish to reiterate that, as set out in the Ruling on Interpretation, I find that the term “anti-Alberta” uses Alberta as a geographic modifier, and clarifies that the Inquiry’s mandate pertains to oil and gas resources located in Alberta and clarifies that the Inquiry’s mandate pertains to oil and gas resources located in Alberta, mindful that a party’s opposition might be targeted at Alberta’s oil and gas resources specifically, or concern a broader collection of oil and gas resources, of which Alberta’s particular resources are a subset. I do not interpret the term “anti-Alberta” as indicating that the Inquiry is to inquire in to whether opposition to oil and gas development in Alberta is “against Alberta” or its interests in some sense. As I interpret the Terms of Reference, the

Inquiry's mandate is not to determine whether support or opposition to oil and gas development in Alberta is pro- or anti-"Albertan"; rather, it involves an examination of issues affecting development of oil and gas resources located in Alberta. As such, a finding that an organization is a Participant should not be understood as a finding that such organization is "against Alberta" or its interests in any way.

395. Further, as referenced in the Ruling on Interpretation, I have not made any finding as to whether an organization has disseminated false or misleading information. Such a finding is not required by the Terms of Reference, and for the reasons set out in the Ruling on Interpretation, is not a matter I have inquired into. As such, my review of evidence in respect of an organization and any conclusions I draw in respect of an organization do not make any finding or suggestion that any information disseminated by any organization is false or misleading.
396. In certain instances, I have considered the campaigns of entities that I have found are affiliated or associated on an aggregated or collective basis. I have done so for the purposes of this Report only, and this should not be construed as a finding that any particular activity discussed was undertaken by one entity or the other for purposes beyond this Report, including any consideration of whether an entity is in compliance with requirements in respect of such entity by virtue of its status as a charity or otherwise.
397. The Terms of Reference also require that I inquire into whether such entities have received government funding and have charitable status in Canada. In respect of government funding, there was insufficient information available to me to determine whether any portion of these amounts were employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, no inference should be drawn that all or any portion of government funding received by an entity has been employed in an anti-Alberta energy campaign.
398. I view the second step in my mandate as inquiring into the role of foreign funding, if any, in anti-Alberta energy campaigns.
399. Having made findings that certain organizations are Participants in anti-Alberta energy campaigns, I have considered whether any foreign funding is provided to such organizations. In the course of this consideration, I identified a number of entities that have provided funding, which I refer to as "**Funders**" in this Report. I also consider funding more generally in Part IV of this Report.
400. In respect of the Funders, I have considered both funding they provided to Participants and additionally whether the Funders provided funding for a purpose that I find is intended to support efforts to frustrate the development of Alberta's oil and gas resources in a broad and general sense, whether made to a Participant or not.
401. I am also required to inquire into whether any foreign organization that has evinced an intent harmful or injurious to the Alberta oil and gas industry has provided financial assistance to a Canadian organization, which may include any Canadian organization that has disseminated misleading or false information about the Alberta oil and gas industry. As set out in the Ruling on Interpretation, I consider a foreign organization that has "evinced an intent harmful or injurious" to Alberta's oil and gas industry to be a foreign organization that has evinced, either through

statements or actions, a broad and general opposition to the continued operation or expansion of either all or a part of Alberta's oil and gas industry, whether in regards to exploration, development, extraction, storage, transportation, processing, upgrading or refining. I wish to clarify that a finding that a foreign entity evinces an intention harmful or injurious to the Alberta oil and gas industry does not impugn such intention as improper.

402. In considering this, and the Terms of Reference as a whole, I have determined that the Terms of Reference refers to inquiring into the intent of foreign entities that have provided funding to Canadian organizations that have participated in anti-Alberta energy campaigns. As such, in order to place reasonable and workable limits on the scope of the inquiry on this point, I have focussed on whether Funders that I have found provided funding to Participants have evinced an intent harmful or injurious to Alberta's oil and gas industry.
403. I again clarify that I do not find that providing funding in respect to an anti-Alberta energy campaign or for a purpose that is intended to support efforts to frustrate the development of Alberta's oil and gas resources in a broad and general sense constitutes misconduct on the part of any party that should be viewed as impugnable in any way.

B. PARTICIPANTS

404. In determining whether any organization is a Participant, I set out below my consideration of the evidence upon which I find on a balance of probabilities that I am satisfied such entity participated in an anti-Alberta energy campaign. I have not included any entities in this Report for which the evidence before me does not establish participation in an anti-Alberta energy campaign.
405. I will generally provide some context regarding the organization, including its charitable status, if any, before looking into the particular campaigns undertaken by the organization, statements made by the organization, grants received by the organization, and government funding received by the organization, if any.
406. I will conclude my analysis by considering whether, based on the totality of the evidence reviewed, I am satisfied the organization has participated in an anti-Alberta energy campaign.
407. In respect of certain of the evidence I will refer to in my analysis:
- A. I have at times relied on archives of internet sites in this section. These archives were made by the Internet Archive and are hosted on its site, the Wayback Machine. The Internet Archive is an American non-profit organization and member of the American Library Association working to build a digital library of internet sites, claiming to host over 475 billion web pages and vast amounts of other information. I consider the Internet Archive and the content accessible through its Wayback Machine to be a reliable resource. Absent good reason demonstrating a particular archived page is not reliable, I find that the archived web pages hosted on the Wayback Machine reflect the web pages as they existed at the specified time and are a sound basis upon which I may make findings based on the content on those web pages.
- B. I have at times referred to statements made by an individual associated with an organization. Where a statement is made by a person on behalf of an organization, I will

consider the nature of the statement and the position of the person in order to determine whether that statement can be imputed to the entity.

- C. I have at times referred to reports authored or co-authored by an organization and have provided comments regarding their content and my assessment of the same. I have provided such comments and assessment for the purposes of understanding the viewpoint expressed in the report, and have not considered the veracity of the content of the report. I have not considered nor make any finding that the content of any report I discuss is false or misleading.
- D. I have at times relied on information obtained from Foundation Directory Online (“**FDO**”) and charitydata.ca. FDO is a website published by Candid, which is a charitable organization monitoring site based in the United States. Charitydata.ca is a website developed and maintained by Blumberg Segal and The Wire (Blumbergs). The Charitydata website developed by Blumberg Segal and The Wire (“**Charitydata**”) maintains Canada’s largest charity information portal with up to 17 years of information on every Canadian registered charity. All of the information on Charitydata is obtained from annual T3010 Registered Charity information Returns (“**T3010**”) filed with the Canada Revenue Agency (“**CRA**”) and is provided “as is”, subject to Charitydata’s limitations and caveats, which are described in detail in Appendix “B.2” to the Deloitte Report (referenced below). Absent good reason demonstrating information taken from FDO or Blumbergs is not reliable, I find that the information is accurate and reliable and are a sound basis upon which I may make findings based on the information.
- E. I have at times relied on information contained in disclosures filed by entities with the Canadian and American governments under applicable law, which include statements on the intended purpose of financial contributions such as grants to charitable organizations. Except where satisfied by the submissions of an organization as to the unreliability of any specific disclosure, or where there is otherwise evidence of unreliability, I find that these disclosures are reliable evidence upon which I may draw conclusions.
- F. Certain amounts referenced below were converted from US dollars to Canadian dollars using the average annual exchange rates published by the Bank of Canada.⁴⁸⁶
408. I initially discuss five entities that are headquartered in the U.S. In some cases I have identified specific grants they received to fund their campaigns but overall I find that their physical location, their mind and management, their operations and their general funding support the fact that these entities were involved in anti-Alberta energy campaigns.

C. U.S. PARTICIPANTS

(a) ***Corporate Ethics International (“CorpEthics”)***

⁴⁸⁶ See attached chart.

409. Corporate Ethics International, now named CorpEthics, is a 501(c)(3) corporation headquartered in San Francisco and founded by Michael Marx, Ph. D., in 2003.⁴⁸⁷ As of 2018, the fair market value of its assets was \$15,198 (USD).⁴⁸⁸
410. CorpEthics describes itself as “experts in the successful creation and implementation of environmental and corporate campaigns. We design, coordinate, and manage the funding process, as well as consult on how campaigns are conducted.”⁴⁸⁹
411. CorpEthics occupies a prominent role in both Background Documents – it contributes a segment to the RBF Document entitled “The Tar Sands Campaign: Strategy and Structure” and is the author of the Corporate Ethics Document – all of which is consistent with what appears on the July 2010 version of CorpEthics’ website.⁴⁹⁰

⁴⁸⁷ <https://corpethics.org/about/>.

⁴⁸⁸ Corporate Ethics International 2018 Form 990EZ IRS Tax Return – line 25

⁴⁸⁹ <https://corpethics.org/corporate-campaign-experts/>.

⁴⁹⁰ <https://web.archive.org/web/20100714063349/http://www.corpethics.org/section.php?id=365>

The screenshot shows the Corporate Ethics International website. The top navigation bar includes links for Business Ethics Network, Strategic Corporate Initiative, Big Box Campaign, Climate Collaboration, and Tar Sands Campaign. The main content area features a large image of a protest sign that reads "TAR SANDS CLIMATE CRIME". Below this, the "Tar Sands Campaign" section is highlighted. The sidebar on the left contains the organization's mission statement and contact information. The main text describes the campaign's goals and lists recent articles.

Corporate Ethics INTERNATIONAL

Our mission is to bring corporations back in service to and under the control of the citizenry.

Tar Sands Campaign

No Tar Sands Network
ReThink Alberta
Articles and Reports
TSC Contact
TSC Press Releases

Corporate Ethics International

- Main Office: 221 Pine Street - 4th Floor, San Francisco, CA 94104
- Mailing Address: P.O. Box 2401, Suisun City, CA 94585
- Telephone: 415 659 0531
- Email: info at corpethics.org

Tar Sands Campaign

The campaign to mitigate the damage and stop the expansion of the tar sands is a joint project of the No Tar Sands Campaign network. Their mission is to accelerate the transition to clean and sustainable energy in Canada and the US by forcing the mitigation of existing tar sands operations, and to stop their expansion and begin their phase out over the next several decades.

The No Tar Sands Campaign is now 18 months old, although some of its member organizations have been working on this issue longer. Several of the groups that comprise the network have worked together in previous successful campaigns, most notably the Great Bear Rainforest Campaign and the Boreal Forest Initiative.

Corporate Ethics International is a key member of the campaign network in terms of campaign strategy development, recruitment of organizations into the network, solicitation and approval of grants, contracting for research, and general campaign administration (e.g., purchase of network advertising, compensation of contractors, etc.).

The formal network itself is comprised of approximately 50 different organizations in Europe, Canada and the US including NRDC, Sierra Club, Friends of the Earth, National Wildlife Federation, Rainforest Action Network, ForestEthics, Environmental Defence-Canada, World Wildlife Fund, Greenpeace, and others. It also includes a number of Canadian First Nations including the Coastal First Nations, Miksew Chipewyan First Nation, Athabasca Chipewyan First Nation, and others. The network is constantly expanding as new fronts in British Columbia and Europe come into play.

Learn more about the Tar Sands

Click to enable Adobe Flash Player

Canada's Dirty Oil: breaking our addiction from Dirty Oil Sands on Vimeo.

Recent Articles

- About the Tar Sands [07.12.10]**
The Alberta Tar Sands have been called "the most destructive energy project on earth." They are the second largest reserve of oil in the world next ... [Read More]
- What Goes Into (And Comes Out of) A Barrel Of Tar Sands Oil [07.09.10]**
As the Gulf disaster continues to unfold, people are looking at alternatives. Canada's Minister of the environment has been pitching the Alberta oil ... [Read More]
- 'We Got that Deleted': Canada's Oil Sands Lobby Twisting Washington's Arm [06.30.10]**
As U.S. senators debate some of the most sweeping climate change laws in American history, a powerful lobbying effort led by Canadian officials and ... [Read More]
- Tar Sands Poised to Become the Next Fossil Fuels Disaster [06.28.10]**
If we could go back in time before the BP Deepwater Horizon rig exploded on April 20, what would we learn? What steps would have helped avert what is ... [Read More]
- Clean tar sands and safe deepwater drilling "more PR than reality." [06.27.10]**
The industry's PR response from Deepwater is shaping up nicely. This is the industry message: We will give you improved safety and you give us ... [Read More]

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412. This website is instructive in other respects as well, pointing out that (a) CorpEthics was (and remains) located in San Francisco and (b) CorpEthics was simultaneously advancing the "Rethink Alberta" campaign (discussed in more detail previously in Part II of this Report).
413. CorpEthics' 990 tax filings in the U.S. during this period also indicate significant involvement in a "Tar Sands Campaign". An excerpt from its 2011 filing is illustrative of CorpEthics' work at the time, providing⁴⁹¹:

⁴⁹¹ https://projects.propublica.org/nonprofits/display_990/753133181/2012_12_EO%2F75-3133181_990_201112.
Page 2.

4b	(Code) (Expenses \$	1,581,795	including grants of \$) (Revenue \$)
THE TAR SANDS CAMPAIGN MISSION IS TO ACCELERATE THE TRANSITION TO CLEAN AND SUSTAINABLE ENERGY ECONOMY BY SLOWING THE EXPANSION OF TAR SANDS 2011 ACCOMPLISHMENTS INCLUDE 1) PREVENTED THE EXXON HEAVY HAUL PROJECT FROM MOVING FORWARD2) OBTAINED 18-MONTH DELAY IN KEYSTONE XL PIPELINE PERMIT, WHICH THEN BECAME A REJECTION OF THE PERMIT IN JANUARY 20123) MADE SIGNIFICANT PROGRESS TOWARD A EUROPEAN UNION FUEL QUALITY DIRECTIVE WITH A VALUE FOR TAR SANDS THAT WOULD DISADVANTAGE ITS USE IN EUROPE4) A YEAR'S DELAY IN THE ENBRIDGE NORTHERN GATEWAY PIPELINE DUE TO HIGH PUBLIC PARTICIPATION						

414. CorpEthics continues to feature its role in “The Tar Sands Campaign” on its website to this day. Its website (as of June 1, 2021) reads as follows:⁴⁹²

CorpEthics

HOME ABOUT WHAT WE DO CLIENTS NGO PARTNERS

Strategic Advisers to Environmental Campaigns



The Tar Sands Campaign

In 2008 the tar sands of Alberta posed a serious threat to the climate in that they were the third largest oil reserve in the world, and would require the destruction of a native boreal forest the size of Florida. The “oil” or bitumen that would be produced from the tar sands was determined by experts to be among the most carbon intensive in the world. The oil industry in Canada projected massive expansion of the tar sands from under two to over six to eight million barrels a day.

CEI joined with dozens of Canadian advocacy groups already working against tar sands expansion and helped bring additional support to the campaign from groups in Europe and the United States who were fighting oil issues in their countries. We also advised foundations in Europe and the U.S. that were already dedicated to slowing the production of oil worldwide on how best to address this emerging new threat to climate.

The resulting campaign successfully educated citizens about the harmful impact of tar sands expansion to our climate, native forests, and First Nations’ sovereignty. It drew attention to the excessive political power the oil industry in Canada and the U.S. exercised over federal and some provincial and state governments. Together we successfully persuaded [President Obama](#) to block the approval of the Keystone XL pipeline and publicly declare that to avoid catastrophic climate change, some oil must stay in the ground. He also took other policy actions to reduce U.S. oil production like limiting oil leases on U.S. public lands, the Arctic and coastal Atlantic Ocean, and parts of the Gulf.

As hoped from the beginning, the tar sands campaign spawned a broader and more diverse climate movement that went beyond the tar sands to challenge the expansion of U.S. oil production in the Bakken Reserve, oil drilling in the Arctic Ocean, oil fracking in states like New York, California, and Colorado, proposed natural gas and oil pipelines throughout the U.S., as well as the expansion of railroad infrastructure that would accommodate new oil production in the U.S.

415. It didn’t always read that way. I note that as of May 2016, CorpEthics’ webpage read differently, as follows:⁴⁹³

⁴⁹²<https://corpethics.org/the-tar-sands-campaign>.

⁴⁹³<https://web.archive.org/web/20160524083428/https://corpethics.org/the-tar-sands-campaign>.

CorpEthics

HOME | ABOUT | WHAT WE DO | CLIENTS | NGO PARTNERS

Strategic Advisors to Environmental Campaigns



The Tar Sands Campaign

In 2008 two major U.S. foundations asked CorpEthics to recruit the groups, develop the strategy, create a coordinated campaign, and act as a re-granting agency for the North American Tar Sands Campaign. The tar sands of Alberta posed a serious threat to the climate in that they were the third largest oil reserve in the world, and would require the destruction of a native boreal forest the size of Florida. CorpEthics coordinated the campaign in Canada and the U.S. until 2014 when the two national campaigns were separated due to their complexity and strategic focus.

From the very beginning, the campaign strategy was to land-lock the tar sands so their crude could not reach the international market where it could fetch a high price per barrel. This meant national and grassroots organizing to block all proposed pipelines.

This strategy is successful to this day. All the proposed pipelines in Canada have effectively been blocked, as have those proposed in the U.S. The Keystone XL Campaign became the most well-known of all the pipeline campaigns achieving a remarkable victory when President Obama not only rejected it, but also publicly stated that "some oil has to stay in the ground if we are to avoid the dangers of climate change."

The Tar Sands Campaign jump started the climate movement in the U.S. as major political figures, celebrities, and a diverse array of NGOs came together to pressure the Administration to reject this pipeline. It also played a role in helping to unseat the Conservative Party in Alberta and nationally.

Referencing the rejection of the Keystone XL, the new premier of Alberta committed to cap emissions from the tar sands (which effectively limits production), put an increasing price on carbon, end dependence on coal-fired power plants, and shift to renewables. The new Liberal Party Prime Minister's first major action was to commit Canada to a course to achieve a 1.5 degree Celsius target.

416. The differences between the two pages are noteworthy in a number of respects. The earlier version of the website expressly states:
- A. "Two major U.S. foundations asked CorpEthics to recruit the groups, develop the strategy, create a coordinated campaign, and act as a re-granting agency for the North American Tar Sands Campaign";
 - B. "From the very beginning, the campaign strategy was to land-lock the tar sands so their crude could not reach the international market where it could fetch a high price per barrel"; and
 - C. "The Tar Sand Campaign...also played a role in helping to unseat the Conservative Party in Alberta and nationally".
417. In addition to many other changes to the webpage, the later version of the webpage: (a) deletes all of the phrases described above, and (b) introduces first nations into the campaign, which were not mentioned in the original version of the webpage.
418. Another webpage on the CorpEthics website, reproduced below, also connects the organization with the Tar Sands Campaign and a number of campaigns like ReThink Alberta and The Dirty Oil Sands Network, both of which are discussed in more detail above:⁴⁹⁴

⁴⁹⁴ <https://web.archive.org/web/20100714080115/http://www.corpethics.org/section.php?id=371>

Corporate Ethics INTERNATIONAL

BUSINESS ETHICS
NETWORK

STRATEGIC
CORPORATE
INITIATIVE

BIG BOX
CAMPAIGN

CLIMATE
COLLABORATION

TAR SANDS
CAMPAIGN



[Home](#) [About Us](#) [Issues](#) [CEI Broadcast](#) [ACT NOW](#) [Search](#)

Home » Projects » Tar Sands Campaign » No Tar Sands Coalition

No Tar Sands Coalition



For an overview of the tar sands issue, go to dirtyoilsands.org

The following organizations are just some of the groups engaged in the campaign to stop the expansion of the tar sands and phase them out over the coming decades:

[Links will open in new window]

American Bottom Conservancy	Honor The Earth
As You Sow	Indigenous Environmental Network
Calumet Project	Minnesota Center For Environmental Advocacy
Canadian Boreal Initiative	NRDC
Canadian Parks And Wilderness Society	Northern Plains Resource Council
Ceres	Oil Change International
Clean Water Action	Pembina Institute
Communities for a Better Environment	Pew Charitable Trusts
Council of Canadians-Canada	Plains Justice
Dakota Rural Action West	Polaris Institute-Canada
DirtyOilSands.org	Power Up Canada
Dogwood Initiative-Canada	RAN
Earthworks	Save Union County, LLC [blog]
Eco-Sol Consulting Inc.	Sierra Club-US
Ecojustice	Sierra Club-Canada
Environment America	Western Organization Of Resource Councils
Environmental Defense-Canada	World Wildlife Fund-Canada
Environmental Law And Policy Center	
Equiterre-Canada	

ACT NOW



to help stop the dirtiest oil on earth

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If we could go back in time before the BP Deepwater Horizon rig exploded on April 20, what would we learn? What steps would have helped avert what is ... [Read More]

ForestEthics
Friends of the Earth
Fresh Energy
Global Community Monitor
Green Century Capital Management,
Inc.
Greenpeace-Canada
Greenpeace UK

**Clean tar sands and safe
deepwater drilling "more PR than
reality." [06.27.10]**

The industry's PR response from
Deepwater is shaping up nicely. This is
the industry message: We will give you
improved safety and you give us ...
[Read More]

If you are interested in more information on the Tar Sands issue, the following areas contain materials gathered from the No Tar Sands Network and from a wide spectrum of news outlets.

Video/Multimedia

Many of the network organizations and involved individuals utilize new technologies to produce documentaries, films, shorts, and general videos to draw attention to their concerns and issues. Here is a collection of TSC related presentations.

Network Press Releases

Here is a collection of Press Releases from the network of organizations in the Tar Sands Campaign.

Publications - redirects to Dirty Oil Sands

For a more comprehensive set of Oil Sands related publications, please see the Dirty Oil Sands main website. This link will redirect you to that publications listing.

Tar Sands Gallery

419. I also note CorpEthics's involvement in the documentary entitled "*Tipping Point: The Age of the Oil Sands*", which I have reviewed and found to generally cast a negative impression on the oil sands.
420. Additionally, CorpEthics' was a signatory to the ENGO Open Letter.⁴⁹⁵
421. I further find that CorpEthics was an author or co-author of the following reports:

<u>Title</u>	<u>Date</u>
Comments to the White House regarding the EISA Section	December, 2009

⁴⁹⁵

https://web.archive.org/web/20130829060500/http://www.sierraclub.org/pressroom/downloads/Tar%20Sands_letter-0701.pdf

933 Energy Security Report to Congress ⁴⁹⁶	
Tar Sands Oil Means High Gas Prices ⁴⁹⁷	May, 2010
Tar Sands Invasion - How dirty and expensive oil from Canada threatens America's New Energy Economy ⁴⁹⁸	May, 2010

422. I have reviewed each of these reports and make the following comments regarding their content and my assessment of the same.
423. The paper entitled “Comments to the White House regarding the EISA Section 933 Energy Security Report to Congress” expresses the view, contrary to the opinion of proponents of oilsands development, that these reserves are expensive to develop and will therefore lead to higher oil prices for Americans. Also contrary to the views of oilsands proponents, the report says that oilsands development will not reduce OPEC’s market share or undermine their power. The report expresses the concern that oilsands development will perpetuate America’s reliance on oil, rather than seeking options to develop renewables.
424. The paper entitled “Tar Sands Oil Means High Gas Prices” suggests that the “tar sands” are the most expensive production in the world. The report says that Keystone will result in over capacity for tar sands crude and suggests that the IEA has labelled tar sands production as the most marginal barrel in the world. Tar sands production, suggests the report, will also lead to greater North American market demand and thus increased costs for cement, steel, engineering, labour etc.
425. The paper entitled “Tar Sands Invasion - How dirty and expensive oil from Canada threatens America’s New Energy Economy”, suggests that the “tar sands” are undergoing “reckless expansion”⁴⁹⁹ of what is arguably the most destructive project on earth. The report is critical of tar sands expansion, which plans to triple the export of “dirty and expensive tar sands oil”⁵⁰⁰ to the U.S. despite North America being on the verge of a cleaner, more energy independent future. The report says the project entails the destruction of pristine forests and bird habitat and will create a wasteland of an area that is the size of Florida. It advises that pipelines and refineries

⁴⁹⁶

https://web.archive.org/web/20100613115158/http://dirtyoilsands.org/files/CommentsToWH_EISA933_CEI_SC_GP.pdf

⁴⁹⁷ <https://web.archive.org/web/20100613053737/http://dirtyoilsands.org/files/CEI-TarSandsMeansHigherOilPrices.pdf>.

⁴⁹⁸ <https://www.nrdc.org/sites/default/files/TarSandsInvasion-full.pdf>.

⁴⁹⁹ <https://www.nrdc.org/sites/default/files/TarSandsInvasion-full.pdf>. Page 25.

⁵⁰⁰ <https://www.nrdc.org/sites/default/files/TarSandsInvasion-full.pdf>. Page 5.

will crisscross the Northern Plains and the Midwest that will affect farmers, ranchers Native Americans and the residents of industrial areas.

426. I also noted Michael Marx attended the International Funders for Indigenous Peoples 9th Annual Conference to serve as facilitator to a panel entitled “Fighting Alberta’s Tar Sands: A Cross-Engo, Cross-First Nations Collaboration”.⁵⁰¹ The description of the session read as follows:

A. “Participants learned about one of the largest collaborative efforts ever that is emerging between ENGOs and First Nations to slow the expansion and minimize the impacts of Alberta’s tar sands operations. First Nations and ENGOs explained the collaborative lessons learned along the way, and how challenges became opportunities to work together in new ways. Presenters described their campaign strategies and shared lessons from past collaborations, good and bad, and how they are being applied to the current campaign.”⁵⁰²

427. The summary of the session (which included input from other panelists) touched on such tactics as utilizing legal precedent available to aboriginal peoples, divestment efforts, land-use tactics, and the “ReThink Alberta” campaign.⁵⁰³

CorpEthics remains active to this day with a program known as “Moving Beyond Oil Project” or the “Beyond Oil Project”, claiming its role “...to be strategic development, coordination, managing the grant-making process, and serving as advisers to the foundations that underwrite this campaign.” CorpEthics’ website describes the campaign as follows:

A. In 2015, the Beyond Oil Campaign evolved from the Tar Sands Campaign. It is the current focus of much of CorpEthics’ work. The goal of this campaign is to radically reduce the production, transport, and ultimately the supply of domestic oil in North America. The campaign continues to be focused on blocking the development of new or expanded tar sands pipelines in the U.S. However, it has expanded to include efforts to block oil terminals and refinery expansions on the West Coast that are ultimately part of the industry strategy to expand oil exports to Asia. The campaign’s highest priority is stopping all new oil and gas leases in the Arctic, Atlantic, and Gulf.⁵⁰⁴

428. The “Beyond Oil Project” is a project of a re-granter foundation known as the New Venture Fund. Between 2015 and 2018 the project received \$3.05 million dollars from the William and Flora Hewlett Foundation, which described the project as follows:

A. The New Venture Fund’s Moving Beyond Oil project aims to contribute to the reduction of oil use and to the transition to clean energy alternatives in the transportation sector in the United States. To keep climate mitigation goals on track, a reduction of about 50 percent in oil use by 2030 is necessary. The project will develop and implement synergistic and integrated strategies to reach this target in key regions on the country. One of its near-

⁵⁰¹ <http://www.internationalfunders.org/wp-content/uploads/2014/10/IFIPConferenceReport2010.pdf>. Pages 42 and 48 of 105.

⁵⁰² <http://www.internationalfunders.org/wp-content/uploads/2014/10/IFIPConferenceReport2010.pdf>. Page 42 of 105.

⁵⁰³ <http://www.internationalfunders.org/wp-content/uploads/2014/10/IFIPConferenceReport2010.pdf>. Pages 42-47.

⁵⁰⁴ <https://corpethics.org/the-beyond-oil-campaign/>

term priorities is to support the Pacific Northwest region to establish low-carbon fuel standards that reduces greenhouse gas emissions.⁵⁰⁵

(ii) Funding Applications and Grant Description

429. I have reviewed information regarding certain grants provided to CorpEthics and find that the evidence demonstrates the following grants were made to CorpEthics:

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Description of Grant</u>
Tides U.S. Foundation ⁵⁰⁶	2011	\$750,000	organizing on dirty fuels
Tides U.S. Foundation ⁵⁰⁷	2011	\$380,000	expenses associated with coordination, meetings, advertising, contracts with vendors and with small groups involved in Tar Sands campaign
Rockefeller Brothers Fund, Inc. ⁵⁰⁸	2010	\$300,000	For its Tar Sands Campaign
The Marisla Foundation ⁵⁰⁹	2010	\$150,000	United States Tar Sands Campaign
Rockefeller Brothers Fund, Inc. ⁵¹⁰	2009	\$500,000	For campaign to reduce demand for tar sands oil
Tides U.S. Foundation ⁵¹¹	2009	\$500,000	Tar Sands Campaign
Tides U.S. Foundation ⁵¹²	2009	\$250,000	Tar Sands Campaign

⁵⁰⁵ See: (a) <https://hewlett.org/grants/new-venture-fund-for-the-moving-beyond-oil-project/>; (b) <https://hewlett.org/grants/new-venture-fund-for-the-moving-beyond-oil-project-2/>; and (c) <https://hewlett.org/grants/new-venture-fund-for-the-moving-beyond-oil-project-3/>.

⁵⁰⁶ Tides Foundation Form 990 for the 2011 calendar year Schedule I Part II page 13.

⁵⁰⁷ Tides Foundation Form 990 for the 2011 calendar year Schedule I Part II page 13.

⁵⁰⁸ Rockefeller Brothers Fund, Inc. Form 990-PF for the 2010 calendar year Schedule 13 Part XV page 13.

⁵⁰⁹ The Marisla Foundation Form 990-PF for the 2010 calendar year Attachment 14 Part XV page 52 of 120 of PDF.

⁵¹⁰ Rockefeller Brothers Fund, Inc. Form 990-PF for the 2009 calendar year Schedule 13 page 13.

⁵¹¹ Tides Foundation Form 990 for the 2009 calendar year Schedule I Part II page 20.

⁵¹² Tides Foundation Form 990 for the 2009 calendar year Schedule I Part II page 20.

The Marisla Foundation ⁵¹³	2009	\$150,000	United States Tar Sands Campaign
Rockefeller Brothers Fund, Inc. ⁵¹⁴	2008	\$200,000	To support a markets campaign to stem demand for tar sands derived fuels in the United States
The Marisla Foundation ⁵¹⁵	2008	\$150,000	United States Tar Sands campaign
Rockefeller Brothers Fund, Inc. ⁵¹⁶	2007	\$250,000	To coordinate the initial steps of a markets campaign to stem demand for tar sands derived fuels in the United States

430. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization received funds which were provided for the stated purpose of the tar sands campaign, organizing on dirty fuels, for campaigns to reduce the demand for tar sands fuel, and for expenses associated with coordination, meetings, advertising, contracts with vendors and with small groups involved in the tar sands campaign correlate to the campaigns of CorpEthics that I reviewed above. Accordingly, I find the grant descriptions opposing the development of Alberta's oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

(iii) Conclusion on Participation in an anti-Alberta Energy Campaign

431. In my review of the foregoing I specifically noted the following in respect of CorpEthics: (a) its direct involvement in the development of both Background Documents, including authorship of the Corporate Ethics Document and contribution to the RBF Document; (b) its direct advocacy against the development of Alberta's oil sands in a number of its webpages; and (c) specific discussion of objecting to the expansion of the "tar sands" and related items in its 990 tax filings, which I find to be evidence tending to establish broad and general objections to the development of Alberta's oil and gas resources.

⁵¹³ The Marisla Foundation Form 990-PF for the 2009 calendar year Attachment 14 Part XV page 45 of 106 of PDF.

⁵¹⁴ Rockefeller Brother Fund, Inc. Form 990-PF for the 2008 calendar year Schedule 18 Part XV page 12.

⁵¹⁵ The Marisla Foundation Form 990-PF for the 2008 calendar year Statement 24 Part XV page 46 of 100 of PDF.

⁵¹⁶ Rockefeller Brothers Fund, Inc. Form 990-PF for the 2007calendar year Schedule 20 Part XV page 12.

432. Moreover, I also noted CorpEthics' participation in: (a) the ReThink Alberta Campaign; (b) the Dirty Oil Sands Network; (c) the research papers reviewed above; (d) the ENGO Open Letter; (e) the International Funders for Indigenous Peoples 9th Annual Conference to serve as facilitator to a panel entitled "Fighting Alberta's Tar Sands: A Cross-Engo, Cross-First Nations Collaboration"; (f) the documentary entitled "Tipping Point – the End of Oil"; and (g) the "Beyond Oil Project.
433. On the basis of the totality of this evidence, I find that CorpEthics has engaged in opposition to the development of Alberta's oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

(b) ***National Resources Defence Council ("NRDC")***

(i) Background

434. NRDC is a 501(c)(3) headquartered in New York City.⁵¹⁷
435. In 2018 NRDC reported total assets of over \$442 million, received over \$173 million in contributions and grants, distributed in excess of \$11 million, and employed over 700 people.⁵¹⁸
436. NRDC occupies a prominent role in the Background Documents – it contributes a segment to the RBF Document entitled "*Drawing a Line in the Sand on the Canadian Tar Sands: US Campaign Strategies*"⁵¹⁹ and is referenced in the Corporate Ethics Document⁵²⁰ and CorporateEthics's webpage listing members of the "No Tar Sands Coalition".⁵²¹
437. I reviewed an article regarding NRDC's involvement in the early days of the campaign that I find is generally consistent with Background Documents:

A. The inside story of the campaign that killed Keystone XL

By Ben Adler Nov 7, 2015, 9:00am EST

"Many stories about the campaign put the start date in mid-2011," says Kenny Bruno, the campaign coordinator at Corporate Ethics International. "But a couple dozen people from environmental groups and tribal nations met in November 2008, two months after the application by TransCanada, and decided to prioritize stopping KXL as a way of fighting the reckless and rapid expansion of the tar sands in Canada.

...

⁵¹⁷ <https://www.charitywatch.org/charities/natural-resources-defense-council-nrdc>

⁵¹⁸ <https://www.nrdc.org/sites/default/files/nrdc-2018-form-990.pdf>

⁵¹⁹ The RBF Document. Page 38.

⁵²⁰ The Corporate Ethics Document. Page 15.

⁵²¹ <https://web.archive.org/web/20100714080115/http://www.corpethics.org/section.php?id=371>

Clayton Thomas-Müller has been an anti-Keystone leader among First Nations, as Canadian Native American tribes are called. “I was probably the first pipeline campaigner,” he says. Currently the indigenous climate campaigner at 350.org, Thomas-Müller previously ran the anti-tar sands campaign for the Indigenous Environmental Network, based in Ottawa, Ontario.

“Back in 2005 I was working with partners in Alberta on other energy issues, and I kept hearing about tar sands,” recalls Susan Casey-Lefkowitz, director of programs at the Natural Resources Defense Council (NRDC). “[Its development] was seen by local activists as a source of regret. It was ramping up, and it had a lot of support in the Canadian government and the Bush administration. There was a sense that little could be done to stop tar sands expansion. Groups in the US were not focused on it at all, but groups in Alberta were very concerned. So I started working with NRDC on what it would mean if tar sands oil were extracted. So we mapped out the infrastructure, pipelines and refineries, where tar sands oil would touch down in the US. We fought first on Keystone [1] and lost, we fought Alberta Clipper [a pipeline from Alberta to Wisconsin] and lost. The different groups working on fighting tar sands expansion agreed to focus together like a laser on Keystone XL.”

That initial coalition consisted of a few national environmental organizations including NRDC, the Sierra Club, and the National Wildlife Federation; First Nations and Native American activist groups such as Idle No More; and Bold Nebraska and local landowner groups.

While the grassroots activists organized from outside DC, policy experts such as Casey-Lefkowitz focused on the inside game, lobbying the government and conducting the research and analysis that armed activists with data-driven arguments. The experts in federal policy also helped guide the local activists and the grassroots climate activists — many of whom had never been to DC or lobbied for anything before — through the political process.⁵²²

(ii) NRDC's Website

438. NRDC details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per NRDC's web pages:
- A. Unparalleled global treasures stretch across the distant reaches of Canada, from the Great Bear Rainforest along British Columbia's coast to the boreal forest, which accounts

⁵²² <https://www.vox.com/2015/11/7/9684012/keystone-pipeline-won>

for a quarter of the world's remaining intact forests and holds nearly twice as much carbon as all the world's oil reserves combined.

These ecosystems are home to hundreds of Indigenous communities and many of North America's most iconic species. They also play a pivotal role in protecting our climate. But industrial campaigns threaten them with irreparable harm—campaigns like the development of Alberta's tar sands, among the world's dirtiest sources of oil, and the clearcutting of more than a million acres of boreal forest each year.

Canada's energy and land-use decisions have major implications for its future, as well as that of its neighbors in the United States and the climate of the entire planet. This is why NRDC works with Indigenous allies and environmental partners to protect the country's landscapes and shape its conservation choices, from Quebec's James Bay to British Columbia's Clayoquot Sound.

Some of our accomplishments:

- NRDC experts have gained a reputation for credible research that has earned us a place in the federal regulatory process, shaping decisions on issues such as tar sands pipeline proposals and deep-sea drilling. We have established trusted partnerships with Indigenous allies, environmental and community groups, and government agencies, making us one of the few environmental organizations that can convene key stakeholders on both sides of the U.S.–Canadian border.
- As one of the first organizations to call international attention to the destructive power of oil production from Alberta's tar sands, NRDC worked with a coalition that stopped the Northern Gateway tar sands pipeline and the Energy East pipeline that would have brought hundreds of tar sands tankers down the U.S. Atlantic coast. We continue to fight the construction of the Keystone XL pipeline, which would carry tar sands oil from Canada to refineries on the Gulf Coast, and we work to protect our communities and marine ecosystems along the Pacific coast from tar sands tankers.⁵²³

439. In addition to the direct advocacy against the development of Alberta's oil sands found on this webpage, I note NRDC's involvement in land use tactics such as the Great Bear Rainforest and the Boreal Forest; political activism through trusted partnerships with government agencies, and general objections to pipeline development.

440. Other pages on NRDC's website continue:

A. OUR STORIES › NRDC IN ACTION

9. The Desire to Stop Canadian Tar Sands Transcends Borders

For more than a decade, NRDC has worked with indigenous communities in Alberta, U.S.-based grassroots groups, and intergovernmental bodies to halt the expansion of

⁵²³ <https://www.nrdc.org/canada>

dirty tar sands oil.
January 10, 2019

Anthony Swift, director of NRDC's Canada Project, doesn't mince words when he talks about the organization's decadelong [*sic*] campaign against dirty tar sands oil development. "We were the first U.S. organization to jump into the tar sands fight," he says, noting that NRDC's work on the issue began several years before his arrival in 2010. The team then quickly reached out to other U.S. organizations to help raise awareness of the looming ecological disaster facing Canada's boreal forest and to highlight the role that the United States was playing in fueling it.

Since then, NRDC has helped stop three-quarters of the dozen tar sands pipeline projects proposed by energy companies in those early days, along with at least six accompanying crude-by-rail projects. As a result of the dogged resistance efforts by Swift and his colleagues, the tar sands industry is currently about a third of the size it projected it would be 10 years ago, and the production of millions of barrels of the dirtiest, most carbon-intensive oil in the world have been sidelined. Equally important, there is now broad public awareness of the damage the industry has done to the boreal forest and the grave threat that its campaigns continue to pose to indigenous communities in northern Alberta.⁵²⁴

- B. NRDC and Canadian allies Living Oceans Society and the Pembina Institute exposed the unique risks of transporting tar sands oil in a 2011 report. Because diluted bitumen is heavier, it sinks instead of floating on top of water, where it is easier to clean up. As the people of Kalamazoo discovered—and as NRDC publicized—those properties make efforts to recover tar sands crude from a body of water practically Sisyphean.

That same year, some 60,000 NRDC members and supporters sent e-mails urging the B.C. premier to take a stand against Northern Gateway. The provincial government formally opposed the project in 2013, citing "serious concerns" about the particular risks of a dilbit spill. A survey found that nearly two-thirds of B.C. residents share the anti-pipeline stance.⁵²⁵

- C. Why We Must Protect Canada's Boreal Forest

Vast areas of Canada's boreal forest are untouched and provide refuge to a rich number of species, including endangered species such as boreal caribou, grizzly bears, and wolverines.

I think many people would be surprised at how important the boreal forest is to North America's songbird population. Each year, between three to five billion songbirds go to the boreal forest to nest and then return

⁵²⁴ <https://www.nrdc.org/STORIES/DESIRE-STOP-CANADIAN-TAR-SANDS-TRANSCENDS-BORDERS>

⁵²⁵ <https://www.nrdc.org/stories/keeping-spirit-bear-coast-clear-tar-sands-oil>

in places throughout the entire continent and South America as well.

We're also seeing the threat of tar sands production in the boreal. Tar sands extraction is an incredibly damaging process that requires clearcutting large tracts of forest for open mines and fragmenting other tracts to extract tar sands oil from deep underground. These industrial sites also pollute the air and water sources of nearby indigenous communities.⁵²⁶

D. The Dirty Fight Over Canadian Tar Sands Oil

Dredging up oil from under Canada's boreal forest and piping it through the United States is a lose-lose proposition.

December 31, 2015

Not everyone could turn a blind eye to the havoc wrought by tar sands, though. First Nations communities who had inhabited the new ground zero for tar sands oil development for thousands of years began voicing concerns. Their water, fishing, and hunting traditions were at risk—as was their health, with more rare and unusual cancers being diagnosed.

In 2005, these communities invited Canadian activist groups and NRDC to Alberta to talk about tar sands. They shared disturbing images of a lunar-like landscape of open-pit mines and vast wastewater containment ponds where boreal forest had once stood, and they asked for help in stopping the devastation.

Shortly thereafter, NRDC launched the first campaign by a U.S. organization against the expanding industry. It forged partnerships with Canadian counterparts like the Pembina Institute, Environmental Defence Canada, Greenpeace Canada, and First Nations communities and set its focus on challenge number one: making the tar sands issue a compelling one to people outside of Alberta. “We had to show people that the United States was a driver for what was happening up there,” says Danielle Droitsch, senior policy analyst for NRDC’s Canada project. “It was the United States that had the solution and ability to effect change.”⁵²⁷ [bolding added]

441. In addition to the continued advocacy against the development of Alberta's oil sands found on this webpage, I note further references to NRDC's involvement in using the Boreal Forest to frustrate the development of Alberta's oil sands.

442. I also noted that in the course of these campaigns, NRDC released a number of statements on its website. These statements include the following in regards to NRDC's campaigns and other campaigns:

⁵²⁶ <https://www.nrdc.org/stories/why-we-must-protect-canadas-boreal-forest>

⁵²⁷ <https://www.nrdc.org/stories/dirty-fight-over-canadian-tar-sands-oil>

A. If the Government Won't Act on Climate, Maybe Banks Will

Gun-control activists want to use financial levers to curtail firearm sales. Can we do the same for carbon emissions?

April 25, 2018 Brian Palmer

Environmental activists are now pondering the same question: Can banks move the needle on climate change? The financial sector's best moves here aren't as obvious as they were in the South Africa divestment, or as they might be in supporting gun control. Climate change isn't a country, so we can't simply stop transacting with it, nor is it limited to a discrete set of transactions. Virtually every financial deal contributes carbon emissions to the planet in some way.

But some strategies are available. For example, major institutional investors, like banks, universities and pension funds, could withdraw their money from fossil fuel companies. It would be similar to what happened to South Africa in the 1980s. Bill McKibben, founder of the climate change advocacy group 350.org and the public face of fossil fuel divestment, acknowledges the shortcomings of this tactic—even a consortium of large investors wouldn't be big enough to significantly alter the share price of, say, ExxonMobil. But McKibben is playing a long game.

"[A]s the country's colleges, cities, and denominations begin to cut their ties, we'll start to revoke the social license of these firms," writes McKibben. He likens this public status change to what happened to the tobacco companies, which went from untouchable corporate behemoths to pariahs in the span of a few years during the 1990s.

Another sphere where banks have significant influence over carbon emissions is the financing of new fossil fuel infrastructure. Banks could limit their involvement in any project that locks in our reliance on coal and oil for decades into the future. Some financial institutions have already made strides on this front. BNP Paribas has promised to "no longer do business with companies whose principal business activity is the exploration, production, distribution, marketing, or trading of oil and gas from shale and/or oil from tar sands"—two of the planet's dirtiest and most destructive fossil fuels.

Pressure is mounting. Last year, the socially conscious investment manager Boston Common joined with the shareholder activist group ShareAction and sent a letter to the world's largest banks demanding policies that would severely limit funding for fossil fuel infrastructure. Calls like these tend to receive heavy press coverage. Many advocacy groups, like the Rainforest Action Network, are producing regular bank

report cards, naming and shaming the financiers behind the fossil fuel industry.⁵²⁸

B. The Tar Sands Tanker Threat: American Waterways in Industry's Sights

Issue Paper by Joshua Axelrod

December 07, 2016

Tar sands oil is one of the most carbon-intensive fuels in the world, and its production is especially destructive to the local environment in Northern Alberta, Canada. In 2015, President Obama rejected TransCanada's proposed Keystone XL tar sands pipeline, which would have carried 835,000 barrels of oil per day. But that hasn't stopped Canadian oil companies from devising new schemes to get their dangerous tar sands crude to refineries in the U.S. Gulf Coast and California.

As first steps to curbing this dangerous threat, NRDC recommends the following:

1. Policymakers at state and federal levels should exercise their regulatory power to reject vessel response plans for ships transporting tar sands diluted bitumen.
2. Policymakers at all levels of government tasked with spill response should take immediate steps to evaluate existing legal, policy, and research priorities related to the transport and environmental behavior of tar sands diluted bitumen.⁵²⁹

C. [From NRDC's 2010 Annual Report] –Stopping Dirty Fuel Sources in Their Tracks

Our Washington, D.C. team is deployed in the fight against the destruction of the Boreal forest by tar sands strip-mining and drilling, pushing the State Department to reject pipelines that would transport tar sands from Alberta through sensitive lands and major aquifers to refineries in already polluted communities of the U.S. Gulf Coast, and working to block U.S. energy bills that promote tar sands.⁵³⁰

443. In addition to the direct advocacy against the development of Alberta's oil sands found on these statements featured on NRDC's website, I note the specific references to NRDC's advancement of divestment tactics and land use tactics such as the tanker ban and the boreal rainforest to delay and frustrate the development of Alberta's oil sands. I have also reviewed a news story

⁵²⁸ <https://www.nrdc.org/stories/if-government-wont-act-climate-maybe-banks-will>

⁵²⁹ <https://www.nrdc.org/resources/tar-sands-tanker-threat-american-waterways-industrys-sights>

⁵³⁰ <https://issuu.com/nrdc/docs/2010annualreport>. Page 11.

published about campaigns of the American environmental movement pertaining to Alberta's oil patch, which noted in part:

A. How the American environmental movement dealt a blow to Alberta's oilpatch

ACTIVISTS IDENTIFIED PERFECT TARGET: KEYSTONE XL PIPELINE, AND THEY THINK IT WORKED

ALEXANDER PANETTA · CBC NEWS · POSTED: NOV 18, 2019 4:00 AM ET

The strategy to stifle Alberta's oilsands came together in a hotel near a mall in Minneapolis over a decade ago.

It was the fall of 2008, and a group of environmental activists spent part of a conference there brainstorming tactics for slowing down the growth of the oilsands — and they identified pipelines as the most vulnerable target.

Now, those activists are claiming victory.

A decade later, Alberta crude is increasingly choked off from international markets; growth forecasts have been cut in half; iconic Canadian energy companies are rebranding themselves or moving head offices; and parts of Western Canada are simmering with talk of separatism.

Several American activists interviewed in recent days cited the tactical decisions made in 2008 as setting the stage for the industry's current woes.

"Keystone was a turning point," said Kenny Bruno, an organizer and author in the environmental movement who helped shape the anti-pipeline strategy.

"It really did impact the industry — as we intended."

Anthony Swift, director of the Canada Project at the Washington-based Natural Resources Defence Council (NRDC), agrees that the effort helped at least curb growth even if, overall, oilsands output continues to rise.

"We really did stop expansion," Swift said.

While delays in large oil projects are now fairly common, in 2008, it was near inconceivable that the United States would reject a pipeline — especially one from Canada, Swift said.

In November of that year, activists reviewed the protest methods employed up to that point and concluded they needed new tactics.

Bruno said they talked about protesting at refineries or lobbying industrial users such as shipping companies that might be using fuel sourced in Alberta.

The problem with targeting refineries and companies, however, was there were so many of them that altering the behaviour of one would have a limited impact. Isolating Alberta oil within a company's fuel supply was also impractical, Bruno said.

But when it came to pipelines, at the time, there were only a few major cross-border projects in the works.

Bruno, a New Yorker who has worked for a number of climate NGOs, including Oil Change, Greenpeace and Corporate Ethics, was among those advocating the view that stalling just one pipeline could do disproportionate damage to the industry.

He and others at the meeting identified the one pipeline project furthest from completion — Keystone XL, for which a permit application had been submitted just weeks earlier, and they zeroed in on it as their target.

What changed at the 2008 meeting, however, was the decision to coordinate efforts and throw all of their energy at stopping one project, said Susan Casey-Lefkowitz, a chief program officer with NRDC who attended the meeting.

And it worked, she said.

"At that time, [Alberta oil] was seen as the next Gold Rush. Every major oil company in the world was there," she said. "That's changed. and it's changed for several reasons. [*sic*]"

Eleven years later — after numerous court battles, protests along the planned route and outside the White House and several delays, including one rejected presidential permit from then-president Barack Obama — Keystone XL remains in limbo.

Drag out and delay

An organizer of the first big Washington protest against Keystone XL, Bill McKibben, said the conflict over that pipeline created a template for future challenges.

He described the broader strategic goal this way: drag out and delay fossil-fuel projects and make them more expensive while alternative energy gets cheaper.

“Nothing gets built for free anymore, without a lot of resistance,” said McKibben, founder of the group 350.org, who has more recently turned his focus to contesting banks that fund oil projects.

So, can international climate activists really claim to have put a dent in Canada’s oilsands?

“I don’t think they’re wrong at all,” said Andrew Leach, an energy economist at the University of Alberta. “It’s massive.... It’s made a huge difference.”

The tactics might arguably be ineffective as a policy to slow down climate change — but, he said, it’s impossible to deny the protests against Keystone XL helped restrain Canada’s pipeline capacity, and the shortage of capacity is one of several factors bedeviling the oilsands.

Activists’ newest strategy on Keystone XL is to delay the project beyond Trump’s first term and hope a Democratic president might cancel the permit in 2021.

Swift, McKibben, Bruno and Casey-Lefkowitz all said they first heard concerns about oilsands expansion in the 2000s from Indigenous and environmental activists in Canada.⁵³¹

444. I also note NRDC’s involvement in the documentary entitled “Tipping Point: The Age of the Oil Sands”, which I have reviewed and found to generally cast a negative impression on the oil sands and advocates for the general opposition to the development of Alberta’s oil sands.

445. I further find that NRDC was an author or co-author of the following reports:

<u>Title</u>	<u>Date</u>
Strip Mining for Oil in Endangered Forests ⁵³²	July, 2006
Driving It Home: Choosing the Right Path for Fueling North America’s Transportation Future ⁵³³	July, 2007
Danger in the Nursery: Impact on birds of tar sands oil development in Canada’s Boreal forest ⁵³⁴	December, 2008

⁵³¹ <https://www.cbc.ca/news/world/paralyze-oilsands-plan-keystone-pipeline-1.5356980>

⁵³² <https://web.archive.org/web/20100706084848/http://www.nrdc.org/land/files/stripmining.pdf>.

⁵³³ <https://web.archive.org/web/20100706104601/http://www.nrdc.org/energy/drivingithome/drivingithome.pdf>.

⁵³⁴ <https://www.borealbirds.org/publications/danger-nursery-impact-birds-tar-sands-oil-development-canada%E2%80%99s-boreal-forest>.

Say no to Tar Sands Pipeline - Proposed Keystone XL Project Would Deliver Dirty Fuel and High Costs ⁵³⁵	March, 2010
Submission to the Commission for Environmental Cooperation - Pursuant to Article 1.4, North American Agreement on Environmental Cooperation ⁵³⁶	April, 2010
Tar Sands Invasion - How dirty and expensive oil from Canada threatens America's New Energy Economy ⁵³⁷	May, 2010
Pipeline and Tanker Trouble - The Impact to British Columbia's Communities, Rivers, and Pacific Coastline from Tar Sands Oil Transport ⁵³⁸	November, 2011
Keystone XL Pipeline: Undermining U.S. Energy Security and Sending Tar Sands Overseas ⁵³⁹	January, 2012
Dirty Oil Diplomacy: The Canadian Government's Global Push to Sell the Tar Sands ⁵⁴⁰	March, 2012
Going in Reverse: The Tar Sands Threat to Central Canada and New England ⁵⁴¹	April, 2012
Keystone XL: A Tar Sands Pipeline to Increase Oil Prices ⁵⁴²	2012
Cooking the books: How the State Department analyses ignores the true climate impact of the Keystone XL Pipeline ⁵⁴³	April, 2013
Far From Inevitable: The Risks of and Barriers to Tar Sands Expansion ⁵⁴⁴	December, 2014

⁵³⁵ https://web.archive.org/web/20100613114953/http://dirtyoilsands.org/files/NRDC_KeystoneXL_FINAL.pdf

⁵³⁶ <https://environmentaldefence.ca/report/report-tar-sands-submission-to-the-commission-for-environmental-cooperation/>.

⁵³⁷ <https://www.nrdc.org/sites/default/files/TarSandsInvasion-full.pdf>.

⁵³⁸ <https://www.pembina.org/reports/nrdc-1353-pipeline-fact-sheet-for-web.pdf>.

⁵³⁹ http://priceofoil.org/content/uploads/2012/01/KXL_-_Undermine_energy_security_Full_Web.pdf.

⁵⁴⁰ https://climateactionnetwork.ca/wp-content/uploads/2012/03/CAN_Dirty_Oil_Diplomacy.pdf.

⁵⁴¹ <https://environmentaldefence.ca/report/report-going-in-reverse/>.

⁵⁴² <https://www.nrdc.org/sites/default/files/Keystone-Oil-Prices-Report.pdf>.

⁵⁴³ http://priceofoil.org/content/uploads/2013/04/Cooking_the_Books_FINAL-SCREEN.pdf.

⁵⁴⁴ <https://environmentaldefence.ca/report/report-far-inevitable-risks-barriers-tar-sands-expansion/>.

Stop Tar Sands Oil Expansion and Infrastructure ⁵⁴⁵	August, 2015
Lockdown: The end of growth in the Tar Sands ⁵⁴⁶	October, 2015
Tar Sands: The Myth of Tidewater Access ⁵⁴⁷	March, 2016
Tar Sands in the Atlantic Ocean - Transcanada's Proposed Energy East Pipeline ⁵⁴⁸	July, 2016
Investor Briefing: Problematic Pipelines - The many obstacles facing Keystone XL ⁵⁴⁹	February, 2018

446. I have reviewed each of these reports and make the following comments regarding their content and my assessment of the same.
447. The paper entitled "Strip Mining for Oil in Endangered Forests" is critical of the environmental impacts of oilsands development through the destruction of the boreal forest, wetlands and wildlife (including through the Mackenzie Valley as a result of the Mackenzie Valley pipeline project) and asserts that oilsands production has triple the global warming pollution compared to conventional oil.
448. The paper entitled "Driving It Home: Choosing the Right Path for Fueling North America's Transportation Future" is critical of the environmental impacts of the oilsands through the destruction of boreal forest and the production of "dirty fuels", leading to environmental risks, harm to Indigenous communities, the destruction of wildlife habitats and ecosystems, a negative impact on local water supplies, the pollution of drinking water with toxins and emphasizes that oilsands production is more polluting than conventional energy.
449. The paper entitled "Danger in the Nursery: Impact on birds of tar sands oil development in Canada's Boreal forest" is critical of the environmental impacts of "tar sands" development leading to the loss of migratory birds, the destruction of their habitat, the creation of toxic waste holding ponds and air and water pollution. The report states that every facet of tar sands development (including, for example, the Mackenzie Gas Project) has the potential to harm boreal birds.
450. The paper entitled "Say no to Tar Sands Pipeline - Proposed Keystone XL Project Would Deliver Dirty Fuel and High Costs" is critical of the environmental risks as the paper says 'tar sands' oil is costly to produce and high in carbon content. The mines will leave a permanent scar on the

⁵⁴⁵ <https://www.nrdc.org/resources/stop-tar-sands-oil-expansion-and-infrastructure>.

⁵⁴⁶ http://priceofoil.org/content/uploads/2015/10/Lockdown_Final.pdf.

⁵⁴⁷ <http://priceofoil.org/content/uploads/2016/05/Tidewater-2016-v2.pdf>.

⁵⁴⁸ <https://www.nrdc.org/resources/tar-sands-atlantic-ocean-transcanadas-proposed-energy-east-pipeline>.

⁵⁴⁹ <http://priceofoil.org/content/uploads/2018/02/KXLBriefingFINAL.pdf>.

boreal forest; they involve high consumption of water and natural gas and the paper postulates that the economic case for Keystone is weak.

451. The paper entitled “Submission to the Commission for Environmental Cooperation - Pursuant to Article 1.4, North American Agreement on Environmental Cooperation” concerns an allegation that tailings ponds are leaking “deleterious substances”⁵⁵⁰ in breach of Canada’s commitment in the North American Agreement on Environmental Cooperation. The report suggests that tailings ponds substances are deleterious to fish and substances leak into the environment. The report concludes that the Canadian government has failed to regulate or prosecute issues relating to the leakages.
452. The paper entitled “Tar Sands Invasion - How dirty and expensive oil from Canada threatens America’s New Energy Economy”, suggests that the “tar sands” are undergoing “reckless expansion”⁵⁵¹ of what is arguably the most destructive project on earth. The report is critical of tar sands expansion, which plans to triple the export of “dirty and expensive tar sands oil”⁵⁵² to the U.S. despite North America being on the verge of a cleaner, more energy independent future. The report says the project entails the destruction of pristine forests and bird habitat and will create a wasteland of an area that is the size of Florida. It advises that pipelines and refineries will crisscross the Northern Plains and the Midwest that will affect farmers, ranchers Native Americans and the residents of industrial areas.
453. The paper entitled “Pipeline and Tanker Trouble - The Impact to British Columbia’s Communities, Rivers, and Pacific Coastline from Tar Sands Oil Transport” concerns allegations that the Northern Gateway pipeline would carry highly acidic and corrosive bitumen from the “tar sands” through rugged and unstable landscapes. The paper goes on to say that the pipeline will be serviced by 220 supertankers each year and that a spill is a certainty in precious coastal waters. The report states that First Nations communities are opposed, and that great angling rivers and the globally important Great Bear Rainforest and our climate are at risk.
454. The paper entitled “Keystone XL Pipeline: Undermining U.S. Energy Security and Sending Tar Sands Overseas” concerns an allegation that Keystone is intended to export Canadian oil to the world market to fetch a higher price for “Big Oil”⁵⁵³, which will threaten farmlands and water of America’s heartland. The report suggests that current “tar sands” production is inadequate to fill current pipelines and the result will be that prices in the American market will actually increase. The report states that clean energy will create more jobs than Keystone.
455. The paper entitled “Dirty Oil Diplomacy: The Canadian Government’s Global Push To Sell The Tar Sands” outlines what are perceived to be the changing domestic and international policies of the federal government in promoting the expansion of the tar sands, Canada’s fastest growing source of greenhouse gas pollution. It describes what it says is a collaborative effort of the

⁵⁵⁰ <https://environmentaldefence.ca/report/report-tar-sands-submission-to-the-commission-for-environmental-cooperation/>. Page 3.

⁵⁵¹ <https://www.nrdc.org/sites/default/files/TarSandsInvasion-full.pdf>. Page 25.

⁵⁵² <https://www.nrdc.org/sites/default/files/TarSandsInvasion-full.pdf>. Page 5.

⁵⁵³ http://priceofoil.org/content/uploads/2012/01/KXL_-_Undermine_energy_security_Full_Web.pdf. Page 1.

Canadian and Alberta governments, along with industry to ensure no door is closed in selling the highly polluting tar sands.

456. The paper entitled “Going in Reverse: The Tar Sands Threat to Central Canada and New England” deals with the Trailbreaker pipeline which would transport the dirtiest oil on the planet through some of the most important natural and cultural landscapes in Eastern Canada and Vermont. The paper speaks of the destruction of large swaths of boreal forest; states that the corrosive qualities of “tar sands” oil pose unique risks to aging pipeline systems; and advises that tar sands spills are more prevalent and damaging than conventional oil spills. The paper goes on to say that carbon pollution from extraction and upgrading mean emissions are 3 to 5 times higher than for conventional oil; that extraction wipes out habitat for millions of birds, uses enormous amounts of water and creates toxic tailings ponds the size of Vancouver B.C. or Washington D.C.
457. The paper entitled “Keystone XL: A Tar Sands Pipeline to Increase Oil Prices”, states that Keystone will pump some of the dirtiest oil, strip mined and drilled under the boreal forest through America’s heartland to Texas refineries. The paper states that the pipeline would mean expansion of “tar sands” production and would worsen climate change as well as undermine efforts to move to clean energy. The paper also states a belief that the pipeline will have the impact of raising gas prices in the U.S.
458. The paper entitled “Cooking the books: How the State Department analyses ignores the true climate impact of the Keystone XL Pipeline” suggests that America does not need this “extreme source of oil”.⁵⁵⁴ It states that Keystone is a disaster for the climate - Keystone will emit 181 metric tons of CO2 each year, which the report says is equivalent to the tailpipe emissions of 37.7 million cars. The report calls for the rejection of Keystone to limit the growth of the “tar sands”.
459. The paper entitled “Far From Inevitable: The Risks of and Barriers to Tar Sands Expansion” cites floods in Calgary, ice storms in Toronto, hurricanes in New York as an indication that extreme weather is hitting closer to home. To avoid climate change the report says that ¾ of known fossil fuels need to be kept in the ground, including the “tar sands”. The report says that the tar sands are among the most carbon intensive fuels in the world, so the tar sands reserves should be the first on the chopping block. The report states that tar sands expansion cannot continue when governments are taking stronger action against climate change. The report also states that tar sands are among the most expensive to produce and prices are low, so they are not economical. The report suggests that the tar sands industry and governments have been effective at spreading misinformation about the tar sands. It also says that the tar sands play a small role in Canada’s GDP, bring with them lots of risks, and that there are alternative economic drivers for Canada.
460. The paper entitled “Stop Tar Sands Oil Expansion and Infrastructure” states that “tar sands” oil is one of the dirtiest fuels on the planet and that the process to mine the tar sands produces toxic waste that contaminates air and water. By the time a gallon of gas leaves the tailpipe of a vehicle, it has generated 17 per cent more pollution than conventional gas. NRDC is leading the charge against this dangerous fuel using the courts, political pressure and grassroots power. The

⁵⁵⁴ http://priceofoil.org/content/uploads/2013/04/Cooking_the_Books_FINAL-SCREEN.pdf. Page 3.

report goes on to say that mining of the tar sands is destroying the boreal forest where it threatens the nesting grounds of many of North America's birds. It suggests that the KXL pipeline would unleash massive expansion of tar sands development and cause a dramatic increase in carbon pollution. The report advises that NRDC partners with First Nations and other allies to halt proposed pipelines and expose the hazards of tar sands spills and as well that they use litigation and advocacy to block legislative efforts to fast track tar sands infrastructure.

461. The paper entitled "Lockdown: The end of growth in the Tar Sands" states that the "tar sands" are among the most carbon intensive sources of oil in the world and that the vast majority of the tar sands can't be burned if we are to avoid the worst impacts of climate change. The report postulates that industry is facing increasing headwinds that could limit the expansion of tar sands- high costs and low prices have helped and citizen engagement has successfully stopped or delayed pipeline infrastructure. The report suggests that expansion plans are no longer inevitable as public support for climate action and opposition to pipelines has directly limited the viability of expansion plans in the landlocked tar sands. The report says that shipping by rail is a high-cost back-up and can turn a profitable project into a loser. They state a belief that the development of new projects is highly unlikely and that without pipelines, some 34.6 billion metric tons of carbon will stay in the ground, meaning a better chance to maintain a safer climate future.
462. The paper entitled "Tar Sands: The Myth of Tidewater Access" suggests that if Alberta had access to tidewater it would not be better off given low prices internationally due to supply in other markets. The paper states that there is currently an excess of capacity in pipelines, so new capacity to ship to markets that are already well supplied won't help Alberta. They believe that "tar sands" expansion is high risk in terms of driving dependency on a volatile sector- fossil fuel demand will decline with climate change initiatives. The report says that unfettered expansion of the tar sands is incompatible with Canada's climate goals. Canada and Alberta must focus on economic diversification and should manage the decline of the tar sands.
463. The paper entitled "Tar Sands in the Atlantic Ocean - TransCanada's Proposed Energy East Pipeline" suggests that Trans Canada is pursuing a project that would effectively create a waterborne tar sands pipeline that would threaten the U.S. Atlantic and Gulf Coast- 300 supertankers per year would form a high risk "pipeline" down the entire U.S. Eastern Seaboard and on to refineries on the Gulf Coast. This would amount to a 300 per cent increase in crude traffic and would pose a threat to endangered marine mammals and regionally critical fisheries in the form of deafening ocean noise and an increased risk of oil spills and ship strikes.
464. The paper entitled "Investor Briefing: Problematic Pipelines - The many obstacles facing Keystone XL" postulates that Trans Canada doesn't have sufficient producer commitments for KXL; an alternate route through Nebraska has been approved but is being challenged in the courts and by Nebraska landowners and the report says that TransCanada admits the new route poses greater environmental risks. The report states that Keystone 1 has leaked more often and in greater volume than predicted; there is escalating Indigenous opposition and questions as to how the new route will impact costs. The report also says a new environmental impact assessment should be obtained given the new route.

465. Additionally, NRDC was signatory to the Obama Letter,⁵⁵⁵ the ENGO Open Letter,⁵⁵⁶ and the ENGO Declaration.⁵⁵⁷

466. I have examined grants received by NRDC and find that the majority of them bear generic descriptions such as “for general support”. As noted in the introduction to this section, however, I find that this is one of the entities, which by their physical location, their mind and management, and their operations are a U.S. entity. In addition, their general funding appears to be from U.S. sources, such that I find they are a foreign funded entity.

(iii) Conclusion on Participation in an anti-Alberta Energy Campaign

467. In my review of the foregoing I specifically noted the following in respect of NRDC: (a) its contribution to a segment of the RBF Document; and (b) its direct advocacy against the development of Alberta’s oil sands in a number of its webpages and statements, which I find to be evidence tending to establish broad and general objections to the development of Alberta’s oil and gas resources.

468. Moreover, I also noted NRDC’s participation in: (a) the Dirty Oil Sands Network; (b) its admitted involvement in the tanker-ban, Mackenze Gas Project, Great Bear Rainforest, and Boreal Forest land-use tactics programs; (c) its admitted support and dissemination of in divestment campaigns (d) the 18 research papers reviewed above; (e) the Obama Letter; (f) the ENGO Declaration; (g) the ENGO Open Letter; (h) the Tar Sands Solutions Network; and (i) the documentary entitled “Tipping Point – the End of Oil”.

469. On the basis of the totality of this evidence, I find that NRDC has engaged in opposition to the development of Alberta’s oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

(c) ***ForestEthics (now Stand.earth)***

(i) Background

470. ForestEthics traced its roots to the Clayoquot Rainforest Coalition (“**CRC**”), founded by NRDC, Greenpeace, Pacific Environment and Rainforest Action in 1994 with a focus on forestry issues, including campaigns regarding Clayoquot Sound and the Great Bear Rainforest (discussed in more detail above in Part II of this Report). In 2001 CRC became ForestEthics US, a 501(c)(3) foundation. Michael Marx, author of the Corporate Ethics Document, was the Executive

⁵⁵⁵ <https://www.pembina.org/reports/engo-obama-tarsands.pdf>

⁵⁵⁶

https://web.archive.org/web/20130829060500/http://www.sierraclub.org/pressroom/downloads/Tar%20Sands_letter-0701.pdf

⁵⁵⁷ <https://www.pembina.org/reports/us-can-ceo-declaration.pdf>

Director.⁵⁵⁸ Both Michael Marx⁵⁵⁹ and Tzeporah Berman⁵⁶⁰ list themselves as co-founders of ForestEthics.

471. According to ForestEthics' website (from July of 2014), ForestEthics reorganized in April of 2012 as a "coalition with three partner organizations: U.S.-based ForestEthics, and Canadian-based ForestEthics Advocacy and ForestEthics Solutions."⁵⁶¹A subsequent version of ForestEthics' website elaborated on the reorganization as follows:

"Recently, the Canadian government has been conducting an unprecedented dismantling of environmental laws and review processes — heavily scrutinizing environmental groups, and attempting to limit the public's ability to advocate strongly and oppose these attacks. In response, we created two independent nonprofit entities in Canada, ForestEthics Solutions Society and ForestEthics Advocacy Association, in April 2012. ForestEthics Solutions continues to craft world-renown environmental solutions such as the Great Bear Rainforest Agreement and the Canadian Boreal Forest Agreement. ForestEthics Advocacy is able to devote an unlimited amount of its time and resources to environmental advocacy-to ensure that destructive projects and weakened environmental laws are vigorously and successfully opposed."⁵⁶²

472. ForestEthics (U.S.) continued to operate as a 501(c)(3) charitable organization and advance its role in The Tar Sands Campaign. It described its campaigns in the "Form 990" U.S. tax filing it made in 2012 (the "**ForestEthics (2012) 990 Return**") as, among other things, providing revenues to "FE Canada Programs:

- (1) Forest Ethics Solution Society for B C Forest \$60,962.79
- (2) Forest Ethics Solution Society for Boreal \$45,850.15
- (3) Forest Ethics Advocacy Association for Climate SHW \$102,622.76
- (4) Forest Ethics Advocacy Association for Climate TS CA \$257,275.47⁵⁶³

473. In March 2016, ForestEthics Advocacy changed its name to Stand.Earth.⁵⁶⁴ForestEthics continues as 501(c)(3) not-for-profit organization named "Stand.earth". As of December 31, 2018, the value of its assets was \$1,611,398 (USD).⁵⁶⁵

⁵⁵⁸ForestEthics Annual Report, 2002. Pages 2, and 16-18.

⁵⁵⁹ <https://corpethics.org/about/>

⁵⁶⁰ <https://www.stand.earth/person/tzeporah-berman>

⁵⁶¹ <https://web.archive.org/web/20140713214314/http://forestethics.org/forestethics-now-operating-international-coalition-coalition-faqs>

⁵⁶² <http://forestethics.ca/about-us/>

⁵⁶³ https://www.stand.earth/sites/default/files/ForestEthics-990-2012_0.pdf. Page 33.

⁵⁶⁴ <https://www.stand.earth/latest/forest-conservation/primary-forests/stand-new-name-forestethics-reflects-action-forests>.

⁵⁶⁵ Obtained from Stand.earth 2018 IRS Tax Return

474. “Stand Environmental Society” (“SES”) is affiliated with Stand.earth.⁵⁶⁶ Formally known known as ForestEthics Advocacy Association, SES is a not-for-profit organization incorporated in British Columbia in 2012 under the *Society Act* (British Columbia).⁵⁶⁷ SES is not a registered charity in Canada so its public disclosure obligations are limited. As of December 31, 2017, the value of its assets was \$74,085.⁵⁶⁸
475. I find that Stand.earth is an organization that operates in both Canada and the U.S. In its submissions to the Inquiry, Stand.earth indicated that it maintains legally separate entities in each country and that its “executive team is an even mix of Canadians and Americans”. Tzeporah Berman, who appears to be a Canadian resident in B.C. is identified as International Program Director for Stand.earth.⁵⁶⁹ Stand.earth specifically noted in its submissions to the Inquiry that its Canadian Oil and Gas Campaign is a largely autonomous program that is directed and operated in Canada, by Canadians. The only financial information for SES posted to Stand.earth’s website for SES is for the year ends of 2016⁵⁷⁰ and 2017⁵⁷¹, with total revenues and expenses of approximately \$800,000 in 2016 and \$1.0 million in 2017.⁵⁷² Since SES is a not-for profit organization, no financial information is available from CRA. In the material that follows, as well as on the website, no distinction is made between SES and Stand.earth, therefore I find it fair to conclude that its operations are primarily directed from the U.S.
476. I have reviewed a substantial body of materials relating to Stand.earth regarding its campaigns and activism. I also note that they are specifically referenced in both the Background Documents⁵⁷³ and CorporateEthic’s webpage listing members of the “No Tar Sands Coalition”.⁵⁷⁴

(ii) Campaigns, Advocacy Efforts, and Statements

477. Stand.earth’s website details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per Stand.earth’s web page:

A. CANADA’S TAR SANDS

Canada’s tar sands are a growing ecological disaster. While being used to extract some of the dirtiest and most carbon intensive forms of oil in the world, the process of production has left a trillion litres of toxic waste in reservoirs now leaching across Northern Alberta.

⁵⁶⁶ <https://www.stand.earth>

⁵⁶⁷ <https://www.stand.earth/sites/stand/files/Stand%20Canada%202017%20Financial%20Statement.pdf> at page 4.

⁵⁶⁸ Obtained from SES 2017 Annual Report

⁵⁶⁹ <https://www.stand.earth/person/tzeporah-berman>

⁵⁷⁰ <https://www.stand.earth/sites/stand/files/2016%20Canadian%20Financial%20Summary.pdf>

⁵⁷¹ <https://www.stand.earth/sites/stand/files/2017%20Canadian%20Financial%20Summary.pdf>

⁵⁷² <https://www.stand.earth/about/financials>

⁵⁷³ RBF Document - Page 12. Corporate Ethics Document – Page 15.

⁵⁷⁴ <https://web.archive.org/web/20100714080115/http://www.corpethics.org/section.php?id=371>

To save the climate, we must stop growing the tar sands.⁵⁷⁵

B. CAMPAIGN WIN

Thanks to months and months of public pressure from Indigenous groups, environmental organizations like Stand.earth, and everyday people, Teck withdrew their application to build the mine just days before a government decision was due – citing concern around climate change and economic uncertainty as the cause of their decision.⁵⁷⁶

C. We want a just recovery, not a Big Oil bailout

Will you email the federal government a copy of this new report, and remind them that Canadians like you don't want to see a Big Oil bailout in the next stimulus package?⁵⁷⁷

D. Trans Mountain pipeline

590,000 more barrels of tar sands each day. A 700% increase in oil tankers in the Salish Sea. A threat to endangered Orca whales. Locking Canada into a fossil fuel economy. A violation to the climate and to Indigenous Rights.

This is the new Trans Mountain pipeline project. And it's why it must not be built.⁵⁷⁸

E. North America's Boreal Forests

Today, we continue to protect the Boreal by:

2. Dramatically reducing the extraction of tar sands which require strip mining large swaths of Alberta and Saskatchewan's Boreal forest to access the tar sands underneath;...⁵⁷⁹

F. HELP WIN CAMPAIGNS

By taking action online – whether sending an email to a decision-maker, signing a petition, spreading the word on social media or making a phone call to your local representative – you're part of the community that makes our work so powerful. Together, the Stand online community is made up of more than 450,000 people taking strategic action together to shift companies (and even whole industries!) and change government policy.

⁵⁷⁵ <https://www.stand.earth/canada-climate-energy/canadas-tar-sands>

⁵⁷⁶ <https://www.stand.earth/canada-climate-energy/canadas-tar-sands>

⁵⁷⁷ <https://act.stand.earth/page/19088/action/1?ea.tracking.id=act-page>

⁵⁷⁸ <https://www.stand.earth/people-vs-big-oil/trans-mountain-pipeline>

⁵⁷⁹ <https://www.stand.earth/boreal-forests>

Search for a campaign or scroll down to take our most recent actions:⁵⁸⁰

[A list of campaigns and a search platform is then provided where users can sign up to advance a particular campaign. Campaigns include:]

- (1) Tell RBC to stop funding climate destruction and respect Indigenous rights ... That's why we are demanding that RBC phase out the financing of fossil fuels, starting with coal and tar sands.⁵⁸¹
- (2) Email Trans Mountain's insurers: Drop the pipeline now! Trans Mountain must secure insurance for its dirty tar sands pipeline, or it cannot continue. Making the pipeline un-insurable is a critical way to stop the project in its tracks.⁵⁸²
- (3) Open Letter to Biden: We Don't Want KXL. President-elect Joe Biden has promised to cancel the Keystone XL tar sands pipeline once he's in office. But in Canada, Justin Trudeau, Jason Kenney and Big Oil have said they're making saving this dirty oil pipeline a top priority.⁵⁸³
- (4) Tell Biden to stop Line 3 pipeline construction. Construction of Enbridge's Line 3 pipeline has begun, and we need federal officials to do everything in their power to stop it. If constructed, this pipeline would carry 760,000 barrels of tar sands oil from Canada every day through a three-foot-wide pipe, as big as Keystone XL – devastating our climate, threatening the Mississippi River, and violating treaty rights.⁵⁸⁴

478. I find that the foregoing review of Stand.earth's website establishes that it advocated: (a) against the approval of Teck's mining project; (b) to the federal government to leave fossil fuel producers out of any government stimulus package; (c) against the Trans Mountain pipeline; (d) against the "tar sands" in favour of the Boreal Forest; and (e) a number of campaigns aimed at frustrating the development of Alberta's oil and gas industry, including urging (i) Royal Bank of Canada not to support the fossil fuels industry, (ii) insurers of the Trans Mountain project to withdraw its support for the Trans Mountain pipeline project, (iii) the President-elect of the U.S., Joe Biden, to cancel the Keystone XL "tar sand pipeline", (iv) people to write U.S. President Joe Biden, to cancel construction of Enbridge's Line 3 pipeline, and (v) municipalities to divest from supporting the fossil fuels industry, on a general basis and is repeated in a variety of circumstances on their webpage.

479. I also noted that in the course of these campaigns, Stand.earth released a number of statements on its website and in its annual reports. These statements include the following in regards to Stand.earth's campaigns and other campaigns:

⁵⁸⁰ <https://www.stand.earth/take-action>

⁵⁸¹ <https://act.stand.earth/page/27742/petition/1?ea.tracking.id=act-page>

⁵⁸² <https://act.stand.earth/page/27074/action/1?ea.tracking.id=act-page>

⁵⁸³ <https://act.stand.earth/page/24280/petition/1?ea.tracking.id=act-page>

⁵⁸⁴ <https://act.stand.earth/page/25404/petition/1?ea.tracking.id=act-page>

A. REPORT: BlackRock's Holdings in Tar Sands Bring Wider Climate Failings to Center Stage

Sven Biggs, Canadian Oil and Gas Program Director at Stand.earth, said:

"Canada is failing on climate change and the tar sands are the biggest single reason why. Our emissions have continued to rise, and as a result we are falling further and further behind other industrialized countries. The oil and gas sector, which is now both the fastest growing and largest single source of our emissions, is the core of the problem. Which is why BlackRock's investments in the tar sands are not just out of line with their commitments on climate, they are out of line with a climate safe world. The tar sands are so toxic that even Shell, ConocoPhillips, and Statoil have quit them – BlackRock must now do the same."⁵⁸⁵

B. One big step closer to stopping Trans Mountain

By Sven Biggs, Canadian Oil and Gas Programs Director

Back in 2019, we realized that taking on the insurance industry may just be one of our best strategies for stopping the Trans Mountain pipeline – and beyond that, stopping the expansion of the entire tar sands industry.

For all these reasons and more, the Stand.earth community mobilized in enormous numbers last year to pressure insurance companies to drop Trans Mountain – and got very close to getting Zurich, the pipeline's biggest insurer, to drop out.

But we didn't quite get there. So earlier this year, we launched a renewed push to un-insure Trans Mountain. And this time, we had major success.

After nearly 17,000 people signed the petition calling on Zurich once again to drop Trans Mountain – the company caved! Getting Trans Mountain's biggest insurer to drop out, just weeks before the renewal deadline, was a major blow to the beleaguered project and left the company scrambling to find a replacement.

Our press release, and resulting media coverage of this major win....⁵⁸⁶

⁵⁸⁵ <https://www.stand.earth/latest/report-blackrock%E2%80%99s-holdings-tar-sands-bring-wider-climate-failings-center-stage>

⁵⁸⁶ <https://www.stand.earth/blog/Canada-climate-energy/trans-mountain-pipeline/one-big-step-closer-stopping-trans-mountain>

- C. Canadian Energy Regulator approves Trans Mountain's request to keep insurers' identities secret

THURSDAY APRIL 29, 2021

Following today's decision, a broad coalition of Indigenous communities and global environmental groups are planning to ramp up pressure on the insurers that have not yet ruled out supporting Trans Mountain, starting with those that were named on the certificate of insurance in 2020. Those companies include: AIG, Chubb, Energy Insurance Limited, Liberty Mutual, Lloyd's of London, Marsh, Starr, and Stewart Specialty Risk Underwriting.

"These insurers can't hide. Any company that refuses to rule out insuring tar sands extraction and pipeline projects is complicit in Indigenous rights violations," said Kanahus Manuel, a Secwepemc and Ktunaxa land defender with the Tiny House Warriors. "By not dropping Trans Mountain, insurers are also making a misguided business decision. Our presence and our assertions of Indigenous jurisdiction and territorial authority to our lands represent major risks to the construction and financial liability of the expansion project."⁵⁸⁷

- D. OUR FOCUS IS ON STOPPING THE MOST CLIMATE-POLLUTING PROJECTS WHILE SUPPORTING FORESTS AND OTHER NATURAL DEFENSES AGAINST A CHANGING CLIMATE.

In Canada, we have prioritized stopping new pipelines from the tar sands, which compared to every other source of fuel on the planet, destroys more forests, produces more toxic tailings, and consumes more energy in order to produce each barrel of oil. Pipelines are all risk and no reward for our climate, our environment, and our communities. Pipeline spills decimate local economies, risk the health of our families and our loved ones, and threaten the wildlife and wild spaces that we cherish.

New pipelines lock our economies into outmoded energy systems of the past, which means more oil production and more global warming emissions. Canada's west coast pipelines are designed to supply Pacific markets just when those markets are beginning to move away from fossil fuels.

⁵⁸⁷ <https://www.stand.earth/latest/Canada-climate-energy/trans-mountain-pipeline/canadian-energy-regulator-approves-trans>

That's why we played a key role in stopping the Enbridge pipeline, which would have run through the Great Bear Rainforest, threatening communities and the environment all along the way.⁵⁸⁸

E. The Energy East Pipeline has been canceled.

We want to extend our congratulations and deep appreciation to the Indigenous communities on the front lines who have fought tirelessly to stop pipelines from being built on their territory. We thank all of the local communities, organizers, and organizations who've stood united in opposition to Energy East for the past five years.

In their press release announcing the cancellation of their pipeline, TransCanada cited "changed circumstances" as the reason why they're abandoning this disastrous project. Let's be clear: These changed circumstances are the ones that came about because of the hard work of thousands of people across the land. By exposing the science, organizing communities, and pressuring decision-makers, it was the collective work of the people who "changed the circumstances" and stopped this pipeline.

People power stopped the Northern Gateway Pipeline. It's now stopped Energy East. Join the fight against the Kinder Morgan pipeline.⁵⁸⁹

F. ForestEthics 2009 Annual Report

Tar Sands.

Canada's Tar Sands is home to the largest, most environmentally devastating fossil fuel project in the world. Producing one barrel of Tar Sands oil wreaks havoc on Canada's Boreal Forest and generates three to five times more greenhouse gas emissions than conventional oil production. Here's what we did in 2009 to build opposition to this environmental catastrophe:

- In February, during President Obama's trip to Canada, we placed tongue-in-check personal ads in major newspapers, resulting in coverage across Canada. Then, in partnership with two First Nations, we published an ad in USA Today exposing the threat the Tar Sands poses to President Obama's plans for a clean energy future. The ad generated major news coverage across Canada—including all three major TV networks—along with several key media hits in the U.S.
- In March, we attended Power Shift, the largest youth environmental conference in the country and signed up 800 new student activists.

⁵⁸⁸ <https://www.stand.earth/stop-climate-change>

⁵⁸⁹ <https://www.stand.earth/blog/stopping-extreme-oil-infrastructure/trans-mountain-pipeline/energy-east-pipeline-has-been>

- In April, we organized more than 40 Tar Sands-focused events across the country.
- In late June, we put pressure on Secretary of State Hillary Clinton to stop the Tar Sands. Our efforts included an ad in prominent political newspaper *Roll Call*, online actions by thousands of supporters, a protest outside the state department and an editorial in *The Huffington Post*. These efforts were featured in *Reuters*.
- We launched the first phase of our U.S. corporate campaign by sending a “Tar Sands Brand Risk” letter to more than 100 Fortune 500 companies educating them on the Tar Sands controversy, offering to engage in dialogue, and making clear that inaction could result in their being targeted in a high-profile public campaign. Less than a month after the mailing, we had responses from more than 30 companies, and before year’s end we had serious conversations going with more than half of them.
- We produced two reports: “Divided We Fall: The Tar Sands vs. The Rest of Canada” and “TARNishing Our Climate Efforts: Dirty Oil and the Future of BC,” which sparked a national debate in Canada and caused key leaders to go on the record demanding accountability around the Tar Sands.⁵⁹⁰

G. ForestEthics 2009 Annual Report

A Look Ahead: Taking on the Enbridge Pipeline

As if the Tar Sands development wasn’t bad enough already, Enbridge Inc. hopes to significantly expand it by building two 725- mile pipelines through the Great Bear Rainforest. The move would introduce oil tanker traffic to the region for the first time— putting it at risk of an oil spill. The pipelines themselves are also prone to leaks: Enbridge recorded 92 spills in 2009 alone.

Thanks to more than ten years of successful campaigning in Ontario and British Columbia, we already have exceptional relationships with key players who can help us win this campaign. In the coming year, we’ll expand our effort to stop the pipeline by organizing opposition from local British Columbia communities and First Nations, and by pressuring the Canadian government to take action.⁵⁹¹

480. Another statement I found regarding Stand.earth’s campaigns and campaigns was issued by the Province of B.C. on February 7, 2006 speaking about the combined Central Coast and North Coast Land and Resource Management Plan – a precursor to the Great Bear Rain Forest – which provided, in part as follows:

- A. “ForestEthics... [was] intimately involved in building this collaborative solution for more than five years. These organizations are expressing strong support for the land use

⁵⁹⁰ForestEthics 2009 Annual Report, at pages 12-13.
https://issuu.com/stand.earth/docs/2009_forestethics_annual_report.

⁵⁹¹ https://issuu.com/stand.earth/docs/2009_forestethics_annual_report. Page 13.

decisions reached between First Nations and the Province and are looking forward to its on-the-ground implementation.”⁵⁹²

481. In addition to my review of Stand.earth’s website above, I find the foregoing statements relevant evidence in my review. In this regard I find the foregoing statements additional evidence of a broad and general opposition to the development of Alberta’s oil and gas resources. In particular, I note: (a) the divestment campaign urging BlackRock to withdraw its support for the oil and gas sector; (b) the repeated opposition to the Trans Mountain pipeline project, including the facilitation of a divestment campaign aimed at all insurers supporting the pipeline project; (c) its organization of citizen engagement to stop all pipeline projects, including Northern Gateway, Energy East, and Kinder Morgan; (d) the advocacy of the various initiatives described in its 2009 Annual Report that are described above.

(iii) Additional Campaigns

482. I noted in my research a number of other initiatives that Stand.earth undertook. The first was a general litigation tactic in late 2013.

483. In August 2013, ForestEthics Advocacy challenged the constitutionality of the “standing” provisions in the National Energy Board Act aimed at making NEB proceedings more focused and efficient by giving the NEB the discretion to exclude some groups and individuals from its hearings.⁵⁹³

484. The Federal Court of Appeal dismissed ForestEthics Advocacy’s challenge in October 2014. In doing so, the Court commented on the fact that ForestEthics Advocacy attempted to bring the litigation despite having nothing to do with the underlying NEB proceeding:⁵⁹⁴

A. Indeed, in this application and on this record, Forest Ethics is a classic ‘busybody,’ as that term is understood in the jurisprudence. Forest Ethics asks this Court to review an administrative decision it had nothing to do with. It did not ask for any relief from the Board. It did not seek any status from the Board. It did not make any representations on any issue before the Board.

485. I also found that Forest Ethics was an author or co-author of the following reports:

<u>Title</u>	<u>Date</u>
Freedom from dirty oil: Ontario’s Tar Sands Decision ⁵⁹⁵	January, 2009

⁵⁹² https://web.archive.org/web/20110817025626/http://www2.news.gov.bc.ca/news_releases_2005-2009/2006AL0002-000066.htm

⁵⁹³ *Forest Ethics Advocacy Association v Canada (National Energy Board)*, 2014 FCA 245.

⁵⁹⁴ *Ibid*, para 33.

⁵⁹⁵ <http://mediatoil.ca/Search/getpdf/1001>.

Divided we fall: The Tar Sands vs. The Rest of Canada ⁵⁹⁶	May, 2009
Our Nation Their Interest - The Case Against Northern Gateway Pipeline ⁵⁹⁷	March, 2012
Keystone XL: A Tar Sands Pipeline to Increase Oil Prices ⁵⁹⁸	2012
Canada's Oil and Gas Challenge - A summary analysis of rising oil and gas industry emissions in Canada and Progress Towards Meeting Climate Targets ⁵⁹⁹	December, 2018

486. I have reviewed each of these reports and make the following comments regarding their content and my assessment of the same.
487. The paper entitled "Freedom from dirty oil: Ontario's Tar Sands Decision" states that "tar sands" oil is the most carbon heavy oil in the world. The report advises that Enbridge's Trailbreaker proposal would cut off Ontario's access to sweet light crude from overseas and make it dependent on dirty Alberta oil, which is the fastest growing source of emissions in Canada, has three times more GHG emissions than conventional oil, is leading to the destruction of the boreal forest, creates toxic lakes that can be seen from space and leads to increased water and air pollution.
488. The paper entitled "Divided we fall: The Tar Sands vs. The Rest of Canada" states that the tar sands are the fastest growing source of GHG emissions in Canada and that special treatment for the tar sands will have negative economic impacts for other Canadian industries.
489. The paper entitled "Our Nation Their Interest - The Case Against Northern Gateway Pipeline" says that Northern Gateway is premised on a rapid increase in tar sands production leading to more habitat destruction, toxic tailings and air pollution, crossing the pristine boreal forest and nearly 800 rivers and streams; it would threaten the survival of the woodland caribou, the spawning ground of all five species of wild salmon and a unique and diverse marine ecosystem. It goes on to say that tankers would travel through the Great Bear Rainforest threatening the iconic Spirit Bear. First Nations are opposed. The project is not in Canada's national interest.
490. The paper entitled "Keystone XL: A Tar Sands Pipeline to Increase Oil Prices", states that Keystone will pump some of the dirtiest oil, strip mined and drilled under the boreal forest through America's heartland to Texas refineries. The paper states that the pipeline would mean

⁵⁹⁶ <http://mediatoil.ca/Search/getpdf/1000>.

⁵⁹⁷ <https://environmentaldefence.ca/report/report-nation-interest/>.

⁵⁹⁸ <https://www.nrdc.org/sites/default/files/Keystone-Oil-Prices-Report.pdf>.

⁵⁹⁹ <https://environmentaldefence.ca/report/canadas-oil-and-gas-challenge/>.

expansion of “tar sands” production and would worsen climate change as well as undermine efforts to move to clean energy. The paper also states a belief that the pipeline will have the impact of raising gas prices in the U.S.

491. The paper entitled “Canada’s Oil and Gas Challenge - A summary analysis of rising oil and gas industry emissions in Canada and Progress Towards Meeting Climate Targets” suggests that Canada’s existing commitment under the Paris agreement is highly insufficient and will have to be doubled to be in line with the science. The report says it is contradictory to support oil and gas production and exploration and to also seek to meet Paris commitments. The report says the oil and gas sector is the fastest growing source of emissions in Canada and there are significant subsidies to oil and gas companies by Canadian governments. The report goes on to say that despite high costs, low prices and Indigenous opposition, governments have facilitated oil and gas expansion. The industry aggressively lobbies the government to weaken climate change policies.
492. I also noted that Stand.earth was a signatory to the Obama Letter⁶⁰⁰ and the ENGO Open Letter.⁶⁰¹
493. I also found my review of the **ForestEthics (2012) 990 Return** (discussed earlier) helpful to understand the campaigns of Stand.earth. An excerpt is reproduced below:⁶⁰²

⁶⁰⁰ <https://www.pembina.org/reports/engo-obama-tarsands.pdf>

⁶⁰¹

https://web.archive.org/web/20130829060500/http://www.sierraclub.org/pressroom/downloads/Tar%20Sands_letter-0701.pdf

⁶⁰²ForestEthics 2012 Form 990 “Return of Organization Exempt From Income Tax” under section 501 (c) of the Internatl Revenu Code. See also https://www.stand.earth/sites/default/files/ForestEthics-990-2012_0.pdf . Page 34.

CLIMATE-TAR SANDS CAMPAIGN: Our Tar Sands Campaign surpassed all of its goals in 2012. As of January 2013, 19 major companies have publicly announced actions against high-carbon transportation services or fuels such as those derived from Canada's Tar Sands. Also, we persuaded global companies to make non-public commitments to reduce their use of high-carbon, high-environmental-impact fuels from their transportation supply chains. In September, we released our report: "Tar Sands Refineries: Communities at Risk." This report is the first published analysis of a US problem with Canada's Tar Sands: refineries using Tar Sands generally emit more sulfur dioxide pollution than refineries that do not use Tar Sands. Our campaign to halt the Enbridge Gateway pipeline has cemented itself in the Canadian media and citizenry. Grassroots organizing teams have mobilized an unprecedented amount of Canadian civic participation in the government's environmental review and approval process. In the last six months of 2012, we amassed more than 25,000 new supporters for this campaign and helped organize the largest act of Canadian civil disobedience in the history of the pipeline fight. In August, we submitted to the National Energy Board 4,119 (out of 4,722 in total submitted) unique Letters of Comment on the Enbridge tankers/pipeline project, written by our supporters.

494. The excerpt speaks to a "Tar Sands Campaign" and various initiatives aimed at frustrating the development of the oil sands, including helping to "organize the largest act of Canadian civil disobedience in the history of the pipeline fight".

(iv) Funding Applications and Grant Description

495. In connection with my review of financial support of Stand.earth I became aware of an affidavit by Mr. Andrew Frank, an employee of ForestEthics, sworn January 23, 2012. The affidavit is unusual in that it is not sworn in connection with any particular legal proceedings but, rather, in response to an alleged exchange between then Prime Minister Harper's office and the President and CEO of ForestEthics's sponsor, Tides Canada, Mr. Ross McMillan. A copy of the Affidavit (the "**Frank Affidavit**") is attached as Schedule "H" to this Report.

496. I have not made any investigation into the veracity of the Frank Affidavit (the Prime Minister’s Office denied its content⁶⁰³, Tides indicated it was inaccurate,⁶⁰⁴ and ForestEthics supported it⁶⁰⁵), but did note the description of Mr. Frank’s position, as follows:

I currently am employed by ForestEthics Canada (“ForestEthics”). I have been employed by ForestEthics as a Senior Communications Manager since October 2011, and before that from 2007 to 2010 as Communications Officer on contract. My primary job duties include envisioning, planning and executing communications strategies for ForestEthics’ Tar Sands and Sacred Headwaters campaigns, and I provide ongoing advice about media aspects of each campaign. ForestEthics is a charitable project of Tides Canada (“Tides”), a charitable foundation. I am technically employed by Tides. Tides holds charitable funds in trust for its respective charitable projects, including ForestEthics. ⁶⁰⁶

497. The structure described by Mr. Frank is reminiscent of the comment in the Corporate Ethics Document that, “...to the extent possible, staff will be “purchased” from engaged organizations.”⁶⁰⁷

(v) Funding Applications and Grant Description

498. I have reviewed information regarding certain grants provided to ForestEthics and find that the evidence demonstrates the following grants were made to ForestEthics:

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Description of Grant</u>
Tides U.S. Foundation ⁶⁰⁸	2017	\$39,799	CAD 50,000.00 research, education, and organizing on dirty fuels and pipelines
Campion Foundation ⁶⁰⁹	2015	\$100,000	Northern Gateway
Tides U.S. Foundation ⁶¹⁰	2015	\$ 76,579	Research, education, and organizing on dirty fuels and pipelines
Tides U.S. Foundation ⁶¹¹	2015	\$ 76,565	CAD \$100,000.00 For research, education,

⁶⁰³ <https://www.ctvnews.ca/affidavit-accuses-pmo-of-threatening-environmental-group-1.758063>

⁶⁰⁴ <https://theyee.ca/Opinion/2012/01/31/Tides-Canada-Joe-Oliver>.

⁶⁰⁵ <https://www.globenewswire.com/en/news-release/2012/01/26/1435671/0/en/ForestEthics-Confirms-Whistleblower-Andrew-Frank-s-Account-of-Harper-Government-s-Attempts-to-Silence-Citizen-Critics.html>

⁶⁰⁶The Frank Affidavit. Paragraph 1.

⁶⁰⁷ The Corporate Ethics Document. Page 13.

⁶⁰⁸ Tides Foundation Form 990 for the 2017 calendar year Schedule F Part II page 49 of 115 of PDF.

⁶⁰⁹ The Campion Foundation Form 990-PF for the calendar year 2015 page 16 of PDF.

⁶¹⁰ Tides Foundation Form 990 tax year beginning 01-01-2015 and ending 12-31-2015 page 132 of PDF.

⁶¹¹ Tides Foundation Form 990 tax year beginning 01-01-2015 and ending 12-31-2015 page 59 of PDF.

			and organizing on dirty fuels and pipelines.
The Marisla Foundation ⁶¹²	2014	\$75,000	Oilnet Preventing Fossil Fuel Expansion through Infrastructure Challenges
The Oak Foundation U.S.A. ⁶¹³	2013	\$ 250,000	Flexible tar sands support
The Marisla Foundation ⁶¹⁴	2013	\$ 75,000	After Enbridge Blocking the Future Flow of Tar Sands Oil to Protect Our Coast
The Oak Foundation U.S.A. ⁶¹⁵	2012	\$ 250,000	Flexible tar sands support
Tides U.S. Foundation ⁶¹⁶	2012	\$ 185,000	For research and education on dirty fuels
Tides U.S. Foundation ⁶¹⁷	2011	\$50,000	Canada chapter's research, education, and outreach on the issues of tankers and oil spills
Tides U.S. Foundation ⁶¹⁸	2011	\$ 50,000	research, community organization and public education on dirty fuels
Oak Foundation ⁶¹⁹	2010	\$149,940	Tar Sands Campaign
Tides U.S. Foundation ⁶²⁰	2009	\$ 250,000	Tar Sands Campaign
Tides U.S. Foundation ⁶²¹	2009	\$ 36,000	Tar Sands Campaign

⁶¹² The Marisla Foundation Form 990-PF for the 2014 calendar year Attachment 15 page 45 of 55 of PDF.

⁶¹³ The Oak Foundation U.S.A. Form 990-PF for the 2013 calendar year Attachment 15 Part XV page 2.

⁶¹⁴ The Marisla Foundation Form 990-PF for the 2013 calendar year Attachment 14 page 49 of 63 of PDF.

⁶¹⁵ The Oak Foundation U.S.A Form 990-PF for the 2012 calendar year Attachment 16 Part XV page 6.

⁶¹⁶ Tides Foundation Form 990 for the 2012 calendar year Schedule I Part II page 71 of 131 of PDF.

⁶¹⁷ Tides Foundation Form 990 for the 2011 calendar year Schedule I Part II page 18.

⁶¹⁸ Tides Foundation Form 990 for the 2011 calendar year Schedule I Part II page 18.

⁶¹⁹ The Oak Foundation U.S.A Form 990-PF for the 2010 calendar year Attachment 17 Part XV page 4.

⁶²⁰ Tides Foundation Form 990 for the 2009 calendar year Schedule I Part II page 28.

⁶²¹ Tides Foundation Form 990 for the 2009 calendar year Schedule I Part II page 28.

499. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization received funds which were provided for the stated purpose of engaging in the tar sands campaign, opposing “dirty fuels”, and opposing pipelines correlate to the campaigns of Stand.earth that I reviewed above. Accordingly, I find the grant descriptions opposing the development of Alberta’s oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

500. Moreover, as noted in the introduction to this Section, I find that Stand.earth is an entity that has operations in both Canada and the United States. In its submissions to the Inquiry, Stand.earth indicated that only 11% of the funding its Canadian office received from US foundations goes to fighting oil and gas expansion in Canada. I have not been able to confirm the accuracy of this number.

(vi) Conclusion on Participation in an anti-Alberta Energy Campaign

501. In my review of the foregoing I specifically noted the following in respect of Stand.earth: (a) its being specifically referenced in both Background Documents; (b) its direct advocacy against the development of Alberta’s oil sands in the webpages and statements that I reviewed above; and (c) its attempts to intervene in proceedings where it had no interest; and (d) the description of its campaigns in the ForestEthics (2012) 990 Return, which I find to be evidence tending to establish broad and general objections to the development of Alberta’s oil and gas resources..

502. Moreover, I also noted Stand.earth’s participation in: (a) the ReThink Alberta Campaign; (b) the Dirty Oil Sands Network; (c) the Tar Sands Solutions Network (both as ForestEthics and ForestEthics Advocacy); (d) the Obama Letter; (e) the ENGO Open Letter; (f) the series of research papers reviewed above; and (g) the tanker-ban, Great Bear Rainforest, and Boreal Forest land use campaigns.

503. On the basis of the totality of this evidence, I find that Stand.earth has engaged in opposition to the development of Alberta’s oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

(d) **350.org**

(i) Background

504. 350.org is a 501(c)(3) non-profit organization headquartered in the U.S. (Boston).⁶²² Its total assets for the year ended September 30, 2019 were \$6,221,284(USD).⁶²³

⁶²² <https://350.org/about/>

⁶²³ <https://350.org/wp-content/uploads/2021/01/350.Org-9-30-2019-Final.pdf> at p 5.

505. I have reviewed a substantial body of materials relating to 350.org regarding its campaigns and activism.

(ii) Campaigns, Advocacy Efforts, and Statements

506. 350.org details a number of its advocacy efforts. These efforts include the following campaigns and descriptions as per 350.org's web page:

A. STOP FOSSIL FUELS. BUILD 100% RENEWABLES.

We are standing up to the fossil fuel industry to stop all new coal, oil and gas projects and build a clean energy future for all.⁶²⁴

B. 350 Campaign Update: Tar Sands

The 350.org tar sands campaign continues to be one of our most robust areas of work in our fight against climate change. We don't want to jinx it, but we expect a full rejection of Keystone XL by President Obama before the end of the year.

So where do we go after Keystone? While we have been fighting all tar sands infrastructure — including other tar sands pipelines like Enbridge, Energy East and Alberta Clipper — for some time now, we will broaden our campaign narrative to encompass all fossil fuels. There are so many existing local fights to stop fossil fuel infrastructure, so we will draw attention to and connect these local fights to create a national campaign called "Keep it in the Ground."

The Keep it in the Ground campaign won't be limited to the U.S. In Canada, 350.org is playing a core role organizing mobilizations and building political power for a national tar sands moratorium. We continue to work with the nearly 100 partners who helped us plan the 10,000-strong March for Jobs, Justice & the Climate this July in Toronto. A top priority is to support partners fighting infrastructure projects — especially frontline and Indigenous communities — with financial support, trainings, extra organizing capacity, and communications support to amplify their message.

We will highlight the impact of all tar sands projects through media and online messaging, strategy sessions, direct actions, and bird-dogging Canadian public officials. We will use a Keystone win to push back against all other tar sands infrastructure, including the Alberta Clipper and the Enbridge system through the Midwest. During the campaign, we will continue the long-term work of developing strong solutions.

With Canada's federal election on October 19, 2015, we are publicizing Prime Minister Stephen Harper's climate record and the economic impacts of his tar sands push. Post-election, we will hold elected candidates accountable to their promises to reject and revoke the permits for the Northern Gateway pipeline and to overhaul the National Energy Board review to include climate change considerations – a victory that was won

⁶²⁴ <https://350.org/>

through work that 350.org helped lead in the Energy East campaign. After the Canadian elections, we will organize a major action in Ottawa to elevate the campaign.

With the price of oil so low and resistance against tar sands at an all-time high, we have an amazing opportunity to stop tar sands expansion entirely and draw attention to the need to halt all fossil fuel expansion through the Keep it in the Ground campaign. Thank you for your partnership to help make this happen!⁶²⁵

C. 2015: The Year We Turn Away from Tar Sands

In 2014 Naomi Klein popularized the term “blockadia” in her book *This Changes Everything* using the term as a sort of catch-all to describe the grassroots insurgency emerging across the globe in the face of extreme energy development. This past year also saw the continued desperate push by tar sands peddlers to build more pipelines, new mines and rush to dig up every last drop of tar sands crude. Thankfully, community opposition from the source to every coast (and even across the Atlantic in Europe, where protests met the arrival of the first shipment of tar sands to Europe) has risen up. As we leave 2014 and look forwards to 2015, here is a snapshot of the global movement to stop the tar sands.

The Source

Just a few short years ago the Northern Alberta tar sands were a little known unconventional oil reserve. Not anymore, thanks to the tireless efforts of activists & community leaders from Indigenous communities downstream of the tar sands. Projects like the Healing Walk, the final walk that happened this past June, have brought global awareness to one of the world’s largest and most dangerous pools of carbon.

This year saw three major tar sands projects shelved. Shell, Total and Stat-Oil all suspended projects that previously had been seen as “done deals” because of a lack of market access, financial uncertainty and rising opposition. With the falling price of oil, and the world waking up to the reality of the carbon bubble, this could be just the beginning for financial trouble in the tar sands. In 2015, new projects like Teck’s Frontier Mine – the largest open pit tar sands mine ever proposed – could become a litmus test for the future of new tar sands developments, and a turning point to stopping tar sands at the source.

In 2014 the fight to stop tar sands at the source took on new energy as potentially game-changing legal actions from the Athabasca Chipewyan First Nation & Beaver Lake Cree Nation took center stage. Both legal challenges have the potential to stop tar sands development in it’s tracks as tar sands companies and the Canadian government could be forced to respect Indigenous rights and honour the treaties.

The West Coast

⁶²⁵ <https://350.org/350-campaign-update-tar-sands/>

2014 went out like a lion on the West Coast when Burnaby Mountain became a flashpoint for the climate justice movement. When RCMP raided a months-long encampment organized by the Burnaby Mountain Caretakers to stop Kinder Morgan from perfuming [sic] testing campaigns on Burnaby Mountain (campaigns they were forced to do because of community opposition to the existing route) to enforce an injunction they set off days of civil disobedience ending in over 100 arrests of people standing up for the climate and Indigenous rights.

This was just one moment in a year where community opposition to the Kinder Morgan took shape, with pockets of resistance emerging all along the pipeline route from the T'seil Watuth Nation building renewable energy across the Burrard Inlet from the pipeline end, to the Secwepemc Women Warrior Society disrupting meetings and challenging the pipeline in the Interior.

Earlier in the year the National Energy Board and Stephen Harper's cabinet both gave their approval for Enbridge's Northern Gateway pipeline. The decision sparked dozens of demonstrations with thousands of people taking to the streets, and drew a clear line that if the federal government wants to build this pipeline, they're going to need to go through a slew of communities in opposition. Most recently over \$300,000 was raised to support a wall of First Nations legal challenges to the pipeline.

On the West Coast of the United States fierce community opposition to coal trains found a new fight as communities have fought off plans to ship oil by rail, including potential tar sands exports. Despite the relentless attempts of tar sands and pipeline companies to drive the pipeline vs. rail debate, tar sands by rail remains a marginal industry and one that is already proving cost-prohibitive. Still, community opposition, like what has emerged on the US West Coast, is blocking what little options there are for expanding tar sands by rail.

The East Coast

Probably the biggest development in 2014 was TransCanada's filing of their 1.1 million barrel per day "Plan B" for Keystone XL – the Energy East Pipeline. Considered by many to one of the easiest pipelines to win approval for, Energy East has become mired in resistance. Called a "nation builder" by many proponents it's proving to be better at building a nation of resistance to the project. Already TransCanada has had plans to build an export terminal in Cacouna, QC all but scuttled and faces a Quebec population that is overwhelmingly opposed to the project. Dozens, if not hundreds, of community groups have emerged to oppose to project from Saskatchewan all the way to New Brunswick, including the Coule Pas Chez Nous network in Quebec, a network of rural community groups that raised nearly half a million dollars in a few short days to stop the project in late 2014.

Indigenous opposition to the project also continues to grow. Organizers in Manitoba and Western Ontario have disrupted TransCanada events and called out collaboration between Indigenous leaders and TransCanada. In [sic] Quebec, community members

from Kanastahke – the site of the 1990 Oka Blockade, which will see it's 25th anniversary this year – issued a declaration opposing the pipeline.

Potentially most importantly going into 2015, Energy East has also become a lightning rod for connecting tar sands pipelines and Stephen Harper's refusal to deal with the reality of climate change. Over 60,000 people have already demanded that the National Energy Board review the project's upstream climate impact, and a growing chorus of organizations & experts is echoing that call. Between the pressure on Energy East, and the fact that many of those arrested on Burnaby Mountain cited the NEB's refusal to consider climate change as their motivation, it's clear that in 2015 reviewing pipelines without considering their full climate impact won't fly.

In 2014 the Line 9 pipeline also faced fierce opposition, including a number of blockades and occupations of worksites on the Enbridge pipeline route in both Ontario & Quebec, a legal challenge from the Chippewya of the Thames and most recently, a rejection from the Mayor of Montreal.

In July the Tar Sands Free Northeast campaign scored a major win shredding industry plans for shipping tar sands from line 9 in Montreal to the port in Portland Maine. The coalition passed a rock solid ordinance banning the building of any new tar sands related infrastructure for the Portland Montreal Pipe Line.

South

In late 2014, after over 300,000 people marched through the streets of New York demanding real action on climate, big oil politicians in the US Senate and Congress tried to push through an approval of the Keystone XL. Their push failed and seems to have emboldened US President Barack Obama against the project as we head in 2015, which could be a decisive year for the fate of the Keystone pipeline.

After the world took notice of the growing rural resistance and alliance between landowners and Indigenous peoples in the United States at Reject & Protect, resistance has continued to build all along the pipeline route. This past year saw the emergence of NoKXL Dakota, an alliance between Dakota Rural Action and Oceti Rising that is working to "protect our land and water in this territory against tar sands and dirty oil". In Nebraska, the pipeline has no legal route and the case is currently in front of the State Supreme Court. No matter the decision from the court the movement in Nebraska is ready, having grown bigger and bolder in 2014 with events like the Harvest the Hope concert. This rural resistance was just one part of the story in 2014 with hundreds of actions happening all across the United States, like the XL Dissent action that saw hundreds of youth and students arrested at the White House to stop the pipeline.

This past year also was the coming out party for the movement against the Alberta Clipper pipeline. In August, organizers discovered Enbridge had devised an illegal scheme to get around the permitting process for the Clipper pipeline. Not content to wait for the legally required federal permitting process and environmental review, Enbridge wants transfer [*sic*] the dirty tar sands crude from Alberta Clipper to another pipeline, Line

3, just north of the border, then re-transfer it back to Alberta Clipper once it's crossed into the United States. The move has already sparked strong opposition and an impending legal challenge.

Also in the Midwest, orgaing [*sic*] being led by Honour the Earth is taking on the Sandpiper pipeline, another Enbridge proposal that could carry fracked Bakken crude or tar sands. Taking action to protect the land, water and wild rice beds in the region, local opposition has forced an extension of the public comment period on the project and is gearing up for more in the coming year.

Solutions

If 2014 was the year of the pipeline fighter, the coming storm in 2015 could land on financial bottom line of the tar sands. With the price of oil continuing to plunge, opposition showing no signs of abating, and legal challenges to new projects in Alberta moving forwards the once “inevitable” development of the tar sands is looking shakier and shakier. Fossil Free Indexes, the group responsible for determining the top 200 companies by proven carbon reserves used by the divestment movement, recently published a list of the top 20 worst tar sands companies stating that “growth of potential CO2 [*sic*] emissions from oil sands has far outstripped the growth of oil and gas emissions overall” and that “falling oil prices will cause proved tar sands reserves to be revised down”. In other words, tar sands investments aren't just morally risky anymore, they're financially risky too. Stephen Harper's relentless agenda of tar sands development could become a major economic liability in 2015 and the economic fallout of a world moving to renewables while Canada refuses to act on climate is [*sic*] should fall squarely on his shoulders.

In the midst of this, without any significant federal government support, a clean energy revolution is also underway in Canada. Over the past five years \$25 billion has been moved into the clean energy sector in Canada, leading clean energy employment to outpace that of the tar sands. The good news is that for every million dollars invested, clean energy outpaces fossil fuels on job creation by a rate of fifteen to two, so with the falling price of oil we can divest, reinvest and turn the corner away from tar sands.

Clearly tar sands opposition isn't stopping or slowing down, but moving forward at full speed to push away from a dirty energy future and towards building just and clean energy here and now. If we continue fighting as this rate [*sic*], we will stop all tar sands development in its tracks, and that is due to the amazing movement built from the ground up.⁶²⁶

507. I find that the foregoing review of 350.org's website establishes that it advocated: (a) generally to stop all oil and gas projects; (b) a program it referred to as “the 350.org tar sands campaign”, which advanced a number of initiatives to stop the development of Alberta's oil sands, including (i) seeking a full rejection of the Keysonte XL pipeline project, (ii) “fighting” all pipelines “like Enbridge, Energy East, and Alberta Clipper”, (iii) supporting a campaign known as “Keep it in the

⁶²⁶ <https://350.org/2015-the-year-we-turn-away-from-tar-sands/>

Ground”, (iv) “building political power” for “a national tar sands moratorium”, (v) organized various citizen engagement projects, including a 10,000 person demonstration, and supporting demonstrations of indigenous and non-indigenous communities by providing “financial support, trainings, extra organizing capacity, and communications support to amplify their message”, and (vi) political activism against the Canadian Prime Minister’s “tar sands push”; and (c) a broad and general support for a “global movement to stop the tar sands”, including (i) advancing legal precedents available for first nations, (ii) citizen engagement regarding demonstrations of the Kinder Morgan, Enbridge Northern Gateway, Line 9, Keystone XL, Alberta Clipper, Line 3, Sandpiper, and Energy East pipeline projects, and efforts to ship oil and gas production by rail, (iii) other citizen engagement and media programs such as “United Reject and Protect”, “NOKXL Dakota”, and “Harvest the Hope”, and “XL Dissent”, and (iv) divestment programs like the “Fossil Free Indexes” and celebrating the departure of participants in Alberta’s oil and gas industry like Stat-Oil, Shell, and Total, all of which I find opposes the development of Alberta’s oil and gas resources.

508. I also noted that in the course of these campaigns, 350.org released a number of statements on its website, including:

A. 350.org on Defeat of Energy East Tar Sands Pipeline

October 5, 2017

Bill McKibben, author and 350.org founder, added:

“The world is grateful to the Canadians and Indigenous peoples who organized against this project. The climate math is sadly simple—the carbon contained in Alberta’s tar sands must stay there. Nothing else that Canada could do to help stabilize Earth’s climate matters anywhere near as much.”⁶²⁷

B. “This is a chance for Canada to come together and start building a Green New Deal” – 350.org Responds to Teck Resources Ltd. Pulling Frontier Mine Application

February 24, 2020

“Make no mistake, Teck abandoned the Frontier project because people are standing up to demand real climate action. This is a chance for Canada to come together and start building a Green New Deal. In its letter, Teck mentioned the need for a real climate plan in Canada, and we agree. But instead of pushing fossil fuel projects that divide our communities and only benefit a wealthy few, our government needs to commit to a rapid, just transition that respects Indigenous rights, supports working families by creating millions of good unionized jobs and

⁶²⁷ <https://350.org/press-release/defeat-energy-east-pipeline/>

gives Canada the best chance it has to meet our global climate commitments.”⁶²⁸

C. On the road with the Enbridge Tar Sands Resistance Tour

May 11, 2015

I am still reeling (in a good way!) from the Enbridge Tar Sands Resistance Tour, a 16 stop / 16 day whirlwind organizing tour across the Great Lakes region to spur and connect the growing movement to stop pipeline expansion and keep tar sands oil in the ground.

The tour was planned by Energy Action Coalition, MN350, MI CATS, Indigenous Environmental Network, the Sierra Club, and too many other local organizations to list. We traveled from Detroit through six states to Minneapolis along the Enbridge Lakehead system, a large pipeline network that carries most of the tar sands oil used in the United States.

The tour is only the beginning — we’ll be continuing to fight back at the Tar Sands Resistance March on June 6 in Minnesota and the Remember Kalamazoo healing walk July 24 – 26th in Michigan. We know we’re stronger when we stand together as a community from across the Great Lakes region.

Together, we’re building the movement this challenge requires. I’ll see you in the streets,

Andy⁶²⁹

D. Europe must close doors to tar sands oil

Louise Hazan October 9, 2014

For years campaigners across Europe have argued that closing off European markets to tar sands oil was crucial in halting the expansion of the Albertan tar sands industry, which former NASA Director James Hansen has dubbed ‘game over for the climate’.

This Saturday, protestors will take to the streets to rally against these corporate trade deals. Over 300 demonstrations are planned in hundreds of cities and towns across EU Member States. It is time our trade policy started to work for, not against people.⁶³⁰

⁶²⁸ <https://350.org/press-release/teck-frontier/>

⁶²⁹ <https://350.org/on-the-road-with-the-enbridge-tar-sands-resistance-tour/>

⁶³⁰ <https://350.org/europe-must-close-doors-to-tar-sands-oil/>

E. Canada's Northern Gateway Tar Sands Pipeline Remains Blocked by First Nations Opposition

June 11, 2014

Although Canadian premier Stephen Harper is soon expected to grant federal approval for the controversial Enbridge Northern Gateway tar sands pipeline, his government is all but powerless to move the project forward because of strong resistance from First Nations and British Columbians.

"This pipeline is never going to be built—First Nations leaders and coastal protectors will see to that," says 350.org co-founder Bill McKibben.⁶³¹

F. Activists rally outside G8 and send Kerry a message: Say No to Keystone XL Tar Sands Pipeline

April 11, 2013

Approximately 60 activists, including some from Texas and the Gulf Coast, gathered outside the G8 foreign ministers' meeting at Lancaster House in London today to tell US Secretary of State John Kerry to reject the Keystone XL tar sands pipeline, address the global climate crisis, and keep tar sands out of Europe.⁶³²

G. Europe says NO to tar sands, NO to KXL

February 17, 2013

This post has been developed in collaboration with our friends and allies at the UK Tar Sands Network, People & Planet, Campaign against Climate Change, and Pembrokeshire Friends of the Earth.

First Nations say no to tar sands

First Nations in Canada are on the frontline of the highly polluting tar sands development, and have suffered for decades as their lands, food and water sources are slowly poisoned. Many communities have been actively speaking out, and taking legal action, against the government and industry.

From Europe we do our best to support First Nations communities who are struggling to protect the air they breathe and water they drink. Their struggle to protect Mother Earth is our struggle to protect the climate.

⁶³¹ <https://350.org/press-release/canadas-northern-gateway-tar-sands-pipeline-remains-blocked-by-first-nations-opposition/>

⁶³² <https://350.org/activists-rally-outside-g8-and-send-kerry-message-say-no-keystone-xl-tar-sands-pipeline/>

How can we stop this?

We can, of course, send our solidarity and support to our friends in the US and Canada who are working so hard to stop KXL and other tar sands infrastructure ever being built. But there is something crucial for us in Europe to do too. A key piece of climate legislation is currently going through the EU. Known as the 'Fuel Quality Directive' (FQD), it would acknowledge that tar sands oil is far more polluting than conventional oil, and strongly discourage its use in Europe.⁶³³

H. Great video of Bill McKibben at Vancouver Rally Opposing Enbridge Tar Sands Pipeline

March 28, 2012

More than 2,000 people rallied in the rain on Monday afternoon in Vancouver, Canada to protest the proposed Enbridge Northern Gateway tar sands pipeline. 350.org founder Bill McKibben was there and gave a great speech.

The rally was led by members of the First Nations and groups like our friends at ForestEthics, who are doing excellent work to help coordinate the fight against the tar sands in Canada. We're honored to have joined the rally and are looking forward to finding more ways that 350.org can help with the growing movement to defuse the largest carbon bomb in North America.⁶³⁴

509. In addition to my review of 350.org's website above, I find the foregoing statements relevant evidence in my review. In this regard I find the foregoing statements additional evidence of a broad and general opposition to the development of Alberta's oil and gas resources. In particular, I note: (a) the celebration of the defeat of the Energy East pipeline project and the Teck Frontier Mine application; (b) the general commentary that "Alberta's tar sands must stay there", being a reference that Alberta's oil sands should not be developed at all; (c) the continuing support of citizens engagement in the "Enbridge Tar Sands Resistance Tour" to oppose pipeline expansion; (d) the continuing support of citizens engagement (in over 300 demonstrations) to frustrate the marketing of Alberta's oil sands production in Europe, including additional campaigns in Europe to reject the Keystone XL pipeline project and support the UK Tar Sands Network; (e) the support of various citizen engagement programs among constituents of the First nations and coastal communities, objecting to the approved Northern Gateway pipelines project; and (f) support for rejecting the Keystone XL pipeline project.

(iii) Other Campaigns

510. In the course of my review I discovered a direct action/citizen engagement program known as the "Hive Proposal. The Hive Proposal was for "a lift-off-action and ongoing coordination of

⁶³³ <https://350.org/europe-says-no-tar-sands-no-kxl/>

⁶³⁴ <https://350.org/great-video-bill-mckibben-vancouver-rally-opposing-enbridge-tar-sands-pipeline/>

organizational support for mass action disrupting KM construction”. The full text of the Hive Proposal is attached as Schedule “I” to this Report and includes references to:

- A. “The Hive” – being “[a] coalition of organizations and grassroots groups, organized to provide support for and share information about mass, creative and non-violent direct actions”; and
- B. “The Swarm” – being “[a]ctivists, small groups and the general public involved in mass actions that sign onto the action agreements (to be decided on by the initial Hive) and require support.”⁶³⁵

511. The Hive Proposal also speaks to the covert nature of the organization, providing in part:

* Limit written action planning to broad frameworks and strategy, and discuss tactics at in person meetings whenever possible. This is less important for actions where the tactical plan and call to action are going to be public (ie. pre-announced actions).

Only share google docs with specific people or the km-action-hive@googlegroups.com list; link sharing is always off. If you need to circulate documents to members of your group or organization, make a copy of the document and share directly with them but keep link sharing off to prevent documents from being publicly viewable online.

Whenever possible, substantive conversations and plannings will happen in person at weekly meetings. If that’s not possible, use Signal with disappearing messages on desktop and phone; try to avoid slack, email or texting.⁶³⁶

If you’re on a call, try to do voice calls from a private location and avoid using speaker phone if it is just you.

512. In an interview on the Lynda Steele Show, the author of the Hive Proposal confirmed its authorship on behalf of 350.org, and further defended the use of civil disobedience and the secrecy surrounding the organization of the campaign.⁶³⁷ The interview included the following comments:

- A. Guest Host Mike Smith (Vancouver Province Columnist) introduces the topic at the 0:35 mark by saying: “The document is entitled the hive, pardon me, the Action Hive Proposal, it describes a plan of quote, mass action disrupting Kinder Morgan construction. Let me introduce you now to the man who wrote the document, his name is Cam Fenton, he’s a campaigner with the environmental group 350.org. Cam thanks a lot for coming on the show.”
- B. At the 1:00 mark Mr. Smith asks Mr. Fenton: “When did you prepare this document and what is its purpose?”

⁶³⁵ Hive Proposal page 1.

⁶³⁶ Hive Proposal page 5.

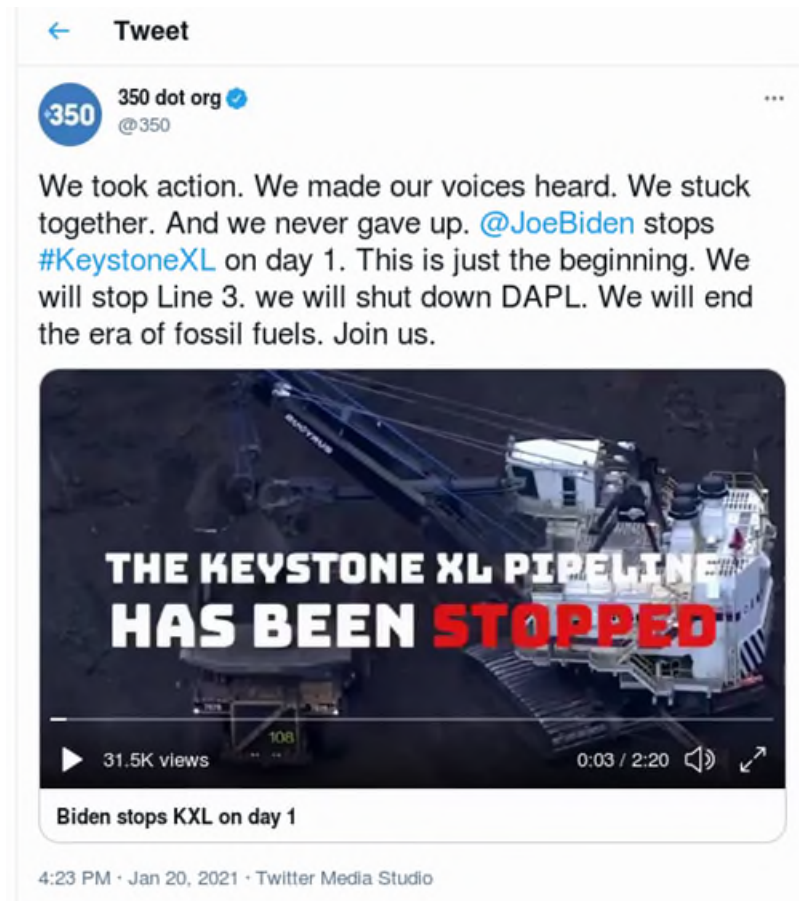
⁶³⁷ <https://omny.fm/shows/steele-drex/talking-to-the-author-of-the-action-hive-proposal>

- C. In his response Mr. Fenton states “So the document was prepared in the fall of last year, 2017, uh, and it was largely, sort of, put together to organize groups who have been publicly opposing the Kinder Morgan pipeline, uh, groups like ours, 350.org, that have publicly pledged to engage in civil disobedience if its necessary to stop the project in advance of Kinder Morgan starting construction.”
- D. At 1:45 Mr. Fenton continues “So the document itself was used to organize this massive kayak flotilla, uh, you can go stopcamflotilla.org, you can see all the documentation from the day, uh, there were 5 people arrested that day, um from disrupting Kinder Morgan’s marine construction, um but, that was sort of the end of the organizing through that process, but I do think that you know we as an organization and other environmental organizations in B.C., as well as we’ve seen in polling upwards of 10% of the population of the province, um, have said they are willing to engage in civil disobedience which could mean, you know, laying down in front of bulldozers, it could mean sit-ins, you know, I think there is a long history in this province and beyond of what that means.”
- E. Mr. Smith: “Blockades? Blocking Roads?”
- F. Mr. Fenton responds: “It’s definitely a possibility.”
- G. Later in the interview (3:00 Mark) Mr. Fenton states: “But I think the Hive is simply a word for, there are a number of Environmental organizations, like us 350, Greenpeace Canada for example, um, that are very publicly stated, we are willing to and organizing civil disobedience to stop this project, um and it’s a platform which those organizations could talk together and collaborate together, and I think that the fact that, you know, environmental organizations, particularly groups like us and Greenpeace who have done this kind of thing in the past, would be working together to do it in the future, uh, is really, not, shouldn’t come as a surprise to anyone
513. 350.org was also involved in organizing various demonstrations against the Energy East project, as described on its website, on the webpage entitled, “ENERGY EAST: A TIMELINE OF HOW WE WON”⁶³⁸
514. I also became aware of 350.org’s involvement with organizing, supporting, participating in, or celebrating various other direct action/citizen engagement initiatives seeking to frustrate the development of pipelines designed to deliver Alberta’s oil and gas resources to commercial markets, including:
- A. Keystone XL. In early 2012, a movement known as “Tar Sands Action” joined 350.org. and continued under the banner known as “Tar Sands Action – Stop Keystone XL Pipeline”. While their efforts focused on Nebraska, related events occurred throughout the U.S. (including Cincinnati, Washington, Boston, Delaware, Raleigh, Columbus, Richmond, Minneapolis well as in Ottawa and Vancouver).⁶³⁹

⁶³⁸ <https://350.org/energyeast-win/>.

⁶³⁹ <http://tarsandsaction.org/> . See also - <http://tarsandsaction.org/page/13/> (and forward).

- B. By 2021 350.org was celebrating the cancellation of Keystone XL:⁶⁴⁰



- C. Line 3:⁶⁴¹

⁶⁴⁰ <https://twitter.com/350/status/1352034131610390530>

⁶⁴¹ <https://350.org/press-release/kxl-zombie-terminated/>

350.org Keep It In the Ground Campaign Manager Kendall Mackey said:

“The fight to stop Keystone XL was never about one pipeline. The termination of this zombie pipeline sets precedent for President Biden and polluters to stop Line 3, Dakota Access, and all fossil fuel projects. With the window of opportunity closing for meaningful climate action and clear [evidence](#) that there is no room for fossil fuel projects in bringing down emissions, this victory puts polluters and their financiers on notice: terminate your fossil fuel projects now – or a relentless mass movement will stop them for you.”



D. Teck Frontier Mine.⁶⁴²

Tweet

Bill McKibben @billmckibben · Feb 23, 2020

Wait! News breaking that campaigners have seemingly won a signal victory against a giant proposed tarsands mine. The company says that 'investors' worried about climate make it impossible to proceed. What great organizing! #RejectTeck #stopthemoneypipeline



Teck Resources pulling application for Frontier oil sands mine
The Teck mine had already passed a lengthy regulatory review and Ottawa was expected to decide this week whether to approve the ...
theglobeandmail.com

⁶⁴² <https://twitter.com/billmckibben/status/1231769361360334849>

515. From my review of the foregoing I find that 350.org advocated for, and advanced, numerous direct action/citizen engagement initiatives on a repeated basis.
516. Earlier in this report I reviewed the evolution of the divestment movement and the key role that 350.org played in that process. My review suggests that 350.org's divestment efforts continue to this day. Recent examples of their efforts are found on 350.org's website as follows:

A. December 13, 2018 – Landmark fossil fuel divestment reached!

[After announcing a paper issued by "Fossil Free",⁶⁴³ the webpage continues....]

The report details that since 2012 the number of institutions committing [*sic*] to fossil fuel divestment has increased rapidly, as has the total number of dollars of those who committed to sell their fossil fuel investments.

The report shows:

- The exponential rate of growth in the number of institutions and total funds divested from fossil fuels companies;
- The global breakdown of divestments including numerous commitments on every continent;
- The sectoral breakdown of divestment actions, which demonstrates the moral leadership of the faith sector on the issue of divestment;
- Politically significant commitments such as those of the sovereign wealth funds of Ireland, Norway and city divestments of Cape Town and New York.

The first fossil fuel divestment commitment made since the movement was launched was made by Unity College (Maine) in the United States in 2012.⁶⁴⁴

B. March 12, 2020 – Pandemic & market crash escalates urgency of New York State divestment fight

The recent plunge in oil stocks is costing New York retirees hundreds of millions of dollars because of Comptroller Thomas DiNapoli's refusal to divest the New York State Common Retirement Fund (NYSCRF) from fossil fuels, according to new analysis by 350.org.

The analysis of just 18 tar sands and fracking companies reveal that the fund lost more than \$850 million in the past year. The companies had been valued at \$2.8 billion last March. The fund's investment in ExxonMobil has been halved, dropping by more than \$400 million. The numbers add a sense of urgency to global momentum of the

⁶⁴³ <https://gofossilfree.org/wp-content/uploads/2018/12/1000divest-WEB-.pdf>

⁶⁴⁴ <https://350.org/press-release/landmark-fossil-fuel-divestment-reached/>

divestment movement, as well as the fossil fuel divestment push unfolding in the State Legislature this session.⁶⁴⁵

- C. November 16, 2020 - Faith institutions announce largest-ever joint divestment from fossil fuels

While government leaders cling to the economic models of yesterday, faith leaders are looking ahead to the energy future we share. With renewables now growing at a faster pace than fossil fuels, institutional investors are increasingly moving toward sustainable investments in the clean energy economy. Faith investors help lead this movement, constituting the single-largest source of divestment in the world, making up one-third of all commitments. To date, nearly 400 religious institutions have committed to divest.

Pressure from faith investors and others has exposed the inherent weakness of the fossil fuel industry, with Royal Dutch Shell now citing divestment as a material risk to its business.⁶⁴⁶

517. I further find that 350.org was an author or co-author of the following reports, the content of which I summarize as follows:

<u>Title</u>	<u>Date</u>
Cooking the books: How the State Department analyses ignores the true climate impact of the Keystone XL Pipeline ⁶⁴⁷	April, 2013
Lockdown: The end of growth in the Tar Sands ⁶⁴⁸	October, 2015

518. I have reviewed each of these reports and make the following comments regarding their content and my assessment of the same.

519. The paper entitled "Cooking the books: How the State Department analyses ignores the true climate impact of the Keystone XL Pipeline" suggests that America does not need this "extreme source of oil".⁶⁴⁹ It states that Keystone is a disaster for the climate- Keystone will emit 181 metric tons of CO2 each year, which the report says is equivalent to the tailpipe emissions of 37.7 million cars. The report calls for the rejection of Keystone to limit the growth of the "tar sands".

520. The paper entitled "Lockdown: The end of growth in the Tar Sands" states that the "tar sands" are among the most carbon intensive sources of oil in the world and that the vast majority of the tar

⁶⁴⁵ <https://350.org/press-release/divest-ny-market-crash-analysis/>

⁶⁴⁶ <https://350.org/press-release/faith-institutions-announce-largest-ever-joint-divestment-from-fossil-fuels/>

⁶⁴⁷ http://priceofoil.org/content/uploads/2013/04/Cooking_the_Books_FINAL-SCREEN.pdf.

⁶⁴⁸ http://priceofoil.org/content/uploads/2015/10/Lockdown_Final.pdf.

⁶⁴⁹ http://priceofoil.org/content/uploads/2013/04/Cooking_the_Books_FINAL-SCREEN.pdf. Page 3.

sands can't be burned if we are to avoid the worst impacts of climate change. The report postulates that industry is facing increasing headwinds that could limit the expansion of tar sands—high costs and low prices have helped and citizen engagement has successfully stopped or delayed pipeline infrastructure. The report suggests that expansion plans are no longer inevitable as public support for climate action and opposition to pipelines has directly limited the viability of expansion plans in the landlocked tar sands. The report says that shipping by rail is a high-cost back-up and can turn a profitable project into a loser. They state a belief that the development of new projects is highly unlikely and that without pipelines, some 34.6 billion metric tons of carbon will stay in the ground, meaning a better chance to maintain a safer climate future.

521. Additionally, I find that 350.org was a signatory to the ENGO Open Letter,⁶⁵⁰ and the EDC Divestment Letter.⁶⁵¹
522. I have also reviewed a news story published about campaigns of the American environmental movement pertaining to Alberta's oil patch, which noted in part:
- A. How the American environmental movement dealt a blow to Alberta's oilpatch
- Activists identified perfect target: Keystone XL pipeline, and they think it worked
- Alexander Panetta · CBC News · Posted: Nov 18, 2019 4:00 AM ET
- The strategy to stifle Alberta's oilsands came together in a hotel near a mall in Minneapolis over a decade ago.
- It was the fall of 2008, and a group of environmental activists spent part of a conference there brainstorming tactics for slowing down the growth of the oilsands — and they identified pipelines as the most vulnerable target.
- Now, those activists are claiming victory.
- A decade later, Alberta crude is increasingly choked off from international markets; growth forecasts have been cut in half; iconic Canadian energy companies are rebranding themselves or moving head offices; and parts of Western Canada are simmering with talk of separatism.
- Several American activists interviewed in recent days cited the tactical decisions made in 2008 as setting the stage for the industry's current woes.

⁶⁵⁰

https://web.archive.org/web/20130829060500/http://www.sierraclub.org/pressroom/downloads/Tar%20Sands_letter-0701.pdf

⁶⁵¹ <https://cela.ca/wp-content/uploads/2021/01/CSO-Letter-Export-Development-Canada-Dec-2020.pdf>

“Keystone was a turning point,” said Kenny Bruno, an organizer and author in the environmental movement who helped shape the anti-pipeline strategy.

“It really did impact the industry — as we intended.”

Anthony Swift, director of the Canada Project at the Washington-based Natural Resources Defence Council (NRDC), agrees that the effort helped at least curb growth even if, overall, oilsands output continues to rise.

“We really did stop expansion,” Swift said.

While delays in large oil projects are now fairly common, in 2008, it was near inconceivable that the United States would reject a pipeline — especially one from Canada, Swift said.

In November of that year, activists reviewed the protest methods employed up to that point and concluded they needed new tactics.

Bruno said they talked about protesting at refineries or lobbying industrial users such as shipping companies that might be using fuel sourced in Alberta.

The problem with targeting refineries and companies, however, was there were so many of them that altering the behaviour of one would have a limited impact. Isolating Alberta oil within a company’s fuel supply was also impractical, Bruno said.

But when it came to pipelines, at the time, there were only a few major cross-border projects in the works.

Bruno, a New Yorker who has worked for a number of climate NGOs, including Oil Change, Greenpeace and Corporate Ethics, was among those advocating the view that stalling just one pipeline could do disproportionate damage to the industry.

He and others at the meeting identified the one pipeline project furthest from completion — Keystone XL, for which a permit application had been submitted just weeks earlier, and they zeroed in on it as their target.

What changed at the 2008 meeting, however, was the decision to coordinate efforts and throw all of their energy at stopping one project, said Susan Casey-Lefkowitz, a chief program officer with NRDC who attended the meeting.

And it worked, she said.

“At that time, [Alberta oil] was seen as the next Gold Rush. Every major oil company in the world was there,” she said. “That’s changed. and it’s changed for several reasons. [sic]”

Eleven years later — after numerous court battles, protests along the planned route and outside the White House and several delays, including one rejected presidential permit from then-president Barack Obama — Keystone XL remains in limbo.

Drag out and delay

An organizer of the first big Washington protest against Keystone XL, Bill McKibben, said the conflict over that pipeline created a template for future challenges.

He described the broader strategic goal this way: drag out and delay fossil-fuel projects and make them more expensive while alternative energy gets cheaper.

“Nothing gets built for free anymore, without a lot of resistance,” said McKibben, founder of the group 350.org, who has more recently turned his focus to contesting banks that fund oil projects.

So, can international climate activists really claim to have put a dent in Canada’s oilsands?

“I don’t think they’re wrong at all,” said Andrew Leach, an energy economist at the University of Alberta. “It’s massive.... It’s made a huge difference.”

The tactics might arguably be ineffective as a policy to slow down climate change — but, he said, it’s impossible to deny the protests against Keystone XL helped restrain Canada’s pipeline capacity, and the shortage of capacity is one of several factors bedeviling the oilsands.

Activists’ newest strategy on Keystone XL is to delay the project beyond Trump’s first term and hope a Democratic president might cancel the permit in 2021.

Swift, McKibben, Bruno and Casey-Lefkowitz all said they first heard concerns about oilsands expansion in the 2000s from Indigenous and environmental activists in Canada.⁶⁵²

⁶⁵² <https://www.cbc.ca/news/world/paralyze-oilsands-plan-keystone-pipeline-1.5356980>

523. The Rockefeller Brothers Fund played a material role in funding 350.org, as a 2010 interview of 350.org's founder revealed⁶⁵³ at 13:15 of the interview:

Q: How is 350.org funded?

A: Well, not very well.

Q: Who are your funders?

A: To the degree that we have any money at all it's come from a few foundations in Europe and the U.S.

Q: Which ones?

A: Uh lets see, the uh, I'm trying to think who the biggest uh, funders are. Uh, there is a foundation in uh, based in Sweden, uh called, I think it's called the Rasmussen foundation, that I think has been the biggest funder.

Q: So you don't get money from Pew or Rockefeller or any of those big foundations?

A: No we did, Rockefeller Brothers Fund gave us some money right when we were starting out that's been useful too.

Q: But they no longer fund you?

A: Uh, I don't know, I don't have that sort of, funders sitting in front of me.

Q: Really? That's usually something that people know?

A: Rockefeller has been one of our, it's one of, it's a great ally in this fight.

524. I have examined grants received by 350.org and find the majority of them bear generic descriptions such as for "general purposes". As noted in the introduction to this section, however, I find this is one of the entities, which by their physical location, their mind and management, and their operations, are a U.S. entity. In addition, their funding appears to be primarily from U.S. sources, such that I find they are a foreign funded entity.

(iv) Conclusion on Participation in an anti-Alberta Energy Campaign

525. In my review of the foregoing I specifically noted the following in respect of 350.org: (a) its direct advocacy against the development of Alberta's oil sands in the webpages and statements that I reviewed above; (b) its efforts in connection with the organizing, supporting, participating, and celebrating direct action/citizen engagement initiatives that I reviewed above in connection with various projects; and (c) its role in the development and advancement of the divestment

⁶⁵³<https://vimeo.com/17613444>.

movement which I reviewed above, which I find to be evidence tending to establish broad and general objections to the development of Alberta's oil and gas resources.

526. Moreover, I also noted 350.org's participation in: (a) the ENGO Open Letter; (b) the EDC Divestment Letter; (c) the Tar Sands Solutions Network (including on the Steering Committee of the network) and (d) the series of research papers reviewed above.
527. On the basis of the totality of this evidence, I find that 350.org has engaged in opposition to the development of Alberta's oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

(e) ***Oil Change International***

(i) Background

528. Oil Change International describes itself as "a research, communications, and advocacy organization focused on exposing the true costs of fossil fuels and facilitating the ongoing transition to clean energy. Rooted in community solidarity and principled policy analysis, we work within larger movements to build a fossil free future."⁶⁵⁴

529. Oil Change International is a 501(3)(c) organization headquartered in the U.S.⁶⁵⁵

530. As of 2018 the value of its assets was \$905,175(USD).⁶⁵⁶

531. I have reviewed a substantial body of materials related to Oil Change International regarding its campaigns and activism. I also note that Oil Change International is specifically referenced in the CorporateEthics Document and CorporateEthic's webpage listing members of the "No Tar Sands Coalition".⁶⁵⁷

(ii) Campaigns, Advocacy Efforts, and Statements

532. Oil Change International details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per Oil Change International's web page:

A. (2013) Tar Sands

We campaign against the rapidly expanding Canadian tar sands industry, a carbon source which is out of control. Far from bringing America energy security, as its proponents claim, tar sands undermines action on climate change and keeps America hooked on dirty oil.

Tar sands is extreme oil in every way. Its extraction is particularly energy and water-intensive, polluting, and destructive. It is either strip mined or produced by injecting high

⁶⁵⁴ <http://priceofoil.org/about/>

⁶⁵⁵ Oil Change International 2017 Form 990 – Page 1

⁶⁵⁶ Oil Change International 2017 Form 990 IRS Tax Return – line 20

⁶⁵⁷ <https://web.archive.org/web/20100714080115/http://www.corpethics.org/section.php?id=371>

pressure steam into the ground to melt the bitumen and get it to flow to the surface. To process it into usable fuel requires complex upgrading and refining that is also highly energy intensive and polluting.

Tar sands oil is more dangerous to transport because it is more corrosive to pipelines. When something goes wrong, as it inevitably does, it is very difficult to clean up a tar sands spill. The Kalamazoo River spill in July 2010 cost more per barrel to clean up than any spill in U.S. history. Despite hundreds of millions of dollars and two years of clean up operations, oil remains in some parts of the affected area.

Tar sands oil is more polluting to produce, transport and refine than conventional oil because it contains more carbon and more toxic substances, such as heavy metals and sulfur. No matter which methods are developed to extract and process it, these pollutants are released into the environment one way or another once the resource is extracted. Developing tar sands means increasing the already high pollution burden associated with oil production.

Further, tar sands is a vast resource – over 175 billion barrels of oil in Canada alone. The volume of tar sands oil, combined with the energy intensive extraction techniques, means that producing and burning all of this tar sands oil would mean assured climate catastrophe.

Challenges

The immense power of the oil industry in North America and the trillions of dollars in profits at stake provide huge momentum to tar sands production. The industry is churning out multiple reasons why tar sands is a viable [sic]– and profitable – oil resource.

The tar sands industry claims that tar sands oil is vital to U.S. energy security and that it will bring jobs and economic benefits. While oil from Canada may seem more appealing than oil from other parts of the world, the climate consequences alone of producing and burning this oil mean that it is simply not a viable option, and will not make the United States any more ‘secure.’ And the jobs and economic benefits that the industry claims are often exaggerated.

There is a choice – we don’t need tar sands oil. One of the great challenges in fighting against tar sands is convincing Americans that we don’t need this dirty and dangerous oil.

Solutions

Debunking tar sands myths. Relying on tar sands oil does not make us more secure or better off – our climate system simply cannot absorb all the carbon in the tar sands. We need to improve transparency and counter industry misinformation about the tar sands, as with much of the oil industry. Our research and analysis shines a spotlight on the myths surrounding tar sands oil, with a focus on climate change and achieving true energy security.

Picking key battles and supporting community resistance. Proposed pipeline projects, which would bring tar sands oil to markets that so far have not had access to the low quality crude, provide important battlegrounds around tar sands. Projects such as Keystone XL and the Northern Gateway have highlighted the risks of tar sands crude contaminating communities along their proposed routes. Supporting communities and activists in halting these pipelines is an important step in fighting back against the tar sands industry.⁶⁵⁸

533. I further find that Oil Change International was an author or co-author of the following reports:

<u>Title</u>	<u>Date</u>
BP and Shell: Rising Risks in Tar Sands Investments ⁶⁵⁹	September, 2008
Reserves Replacement Ratio in a Marginal Oil World: Adequate Indicator or Subprime Statistic ⁶⁶⁰	January, 2011
Exporting Energy Security - Keystone XL Exposed: An Oil Change International Briefing ⁶⁶¹	September, 2011
Keystone XL Pipeline: Undermining U.S. Energy Security and Sending Tar Sands Overseas ⁶⁶²	January, 2012
Keystone XL: A Tar Sands Pipeline to Increase Oil Prices ⁶⁶³	2012
Petroleum Coke: The Coal Hiding in the Tar Sands ⁶⁶⁴	January, 2013
Cooking the books: How the State Department analyses ignores the true climate impact of the Keystone XL Pipeline ⁶⁶⁵	April, 2013
Keystone XL: The Key to Crude Exports ⁶⁶⁶	July, 2013
FAIL: How the Keystone XL Tar Sands Pipeline Flunks the Climate Test ⁶⁶⁷	September, 2013
Wrong side of the tracks: Why rail is not the answer to the Tar Sands Market Access Problem ⁶⁶⁸	September, 2014

⁶⁵⁸ <https://web.archive.org/web/20130424050526/http://priceofoil.org/campaigns/extreme-fossil-fuels/no-extreme-fossil-fuels-tar-sands/>

⁶⁵⁹ <http://priceofoil.org/content/uploads/2011/05/RisingRisks.pdf>.

⁶⁶⁰ <http://priceofoil.org/2010/12/04/reserves-replacement-ratio-in-a-marginal-oil-world/>.

⁶⁶¹ <http://priceofoil.org/2011/08/31/report-exporting-energy-security-keystone-xl-exposed/>.

⁶⁶² http://priceofoil.org/content/uploads/2012/01/KXL_-_Undermine_energy-security_Full_Web.pdf.

⁶⁶³ <https://www.nrdc.org/sites/default/files/Keystone-Oil-Prices-Report.pdf>.

⁶⁶⁴ <http://priceofoil.org/content/uploads/2013/01/OCI.Petcoke.FINALSCREEN.pdf>.

⁶⁶⁵ http://priceofoil.org/content/uploads/2013/04/Cooking_the_Books_FINAL-SCREEN.pdf.

⁶⁶⁶ http://priceofoil.org/content/uploads/2013/07/OCI_KXL-Crude-Exports_07-11-13.pdf.

⁶⁶⁷ <http://priceofoil.org/content/uploads/2013/08/kxl-climate-report.pdf>.

⁶⁶⁸ http://priceofoil.org/content/uploads/2014/09/OCI-Wrong-Side-of-the-Tracks_Final.pdf.

Material Risks: How Public Accountability is Slowing Tar Sands Development ⁶⁶⁹	October, 2014
On the Edge: 1.6 million barrels per day of proposed Tar Sands Oil on Life Support ⁶⁷⁰	May, 2015
Lockdown: The end of growth in the Tar Sands ⁶⁷¹	October, 2015
Tar Sands: The Myth of Tidewater Access ⁶⁷²	March, 2016
Flawed Fundamentals - Shell's and BP's Stalled Tar Sands Ambitions ⁶⁷³	September, 2016
The Elephant in the Room: Canada's Fossil Fuel Subsidies Undermine Carbon Pricing Efforts ⁶⁷⁴	November, 2016
Climate on the Line: Why new tar sands pipelines are incompatible with Paris Goals ⁶⁷⁵	January, 2017
Reality Check: The end of growth in the Tar Sands ⁶⁷⁶	June, 2017
In the Pipeline - Risks for Funders of Tar Sands Pipelines ⁶⁷⁷	October, 2017
Funding Tar Sands: Private Banks vs. the Paris Climate Agreement ⁶⁷⁸	November, 2017
Investor Briefing: Problematic Pipelines - The many obstacles facing Keystone XL ⁶⁷⁹	February, 2018
Risking it all: How Export Development Canada's Support For Fossil Fuels Drives Climate Change ⁶⁸⁰	November, 2018
Big Oil Reality Check - Assessing oil and gas company climate plans ⁶⁸¹	September, 2020

⁶⁶⁹ http://priceofoil.org/content/uploads/2014/10/IEEFA.OCI_Material-Risks-FINweb2-1.pdf.

⁶⁷⁰ http://priceofoil.org/content/uploads/2015/05/OCI-Briefing-OnTheEdge_FINAL+.pdf.

⁶⁷¹ http://priceofoil.org/content/uploads/2015/10/Lockdown_Final.pdf.

⁶⁷² <http://priceofoil.org/content/uploads/2016/05/Tidewater-2016-v2.pdf>.

⁶⁷³ <http://priceofoil.org/content/uploads/2017/04/FlawedFundamentalsTarSands.pdf>.

⁶⁷⁴ <http://priceofoil.org/content/uploads/2016/11/Elephant-in-the-Room-Canada-Subsidies.pdf>.

⁶⁷⁵ http://priceofoil.org/content/uploads/2017/01/climate_on_the_line_FINAL-OCI.pdf.

⁶⁷⁶ http://priceofoil.org/content/uploads/2017/06/endOfGrowth_Briefing.pdf.

⁶⁷⁷ http://priceofoil.org/content/uploads/2017/10/In_the_pipeline.pdf.

⁶⁷⁸ http://priceofoil.org/content/uploads/2017/11/Funding_Tar_Sands-RAN-report.pdf.

⁶⁷⁹ <http://priceofoil.org/content/uploads/2018/02/KXLBriefingFINAL.pdf>.

⁶⁸⁰ http://priceofoil.org/content/uploads/2018/11/Risking-It-All-report_web.pdf.

⁶⁸¹ https://environmentaldefence.ca/report/bigoil_realitycheck/.

534. I have reviewed each of these reports and make the following comments regarding their content and my assessment of the same.
535. The paper entitled “BP and Shell: Rising Risks in Tar Sands Investments” advises investors that there are big risks from the expansion of “tar sands” production, including a warning that pending low carbon standards will mean there is no market for tar sands oil and that unproven technology (Carbon Capture and Storage) will not work and will leave assets stranded. As well, the paper warns of risks due to rising costs of labour and construction, and significant litigation risks and clean-up liabilities due to habitat destruction, toxification and depletion of water supplies.
536. The paper entitled “Reserves Replacement Ratio in a Marginal Oil World: Adequate Indicator or Subprime Statistic” advises there are declining investment returns in the oil sands with greater risks and escalating costs to produce a marginal resource.
537. The paper entitled “Exporting Energy Security - Keystone XL Exposed: An Oil Change International Briefing” postulates that Keystone will not reduce U.S. dependence on foreign oil but will transport Canadian oil to U.S. refineries for export to foreign markets. The paper suggests that the refiner, Valero, will benefit as they are part of a tax-free zone. The paper goes on to say that Keystone is not needed due to slow economic growth and anticipated higher fuel standards.
538. The paper entitled “Keystone XL Pipeline: Undermining U.S. Energy Security and Sending Tar Sands Overseas” concerns an allegation that Keystone is intended to export Canadian oil to the world market to fetch a higher price for “Big Oil”⁶⁸², which will threaten farmlands and water of America’s heartland. The report suggests that current “tar sands” production is inadequate to fill current pipelines and the result will be that prices in the American market will actually increase. The report states that clean energy will create more jobs than Keystone.
539. The paper entitled “Keystone XL: A Tar Sands Pipeline to Increase Oil Prices” advises that Keystone will pump some of the world’s dirtiest oil, strip mined and drilled from under the boreal forest through America’s heartland to Texas refineries. The report goes on to state that that the pipeline will mean expansion of “tar sands” production and it will worsen climate change and undermine efforts to transition to clean energy. As well, it states, it will have the impact of raising gas prices in the U.S.
540. The paper entitled “Petroleum Coke: The Coal Hiding in the Tar Sands” describes the “tar sands” as “the most environmentally destructive project on earth”⁶⁸³- huge amounts of energy and water are required for extraction and vast tracts of forest are cleared leaving scars on the land that can be seen from space. The paper also says that the health and livelihoods of First Nations are threatened. As well, the paper states that Petcoke is hiding in the tar sands making them dirtier than coal. Proven tar sands reserves will yield roughly 5 billion tons of Petcoke, enough to fuel 111 coal plants in the U.S. until 2050.
541. The paper entitled “Cooking the books: How the State Department analyses ignores the true climate impact of the Keystone XL Pipeline” suggests that America does not need this “extreme

⁶⁸² http://priceofoil.org/content/uploads/2012/01/KXL_-_Undermine_energy-security_Full_Web.pdf. Page 1.

⁶⁸³ <http://priceofoil.org/content/uploads/2013/01/OCI.Petcoke.FINALSCREEN.pdf>. Page 4.

- source of oil”.⁶⁸⁴ It states that Keystone is a disaster for the climate - Keystone will emit 181 metric tons of CO₂ each year, which the report says is equivalent to the tailpipe emissions of 37.7 million cars. The report calls for the rejection of Keystone to limit the growth of the “tar sands”.
542. The paper entitled “Keystone XL: The Key to Crude Exports” advances the suggestion that allowing Keystone to proceed will lead to expanded production of the “tar sands”- there is already a surplus of heavy oil at Texas refineries such that tar sands oil will be exported leading to tar sands growth and increased emissions.
543. The paper entitled “FAIL: How the Keystone XL Tar Sands Pipeline Flunks the Climate Test” describes the “tar sands” as one of the most carbon polluting sources of oil on the planet. It describes Keystone as a “climate disaster”⁶⁸⁵ – the tar sands are a land-locked asset that needs pipelines in order to grow. The paper states that approval of Keystone could lead to a 36% expansion of the tar sands and that oil from the tar sands may be 22% more carbon intensive than oil in the U.S. The paper also comments on the implications of destroying the boreal forest through expanded production.
544. The paper entitled “Wrong side of the tracks: Why rail is not the answer to the Tar Sands Market Access Problem” states that anti-pipeline campaigns have caused a shift to rail, which is more expensive. The paper goes on say that suggestions that “tar sands” expansion will not be curtailed due to a shift to rail are incorrect- the cost is too high, there is not enough capacity and not enough infrastructure to facilitate rail. The paper also raises significant safety concerns due to the volatile nature of diluent which have caused dramatic explosions. The paper goes on to say that opposition to tar sands is about more than opposition to pipelines- it is opposition to expansion of tar sands production- climate science indicates we can’t afford to burn more tar sands crude.
545. The paper entitled “Material Risks: How Public Accountability is Slowing Tar Sands Development” states that “tar sands” production is landlocked due to effective anti-pipeline campaigns. The report says that delays cost producers money and time and that market changes have taken place which weaken the viability of tar sands projects. The report states that the lack of market access has been caused in large part by public accountability actions driven by anti-pipeline campaigns leading to the cancellation of projects. It goes on to say that the emissions of the cancelled projects would have been equivalent to emissions of 735 coal plants in one year. Further, the report advises that tar sands producers lost \$30.9 billion from 2010-2013 due to wider price differentials. Of that, \$17.1 billion can be attributed to public accountability campaigns. The paper postulates that if pipeline campaigns continue to drive transportation constraints, up to 6.9 billion barrels of oil could be left in the ground and that spread over 16 years, they calculate that is equivalent to emissions from 54 million cars. The report underscores that Tar sands campaigns can alter capital investment decisions – the KXL campaign the report says, has managed to delay the pipeline and raise awareness of the environmental costs of tar sands development.

⁶⁸⁴ http://priceofoil.org/content/uploads/2013/04/Cooking_the_Books_FINAL-SCREEN.pdf. Page 3.

⁶⁸⁵ <http://priceofoil.org/content/uploads/2013/08/kxl-climate-report.pdf>. Page 5.

546. The paper entitled “On the Edge: 1.6 million barrels per day of proposed Tar Sands Oil on Life Support” states that the “tar sands” are among the most carbon intensive, highest cost sources of oil in the world- projects are being cancelled due to low prices and high costs; 39 projects are delayed or on hold representing 1.61 million barrels a day. The report suggests that delayed projects will be exposed to growing risks of new government regulations, government action on climate change, public campaigns against pipelines, and First Nations resistance in defense of treaty rights. As well, the report states that the tar sands create air and water contamination, destruction of boreal forest and traditional hunting and fishing territories of First Nations. The report concludes that all of the above represent strong headwinds for the industry so that growth will be slowed, potentially avoiding significant GHG emissions. As risks and hurdles continue to grow, the report suggests that it is likely tar sands development will not proceed.
547. The paper entitled “Lockdown: The end of growth in the Tar Sands” states that the “tar sands” are among the most carbon intensive sources of oil in the world and that the vast majority of the tar sands can’t be burned if we are to avoid the worst impacts of climate change. The report postulates that industry is facing increasing headwinds that could limit the expansion of tar sands- high costs and low prices have helped and citizen engagement has successfully stopped or delayed pipeline infrastructure. The report suggests that expansion plans are no longer inevitable as public support for climate action and opposition to pipelines has directly limited the viability of expansion plans in the landlocked tar sands. The report says that shipping by rail is a high cost back-up and can turn a profitable project into a loser. They state a belief that the development of new projects is highly unlikely and that without pipelines, some 34.6 billion metric tons of carbon will stay in the ground, meaning a better chance to maintain a safer climate future.
548. The paper entitled “Tar Sands: The Myth of Tidewater Access” suggests that if Alberta had access to tidewater it would not be better off given low prices internationally due to supply in other markets. The paper states that there is currently an excess of capacity in pipelines, so new capacity to ship to markets that are already well supplied won’t help Alberta. They believe that “tar sands” expansion is high risk in terms of driving dependency on a volatile sector- fossil fuel demand will decline with climate change initiatives. The report says that unfettered expansion of the tar sands is incompatible with Canada’s climate goals. Canada and Alberta must focus on economic diversification and should manage the decline of the tar sands.
549. The paper entitled “Flawed Fundamentals - Shell’s and BP’s Stalled Tar Sands Ambitions” suggests that stalled growth in the “tar sands” is due to structural, rather than cyclical issues- 42 tar sands projects have been cancelled or put on hold due to a combination of factors, including a lack of market access infrastructure, gathering momentum to reduce carbon emissions and mounting public opposition. The paper also says there is an existential threat to the oil industry from new technologies like electric vehicles. Tar sands projects are high cost and require a long time horizon that doesn’t make sense in a time of reduced fossil fuel usage.
550. The paper entitled “The Elephant in the Room: Canada’s Fossil Fuel Subsidies Undermine Carbon Pricing Efforts” states that fossil fuel subsidies are an incentive to produce and consume more fossil fuels, which is a policy conflict with carbon pricing that is intended to reduce carbon emissions from producing and consuming fossil fuels. By giving polluters big breaks, says the paper, fossil fuel subsidies pull in the opposite direction of a carbon price. Each year according to

the paper, Canada gives \$3.3 billion in subsidies to oil and gas companies. The paper calls for the phasing out of all these subsidies by 2020 at the latest.

551. The paper entitled “Climate on the Line: Why new tar sands pipelines are incompatible with Paris Goals” suggests that the government’s approval of pipelines is inconsistent with Canada’s Paris commitments. The report takes exception to the Prime Minister’s suggestion that Canada can meet its climate goals while expanding production from the “tar sands”. The paper advises that if tar sands expansion proceeds, Canada would be on track to be among the highest contributors to new oil production globally for the next 20 years. The report goes on to state that Canada would “exhaust 16% of the world’s total carbon budget for staying below 1.5°C”.⁶⁸⁶ The report says it will be impossible for Canada to meet its Paris commitment with that sort of production. It says that pipelines are the key to opening up new production and therefore should not be approved. Instead, the report suggests, Canada needs to diversify its economy.
552. The paper entitled “Reality Check: The end of growth in the Tar Sands” states that a precipitous drop in prices, political and public opposition to pipelines, and increased regulatory stringency have eroded the economic and political climate that would have led to growth in the sector and that the cyclical nature of oil prices can not be counted on in the future. The paper suggests that the market is oversupplied due to new technologies and demand reduction driven by climate regulation and rapid uptake of new technologies like electric vehicles, which will depress growth in the sector. The paper advises that current pipeline capacity is sufficient as there is going to be a climate transition; there will not be a rebound in growth.
553. The paper entitled “In the Pipeline - Risks for Funders of Tar Sands Pipelines” states that risks include a lack of progress around Free, Prior and Informed consent from First Nations, given the risks of a spill or contamination of drinking water; projects also carry potential climate and environmental risks and risks due to expansion of the “tar sands”. The report concludes that all of the associated risks mean significant risks to investors and financiers of pipeline projects due to the questionable economic viability of the projects.
554. The paper entitled “Funding Tar Sands: Private Banks vs. the Paris Climate Agreement” says that meeting Paris agreement commitments must mean halting the rapid expansion of the “tar sands”, followed by rapid phase out of fossil fuels. The paper states that the phase out must begin with the most environmentally damaging fuels, including the tar sands. The “tar sands”, the paper says, occupy a unique place given high extraction costs, difficulties in getting to market, huge reserves, GHG intensity, major local and Indigenous rights impacts and immediate substitutability by less carbon intensive and cheaper alternatives. The paper also suggests that many banks have supported the Paris agreement so they must necessarily end their financial support for the tar sands.
555. The paper entitled “Investor Briefing: Problematic Pipelines - The many obstacles facing Keystone XL” postulates that Trans Canada doesn’t have sufficient producer commitments for KXL; an alternate route through Nebraska has been approved but is being challenged in the courts and by Nebraska landowners and the report says that TransCanada admits the new route poses greater environmental risks. The report states that Keystone 1 has leaked more often and

⁶⁸⁶ http://priceofoil.org/content/uploads/2017/01/climate_on_the_line_FINAL-OCI.pdf. Page 4.

in greater volume than predicted; there is escalating Indigenous opposition and questions as to how the new route will impact costs. The report also says a new environmental impact assessment should be obtained given the new route.

556. The paper entitled “Risking it all: How Export Development Canada’s Support For Fossil Fuels Drives Climate Change” is critical of EDC, which the report claims provides billions of dollars of support for fossil fuels companies every year. The report says this support is incompatible with Canada’s Paris commitments and is out of step with moves by the financial community to move away from supporting fossil fuel companies. The report states that from 2013-2017, EDC facilitated at least \$4.4 billion in support of oil sands expansion and transportation. In 2018 the report says that EDC guaranteed \$1 billion or more in financing the construction of Trans Mountain.
557. The paper entitled “Big Oil Reality Check - Assessing oil and gas company climate plans” reviews a number of “oil majors”⁶⁸⁷ and claims that none of them have “climate strategies, plans or pledges that align with Paris. The report says that if these oil and gas companies were serious about Paris they would need to end oil and gas extraction now and phase out production from existing reserves.
558. I also noted that in the course of these campaigns, Oil Change International released a number of statements on its website. A search of “tar sands” on the website would seem to indicate that there are over 190 statements or related items on the Oil Change International website. A sampling of these statements include the following in regards to Oil Change International’s campaigns and other campaigns:
- A. Oil Change “Bears” Witness to Canada’s Tar Sands Insanity (2008)
- Oil Change has started up a new campaign targeting tar sands and particularly new US tar sands infrastructure. Watch this space for more updates.⁶⁸⁸
- B. Tar sands reality check (2013)
- It seems the market is likely to deliver a reality check to tar sands producers, which could see some projects shelved as the supply and demand balance in North America tips against the tar sands industry.
- However, we will need more than market forces to constrain tar sands development within climate limits. A climate-led energy policy in the tar sands’ key market – the United States – as well as in Canada that recognizes the imperative to leave fossil fuels in the ground would go some way towards it.⁶⁸⁹

⁶⁸⁷ https://environmentaldefence.ca/report/bigoil_realitycheck/. Page 1.

⁶⁸⁸ <http://priceofoil.org/2008/01/17/oil-change-bears-witness-to-canadas-tar-sands-insanity/>

⁶⁸⁹ <https://web.archive.org/web/20130520112723/http://priceofoil.org/2012/08/30/tar-sands-reality-check/>

C. Support the KXL Protestors! (2013)

As I write three anti-tar sands protestors remain in jail in Texas for stopping the construction of the Keystone XL pipeline. They are being held on \$1,000 each. Four other protestors have been released.⁶⁹⁰

D. Tar Sands: The Myth of Tidewater Access (2016)

We conclude that oil-to-tidewater is no longer a sound argument to be made in favour of major new pipelines and that mid-long term economic planning in Alberta and Canada should be focused on diversification rather than an expanded dependency on the boom and bust cycle of oil.⁶⁹¹

E. Evidence shows new pipelines will not solve Alberta's economic woes or support a clean energy transition (2016)

New pipelines from the Alberta to tidewater would do nothing to help Canada's oil industry cope with low oil prices. Contrary to assertions made by the Canadian Association of Petroleum Producers today and Natural Resources Minister Carr on Tuesday in interviews, there is no longer a sound economic argument for increased market access to tidewater.⁶⁹²

F. #ExxonKnew Trial Starts in New York

OCTOBER 21, 2019 BY ANDY ROWELL

Today, history will be made in the quest to hold the oil industry responsible for our climate crisis.

In a court room in New York, Big Oil will finally be in the dock for misleading investors over the financial risks of climate change.⁶⁹³

G. Canada's "Pipeline Through Paradise"

JULY 25, 2011 BY ANDY ROWELL

But the pipeline is opposed by First Nations, environmental groups, fishermen and local communities who are concerned about all the

⁶⁹⁰ <https://web.archive.org/web/20120901120240/http://priceofoil.org/2012/08/29/support-the-texas-kxl-protestors/>

⁶⁹¹ <https://web.archive.org/web/20160325085531/http://priceofoil.org/2016/03/17/tar-sands-the-myth-of-tidewater-access/>

⁶⁹² <https://web.archive.org/web/20160420174549/http://priceofoil.org/2016/04/07/evidence-shows-new-pipelines-will-not-solve-albertas-economic-woes-or-support-a-clean-energy-transition/>

⁶⁹³ <http://priceofoil.org/2019/10/21/exxonknew-trial-starts-in-new-york-tomorrow/>

problems that pipelines bring or from a tanker spill along the rugged, but beautiful coastline [*sic*]

It's not just the coast that is threatened. The issue is no less critical for the wild and fragile Great Bear Rainforest that is home to wolves and bears.⁶⁹⁴

H. Report: Big Banks Complicit in Massive Tar Sands Destruction and Pollution Through Hundreds of Billions in Financing

NOVEMBER 2, 2017 BY ADAM SCOTT

According to a new report released today by Rainforest Action Network, Oil Change International, and 10 organizations from around the world, commercial banks continue to finance the tar sands sector at levels that do not align with the Paris Agreement 1.5° to 2° target – and finance levels are surging in 2017. The report, *Funding Tar Sands: Private Banks vs. the Paris Climate Agreement*, finds that tar sands financing for producers and pipeline companies so far in 2017 is already at levels 50% greater than all of the financing committed in 2016.

A complementary report by Greenpeace and Oil Change International, "In the Pipeline: Risks for Funders of Tar Sands Pipelines," also released this week, warns of major banks' exposure to financial and reputational damage due to their financing of tar sands pipelines. The report examines in depth the range of risks impacting all three proposed tar sands pipelines including legal challenges, opposition from Indigenous and local communities, threats to drinking water and economic vulnerability.⁶⁹⁵

I. Victory for First Nations in Northern Gateway Fight

JULY 1, 2016 BY ANDY ROWELL

In a stunning victory for First Nations and environmentalists, a Canadian court has overturned the approval of the highly controversial Northern Gateway pipeline in Canada.

The proposed \$7.9 billion Enbridge Northern Gateway pipeline, if built, would transport the dirty tar sands fuel from Alberta to an export terminal on the west coast of British Columbia. The cultural and ecological impact of the pipeline would be huge.

Oil tankers would have to navigate what are seen as treacherous waters. The pipeline itself crosses the Great Bear rainforest and would have run

⁶⁹⁴ <http://priceofoil.org/2011/07/25/canadas-%e2%80%9cpipeline-through-paradise%e2%80%9d/>

⁶⁹⁵ <http://priceofoil.org/2017/11/02/big-banks-complicit-in-tar-sands-destruction/>

down the Skeena River, the major salmon river of northwest British Columbia.⁶⁹⁶

J. Ten Days Left For Kids to #JoinJuliana in #YouthvGov Lawsuit

FEBRUARY 18, 2019 BY ANDY ROWELL

But we should also draw inspiration from other young adults who are challenging their elders over climate too. In 2015, 21 young people sued the US Government to demand action on climate change in a case called Juliana v. U.S.

Zero Hour, a youth-led climate justice organization, has launched a nationwide drive to get thousands of young people to add their names to the Juliana Plaintiffs.⁶⁹⁷

K. People power can stop the Line 3 tar sands pipeline in Minnesota

MAY 23, 2019 BY COLLIN REES

We know that people power can stop dangerous fossil fuel projects like the proposed Line 3 tar sands oil pipeline in Minnesota, because we've proved it over and over again – and recently we've had two more big wins.

Pipeline owner Enbridge wants to force Line 3 from Alberta to Wisconsin...

In light of reports on what's needed to limit global warming to 1.5 degrees Celsius, preventing tar sands oil from being extracted and burned is more crucial than ever.⁶⁹⁸

L. Pipeline opposition could end tar sands growth - new analysis

OCTOBER 27, 2015 BY DAVID TURNBULL

The pipelines exporting tar sands out of Alberta are almost full, according to new analysis released today by Oil Change International. Without major expansion-driving pipelines such as Energy East, Kinder Morgan or Keystone XL, there will be no room for further growth in tar sands extraction and tens of billions of metric tonnes of carbon will be kept in the ground. This would be a significant step towards a safer climate, cleaner water and air, and healthier communities.

⁶⁹⁶ <http://priceofoil.org/2016/07/01/victory-for-first-nations-in-northern-gateway-fight/>

⁶⁹⁷ <http://priceofoil.org/2019/02/18/ten-days-left-for-kids-to-joinjuliana-in-youthvgov-lawsuit/>

⁶⁹⁸ <http://priceofoil.org/2019/05/23/people-power-can-stop-line-3-pipeline/>

The report, entitled, “Lockdown: The End of Growth in the Tar Sands” can be found here: <http://priceofoil.org/2015/10/27/lockdown-the-end-of-growth-in-the-tar-sands>

“The tar sands have run out of room to grow,” says Hannah McKinnon of Oil Change International. “Production is close to peaking, and now it is time for a recognition that tar sands production has no place in a climate safe world.”

All proposed new pipeline routes out of Alberta are facing legal challenges, opposition by local authorities and regulators, and broad-based public opposition. All of the major projects have been significantly delayed with some cancellations seemingly imminent. No pipeline has been built since 2010, despite active industry efforts.

To assess the impact of these pipeline constraints, Oil Change International built a new and comprehensive model called the Integrated North American Pipelines model (INAP). It finds:

- the current system is 89% full; and
- the industry will run out of transportation capacity as soon as 2017.⁶⁹⁹

M. Oil Change International and Leadnow response to the 2016 Canadian federal budget

MARCH 22, 2016 BY DAVID TURNBULL

Alex Doukas, Senior Campaigner, Oil Change International:

“Today’s budget missed the opportunity to make meaningful cuts to wasteful handouts to some of the wealthiest, most polluting fossil fuel companies on the planet – even announcing new subsidies for a sector that is dragging down the economy and the climate.* [s/c] These fossil fuel subsidies go to some of the richest companies in the world, and Canadians should not be on the hook to pay for them to clean up their acts.

We need much bolder leadership. Action to incentivize clean energy development and climate action are undermined by continued handouts to the very source of the problem. The government’s next move should be a commitment that all of Canada’s billions in wasteful fossil fuel subsidies will end by 2020, setting a global precedent for climate action on this front.”

Jolan Bailey, National Organizer, Leadnow:

“In this budget, the government has taken some positive steps to building a 100% clean energy economy by 2050. Unfortunately, they’re

⁶⁹⁹ <http://priceofoil.org/2015/10/27/pipeline-opposition-could-end-tar-sands-growth-new-analysis/>

undermining their own commitments by including a decade of continued subsidies for new fossil fuel infrastructure projects.”⁷⁰⁰

N. Day of Action Against Financing of Keystone XL, Line 3 Pipelines

DECEMBER 11, 2020 BY COLLIN REES

Actions are planned in New York City, Washington DC, San Francisco, Denver, Boston, Chicago, Cincinnati, Madison, Minneapolis, and Charlotte. In Boston, Climate Finance Action will make deliveries to Liberty Mutual and BlackRock offices. In the Bay Area, activists will visit at least twenty bank branches in cities across the region. In Washington, DC activists with Shut Down DC will be delivering the letter to a branch of Chase Bank, Bank of America, Wells Fargo, and Citibank, with banker CEO puppets, signs, banners, and chants. In Colorado, activists in Denver, Boulder, and Colorado Springs will be participating along with others in 25 states to carry out COVID-safe letter deliveries at local bank branches and insurance offices.⁷⁰¹

559. I find that the foregoing evidence, and particularly the campaign described regarding the tar sands, which encourages among other things community resistance and opposition to pipelines, show that Oil Change International has participated in efforts to frustrate the development of Alberta’s oil and gas resources. I also find that Oil Change International has voiced support for protesters of infrastructure projects that would transport Alberta’s oil and gas resources. While this in and of itself might not constitute broad and general opposition to the development of Alberta’s oil and gas resources, I consider this an important consideration in light of the “tar sands” campaign described by Oil Change International.

(iii) Additional Campaigns

560. Additionally, Oil Change International was a signatory to the ENGO Open Letter⁷⁰² and the EDC Divestment Letter.⁷⁰³

(iv) Funding Applications and Grant Description

561. I have reviewed information regarding certain grants provided to Oil Change International and find that the evidence demonstrates the following grants were made to Oil Change International:

⁷⁰⁰ <http://priceofoil.org/2016/03/22/oil-change-international-and-leadnow-response-to-the-2016-canadian-federal-budget/>

⁷⁰¹ <http://priceofoil.org/2020/12/11/stmp-day-of-action-tar-sands-kxl-line-3-letters/>

⁷⁰²

https://web.archive.org/web/20130829060500/http://www.sierraclub.org/pressroom/downloads/Tar%20Sands_letter-0701.pdf

⁷⁰³ <https://cela.ca/wp-content/uploads/2021/01/CSO-Letter-Export-Development-Canada-Dec-2020.pdf>

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
Tides U.S. Foundation ⁷⁰⁴	2012	\$8,000	\$7,997	research, education and organizing on dirty fuels and pipelines
Tides U.S. Foundation ⁷⁰⁵	2011	\$19,670	\$19,455	Advancing U.S. Global Leadership by Supporting the Removal of Domestic Fossil Fuel Subsidies project
Tides U.S. Foundation ⁷⁰⁶	2009	\$30,000	\$34,259	Tar Sands Campaign

562. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization received funds which were provided for the stated purpose of “research, education and organizing the dirty fuels and pipelines”, “removal of domestic fossil fuel subsidies project”, and “for Tar Sand Campaign” correlate to the campaigns of Oil Change International that I reviewed above. Accordingly, I find the grant descriptions opposing the development of Alberta’s oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

563. Moreover, as noted in the introduction to this Section, I find that Oil Change International is an entity, which by their physical location, their mind and management, and their operations are a U.S. entity. In addition, to the specific grants noted above, I find that the majority of their funding is from U.S. sources.

(v) Conclusion on Participation in an anti-Alberta Energy Campaign

564. In my review of the foregoing I specifically noted the following in respect of Oil Change International: (a) it being specifically referenced in the Corporate Ethics Document and CorporateEthic’s webpage listing members of the “No Tar Sands Coalition”; (b) its direct advocacy against the development of Alberta’s oil sands in the webpages and statements that I reviewed above; and (c) the receipt of grants described above whose object appears to be to

⁷⁰⁴ Tides Foundation Form 990 for the 2012 calendar year Schedule I Part II page 93 of 131 of PDF.

⁷⁰⁵ Tides Foundation Form 990 for the 2011 calendar year Schedule I Part II page 36.

⁷⁰⁶ Tides Foundation Form 990 for the 2009 calendar year Schedule I Part II page 51.

advance “research, education and organizing the dirty fuels and pipelines”, “removal of domestic fossil fuel subsidies project”, and the “Tar Sand Campaign”, which I find to be evidence tending to establish broad and general objections to the development of Alberta’s oil and gas resources.

565. Moreover, I also noted 350.org’s participation in: (a) the ENGO Open Letter; (b) the EDC Divestment Letter; (c) the Tar Sands Solutions Network (including on the Steering Committee of the network) and (d) the series of research papers reviewed above.

566. On the basis of the totality of this evidence, I find that Oil Change International has engaged in opposition to the development of Alberta’s oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

D. CANADIAN ENVIRONMENTAL NON-GOVERNMENT ORGANIZATIONS

(f) ***The Pembina Foundation for Environmental Research and Education (Pembina Foundation) & Pembina Institute for Appropriate Development (“Pembina Institute”) (collectively, “Pembina”)***

567. Pembina was identified in both Background Documents. The CRA’s registered charity list shows the Pembina Institute as the registered charity since January 1, 1994⁷⁰⁷; however, based on a limited review, the Pembina Foundation appears to be the organization filing the T3010 tax returns with CRA as the amounts reported on the T3010 tax returns are consistent with the Pembina Foundations financial information published in its annual reports.⁷⁰⁸ The Pembina Foundation (formerly known as the GAIA Foundation for Earth Education) was federally incorporated in British Columbia under the Canada not-for-profit Corporations Act.⁷⁰⁹ The Pembina Foundation merged with the Pembina Institute effective January 1, 2019 and will continue to operate as the Pembina Institute.⁷¹⁰

568. As of 2018 the fair market value of its assets was \$3,660,947.⁷¹¹

569. As Pembina Foundation and Pembina Institute have merged, I view it as appropriate to discuss any historical activity of either entity under this heading.

570. Pembina Institute is identified in the Corporate Ethics Document as an NGO that is involved in the Tar Sands Campaign, which states that “funding to support their work is considered a very high priority”.⁷¹² It appears that Pembina Institute authored a section of the RBF Document titled “Tar

⁷⁰⁷ <https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyRprtngPrd?q.srchNm=pembina&q.stts=0007&selectedCharityBn=875787913RR0001&dsrdPg=1>

⁷⁰⁸ Pembina Foundation Annual Report 2018

⁷⁰⁹ <https://www.pembina.org/about/revenue>

⁷¹⁰ Ibid

⁷¹¹ Information has been obtained from Pembina Institute 2018 Annual Report – page 2. CRA’s registered charity list shows the Pembina Institute as the registered charity since January 1, 1994; however, based on our limited review, the Pembina Institute’s, sister organization, the Pembina Foundation for Environmental Research and Education (“Pembina Foundation”), is the organization filing the charity tax returns with CRA as the historical amounts reported are consistent with the Pembina Foundations financial information published in its annual reports.

⁷¹² The Corporate Ethics Document. Page 15.

Sands & the Canadian Context”.⁷¹³ I have not found evidence indicating Pembina authored any part of the Corporate Ethics Document, but I note that they are referenced in the document in a number of instances.⁷¹⁴

571. Pembina is also listed as a member of the “No Tar Sands Coalition” on the Corporate Ethics International website.⁷¹⁵

572. I have reviewed a substantial body of materials relating Pembina regarding its campaigns.

573. In the course of my research, I did find evidence that Pembina has undertaken campaigns opposed to the development of Alberta’s oil and gas resources. The Executive Director of the Pembina Institute from February 1, 2004 to January 1, 2012, recalls that period as follows:⁷¹⁶

The Pembina Institute has been working on the environmental implications of the oilsands since the mid-1990’s. In the 1990’s, the pace of oilsands development was slow. Our strategy was simple: proactively work with companies to negotiate environmental improvements one project at a time to continuously raise the bar for the next project...

But when the oilsands boom started around 2000, our capacity to keep pace was overwhelmed...The boom forced us to change our strategy and tactics...

It was a time when there was minimal awareness among the public and the majority of policy makers of the environmental challenges related to developing the oilsands resource. As a result, one of our 2005 and 2006 strategic objectives was to ensure “the vast majority of media stories on the oilsands include a mention of growing environmental concerns”...

As a start, we compiled our environmental concerns and solutions into a significant report entitled Oilsands Fever: The Environmental Implications of Canada’s Oilsands Rush. Published in the fall of 2005, we utilized this report to attract the attention of the media, policy makers, and other environmental NGOs. When government or industry spoke at a conference, we made every effort to be an invited speaker. When we could determine that the provincial government was involved in a significant event in Washington D.C., we made the same trip and did the rounds on Capitol Hill. By the end of 2006, we had put oilsands onto the environmental radar: rarely did a media story, even in the business section, not mention growing environmental concerns. And probably most importantly in this stage, we attracted the attention of some of the largest environmental organizations and funders across North America...

⁷¹³ The RBF Document page 25.

⁷¹⁴ The Corporate Ethics Document. Pages 3, 12, and 15.

⁷¹⁵ <https://web.archive.org/web/20100714080115/http://www.corpethics.org/section.php?id=371>

⁷¹⁶ M. Reynolds, “*Prepare Your Non-Profit Organization to Help create a Wave of Positive Change*”, The Muttart Foundation, (2013)

We were directly credited with much of our work, driving over 4000 media hits annually (over 10 a day). But many times we used the very powerful tactic of encouraging and enabling others to tell the story without any attribution back to ourselves.

574. I note that in 2005, Pembina signed on to a declaration entitled “Managing Oil Sands Development for the Long Term: A Declaration by Canada’s Environmental Community”, which provided in part⁷¹⁷:

A.

MANAGING OIL SANDS DEVELOPMENT FOR THE LONG TERM: A DECLARATION BY CANADA’S ENVIRONMENTAL COMMUNITY



...

The undersigned environmental organizations, on behalf of the environment and future generations, agree that the “license to operate” in the oil sands should be conditional, with any further development of the oil sands resource satisfying the following three conditions:

First, that a regulatory and policy regime be implemented for making the **transition to a sustainable energy economy** in Canada through the implementation of a long-term national energy framework that positions Canada at the vanguard of a new climate-friendly energy system. A significant first step to addressing the demand for synthetic crude oil, which is predominantly used for transportation fuel in both Canada and the United States, can be achieved through legally

⁷¹⁷ https://www.pembina.org/reports/OS_declar_Full.pdf

binding **automobile fuel efficiency standards** that ensure more responsible and efficient consumption of this valuable and non-renewable energy resource.

Second, that this transition be underwritten by a fiscal regime that ensures **genuine and sustainable prosperity** beyond the exploitation of the oil sands. Central to achieving this condition is **the elimination of subsidies to the oil sands industry**, implementation of tax and royalty regimes that **maximize the wealth of citizens**, and utilization of this resource wealth to **rapidly increase the Canadian economy's energy efficiency and the deployment of low-impact renewable energy**. Further, current and future generations must be **protected from potential future liabilities** by requiring full-cost bonding of oil sands operations.

Third, that a regulatory and policy regime be implemented that **assures the maintenance of environmental integrity**. This will require that existing and new oil sands operations are **carbon neutral (zero net greenhouse gas emissions) by 2020** through a combination of on-site emission reductions and genuine emissions offsets. In addition, this will require the legal establishment of an ecologically representative **interconnected network of protected areas and corridors**, prescribed **precautionary limits** for water use and release, criteria air contaminants, watershed integrity and wildlife habitat, and a **binding regional integrated management plan** that maintains biodiversity and ensures the resilience of endangered species populations. Additionally a fundamental principle must be to prevent exposing current and future generations to potential catastrophic **environmental or human health risks**.

As signatories to this declaration, **we will work together and with proactive companies and governments** to help ensure these minimum conditions are met for the responsible development of Canada's oil sands.

575. I reviewed an opinion editorial published on Pembina's website in 2008 authored by Steven Guilbeault, Co-founder and Deputy Executive Director of Équiterre and Marlo Reynolds, Executive Director of the Pembina Institute, which stated in part:

- A. These facts lead to the perfectly reasonable conclusion that, relatively speaking, synthetic crude from the oilsands is "dirty oil." Disappointingly, rather than focusing efforts on cleaning up the oilsands, the federal and Alberta governments are teaming up to convince the world that oilsands aren't so bad, all the while expediting approvals for new oilsands projects.

The environmental damage that has already occurred as production has grown to more than one million barrels per day has been sufficient to shock the world.⁷¹⁸

⁷¹⁸ <https://www.pembina.org/op-ed/1673>

576. Pembina was also a signatory to the ENGO Declaration,⁷¹⁹ and in this regard I reviewed a newspaper article that noted Pembina's involvement in the declaration, along with several other entities that I have found to be Participants:

A. U.S., Canadian groups gear up to halt oil sands development

"Tar sands oil production is the fastest growing source of greenhouse gas emissions pollution in Canada and is having a devastating impact on Boreal ecosystems, migratory birds and air and water quality," the declaration notes.

NRDC's Casey-Lefkowitz predicted that the 30 environmental groups will be a strong lobbying force with real potential to halt oil sands production, despite its staunch support from Alberta's government. Public support is more mixed.

U.S. environmental groups that signed the declaration include NRDC, Environment America, Friends of the Earth, the National Audubon Society, the National Tribal Environmental Council, the Izaak Walton League, the League of Conservation Voters, the Environmental Defense Fund, the Center for International Environmental Law, the Wilderness Society, the Sierra Club, Greenpeace, the Trust for Public Land, Defenders of Wildlife, the National Wildlife Federation, Population Connection, Oceana, Earthjustice, the Land Trust Alliance, Physicians for Social Responsibility, and American Rivers.

Canadian environmental groups that signed the declaration include the Canadian Wilderness Foundation, Greenpeace Canada, Sierra Club Canada, the Canadian Parks and Wilderness Society, Pollution Probe, the Pembina Institute, Équiterre, Climate Action Network Canada and Environmental Defence Canada.⁷²⁰

577. I also reviewed the Pembina Institute's 2016 report to Donors, which highlighted that part of its collaboration on a federal action plan would be to:

- A. Build support within the Liberal and NDP caucuses, the B.C., Ontario and Alberta governments, the media, and key industry groups (oil and gas, electricity and green buildings), by leveraging our research, reputation and convening power. We will do this in conjunction with partnerships we have developed with Environmental Defence Canada and Équiterre, and our partnerships with U.S. groups (Natural Resources Defense Council, Environmental Defense Fund and the Center for American Progress).⁷²¹

⁷¹⁹ <https://www.pembina.org/reports/us-can-ceo-declaration.pdf>

⁷²⁰ <https://archive.nytimes.com/www.nytimes.com/gwire/2009/06/04/04greenwire-us-canadian-groups-gear-up-to-halt-oil-sands-d-53217.html>

⁷²¹ <https://www.pembina.org/reports/spring-2016-report-to-donors.pdf> at page 9.

578. I also reviewed a news report that read in part:

- A. The Pembina Institute, the Alberta based environmental and energy think tank has reacted to the decision by the United States Department of State to delay approval of the Keystone XL bitumen pipeline by urging Prime Minister Stephen Harper to under take a similar “objective perspective” on the proposed Enbridge Northern Gateway pipeline from the Alberta bitumen sands to Kitimat.

In a news release, Pembina spokesman Dan Woynillowicz said that US President Barack Obama “has made it clear that he has heard the concerns of Americans about environmental protection, climate change, and the need for the United States to create a clean energy future.”

The State Department release on the decision did include “climate change,” which Pembina interprets as, “The fact that climate change will be explicitly considered in the final decision is notable given the higher greenhouse gas pollution associated with oilsands compared to other sources of oil.”

Woynillowicz said the US decision shows that the regulatory process should be “based on the best available information and analysis, and will take into account the views and concerns of American citizens.”

He then goes on to say:

“This decision stands in stark contrast with the Canadian government’s approach to the proposed Enbridge Gateway pipeline that would transport oil sands product to the West Coast. Rather than maintaining an objective perspective on this pipeline, Prime Minister Harper and his cabinet have been actively promoting its approval before public hearings on the environmental impacts of the project have even begun.

“The Canadian government should take a lesson from the U.S. and ensure a broader and more rigorous review of Gateway is completed, including the upstream environmental and greenhouse gas impacts of expanding oilsands development to fill the pipeline.”⁷²²

579. Additionally, Pembina was a signatory to the Obama Letter.⁷²³

580. The bulk of the campaigns I have reviewed consist of reviewing research papers published by Pembina.

581. Included in the research I reviewed is one report, which appears to have been co-authored with the David Suzuki Foundation, entitled “The Case for Deep Reductions – Canada’s Role in

⁷²² <http://nwcoastenergynews.com/2011/11/10/192/pembina-urges-harper-to-follow-us-objective-perspective-of-keystone-in-looking-at-northern-gateway/>

⁷²³ <https://www.pembina.org/reports/engo-obama-tarsands.pdf>

Preventing Dangerous Climate Change.”⁷²⁴ Among the observations in this report were the following:

A.



Canada’s energy policies, which include support for rapid expansion of highly GHG-intensive campaigns such as oil sands development, need to be overhauled to make them consistent with our climate policy, but this cannot be achieved if our climate policy is limited to the near term.⁷²⁵

Canada’s energy policies, which include support for rapid expansion of highly GHG-intensive campaigns such as oil sands development, are sharply at odds with our climate policy, which aims for reductions in absolute GHG emissions levels. Our energy policy needs to be overhauled to make it consistent with our climate policy, but this cannot be achieved if our climate policy is limited to the near term.⁷²⁶

582. As referred to above, the Background Documents expressly set out that Pembina had a role in the Tar Sands Campaign. In considering how they defined their role and the role of others, I have found particularly helpful an article published by the Muttart foundation and authored by the former executive director of Pembina, who served in that role from 2004 to 2010.⁷²⁷

⁷²⁴ https://www.pembina.org/reports/Case_Deep_R_E.pdf

⁷²⁵ https://www.pembina.org/reports/Case_Deep_R_E.pdf at page 4.

⁷²⁶ https://www.pembina.org/reports/Case_Deep_R_E.pdf at page 36.

⁷²⁷ <https://www.pembina.org/blog/leader-who-gave-pembina-institute-room-grow>

What Sea Creature is Your Organization?

Now if the approach of “operational space” is just too academic for you, try this:

Are you a shark, an orca, a sea-lion, or a dolphin?

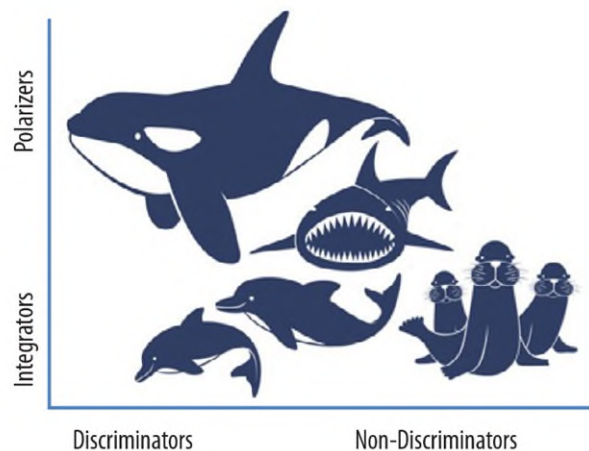
A paper written by John Elkington of Sustainability entitled *The 21st Century NGO – In the Market for Change* created a very useful frame for NGOs to test who they are in the “biodiversity of the movement”. The paper challenges NGOs to put themselves along two axes:

1. **Integrators versus polarizers**, where polarizers aim to achieve change by disrupting the status quo through confrontation while integrators seek

to achieve change through constructive partnerships with businesses, governments and other stakeholders.

2. **Discriminators versus non-discriminators**, where discriminators study their targets and understand strategically how best to engage them, while non-discriminators don’t really have targeted audiences.

By creating a simple 2-by-2 matrix with these two characteristics, Elkington categorizes NGOs as “sharks”, “orcas”, “sea-lions”, and “dolphins”.



“Orca” organizations are very strategic, have highly intelligent staff, are independent and can be unpredictable. A good Canadian example is Greenpeace. Orca organizations are critical for raising awareness of issues, and do so very effectively. They are most effective at bringing attention to issues through polarization and do so by being very targeted both on the issues they choose and who is selected to be the “bad guy”.

“Dolphins” have a keen capacity to learn, are creative, keen to work with unusual partners, and adapt strategies and behavior to changing contexts. In Canada, the Pembina Institute is a good example of a “dolphin” organization. Dolphins can effectively bring together diverse interests and drive towards a solution. They integrate thinking and ideas from a range of sectors, but again are selective on which issues to focus on.

There really are not many “shark” organizations because they don’t tend to be organized. Sharks act on instinct, are tactical at best, and will attack any target, often in packs. One would look to members of the “Black Block” instigating riots as an example. Shark organizations can bring attention to issues, but due to the extreme polarization of issues, can have a side effect of losing sight of the

actual issues. The riot, not the issue or problem, becomes the story.

The “sea lion” organizations are always keen to please, maintaining a large tent, are professional, but tend to prefer the mainstream and not cause ripples. Canadian examples of sea lion organizations in the environmental sector include Nature Conservancy and Ducks Unlimited.

Of course many organizations do illustrate characteristics of different sea-creatures at different times, but tend to predominantly be one by their very nature.

At the Pembina Institute, we wrestled with our identity for quite some time. On a general level, we obviously knew we were a non-profit and we were non-government. And we knew what we were not –we were not a Greenpeace, we were not a WWF with a worldwide brand, we were not a David Suzuki Foundation with a Canadian icon, and we were not an EcoJustice with a team of legal expertise.

But who exactly were we? At our core, we were technical and policy analysts with a keen interest to collaborate with anyone we believed could move solutions forward. We largely became known as “the egg-heads of the environmental movement doing good analysis”.

But we were frustrated that our materials were not getting in the right hands at the right time to have a real impact. So we built up our skills in government relations and communications, and developed relationships with a strong network of opinion leaders. This is where we focused.

It all clicked when we invited a former senior staff person from the Prime Minister's Office to our annual organizational retreat and asked him "What is Pembina in your mind?". Without hesitation, the answer was: "tough but fair". This stuck.

The Pembina Institute is largely a dolphin organization with an operational space of "energy/analysis/Canada". Understanding the nuances of the Institute's identity enabled the Pembina Institute to refine its tactics, and make more strategic decisions. Of course at times, Pembina needs to act like an orca or call upon orca friends. Some of the most effective efforts in the movement occur when different sea-creatures work together.

In short, the movement will be stronger and more effective when you understand your role in the movement, you communicate it, strengthen it, and synergize with it. We have to constantly remind ourselves that we cannot be all things for all people and still be effective. Different skills and approaches need to be brought to bear on the challenges we face at appropriate times if we are going to be most successful as a movement. We each need to know and focus on our niche.

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583. Acknowledging that the foregoing expresses a view of Pembina provided by a former executive director, and not by Pembina itself, the concept described in the article, namely that Pembina had a particular role in focusing on research but that it acknowledged the possibility it operated within a larger movement with other players who may have different goals and roles in the movement, accurately reflects the evidence I have reviewed in respect of Pembina.

584. I further find that Pembina was an author or co-author of the following reports, the content of which I summarize as follows:

<u>Title</u>	<u>Date</u>
Driving It Home: Choosing the Right Path for Fueling North America's Transportation Future ⁷²⁹	July, 2007

⁷²⁸ "Prepare Your Non-Profit Organization to Help Create a Wave of Positive Change", M. Raynolds, PhD, The Muttart Foundation, 2013.

⁷²⁹ <https://web.archive.org/web/20100706104601/http://www.nrdc.org/energy/drivingithome/drivingithome.pdf>.

Under-Mining the Environment - The Oil Sands Report Card ⁷³⁰	January, 2008
Danger in the Nursery: Impact on birds of tar sands oil development in Canada's Boreal forest ⁷³¹	December, 2008
Watered Down: Overcoming Federal Inaction on the Impact of Oil Sands Development to Water Resources ⁷³²	November, 2009
What is the highest environmental impact oil? ⁷³³	May, 2010
Pipeline and Tanker Trouble - The Impact to British Columbia's Communities, Rivers, and Pacific Coastline from Tar Sands Oil Transport ⁷³⁴	November, 2011
Fossil Fuel Subsidies - An analysis of federal financial support to Canada's Oil Sector ⁷³⁵	July, 2014

585. I have reviewed each of these reports and make the following comments regarding their content and my assessment of the same.
586. The paper entitled "Driving It Home: Choosing the Right Path for Fueling North America's Transportation Future" is critical of the environmental impacts of the oilsands through the destruction of boreal forest and the production of "dirty fuels", leading to environmental risks, harm to Indigenous communities, the destruction of wildlife habitats and ecosystems, a negative impact on local water supplies, the pollution of drinking water with toxins and emphasizes that oilsands production is more polluting than conventional energy.
587. The paper entitled "Under-Mining the Environment - The Oil Sands Report Card" is critical of the environmental performance of oilsands producers. The paper describes the oilsands as the "most environmentally costly sources of transport fuel".⁷³⁶ The paper reviews several oilsands operators and concludes that very few have independently accredited environmental management systems; only one company had a target to limit GHG emissions; no lands have been reclaimed by any company after 40 years of operations; and notes that all companies reviewed had generally poor environmental performance.

⁷³⁰ <https://web.archive.org/web/20091211131252/http://pubs.pembina.org/reports/OS-Undermining-Final.pdf>.

⁷³¹ <https://www.borealbirds.org/publications/danger-nursery-impact-birds-tar-sands-oil-development-canada%E2%80%99s-boreal-forest>.

⁷³² <https://web.archive.org/web/20111121215453/http://www.water-matters.org/docs/watered-down.pdf>.

⁷³³ <https://web.archive.org/web/20101226151959/http://pubs.pembina.org/reports/mining-vs-in-situ.pdf>.

⁷³⁴ <https://www.pembina.org/reports/nrdc-1353-pipeline-fact-sheet-for-web.pdf>.

⁷³⁵ <https://www.pembina.org/reports/fossil-fuel-subsidies.pdf>.

⁷³⁶ <https://web.archive.org/web/20091211131252/http://pubs.pembina.org/reports/OS-Undermining-Final.pdf>. Page 7.

588. The paper entitled “Danger in the Nursery: Impact on birds of tar sands oil development in Canada’s Boreal forest” is critical of the environmental impacts of “tar sands” development leading to the loss of migratory birds, the destruction of their habitat, the creation of toxic waste holding ponds and air and water pollution. The report states that every facet of tar sands development (including, for example, the Mackenzie Gas Project) has the potential to harm boreal birds.
589. The paper entitled “Watered Down: Overcoming Federal Inaction on the Impact of Oil Sands Development to Water Resources” is critical of what is described as the damaging impact of oilsands activity on water resources; toxic water in tailings ponds, which seeps into ground water and source water; the destruction of forests and wetlands; the negative impact on First Nations water sources; emissions that contaminate lakes in Saskatchewan; and significant bird deaths.
590. The paper entitled “What is the highest environmental impact oil?” describes concerns regarding significant impacts on forests and wildlife. As well the paper says that in situ mining could lead to greater environmental impacts than surface mining and could create significant harm to the boreal forest and threaten woodland caribou. The paper says in situ operations are major emitters of air pollution and speaks of toxic lakes. The paper says that oilsands operations represent Canada’s fastest growth of GHG emissions; they have reclamation challenges and the paper says that the full impact of oilsands development is poorly understood.
591. The paper entitled “Pipeline and Tanker Trouble - The Impact to British Columbia’s Communities, Rivers, and Pacific Coastline from Tar Sands Oil Transport” concerns allegations that the Northern Gateway pipeline would carry highly acidic and corrosive bitumen from the “tar sands” through rugged and unstable landscapes. The paper goes on to say that the pipeline will be serviced by 220 supertankers each year and that a spill is a certainty in precious coastal waters. The report states that First Nations communities are opposed, and that great angling rivers and the globally important Great Bear Rainforest and our climate are at risk.
592. The paper entitled “Fossil Fuel Subsidies - An analysis of federal financial support to Canada’s Oil Sector” argues that subsidies should be reduced or eliminated to discourage growth and consumption of oil and gas. The paper says that subsidies encourage energy use which leads to greater emissions. There is recognition that exploration campaigns carry risks, especially with oilsands that are a high-cost source of oil and that removal of these subsidies may place Canadian producers at some risk, but they suggest that these producers are well positioned to carry the additional risk. The paper also argues that subsidies should be reduced to reflect the higher cost to governments for support measures and increased environmental impacts for future generations.

(ii) Government Funding

593. I have found that during the years 2003 to 2018, Pembina Foundation received revenue from the provincial/territorial levels of government in the amount of \$289,666.⁷³⁷ I have not found evidence

⁷³⁷ CharityData summary for The Pembina Institute for Environmental Research and Educat [sic] at page 2, Pembina Institute for Appropriate Development T3010 Registered Charity Information Return : Schedule 6 for Fiscal Period January 01, 2018 to December 31, 2018 at pages 3 and 4.

that Pembina Foundation received revenue from municipal/regional or federal levels of government.

594. I have not found evidence that Pembina Institute received revenue from municipal/regional, provincial/territorial, or federal levels of government.

(iii) Conclusion on Participation in an anti-Alberta Energy Campaign

595. In my review of the foregoing I specifically noted the following in respect of Pembina: (a) its contribution to a segment of the RBF Document; (b) its involvement during the formative years of the Tar Sands Campaign (2005-2009), particularly driving media hits “..without any attribution to ourselves..”; (c) its support of the 2005 declaration seeking to impose conditions on oil sand development and the cessation of all subsidies to the oil sands; (d) the 2008 op-ed of its executive director labelling oil sands “dirty oil”; and (e) its efforts to leverage its research and reputation in conjunction with ENGOs that I have found to be participants in anti-Alberta energy campaigns, which I find to be evidence tending to establish broad and general objections to the development of Alberta’s oil and gas resources.

596. Moreover, I also noted Pembina’s participation in: (a) the Obama Letter; and (b) the ENGO Declaration.

597. On the basis of the totality of this evidence, I find that Pembina has engaged in opposition to the development of Alberta’s oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

598. While I make this finding based on the evidence reviewed, the evidence of course speaks to the actions of Pembina at particular points in time, and I observed a shift over time in the sorts of campaigns that Pembina was involved in, generally noting that its approach to Alberta’s oil and gas resources has grown less confrontational, to a point where now I would characterize most of its commentary, largely in the form of reports, as attempting to be balanced and offer constructive observations on the development of Alberta’s oil and gas resources.

(g) ***The David Suzuki Foundation***

(i) Background

599. David Suzuki Foundation describes itself as “a national, bilingual non-profit organization headquartered in Vancouver, with offices in Toronto and Montreal.”⁷³⁸ For clarity, while the David Suzuki Foundation describes itself as a “non-profit organization” I find it is specifically a registered charity.⁷³⁹

600. As of 2019, the value of its assets was \$21,900,448.⁷⁴⁰

⁷³⁸ <https://davidsuzuki.org/about/>

⁷³⁹ <https://davidsuzuki.org/about/>

⁷⁴⁰ David Suzuki Foundation 2019 CRA Tax Return – line 4200

601. I have reviewed a substantial body of materials relating to the David Suzuki Foundation regarding its campaigns and activism.

(ii) Campaigns, Advocacy Efforts, and Statements

602. The David Suzuki Foundation details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per the David Suzuki Foundation's web page:

A. August 2010: "Protecting Canada From an oil spill"

Do your part to keep Canada's waterways clean

Canada should learn from the mistakes made in the Gulf of Mexico.

It's up to people like you to tell leaders we need to be careful, because we won't get a second chance. You can help:

- Send a message to our leaders. Tell them you want them to create more marine protected areas and ensure a strong marine planning process.
- Tell the federal government that you want it to keep the moratorium on oil drilling and tanker traffic on the Pacific Coast.
- Cut back your oil and energy use. Find alternatives to the car, because they are the largest source of greenhouse gases and other pollutants. Reduce your energy consumption at home, or switch to green power.
- Donate and help fund our critical work to protect Canada's oceans and promote a cleaner energy system.⁷⁴¹

B. 2011: "Harper government cripples ocean planning process in B.C."

Tell the Prime Minister to protect the Pacific Ocean

Tell the Prime Minister that you want Canada to step forward to reinstate funding for the Pacific North Coast marine planning initiative so that we can establish a truly sustainable future for our oceans.

Canada can no longer afford to manage our oceans with a hodge-podge of regulations and fragmented enforcement. Leaving tanker-sized loopholes for industrial interests in ocean management plans while

⁷⁴¹ <http://web.archive.org/web/20100803161351/http://www.davidsuzuki.org/issues/oceans/science/marine-planning-and-conservation/protecting-canada-from-an-oil-spill/>

ignoring science and democratic input will not serve communities, First Nations or the marine environment.

Will shipping and oil interests trump science and the public interest? Is sending oil tankers to China more important than protecting fishing grounds and pristine ocean habitat? Let the Prime Minister and Minister of Fisheries and Oceans know what you think.

Please feel free to include your own comments, edit the text and subject lines to reflect your personal views.

Thanks to you we've already reached our goal of 2,000 letters sent!⁷⁴²

C. March 1, 2012: "Weaver study offers fossil fuel warnings"

That doesn't mean putting pipelines through pristine wilderness, extracting bitumen as quickly as possible, and shipping it off to China in supertankers. It does mean we have to find ways to stop using coal and gas as well as oil. As Weaver points out, "The tar sands are a symptom of a bigger problem. The bigger problem is our societal dependence on fossil fuels."⁷⁴³

D. July 13, 2011: Energy Ministers: Canadians, not dirty energy companies, are your biggest sponsors

Canada's energy ministers need to remember that their biggest sponsors are actually Canadian taxpayers; we are the people they serve, not dirty oil and gas producers. Send an email to your minister of energy reminding him or her that Canada's energy ministers need to take us down a road that leads to clean, renewable energy and not a radical expansion of the fossil fuel industry with more leaky pipelines.⁷⁴⁴

603. I find that the foregoing review of the David Suzuki Foundation's website establishes that it advocated: (a) for a moratorium on tanker traffic on the Pacific Coast (including letter writing campaigns to elected officials), (b) for the discontinuance of oil (including the "tar sands"), and (c) against radical expansion of dirty energy companies with leaky pipelines, all of which I find opposes the development of Alberta's oil and gas resources in a broad and general sense and as such constitute anti-Alberta energy campaigns.

⁷⁴² <http://web.archive.org/web/20110925154529/http://action.davidsuzuki.org/marine-planning>

⁷⁴³ <http://web.archive.org/web/20120311075653/http://www.davidsuzuki.org/blogs/science-matters/2012/03/weaver-study-offers-fossil-fuels-warning/>

⁷⁴⁴ <http://web.archive.org/web/20111103161750/http://www.davidsuzuki.org/blogs/climate-blog/2011/07/energy-ministers-canadians-not-dirty-energy-companies-are-your-biggest-sponsors/>

604. I also noted that in the course of these campaigns, the David Suzuki Foundation released a number of statements on its website. These statements include the following in regards to the David Suzuki Foundation's campaigns and other campaigns:

- A. June 23, 2010 - the David Suzuki Foundation issued a press release "DSF applauds federal Liberal party's commitment to oceans"

"The David Suzuki Foundation applauds the federal Official Opposition's commitment to formalize the existing B.C. crude oil tanker moratorium. This promise, if implemented, would legislatively formalize a long-standing and important measure that has kept dangerous crude oil cargo away from most of B.C.'s northern coastal waters."⁷⁴⁵

- B. In response to the Federal Court of Appeal's decision in Tsleil-Waututh Nation v Canada (Attorney General), 2018 FCA 153, it published an article titled "September 6, 2018: Trans Mountain decision is good, but we still have far to go" that said in part:

"Not to diminish the efforts of Indigenous Peoples, environmental groups, politicians with integrity and citizens from all walks of life who stood strong for protection of land, air, water and climate - but it's interesting that the whales we're trying to save may have saved us from this anachronistic project."⁷⁴⁶

605. In addition to the direct advocacy against the development of Alberta's oil sands found on these statements featured on the David Suzuki Foundation's website, I note the specific references to the organization's support and advancement of the tanker ban campaign to delay and frustrate the development of Alberta's oil sands.

606. I also became aware of a 2009 report entitled "Cleaning up Our Ocean: A report on pollution from shipping related sources in the Pacific North Coast Integrate Management Area (Pncima) on the British Columbia Coast" that was issued jointly by Living Oceans, Sierra Club BC, and the David Suzuki Foundation. Among other things it recommended:

"11. Strengthen and enforce the ban on crude oil tankers on the north and central coast.

The inland waters of Pncima have been protected since 1972 by a federal moratorium on crude oil tanker traffic. The moratorium was implemented to mitigate concerns over potential environmental impacts, is referenced in government documents and has since been upheld by eight Canadian prime ministers. Today the federal government is denying the existence of a ban on tankers, claiming there is a "voluntary exclusion zone" only. With six oil and gas terminal projects in various stages of application and approval in Kitimat and

⁷⁴⁵ <http://web.archive.org/web/20100803162150/http://www.davidsuzuki.org/media/news/2010/06/dsf-applauds-federal-liberal-partys-commitment-to-oceans/>

⁷⁴⁶ <https://davidsuzuki.org/story/trans-mountain-decision-is-good-but-we-still-have-far-to-go/>

Prince Rupert, all of which would necessitate tanker traffic, the risk of environmental degradation to Pncima is heightened. A permanent ban on crude oil tankers on the north and central coast is required to mitigate ecological damage and avoid the reinterpretation of history.”⁷⁴⁷

607. David Suzuki, described as the “Co-founder” of the David Suzuki Foundation, wrote a blog post on Huffington Post entitled “Dream Weavers: Those Who Think Study Supports Oil Sands are Wrong”, which concluded in part:

A. That doesn’t mean putting pipelines through pristine wilderness, extracting bitumen as quickly as possible, and shipping it off to China in supertankers. It does mean we have to find ways to stop using coal and gas as well as oil.⁷⁴⁸

608. The David Suzuki Foundation co-published a book entitled “Tar Sands – Dirty Oil and the Future of a Continent”, that was promoted by David Suzuki in an article he co-wrote which appeared on the “Oil Sands Truth – shut down the tar sands” website entitled “David Suzuki: Tar sand wealth comes with environmental costs” that provided, among other things:

If you want to be scared, you don’t need to watch a horror movie or read the latest Stephen King bestseller.

Real terror can be found by simply firing up Google Earth, the computer program that allows users to look at satellite pictures of any place on the planet. By mousing over and zooming in, you can see what Alberta’s tar sands look like from space.

It is not a pretty sight. In fact, it’s scary—and for good reason.

The scale of the Alberta tar sands project is unprecedented in Canadian history. Alberta’s “blue-eyed sheiks”, as the oil-industry elite are known, stand to make billions of dollars from carving up northern Alberta in order to meet U.S. demand for oil. But these dollars pale in comparison to the environmental value that is being squandered at the expense of petrodollars.⁷⁴⁹

609. A rally was held in downtown Vancouver in support of those arrested at the protest camp in northern BC. David Suzuki was in attendance and was quoted as making the following comments on the situation:

⁷⁴⁷ <https://davidsuzuki.org/wp-content/uploads/2009/04/cleaning-up-ocean-pollution-shipping-pacific-north-coast-integrated-management-area-british-columbia.pdf>. Page 33.

⁷⁴⁸ https://www.huffingtonpost.ca/david-suzuki/tar-sands-canada_b_1308036.html

⁷⁴⁹ <http://web.archive.org/web/20101129160430/http://oilsandstruth.org/david-suzuki-tar-sand-wealth-comes-environmental-costs>

- A. "...we shouldn't be building anymore pipelines..."⁷⁵⁰
- B. "...we've got to get off fossil fuels, that's been indicated by the IPCC report, we've got to have 45% of our emissions off by 2030 and you don't do that by building more pipelines and liquefied fracked gas plants..."⁷⁵¹
610. Acknowledging that the foregoing are views expressed by David Suzuki, a co-founder of the David Suzuki Foundation who is very prominently featured on the David Suzuki Foundation website,⁷⁵² and not necessarily the views of the David Suzuki Foundation, I nonetheless find them of some evidentiary value in determining the position of the foundation that he and his family founded and continue to operate to this day.⁷⁵³ The David Suzuki Foundation indicated that in 2012, Dr. Suzuki recused himself from any formal role or position with the David Suzuki Foundation. Dr. Suzuki does not speak for the Foundation. Having considered this, I remain of the view that the statements of an individual identified as co-founder of an organization who is still featured prominently on the organization's website are of some evidentiary value in considering the organization. In this regard I find the foregoing statements additional evidence of a broad and general opposition to the development of Alberta's oil and gas resources, not only through the direct advocacy of "shut down the tar sands" and that the tar sands should be "kept in the ground", but also through supporting land-use programs like the Great Bear Rain Forest and the tanker ban.
611. I also note the David Suzuki Foundation's involvement in the documentary entitled "Tipping Point: The Age of the Oil Sands", which I have reviewed and found to generally cast a negative impression on the oil sands and advocates for opposition to the development of Alberta's oil sands.
612. Additionally, the David Suzuki Foundation was a signatory to the Obama Letter⁷⁵⁴, the ENGO Declaration⁷⁵⁵, and the EDC Divestment Letter.⁷⁵⁶ I also note that the David Suzuki Foundation supported the Children's Lawsuit filed in Federal Court in B.C. that is discussed above.⁷⁵⁷
- (iii) Government Funding
613. I have found that during the years 2003 to 2019, the David Suzuki Foundation received revenue from the provincial/territorial level of government in the amount of \$74,300.⁷⁵⁸ I have not found evidence that the David Suzuki Foundation received revenue from municipal/regional or federal levels of government. I note that in its submission to the Inquiry the David Suzuki Foundation

⁷⁵⁰ <https://globalnews.ca/video/4827675/david-suzuki-attends-vancouver-anti-pipeline-rally> at 0:33.

⁷⁵¹ <https://globalnews.ca/video/4827675/david-suzuki-attends-vancouver-anti-pipeline-rally> at 0:44.

⁷⁵² <https://david Suzuki.org/expert/david-suzuki/>

⁷⁵³ <https://david Suzuki.org/experts/founding-family/>

⁷⁵⁴ <https://www.pembina.org/reports/engo-obama-tarsands.pdf>

⁷⁵⁵ <https://www.pembina.org/reports/us-can-ceo-declaration.pdf>

⁷⁵⁶ https://environmentaldefence.ca/report/edc_climate_target_letter/

⁷⁵⁷ See Part II above.

⁷⁵⁸ CharityData summary for The David Suzuki Foundation at page 2, The David Suzuki Foundation T3010 Registered Charity Information Return : Schedule 6 for Fiscal Period September 1, 2018 to August 31, 2019 at pages 2 and 3.

indicated that the financial figure of \$74,300 was inaccurate, however did not provide any evidence to consider on this point or indicate what was, in their view, an accurate number. As they provided no additional evidence for my consideration nor raised any specific issues with the evidence I reviewed to determine the figure, I maintain the conclusion as to the amount of government funding received.

(iv) Conclusion on Participation in an anti-Alberta Energy Campaign

614. In my review of the foregoing I specifically noted the direct advocacy employed by the David Suzuki Foundation against the development of Alberta's oil sands in a number of its webpages that I discussed in more detail above, including related statements issued by it and its founder, David Suzuki, which I find to be evidence tending to establish broad and general objections to the development of Alberta's oil and gas resources.
615. Moreover, I also noted the David Suzuki Foundation's participation in: (a) the Obama Letter; (b) the ENGO Declaration; (c) the EDC Divestment Letter; (d) the Children's Lawsuit; (e) the Tanker Ban program; (f) the Great Bear Rainforest program; and (g) the Boreal Forest program.
616. On the basis of the totality of this evidence, I find that David Suzuki Foundation has engaged in opposition to the development of Alberta's oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

(h) **Greenpeace Canada**

(i) Background

617. Greenpeace Canada is an independent registered non-profit.⁷⁵⁹ I find that Greenpeace Canada is a non-profit rather than a registered charity.
618. As of 2019, the value of its assets was \$2,164,663.⁷⁶⁰
619. I have reviewed a substantial body of materials relating to Greenpeace Canada regarding its campaigns and activism. I also note that they are specifically referenced in both Background Document⁷⁶¹ and Corporate Ethic's webpage listing members of the "No Tar Sands Coalition".⁷⁶²

(ii) Campaigns, Advocacy Efforts, and Statements

620. Greenpeace Canada details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per Greenpeace Canada's web page:
- A. "Greenpeace activists drop banner, occupy Canadian High Commission in U.K."

⁷⁵⁹ Obtained from Greenpeace Audited Annual Financial Statements 2012 to 2018

⁷⁶⁰ Greenpeace 2019 Financial Statements

⁷⁶¹ The RBF Document. Page 12. The Corporate Ethics Document. Page 15.

⁷⁶² <https://web.archive.org/web/20100714080115/http://www.corpethics.org/section.php?id=371>

The Kinder Morgan controversy followed Prime Minister Justin Trudeau to Europe today, as Greenpeace activists occupied the Canadian High Commission in London's Trafalgar Square, rebranding it "Crudeau Oil HQ" in protest of his plans to build massive oil pipelines that will expand operations in the Alberta tar sands.⁷⁶³

- B. "Please sign our petition calling on the big five banks to stop financing fossil fuels."

"Many climate activists are encouraging people to leave the big five banks for a credit union, as they are less involved in fossil fuels and more likely to act in the interest of the community instead of profit. This is helpful and seriously ramps up the pressure on the big banks. If you bank with one of the big five you should seriously consider switching. However some credit unions are involved in financing fossil fuels—Desjardins for example was implicated in financing tar sands pipelines—and very few have been willing to actually adopt a no fossil fuels policy. To my knowledge the only one that has is Vancity (if you know of others, please reach out to let us know!)."⁷⁶⁴

- C. Greenpeace Canada also applauded the decision of Teck to withdraw. Greenpeace's website notes:

This. Is. BIG. We WON the #RejectTeckcampaign!

This would not have been possible without the leadership of the Indigenous communities and the tens of thousands of Greenpeace supporters across the country, who took action.

Three months ago, very few people had heard of Teck's Frontier mine. Its approval was considered a no-brainer because no tar sands project has ever been rejected. But, by working with a movement led by Indigenous Climate Action, we were able to push it to the top of the public and media agenda. Ultimately, we were able to turn it into a litmus test of Justin Trudeau's government's commitment to acting on a climate crisis.

Teck's decision to pull the plug on the project reflects the global work that Indigenous leaders, Greenpeace supporters and activists everywhere have been doing to make investors and politicians understand the risks of deepening fossil fuel investments ...

Every petition, signature, every protest, every dollar, every phone call matters. When I met a Liberal staffer for Deputy Minister Freeland last

⁷⁶³ <https://www.greenpeace.org/canada/en/story/3178/press-release-greenpeace-activists-drop-banner-occupy-canadian-high-commission-in-u-k-3/>

⁷⁶⁴ <https://www.greenpeace.org/canada/en/story/46186/canadas-big-banks-are-bankrolling-the-climate-crisis/>

Friday, they said that Greenpeace had been “very effective” in getting our message across.

- More than 55,000 Greenpeace supporters emailed Justin Trudeau’s cabinet to reject Teck.
- More than 100,000 petition signatures were collected by Greenpeace and other groups across Canada.
- Many of you participated in our Twitterstorm that trended across Canada. Send [sic] a message to Cabinet in Ottawa last week.
- In collaboration with Leadnow and Equiterre, several hundred people visited their Ministers and Members of Parliament in their constituency to voice their opposition to the project.
- Around 100 people, in collaboration with climate strikers and Extinction Rebellion, occupied the Montreal office of Heritage Minister Steven Guilbeault to ask him to reject Teck.⁷⁶⁵

D. Victory! Energy East Tar Sands Pipeline Cancelled

This victory is because of all of us who worked so hard to ensure this pipeline never saw the light of day. It was because we wrote letters, took to the streets and the banks, pressured governments and built broad coalitions that we were able to delay this project, and ensure that once the project’s climate impacts were assessed even TransCanada recognized there’s no place for Energy East in a climate safe world.

What’s true for Energy East’s climate impacts is true for all the other proposed tar sands pipelines: Keystone XL, Line 3, and the Trans Mountain expansion. They are all incompatible with action on climate change and Indigenous rights and investors should take note. It’s time for banks (like TD and JP Morgan Chase) to get on the right side of history and move their investments.⁷⁶⁶

E. A page on Greenpeace Canada’s website included a page with the following:

“Let’s disrupt the Liberal National Convention...”

Call out Prime Minister Trudeau and Finance Minister Chrystia Freeland on their social media channels, by phone, by email (spam them for the

⁷⁶⁵ <https://www.greenpeace.org/canada/en/story/29438/this-is-big-we-won-the-rejectteck-campaign/>

⁷⁶⁶ <https://www.greenpeace.org/canada/en/story/510/victory-people-power-just-stopped-another-pipeline-bye-bye-energy-east/>

planet!). In less than 10 days, the long-awaited federal budget will be released and it must include immediate and ambitious climate action.⁷⁶⁷

- F. This same page proposed sample Tweets, and appeared to include a mechanism that would allow a user to Tweet the sample text, including:

Tweet at Justin Trudeau

We know that oil & gas lobbyists have met with your gov't 1,000+ times since #COVID19 began @justintrudeau.
We're here to remind you that you don't work for Big Polluters. You work for us.
We want you to #KeepYourPromises #Lib2021
#BuildBackFossilFree><https://act.gp/39SPzJj>

.@ylc_jlc your gov't bought a pipeline that research says will lose taxpayers \$11 billion. It will cost the climate even more. #StopTMX
Will you #KeepYourPromises & put bold #ClimateAction at the centre of #LIB2021?
We're counting on you>> <https://act.gp/3uFwjyq> @GreenpeaceCA⁷⁶⁸

621. I find that the foregoing review of Greenpeace Canada's website establishes that it advocated: (a) for stopping the Kinder Morgan and Energy East pipelines and stopping the expansion of the Alberta tar sands; (b) for people to participate in divestment efforts by encouraging them to leave the big five banks who financed fossil fuels; (c) to pressure Teck to withdraw its application for its Frontier mine (including through the use of a social media campaign, a political activism campaign, and direct citizen engagement) ; and (d) the federal cabinet to withdraw its support of, all of which I find oppose the development of Alberta's oil and gas resources.

622. I further find that Greenpeace Canada was an author or co-author of the following reports:

<u>Title</u>	<u>Date</u>
Dirty Oil: How the tar sands are fueling the global climate crisis ⁷⁶⁹	September, 2009
Dirty Oil Diplomacy: The Canadian Government's Global Push to Sell the Tar Sands ⁷⁷⁰	March, 2012

⁷⁶⁷ <https://www.greenpeace.org/canada/en/spam-your-pm-for-climate/>

⁷⁶⁸ <https://www.greenpeace.org/canada/en/spam-your-pm-for-climate/>

⁷⁶⁹

https://web.archive.org/web/20120503214856/http://www.greenpeace.org/canada/Global/canada/report/2009/9/tar_sands_report.pdf.

⁷⁷⁰ https://climateactionnetwork.ca/wp-content/uploads/2012/03/CAN_Dirty_Oil_Diplomacy.pdf.

Cooking the books: How the State Department analyses ignores the true climate impact of the Keystone XL Pipeline ⁷⁷¹	April, 2013
Economics of Transporting and Processing Tar Sands Crudes in Quebec ⁷⁷²	January, 2014
Dirty Deals: How Trade Talks threaten to undermine EU Climate Policies and Bring Tar Sands to Europe ⁷⁷³	July, 2014
TransCanada vastly exaggerating Energy East's ability to reduce overseas oil imports - Canadians and investors are being misled with outdated, inaccurate information ⁷⁷⁴	October, 2014
In the Pipeline - Risks for Funders of Tar Sands Pipelines ⁷⁷⁵	October, 2017

623. I have reviewed each of these reports and make the following comments regarding their content and my assessment of the same.
624. The paper entitled "Dirty Oil: How the tar sands are fueling the global climate crisis" alleges that the unrestrained release of GHG emissions threatens the political stability of human civilization and that by planning to expand production from the "tar sands", Canada epitomizes that global threat. The paper also suggests that exploitation of the tar sands spells the end of cheap oil. As well, it suggests that emissions from the tar sands by 2020 could exceed those of Austria, Portugal, Ireland or Denmark. The report says that life cycle emissions are not reported in a transparent way; some projects are 10 times dirtier than North Sea production; projects cannibalize natural gas production; there is a low regulatory regime; and unproven band-aid technologies like CCS will not reduce emissions on any scale.
625. The paper entitled "Dirty Oil Diplomacy: The Canadian Government's Global Push to Sell the Tar Sands" outlines what are described as the changing domestic and international policies of the Canadian government in promoting the expansion of the "tar sands", which the paper describes as Canada's fastest growing source of greenhouse gas pollution. The paper says there is a collaborative effort of the Canadian and Alberta governments along with industry to ensure no door is closed in selling the highly polluting tar sands.

⁷⁷¹ http://priceofoil.org/content/uploads/2013/04/Cooking_the_Books_FINAL-SCREEN.pdf.

⁷⁷² https://www.equiterre.org/sites/fichiers/economics_of_transporting_and_processing_tar_sands_crudes_in_quebec_a_final.pdf.

⁷⁷³ https://www.transportenvironment.org/sites/te/files/publications/foee-fqd-trade-ttip-170714_0.pdf.

⁷⁷⁴ <https://environmentaldefence.ca/report/report-transcanada-vastly-exaggerating-energy-east-ability-to-reduce-overseas-oil-imports/>.

⁷⁷⁵ http://priceofoil.org/content/uploads/2017/10/In_the_pipeline.pdf.

626. The paper entitled “Cooking the books: How the State Department analyses ignores the true climate impact of the Keystone XL Pipeline” suggests that America does not need this “extreme source of oil”.⁷⁷⁶ It states that Keystone is a disaster for the climate - Keystone will emit 181 metric tons of CO2 each year, which the report says is equivalent to the tailpipe emissions of 37.7 million cars. The report calls for the rejection of Keystone to limit the growth of the tar sands.
627. The paper entitled “Economics of Transporting and Processing Tar Sands Crudes in Quebec” says that more involvement by Quebec in the “tar sands” would provide few if any benefits for Quebec and would expose Quebec to substantial risks, costs and negative environmental impacts. Quebec, says the paper, would bear almost all of the risks/costs of spills and other environmental impacts and tar sands proponents will receive almost all of the benefits while bearing little environmental risk/cost.
628. The paper entitled “Dirty Deals: How Trade Talks threaten to undermine EU Climate Policies and Bring Tar Sands to Europe” states that the EU’s Fuel Quality Directive was aimed at reducing the climate impact of transport fuels but the paper says the oil industry has waged an extensive lobby effort against the EU for unfairly discriminating against the “tar sands”. The paper says that the Canadian government has been the dirty fuel’s advocate and they may now be able to attack the Fuel Quality Directive through the TransAtlantic Trade and Investment Partnership, which may foil the attempt to keep the most climate polluting fuels, like the tar sands from entering Europe.
629. The paper entitled “TransCanada vastly exaggerating Energy East’s ability to reduce overseas oil imports - Canadians and investors are being misled with outdated, inaccurate information” alleges that TransCanada repeats false information to justify Energy East, when it claims that the pipeline would end Canada’s reliance on overseas oil. Energy East, says the paper, will put unrefined oil on massive supertankers and put communities across Canada at risk of spills. The paper says that a spill from the tankers will threaten an ecological disaster for coastal communities in Quebec, Newfoundland, Nova Scotia, PEI and New Brunswick. Finally, the paper says that Energy East will export jobs but not the dangers associated with transporting huge quantities of dirty oil.
630. The paper entitled “In the Pipeline - Risks for Funders of Tar Sands Pipelines” states that risks include a lack of progress around Free, Prior and Informed consent from First Nations, given the risks of a spill or contamination of drinking water; projects also carry potential climate and environmental risks and risks due to expansion of the “tar sands”. The report concludes that all of the associated risks mean significant risks to investors and financiers of pipeline projects due to the questionable economic viability of the projects.
631. I also noted that in the course of these campaigns, statements were made by senior members of Greenpeace Canada and on its webpage.
632. Greenpeace campaigner Patrick Bonin reacted to the Energy East cancellation announcement:
- A. “This is an incredible victory for all the people, environmentalists, municipalities, landowners, unions, First Nations, and everyone who opposed the project, causing

⁷⁷⁶ http://priceofoil.org/content/uploads/2013/04/Cooking_the_Books_FINAL-SCREEN.pdf. Page 3.

enough delays and ensuring assessment of the projects climate impact. ... The movement for a sustainable, just and prosperous economy will ensure these pipelines never get built.”⁷⁷⁷

633. Greenpeace Canada released a number of statements on its website. These statements include the following in regards to Greenpeace Canada’s campaigns and other campaigns:

A. “Here are just a few of Greenpeace’s success since 1971...”⁷⁷⁸

March 2009: Celebration! Great Bear Rainforest Protected

May 2010: The biggest, most ambitious forest conservation deal ever is announced: the Canadian Boreal forest agreement.

November 2015: President Obama Rejects Expansion of Keystone XL.

November 2015: Another Historic Day in the Battle to Stop the Tarsands. After a string of pipeline victories and over a decade of campaigning on at least three different continents, the Alberta government has finally put a limit to the tarsands.

February 2016: Greenpeace Canada began protesting against the destruction of the Great Bear Rainforest in the mid-1990s – exposing the story to the world through blockades, protests and banners. Along with other environmental organisations and Indigenous leaders, Greenpeace shined a light on the impacts of forest destruction on First Nations communities who have lived there for thousands of years and on wildlife like the rare white spirit bear. We used this spotlight to pressure logging companies and the local government to change their approach. And it worked!

February 2019: Aegon quits Tar Sands investments

October 2017: East Energy Tar Sands pipeline is officially dead, with TransCanada announcing the cancellation of the project and a resulting billion dollar loss. This marks the end of a five year campaign for Greenpeace Canada and their allies.⁷⁷⁹

634. Another statement I found regarding Greenpeace Canada’s campaigns and campaigns was issued by the Province of B.C. on February 7, 2006 speaking about the combined Central Coast and North Coast Land and Resource Management Plan – a precursor to the Great Bear Rain Forest – which provided, in part as follows:

⁷⁷⁷ <https://www.greenpeace.org/canada/en/press-release/330/greenpeace-reacts-to-cancellation-of-energy-east-pipeline/>.

⁷⁷⁸ https://www.tiki-toki.com/timeline/entry/594418/Greenpeace/#vars!date=1978-10-03_17:37:40!

⁷⁷⁹ <https://www.greenpeace.org/canada/en/about-us/history-successes/>

A. “Greenpeace... [was] intimately involved in building this collaborative solution for more than five years. These organizations are expressing strong support for the land use decisions reached between First Nations and the Province and are looking forward to its on-the-ground implementation.”⁷⁸⁰

635. In addition to my review of Greenpeace Canada’s website discussed above, I find the foregoing statement relevant evidence in my review. In this regard – and in addition to the direct advocacy against the development of Alberta’s oil sands found in these statements - I note the specific references to Greenpeace Canada’s advancement of divestment tactics and land use tactics such as the tanker ban, the Great Bear Rain Forest, and the boreal forest to delay and frustrate the development of Alberta’s oil sands.

636. I also note Greenpeace Canada’s involvement as producer of the documentary entitled “Petropolis: Aerial Perspectives on the Alberta Tar Sands”, which I have reviewed and found to generally cast a negative impression on the oil sands and advocates for opposition to the development of Alberta’s oil sands.

637. My research also found a job posting for the role of “Head of Campaign (Climate)” for Greenpeace Canada.⁷⁸¹ The job description reads, in part:

Greenpeace Canada (GPCA) is seeking a Campaign Head to provide leadership in the development and implementation of our campaigns to fight climate change and scandalize the fossil fuel industry in Canada.

638. Additionally, Greenpeace Canada was a signatory to the Obama Letter,⁷⁸² the ENGO Declaration,⁷⁸³ the ENGO Open Letter,⁷⁸⁴ and the EDC Divestment Letter.⁷⁸⁵

(iii) Funding Applications and Grant Description

639. I have reviewed information regarding certain grants provided to Greenpeace Canada and find that the evidence demonstrates the following grants were made to Greenpeace Canada:

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
The Oak Foundation. ⁷⁸⁶	2010	\$424,373	\$437,078	To create awareness of the

⁷⁸⁰ https://web.archive.org/web/20110817025626/http://www2.news.gov.bc.ca/news_releases_2005-2009/2006AL0002-000066.htm

⁷⁸¹ <https://tnc.news/2020/03/04/greenpeace-paying-70k-salary-for-campaigner-to-scandalize-fossil-fuel-industry/>

⁷⁸² <https://www.pembina.org/reports/engo-obama-tarsands.pdf>

⁷⁸³ <https://www.pembina.org/reports/us-can-ceo-declaration.pdf>

⁷⁸⁴

https://web.archive.org/web/20130829060500/http://www.sierraclub.org/pressroom/downloads/Tar%20Sands_letter-0701.pdf

⁷⁸⁵ https://environmentaldefence.ca/report/edc_climate_target_letter/

⁷⁸⁶ The Oak Foundation, U.S.A Form grant listing obtained from website page 35.

				<p>financial, regulatory and political uncertainty that surrounds investments in the tar sands so that prominent financial analysts, media, opinion leaders and Members of the Parliament will publically [<i>sic</i>] express concern about the lack of government regulation of the tar sands industry. Greenpeace Canada aims to publicize the controversy around the tar sands both within and outside Canada. This will encourage the withdrawal of major institutional investors from the tar sands; the end of France's tar sands subsidies; and the passage of a feed-in-tariff in Alberta utilized by farmers, ranchers, landowners and investors to develop the province's huge wind power potential</p>
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Wilburforce Foundation ⁷⁸⁷	2008	\$3,000	\$3,198	Greenpeace Canada: Alberta Tar Sands Campaign
Tides U.S. Foundation ⁷⁸⁸	2015	\$92,850	\$118,728	CAD \$120,000.00 For research, education, and organizing on dirty fuels and pipelines.
Tides U.S. Foundation ⁷⁸⁹	2015	\$7,656	\$9,790	CAD\$10,000.00 Front Commun Pour La Transition Energetique's research, education, and organizing on dirty fuels and pipelines as outlined in your proposal
Tides U.S. Foundation ⁷⁹⁰	2009	\$150,000	\$171,297	Tar Sands Campaign

640. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the organization received funds, which were for the stated purpose of, “encourage the withdrawal of major investors from the tar sands”, the “tar sands campaign”, “research, education and organizing for dirty fuels”, and correlate with the campaigns that I reviewed above. Accordingly, I find the grant descriptions opposing the development of Alberta’s oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

(iv) Government Funding

641. I have not found evidence that Greenpeace Canada received revenue from municipal/regional, provincial/territorial, or federal levels of government.

⁷⁸⁷ Wilburforce Foundation Form 990-PF for the 2008 calendar year Attachment A page 4.

⁷⁸⁸ Tides Foundation Form 990 for the 2015 calendar year Schedule F Part II page 61.

⁷⁸⁹ Tides Foundation Form 990 for the 2015 calendar year Schedule F Part II page 61.

⁷⁹⁰ Tides Foundation Form 990 for the 2009 calendar year Schedule F Part II page 13.

(v) Conclusion on Participation in an anti-Alberta Energy Campaign

642. In my review of the foregoing I specifically noted the following in respect of Greenpeace Canada: (a) it being specifically referenced in both Background Documents; (b) its direct advocacy against the development of Alberta's oil sands in a number of its webpages and statements that I discussed above; (c) its efforts to hire a campaign director whose role included scandalizing the fossil fuel industry in Canada; and (d) the receipt of grants described above whose object appears to be to publicize the controversy around the "tar sands", organize dirty fuels and pipelines, advance a divestment campaign of major institutional investors from the "tar sands", and advance the "Tar Sands Campaign", which I find to be evidence tending to establish broad and general objections to the development of Alberta's oil and gas resources.

643. Moreover, I also noted Greenpeace's Canada's participation in: (a) the Dirty Oil Sands Network; (b) the Tar Sands Solutions Network (including its Steering Committee); (c) the Obama Letter; (d) the ENGO Declaration; (e) the ENGO Open Letter; (f) the EDC Divestment Letter; (g) the documentary entitled "Petropolis: Aerial Perspectives on the Alberta Tar Sands; (h) the papers I reviewed above; and (i) the tanker-ban, Great Bear Rainforest, and Boreal Forest land use campaigns.

644. On the basis of the totality of this evidence, I find that Greenpeace Canada has engaged in opposition to the development of Alberta's oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

(i) ***Equiterre***

(i) Background

645. Equiterre is a registered charity.⁷⁹¹

646. As of 2018, the value of its assets was \$9,457,964.⁷⁹²

647. I have reviewed a substantial body of materials relating to Equiterre regarding its campaigns and activism. In addition to what I discuss below, I noted that Equiterre is listed on CorporateEthic's webpage listing members of the "No Tar Sands Coalition".⁷⁹³

(ii) Campaigns, Advocacy Efforts, and Statements

648. Equiterre details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per Equiterre's web page:

A. TAKE ACTION

⁷⁹¹ <https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyRprtngPrd?q.srchNm=Equiterre&q.stts=0007&selectedCharityBn=894057132RR0001&dsrdPg=1>

⁷⁹² Equiterre 2018 CRA Tax Return – line 4200

⁷⁹³ <https://web.archive.org/web/20100714080115/http://www.corpethics.org/section.php?id=371>

Many Quebec residents are taking the lead, both alone and as part of a group, with inspiring action to protest against the arrival of tar sands oil in Quebec. Here are some ideas to help build the movement.

GET INFORMED

Look further into the issue and learn more about tar sands and diluted bitumen.

- Visit the Equiterre tar sands page for details of pipeline projects (only available in French for now).
- Visit the information page on Greenpeace's website
- Connect with local groups to keep up to date. Several citizen groups follow the news relating to tar sands pipelines closely. Contact a group in your area.
- View the map of Enbridge's Line 9 pipeline to learn about past spills, wetland crossing points and more.

BUILD AWARENESS

Share information with residents of your city, district or neighborhood. Many people do not know the facts or risks regarding tar sands oil and their pipelines[sic], so raising awareness is the first step towards mobilising

- Spread the word! Share your concerns with your family, colleagues and friends. Share news items and articles via email or social media.
- Sign the petition "Non aux sables bitumineux" and share it with your network.
- Distribute leaflets highlighting the issues and impacts. Contact Equiterre for more information.
- Add information to the pipeline map.

ORGANIZE

Ready to put in a little more time? Gather around!

- Organize a conference, round table, coffee meeting or workshop. Contact Equiterre for more information.
- Set up a group in your community or neighborhood

- Take artistic action: Be creative!
- Share the following videos or host a public viewing:

Tar Sands Action (By Gas Land Director, Josh Fox). 4:39. English.

The Dirty Truth. 12 min. English. Available with French sub-titles.

Tipping Point: The Age of the Oil Sands. 44 min. English. 2013

Petropolis. Different formats available. English. Available with French sub-titles.

The Pipedreams Project. (On Enbridge's proposed Northern Gateway project in Alberta and British Columbia). 29 min. English.

H2Oil. 76 min. English. Available with French subtitles.

White Water, Black Gold. 57 min. English or French. Available to purchase online for public screenings.

INFLUENCE

Let your voice be heard! Use media to spread your opinion and contact your elected officials to let them know what you think.

- Write to your local or regional (RCM) municipality, to encourage them to adopt a resolution
- Join the debate! Write letters to the media and post comments online regarding the pipelines and tar sands
- Attend meetings of your local council or government
- Contact local organisations such as conservation groups, trade unions, farmers associations, watershed associations to discuss and collaborate on pipeline projects in your area. Don't forget to reach out to less obvious groups, for example chamber of commerce, tourism office, public health and CSSS
- Participate in the civic campaign # directlyaffected on twitter and show that the arrival of the tar sands oil in Quebec concerns everyone.
- Find out more about divestment and join or start a divestment campaign to stop subsidizing fossil fuels.

For more information, please contact Geneviève Puskas, mobilisation officer, by email or at 1-877-272-6656, extension 298.⁷⁹⁴

- B. On March 13, Equiterre launched its Say No to Tar Sands petition. More than 25,000 people have already signed. Have you? (In French only.)⁷⁹⁵
- C. More than 40,000 Quebecers have signed our petition opposing the proposed TransCanada Energy East pipeline. Now you can, too!⁷⁹⁶
- D. Since its creation nearly 25 years ago, Équiterre has worked hard to fight climate change, calling for the phasing out of fossil fuel use and opposing new oil and gas development and transportation projects. For example, working with the residents of Dunham, we put a stop to Enbridge's Trailbreaker pipeline and, from the start, we have fought fiercely against the Energy East project. We've held dozens of public meetings to oppose the project—mostly in Quebec, but also in Manitoba, Ontario and New Brunswick. Some of these meetings led to the emergence of anti-Energy East community groups, many of which have joined the Mouvement STOP Oléoduc [Stop The Pipeline Movement].⁷⁹⁷
- E. Tell the Prime Minister of Canada not to fund Texan oil giant Kinder Morgan's Trans Mountain pipeline expansion with Canadian taxpayers' money and to respect the rights of Indigenous communities and British Columbians, who have been dead set against the project for many months now.⁷⁹⁸
- F. Sign and share the petition

Contact your MP to tell him/her to reject the Teck Frontier project (you can find the phone numbers and addresses of the constituency offices here).

Call your MP.

Bring this document with all the necessary information to his/her constituency office by February 14.⁷⁹⁹

- G. Special collaboration of Brenda Plant, cofounder of Ethiquette.ca, an independent platform of information and analysis on responsible investment.

Are you frustrated by investment advisers who don't know much about responsible investment options and who don't seem to care about

⁷⁹⁴ <https://www.equiterre.org/en/solution/take-action>

⁷⁹⁵ <https://www.equiterre.org/en/news/anticosti-cacouna-tar-sands-the-time-to-act-is-now>

⁷⁹⁶ <https://www.equiterre.org/en/news/petition-say-no-to-tar-sands>

⁷⁹⁷ <https://www.equiterre.org/en/news/where-do-we-stand-energy-east>

⁷⁹⁸ <https://www.equiterre.org/en/news/no-public-funds-for-kinder-morgan-equiterres-petition>

⁷⁹⁹ <https://www.equiterre.org/en/news/massive-new-tar-sands-project-in-alberta-what-you-need-to-know>

helping you on this? And when you try to do your own research, nothing (relevant) comes up in a Google search?

Have you ever imagined what it might feel like to be proud of your investment portfolio? To be able to talk about it like you might talk about a new eco-responsible product you just discovered?

Download the list of 17 fossil fuel free funds available in Canada⁸⁰⁰

- H. Join us for a peaceful protest in Ottawa on September 26 to say no a toxic [sic] tar sands industry. Equiterre cofounder and deputy executive director Steven Guilbeault will speak out against tar sands mining and other extreme forms of energy extraction.⁸⁰¹

I. FIND AN EVENT NEAR YOU FOR SEPTEMBER 27

Whether it's alongside Greta Thunberg in Montreal or at one of the many local demonstrations, come walk with us and raise your voice for the climate emergency!

- For a list of events in Quebec or on Facebook
- Key events in Canada and around the world

There's still time to convince businesses near you to close their doors for the climate on September 27. It's all explained here (in French).⁸⁰²

J. JOIN THE MOVEMENT

Do you want to participate in the movement against the pipelines and tar sand development? Several local groups have already formed in the towns along the route of Enbridge's Line 9 and along the Montréal-Portland pipeline. Don't hesitate to contact a group to find out how you can get involved.

If you would like to start a new group in your municipality, contact Equiterre to help get you started.⁸⁰³

- K. Please alert us to any upcoming meetings involving Enbridge, the Calgary-based pipeline transport company seeking to bring tar sands crude through Quebec.

The solution:

⁸⁰⁰ <https://www.equiterre.org/en/news/fossil-fuel-free-rrsp-%E2%80%93-heres-the-real-scoop>

⁸⁰¹ <https://www.equiterre.org/en/news/ottawa-sit-in-against-tar-sands>

⁸⁰² <https://www.equiterre.org/en/news/everything-you-need-to-know-about-the-climate-strike-on-september-27>

⁸⁰³ <https://www.equiterre.org/en/solution/join-the-movement>

1. If you hear about an Enbridge meeting in your area, let us know:

- Idehoux@equiterre.org
- (514) 605-2000

2. Attend the meeting to ask questions about:

- the risk of spills
- the transport of tar sands crude via ageing pipelines
- plans by Enbridge and Suncor to refine tar sands crude in Montreal refineries⁸⁰⁴

L. First there was Enbridge, now there is TransCanada. The risk is greater, but so are our chances of winning.

In the fall of 2012 Enbridge filed an application with the National Energy Board (NEB) to reverse the flow of its Line 9B pipeline and use it carry [*sic*] crude oil from the tar sands to Montreal. In response, we launched the Tar sands toolkit, which includes a map of Line 9 indicating all the wetland crossings, drinking water wells and First Nations communities along its route. Our toolkit also gives you advice on how to make your voice heard, by helping you connect with groups active in your area.⁸⁰⁵

M. TransCanada, the company behind the controversial Keystone XL project, announced this summer that it would proceed with its Energy East Pipeline project. The company plans to convert an existing pipeline to carry crude oil from Alberta and Saskatchewan to Ontario, and to build a new pipeline from Cornwall, Ontario to Saint John, New Brunswick. The project would bring 1.1 million barrels of crude oil per day through nine regions of Quebec. Some of the crude oil would come from the tar sands.

TransCanada is holding a series of information sessions this fall. If you are concerned about the risk this project poses, go and ask questions.

Here's the list of municipalities TransCanada is visiting (links in French):

- Trois-Rivières
- Terrebonne

⁸⁰⁴ <https://www.equiterre.org/en/news/tell-us-what-enbridge-is-up-to-in-your-area>

⁸⁰⁵ <https://www.equiterre.org/en/news/tar-sands-crude-coming-to-quebec-get-informed>

- Saint-Basile-de-Portneuf
- Saint-Ignace-de-Loyola
- Montréal
- Sainte-Justine-de-Newton
- Blainville
- Saint-Honoré-de-Témiscouata
- St-Onésime-d'Ixworth
- Montmagny
- Lévis
- Deschambault-Grondines
- Saint-Michel-de-Bellechasse⁸⁰⁶

- N. Wednesday, February 5, the Centre for Sustainable Development (better known by its official name, Maison du développement durable) and Equiterre will welcome British Columbia's Tzeporah Berman for a noon-hour talk in English, Tarsands Expansion: An Opportunity or a Threat, about how the push for new pipelines and tarsands expansion is creating unprecedented community engagement across the country.⁸⁰⁷
- O. Only 3 days left to voice your opposition to the Energy East Pipeline by filling out the Communauté Métropolitaine de Montréal (CMM)'s questionnaire (French only). Let the CMM know your opinion on this export project that would compromise Canadians' security, jeopardize water access in case of a spill and seriously worsen the climate crisis.⁸⁰⁸
- P. Enbridge is proposing to reverse the flow of its 9B pipeline from North Westover (Ontario) to Montreal. If its application to the National Energy Board is accepted, tar sands oil could soon flow to Quebec and possibly on to Portland, Maine passing through Montérégie, Basses-Laurentides, Lanaudière, Laval, [sic] Montreal and the Eastern Townships.

Equiterre, in collaboration with its partners Environmental Defence, The Environmental Committee of St-Césaire, 350.org and NRDC, have

⁸⁰⁶ <https://www.equiterre.org/en/news/transcanada-pipeline-nows-the-time-to-ask-questions>

⁸⁰⁷ <https://www.equiterre.org/en/news/montreal-tzeporah-berman-of-clayoquot-fame-talks-pipelines-politics-and-protests>

⁸⁰⁸ <https://www.equiterre.org/en/news/public-consultation-3-days-left-to-oppose-the-energy-east-pipeline>

developed a map to enable the citizens of Ontario, Quebec and the northeastern United States to know the exact route of the pipeline.

The map highlights the location of past spills, wetland and river crossings, First Nation communities, communities which have adopted a resolution and drinking water wells.

Do not hesitate to contact Geneviève Puskas, Research Officer, to add additional information to the map or to learn how to integrate it to your website: email, 514-522-2000, ext 298.⁸⁰⁹

649. Equiterre also led or supported a letter-writing and intervenor-application campaign targeting a major energy project.⁸¹⁰
650. I find that the foregoing review of Equiterre's website establishes that Equiterre has coordinated and facilitated campaigns seeking to frustrate further development of the Alberta oil sands, including by encouraging petitions speaking out against development, encouraging individuals to take steps in opposition to the development as outlined in their tool kit, and encouraging individuals to deinvest from fossil fuels in Canada.
651. Moreover, I find that Equiterre has opposed the Energy East, Tailbreaker, Trans Mountain, Keystone XL and Line 9 pipelines, and has put forward campaigns that encouraged individuals to also oppose these pipelines. I find that Equiterre participated in, and encouraged others to participate in, protests seeking to discourage certain of these pipelines. I also find Equiterre has opposed the Teck Frontier mine in Alberta. While opposition to any one particular project will not, in and of itself, establish participation in an anti-Alberta energy campaign, I find this to be repeated opposition to projects that would see increased development or facilitate transportation of Alberta's oil and gas resources and as such does provide some evidence relevant to determining the existence of opposition to the development of Alberta's oil and gas resources in a broad and general sense.
652. I further find that Equiterre was an author or co-author of the following reports:

<u>Title</u>	<u>Date</u>
Divided we fall: The Tar Sands vs. The Rest of Canada ⁸¹¹	May, 2009
Dirty Oil Diplomacy: The Canadian Government's Global Push to Sell the Tar Sands ⁸¹²	March, 2012

⁸⁰⁹ <https://www.equiterre.org/en/solution/pipeline-map>

⁸¹⁰ web.archive.org/web/20160328111433/http://equiterre.org/solution/participez-au-bape.

⁸¹¹ <http://mediatoil.ca/Search/getpdf/1000>

⁸¹² https://climateactionnetwork.ca/wp-content/uploads/2012/03/CAN_Dirty_Oil_Diplomacy.pdf.

Economics of Transporting and Processing Tar Sands Crudes in Quebec ⁸¹³	January, 2014
Trans Canada's Energy East: An Export Pipeline NOT for Domestic Gain ⁸¹⁴	March, 2014
Lockdown: The end of growth in the Tar Sands ⁸¹⁵	October, 2015
The Elephant in the Room: Canada's Fossil Fuel Subsidies Undermine Carbon Pricing Efforts ⁸¹⁶	November, 2016
Risking it all: How Export Development Canada's Support For Fossil Fuels Drives Climate Change ⁸¹⁷	November, 2018

653. I have reviewed each of these reports and make the following comments regarding their content and my assessment of the same.
654. The paper entitled "Divided we fall: The Tar Sands vs. The Rest of Canada" states that the "tar sands" are the fastest growing source of GHG emissions in Canada and that special treatment for the tar sands will have negative economic impacts for other Canadian industries.
655. The paper entitled "Dirty Oil Diplomacy: The Canadian Government's Global Push To Sell The Tar Sands" outlines what are perceived to be the changing domestic and international policies of the federal government in promoting the expansion of the tar sands, Canada's fastest growing source of greenhouse gas pollution. It describes what it says is a collaborative effort of the Canadian and Alberta governments, along with industry to ensure no door is closed in selling the highly polluting tar sands.
656. The paper entitled "Economics of Transporting and Processing Tar Sands Crudes in Quebec" says that more involvement by Quebec in the "tar sands" would provide few if any benefits for Quebec and would expose Quebec to substantial risks, costs and negative environmental impacts. Quebec, says the paper, would bear almost all of the risks/costs of spills and other environmental impacts and tar sands proponents will receive almost all of the benefits while bearing little environmental risk/cost.
657. The paper entitled "Trans Canada's Energy East: An Export Pipeline NOT for Domestic Gain" says that Energy East will not benefit Canada as almost all of the oil will be exported.

⁸¹³

https://www.equiterre.org/sites/fichiers/economics_of_transporting_and_processing_tar_sands_crudes_in_quebec_a_final.pdf.

⁸¹⁴ <https://environmentaldefence.ca/report/report-transcanadas-energy-east-export-pipeline-not-domestic-gain/>.

⁸¹⁵ http://priceofoil.org/content/uploads/2015/10/Lockdown_Final.pdf.

⁸¹⁶ <http://priceofoil.org/content/uploads/2016/11/Elephant-in-the-Room-Canada-Subsidies.pdf>.

⁸¹⁷ http://priceofoil.org/content/uploads/2018/11/Risking-It-All-report_web.pdf.

658. The paper entitled “Lockdown: The end of growth in the Tar Sands” states that the “tar sands” are among the most carbon intensive sources of oil in the world and that the vast majority of the tar sands can’t be burned if we are to avoid the worst impacts of climate change. The report postulates that industry is facing increasing headwinds that could limit the expansion of tar sands- high costs and low prices have helped and citizen engagement has successfully stopped or delayed pipeline infrastructure. The report suggests that expansion plans are no longer inevitable as public support for climate action and opposition to pipelines has directly limited the viability of expansion plans in the landlocked tar sands. The report says that shipping by rail is a high cost back-up and can turn a profitable project into a loser. They state a belief that the development of new projects is highly unlikely and that without pipelines, some 34.6 billion metric tons of carbon will stay in the ground, meaning a better chance to maintain a safer climate future.
659. The paper entitled “The Elephant in the Room: Canada’s Fossil Fuel Subsidies Undermine Carbon Pricing Efforts” states that fossil fuel subsidies are an incentive to produce and consume more fossil fuels, which is a policy conflict with carbon pricing that is intended to reduce carbon emissions from producing and consuming fossil fuels. By giving polluters big breaks, says the paper, fossil fuel subsidies pull in the opposite direction of a carbon price. Each year according to the paper, Canada gives \$3.3 billion in subsidies to oil and gas companies. The paper calls for the phasing out of all these subsidies by 2020 at the latest.
660. The paper entitled “Risking it all: How Export Development Canada’s Support For Fossil Fuels Drives Climate Change” is critical of EDC, which the report claims provides billions of dollars of support for fossil fuels companies every year. The report says this support is incompatible with Canada’s Paris commitments and is out of step with moves by the financial community to move away from supporting fossil fuel companies. The report states that from 2013-2017, EDC facilitated at least \$4.4 billion in support of oil sands expansion and transportation. In 2018 the report says that EDC guaranteed \$1 billion or more in financing the construction of Trans Mountain.
661. Equiterre released a number of statements on its website. These statements include the following in regards to Equiterre’s campaigns and other campaigns:

A.



The extraction of tar sands oil is already the primary source of greenhouse gas (GHG) emissions growth in Canada. Despite this, the industry continues its expansion plans with an eye firmly on international markets. To reach these markets, tar sands oil must be transported to a deep-water port.

First Enbridge submitted plans to reverse the flow of its Line 9B pipeline (French only) between Montreal and Westover (Ontario). Now TransCanada - the company behind the controversial Keystone XL project - proposes to convert existing gas pipelines and add a new pipeline - the Energy East pipeline (French only) - to transport tar sands oil through Montreal to Quebec City and St. John, New Brunswick. Tar sands oil could flow through Quebec soil by 2014, bringing environmental risks (French only) to our communities and providing the infrastructure for a catastrophic expansion of operations in Alberta.

What can you do?

- Sign the petition “No to tar sands”! Then, print it (pdf) and make your friends and family sign. Don't forget to mail us the signatures before Dec 12, 2014.
- Follow the four steps of taking action and getting involved!
- See where the Enbridge pipeline passes by exploring the map of the route.
- Adopt a resolution: several municipalities and organizations have already taken position by adopting a resolution. Encourage your elected officials to do the same!
- Build the movement! You can create a group of concerned citizens or join an existing group to organize outreach campaigns or awareness campaigns in your region or municipality.
- To learn more about the arrival of the tar sands in Quebec, check the latest information (French only) from Equiterre or our recent publications (some bilingual).⁸¹⁸
 - B. The Canadian government must act now and stop creating an incentive to produce and pollute more by giving billions in subsidies to the coal, oil and natural gas industries. Canada's fossil fuel subsidies total \$3.3 billion, which amounts to paying polluters \$19 for each tonne of carbon dioxide they emit. These subsidies seriously undermine Canada's chances of achieving its GHG reduction goal and send contradictory messages to fossil fuel producers and users.⁸¹⁹
 - C. Every year in Canada, at least \$3.3 billion go up in smoke as generous tax credits are offered to the oil, gas and coal industries.

⁸¹⁸ <https://www.equiterre.org/en/solution/tar-sands-toolkit>

⁸¹⁹ <https://www.equiterre.org/en/news/sign-the-petition-calling-on-the-federal-government-to-eliminate-fossil-fuel-subsidies>

Like its G20 counterparts, in 2009, Canada committed to phasing out fossil fuel subsidies by 2020. Seven years later and we're still paying billions to oil and gas producers to pollute!⁸²⁰

- D. Today, one year later, Équiterre filed a petition containing over 15,000 signatures against the use of public funds for the purchase of this pipeline and asking that the rights of indigenous communities and the population of British Columbia be respected. On this anniversary, Équiterre is also taking the opportunity to remind the government of its unfulfilled election promise to eliminate fossil fuel subsidies, by filing another petition containing close to 15,000 signatures against fossil fuel subsidies—another use of public funds to support the fossil fuel industry.⁸²¹
- E. Last week, the Pembina Institute released a report on the climate impact of the proposed Energy East pipeline showing that this project would lead to a significant increase in Canada's greenhouse gas emissions.

According to the Pembina Institute, Energy East “could generate up to 32 million tonnes of additional greenhouse gas emissions each year - an even greater impact than the proposed Keystone XL pipeline.”⁸²²

- F. The 60-year-old Portland-Montreal Pipe Line, a pipeline system running from Maine to Quebec, is a critical link in efforts to move tar sands oil to the East Coast. Energy companies are now pushing for this pipeline to be reversed to carry tar sands crude oil. Communities throughout Quebec and New England are organizing to fight this reversal.⁸²³

- G. IT IS SCARY BECAUSE...

Quebec would become a pathway for crude oil from the tar sands. It would assume many of the risks with very few economic benefits. And it would enable expansion in the tar sands, making it hard for Canada to reduce its greenhouse gas emissions.⁸²⁴

- H. FEDERAL CONSULTATIONS ON CLIMATE CHANGE

To mark Earth Day this past April 22, Canadian Prime Minister Justin Trudeau signed the Paris Agreement on climate change, showing unprecedented support among all world leaders. In doing so, Canada has agreed to keep the increase in global average temperature to 1.5°C.

⁸²⁰ <https://www.equiterre.org/en/news/like-it-or-not-your-taxes-are-funding-fossil-fuels-sign-to-say-no>

⁸²¹ <https://www.equiterre.org/en/news/first-anniversary-of-the-announcement-of-the-purchase-of-the-trans-mountain-pipeline-by-the-fed>

⁸²² <https://www.equiterre.org/en/news/energy-east-greater-emissions-threat-than-keystone-xl>

⁸²³ <https://www.equiterre.org/en/news/tar-sands-free-walk-south-of-border>

⁸²⁴ <https://www.equiterre.org/en/news/energy-east-pipeline-what-you-need-to-know>

But the challenge remains: How will we achieve this goal? The Canadian government is currently working on a new climate plan-and it wants your ideas.

Other, more specific ideas being defended by Équiterre

GHG mitigation measures

- Development of the oil sands and construction of new pipelines are incompatible with our goals to reduce greenhouse gas emissions.
 - All energy projects in Canada should undergo rigorous climate assessment.⁸²⁵
- I. On Monday, June 4, thousands of Canadians responded to the call from environmental and social groups to speak out against the so-called federal budget omnibus bill C-38, which would weaken the nation's environmental review process.⁸²⁶
- J. The pipelines in question are old, used, and, in any case, were not designed to transport this kind of heavy tar sands crude. The risk of an oil spill is very real indeed – and coming closer.⁸²⁷
- K. Within a few weeks, the National Energy Board will come out for or against the Line 9B Reversal. If the project is approved, tar sands crude could soon flow through Quebec.

Enbridge first announced its Line 9B Pipeline Reversal and Line 9 Capacity Expansion project in May 2012. It has two components:

- reversing the direction of the flow in the Line 9B pipeline between North Westover, Ontario and Montreal
- increasing the capacity for Line 9 by 25%, from 240,000 barrels a day to 300,000 barrels a day

This decision could have major consequences for the many residents that live along the 639 km pipeline. Line 9 goes by:

- Toronto
- Kingston
- Vaudreuil-Soulanges

⁸²⁵ <https://www.equiterre.org/en/solution/federal-consultations-on-climate-change>

⁸²⁶ <https://www.equiterre.org/en/news/thank-you-for-denouncing-bill-c-38>

⁸²⁷ <https://www.equiterre.org/en/news/trailbreaker-national-energy-board-okays-partial-line-9-reversal-because-why>

- the Lower Laurentians
- Lanaudière
- Laval
- Montreal

(Wondering if you live along the pipeline? Check out our interactive pipeline map.)⁸²⁸

- L. “Today is an exciting day for the climate and the tens of thousands of individuals who have fought against this senseless project. This is an important day for all those who have advocated a better future on behalf of our children. We have won!” declared Sidney Ribaux, Équiterre Executive Director.

For Équiterre, this victory is the accomplishment of the unprecedented united front that has brought together civil society organizations, municipalities, farmers and citizens to rise against a project of a bygone era.⁸²⁹

- M. Whether in a pandemic context or not, our government relations team is constantly working to defend what is dear to you, to promote Équiterre’s mission and to push our elected officials to take action.⁸³⁰

	Bloc Québécois	Conservative Party	Green Party	Liberal Party	New Democratic Party
Climate plan	✓		✓	✓	✓
Carbon pricing	✓		✓	✓	✓
Greener energy	✓		✓	✓	✓
Transportation	✓		✓	✓	✓
Protecting Great Lakes	✓		✓	-	✓
Tankers	✓		✓	✓	✓
Protecting Public Land and Water	-		✓	✓	✓
Marine protected areas	✓		✓	✓	✓
Oils Sands	-		✓	✓	✓
Toxics in Consumer Products	✓		✓	✓	✓
Total	8/10		10/10	9/10	10/10

N.

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- O. Équiterre and Environmental Defence, two of the countries [sic] largest environmental organisations, unveiled their analysis of the of the [sic] main federal political parties’ environmental commitments in a press conference today. It should be remembered that

⁸²⁸ <https://www.equiterre.org/en/news/line-9b-reversal-neb-decision-imminent>

⁸²⁹ <https://www.equiterre.org/en/news/victory-transcanada-puts-an-end-to-its-energy-east-project>

⁸³⁰ <https://www.equiterre.org/en/news/the-important-role-played-by-equiterres-government-relations-team>

⁸³¹ <https://www.equiterre.org/en/news/how-do-the-parties-compare-on-the-environment>

the environment is rated as one of the main issues of the election campaign according to CBC/Radio-Canada's Vote Compass.⁸³²

- P. Last week in the *Métro* newspaper, environmentalist Steven Guilbeault reported on three pieces of good news in the fight against the tar sands.⁸³³
- Q. Last Friday, international pipeline safety expert Richard Kuprewicz and energy economists Ian Goodman and Brigid Rowan expressed concerns about the Enbridge Line 9B Reversal and Line 9 Capacity expansion project at National Energy Board (NEB) hearings in Toronto.

Richard Kuprewicz explained his assessment of a "high risk of rupture on Line 9 in the early years of the reversal" and addressed Enbridge's refusal to prudently implement the lessons from its Marshall, Michigan rupture in 2010.

Ian Goodman and Brigid Rowan – who demonstrated to the Obama administration that the economic benefits and job numbers for Keystone XL have been greatly exaggerated by proponents – disussed [*sic*] why the Line 9 project involves a substantial risk of major economic damage and disruption – and potential loss of life.⁸³⁴

- R. In documents recently leaked to Greenpeace Canada, Edelman proposes creating fake citizens groups to give the impression that there is popular support for the Energy East project. The plan also proposes strategies to "distract" environmental groups.

The documents name Equiterre and the David Suzuki Foundation directly. My name has the honour of appearing on the black list.⁸³⁵

- S. Equiterre also published the following statement in conjunction with the release of a Report titled "Booms, Busts and Bitumen: The economic implications of Canadian oilsands development":

The rapid pace of oilsands development is creating economic risks and regional disparities that need to be addressed, according to a new report released today by the Pembina Institute and Equiterre.

Booms, Busts and Bitumen: The economic implications of Canadian oilsands development looks at the side effects of the oilsands boom in

⁸³² <https://www.equiterre.org/en/news/2015-elections-will-canada-finally-tackle-climate-change-analysis-of-the-federal-political-part>

⁸³³ <https://www.equiterre.org/en/news/three-strikes-against-the-tar-sands>

⁸³⁴ <https://www.equiterre.org/en/news/enbridges-line-9-experts-express-safety-economic-concerns-at-toronto-hearings>

⁸³⁵ <https://www.equiterre.org/en/news/energy-east-leaked-documents-reveal-transcanadas-dirty-communications-campaign>

uncertain economic times and presents a counterpoint to the frequently overstated economic benefits of oilsands expansion.⁸³⁶

662. In my review of Equiterre’s website above, I find the foregoing statements relevant evidence. In this regard, I note: (a) the specific statements criticizing the granting of economic subsidies for energy development; (b) references to Equiterre’s advancement of political activism tactics; and (c) continual and repeated objections to pipelines and oil sands projects, all with a view to delay and frustrate the development of Alberta’s oil sands.

663. Additionally, Equiterre was a signatory to both the ENGO Declaration⁸³⁷ and the EDC Divestment Letter.⁸³⁸

(iii) Funding Applications and Grant Description

664. I have reviewed information regarding certain grants provided to Equiterre and find that the evidence demonstrates the following grants were made to Equiterre:

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
Oak Foundation ⁸³⁹	2012	\$304,290	\$304,162	To raise public awareness and encourage greater public debate about the social and environmental costs associated with plans to reverse the flow of a pipeline between Maine, Quebec and Ontario
Tides U.S. Foundation ⁸⁴⁰	2017	\$39,799	\$40,623	CAD 50,000.00 research, education, and organizing on dirty fuels and pipelines

⁸³⁶ <https://www.equiterre.org/en/news/oilsands-boom-brings-economic-risks-new-report-reveals>

⁸³⁷ <https://www.pembina.org/reports/us-can-ceo-declaration.pdf>

⁸³⁸ <https://cela.ca/wp-content/uploads/2021/01/CSO-Letter-Export-Development-Canada-Dec-2020.pdf>

⁸³⁹ <https://.foundationcenter.org/saved-profiles/pdf/60e8bd4d3e62c4.92929942.pdf>

⁸⁴⁰ Tides Foundation Form 990 for the 2017 calendar year Schedule F Part II page 39 of 115 of PDF.

Tides U.S. Foundation ⁸⁴¹	2009	\$60,000	\$68,519	For Tar Sands Campaign
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665. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the organization received funds which were for the stated purpose of “raise awareness and encourage greater public debate about the social and environmental costs associated with plans to reverse the flow of a pipeline”, “research, education and organizing for dirty fuels and pipelines”, and “for Tar Sands campaign”, and correlate to the campaigns I reviewed above. Accordingly, I find the grant descriptions opposing the development of Alberta’s oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

(iv) Government Funding

666. I have found that during the years 2003 to 2018, Equiterre received revenue from municipal/regional, provincial/territorial, and federal levels of government in the following amounts⁸⁴²:

<u>Federal</u>	<u>Provincial/Territorial</u>	<u>Municipal/Regional</u>
\$2,936,672	\$9,228,190	\$420,702

(v) Conclusion on Participation in an anti-Alberta Energy Campaign

667. In my review of the foregoing I specifically noted the following in respect of Equiterre: (a) its direct advocacy against the development of Alberta’s oil sands in a number of its webpages and statements that I reviewed above; and (c) the receipt of grants described above whose object appears to be to object to pipeline approvals, organize dirty fuels and pipeline campaigns, and advance a “Tar Sands Campaign”, which I find to be evidence tending to establish broad and general objections to the development of Alberta’s oil and gas resources.

668. Moreover, I also noted Equiterre’s participation in: (a) the ENGO Declaration; (b) the EDC Divestment Letter; (c) the research papers I reviewed above; (d) the Tar Sands Solutions Network (including its Steering Committee).

669. On the basis of the totality of this evidence, I find that Equiterre has engaged in opposition to the development of Alberta’s oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

⁸⁴¹ Tides Foundation Form 990 for the 2009 calendar year Schedule F Part II page 10.

⁸⁴² CharityData summary for Equiterre at page 2, Equiterre T3010 Registered Charity Information Return : Schedule 6 for Fiscal Period January 01, 2018 to December 31, 2018 at pages 2 and 3.

(j) ***Western Canada Wilderness Committee***

(i) Background

670. Western Canada Wilderness Committee is a non-profit society and federal charity.⁸⁴³

671. As of 2019 the value of its assets was \$721,404.⁸⁴⁴

672. I have reviewed a substantial body of materials relating to Western Canada Wilderness Committee regarding its campaigns and activism.

(ii) Campaigns, Advocacy Efforts, and Statements

673. Western Canada Wilderness Committee details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per Western Canada Wilderness Committee's web page:

A. Contact Prime Minister Harper about the Tar Sands

The Wilderness Committee is calling for the government to pass a real cap on carbon emissions, respect aboriginal title and rights in the area, and enforce air, water and forest protection regulations.

Get in touch with Prime Minister Harper and tell him what you think about tar sands development and it's [*sic*] impact across the country!⁸⁴⁵

B. Tar Sands – Fighting Climate Change

Alarm bells are clanging louder every day. Wildfires. Hurricanes. Floods. Droughts. Heatwaves. In 2018, the climate crisis is impossible to ignore. Yet Prime Minister Justin Trudeau insists on building new tar sands pipelines – shoveling even more fossil fuel on an out of control fire.

In order for the world to meet the goals set out in the Paris Agreement on climate change, tar sands projects must be shut down by 2040. Instead, the National Energy Board forecasts production to double by then, with new pipelines enabling this growth.

Divestment from fossil fuels must include a just transition for tar sands workers which offers training and jobs in a zero-carbon economy.

Humanity cannot afford any new fossil fuel infrastructure if we are to keep the world at a safe temperature for future generations. We need a

⁸⁴³ https://www.wildernesscommittee.org/who_we_are/our_story

⁸⁴⁴ Western Canada Wilderness Committee 2019 CRA Tax Return – line 4200

⁸⁴⁵ web.archive.org/web/20120618020229/https://www.wildernesscommittee.org/TarSands

plan that aligns with science and supports workers as we phase out the tar sands before 2040.⁸⁴⁶

C. Anti-Tar Sands Pipeline Demonstration at Chinese Consulate

As Prime Minister Harper visits China with a delegation of oil executives, environmentalists, First Nations and other concerned Canadians will be at the Chinese Consulate in Vancouver with a message for the people of China that Prime Minister Harper doesn't speak for all of us and that tar sands pipelines and oil tankers are a bad investment.

Who: Ben West, Healthy Communities Campaigner for the Wilderness Committee as well as other oil pipeline opponents.⁸⁴⁷

D. Time to have your say on the Kinder Morgan pipeline

To support you through this process, many groups are hosting workshops in various communities. Staff and volunteers can help walk you through the online form, answer your questions about the process and make sure your concerns are submitted effectively to the NEB.

For more info, read this backgrounder from our allies at Sierra Club BC, ForestEthics Advocacy and the PIPE UP Network.⁸⁴⁸

E. Tell Canada's new finance minister to rethink TMX

For months, we've highlighted skyrocketing costs and massive delays facing construction of the pipeline. But it's a lot to ask for a Finance Minister to admit he was wrong to spend \$4.5 billion of public money on a boondoggle. Now we've got a fresh start — will you write to her today?

[What follows is a letter to the finance minister that can be populated with various negative comments about the TMX pipeline and oil and gas, generally.]⁸⁴⁹

674. I find that the foregoing review of the Western Canada Wilderness Committee's website establishes that it advocated: (a) for a halt to all pipeline projects and to start a managed decline of the tar sands (including utilizing letter writing campaigns to elected officials), (b) for direct citizen engagement to demonstrate against tar sands pipelines and oil tankers, the discontinuance of oil (including the "tar sands"), and (c) repeated and general objections to the

⁸⁴⁶ <https://web.archive.org/web/20200227210951/https://www.wildernesscommittee.org/TarSands>

⁸⁴⁷

web.archive.org/web/20120221025607/http://wildernesscommittee.org/press_release/anti_tar_sands_pipeline_demonstration_chinese_consulate

⁸⁴⁸ www.wildernesscommittee.org/news/time-have-your-say-kinder-morgan-pipeline

⁸⁴⁹ <https://www.wildernesscommittee.org/take-action/tell-canadas-new-finance-minister-rethink-tmx>

TMX pipeline being built by Kinder Morgan, all of which I find opposes the development of Alberta's oil and gas resources.

675. I further find that Western Canadian Wilderness Committee was an author or co-author of the following report:

<u>Title</u>	<u>Date</u>
TIME'S UP FOR THE TAR SANDS ⁸⁵⁰	June, 2017

676. I have reviewed this report and make the following comments regarding its content and my assessment of the same.
677. The paper entitled "TIME'S UP FOR THE TAR SANDS"⁸⁵¹ suggests that in 2016, "Earth was hotter than it's been in 120,000 years"⁸⁵²; and that "[o]ur planet is already 1.1 degrees warmer than it was before the Industrial Revolution."⁸⁵³ It goes on to say that "This freakish warmth has led to drought-fuelled wars in the Middle East and North Africa, the imminent extinction of the Great Barrier Reef and successive super typhoons rocking the Phillipines and the South Pacific."⁸⁵⁴ The paper argues that these sorts of issues require that no new coal, oil or gas infrastructure can be built anywhere on the planet. The paper goes on to say that Canada is "hell-bent on pursuing the world's dirtiest oil"⁸⁵⁵ by approving two massive "tar sands" pipelines. It describes tar sands oil as the dirtiest and most expensive on Earth and goes on to describe what it takes to produce a barrel of tar sands oil – "It starts by clear-cutting the boreal forest so you can strip mine huge truckloads of oily sand. Then you wash it with massive amounts of fresh water from the Athabasca River...."⁸⁵⁶ "While Canada is doubling down on its dirtiest, most polluting industry, the rest of the world is moving on. Countries like China and India are barrelling forward with plans to slash carbon pollution."⁸⁵⁷ The paper notes that Northern Gateway has been stopped and it advocates for killing Kinder Morgan, Grand Rapids, Keystone, Line 3 and Energy East and encourages people to donate money to the Wilderness Committee to support the cause and also to write the federal government and urge them to freeze tar sands expansion. The paper also suggests that new technologies (renewable energy and batteries) will "kill fossil fuels

⁸⁵⁰ https://www.wildernesscommittee.org/sites/all/files/publications/2017_wc_pipelinepaper_web_0.pdf.

⁸⁵¹ https://www.wildernesscommittee.org/sites/all/files/publications/2017_wc_pipelinepaper_web_0.pdf

⁸⁵² https://www.wildernesscommittee.org/sites/all/files/publications/2017_wc_pipelinepaper_web_0.pdf at page 1 of 4 of PDF.

⁸⁵³ https://www.wildernesscommittee.org/sites/all/files/publications/2017_wc_pipelinepaper_web_0.pdf at page 1 of 4 of PDF.

⁸⁵⁴ https://www.wildernesscommittee.org/sites/all/files/publications/2017_wc_pipelinepaper_web_0.pdf at page 1 of 4 of PDF.

⁸⁵⁵ https://www.wildernesscommittee.org/sites/all/files/publications/2017_wc_pipelinepaper_web_0.pdf at page 1 of 4 of PDF.

⁸⁵⁶ https://www.wildernesscommittee.org/sites/all/files/publications/2017_wc_pipelinepaper_web_0.pdf at page 1 of 4 of PDF.

⁸⁵⁷ https://www.wildernesscommittee.org/sites/all/files/publications/2017_wc_pipelinepaper_web_0.pdf at page 1 of 4 of PDF.

for good”.⁸⁵⁸ This energy transformation will cause some disruption, acknowledges the paper, but the industry “only contributes two per cent of the country’s economy and employs around 112,000 people.”⁸⁵⁹ The paper compares this to the film and television industry, which it says, employs 262,700 people and the technology sector which employs 864,000. The paper argues for a speedy end to fossil fuels and a transition plan to a clean economy that will ensure no workers are left behind.

678. I also noted that in the course of these campaigns, Western Canada Wilderness Committee released a number of statements on its website. These statements include the following in regards to Western Canada Wilderness Committee’s campaigns and other campaigns:

A. No Trans Mountain Pipeline

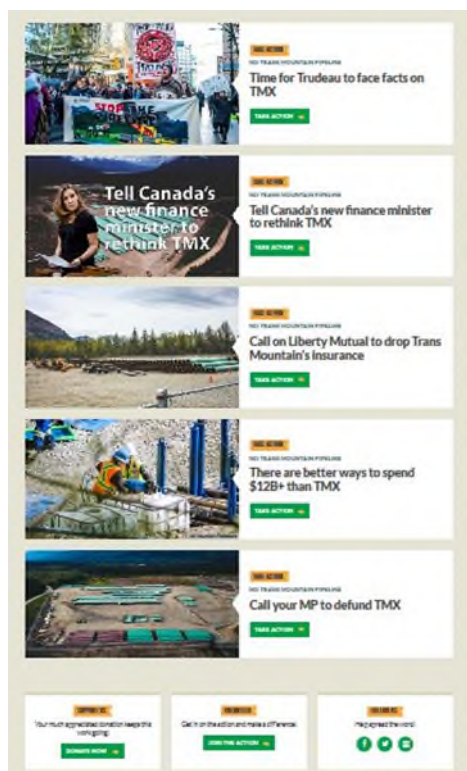
When Trans Mountain was built in the late 1950s, it was a cooperative designed to feed local refineries and supply British Columbians with gasoline. But when Texas-based oil giant Kinder Morgan took over the line in 2005, it launched a plan to turn Metro Vancouver into a tar sands export hub. In 2007, without any public process or debate, they began moving toxic sludge known as diluted bitumen out via the Salish Sea.

Tsleil-Waututh Nation [pronounced sail-wha-tooth], whose territory centres around the Burrard Inlet where the pipeline terminates, found a 79% to 87% chance of a spill in their waters over the next 50 years if the project is built. They also put the chances of a worst-case scenario spill of over 100,000 barrels at 29%. This level of risk is why their community, and over two-thirds of the First Nations impacted by the project, have not given their consent to allow it through their territories as required by the UN Declaration on the Rights of Indigenous Peoples.

[The webpage then goes on to feature the following...]

⁸⁵⁸ https://www.wildernesscommittee.org/sites/all/files/publications/2017_wc_pipelinepaper_web_0.pdf at page 3 of 4 of PDF.

⁸⁵⁹ https://www.wildernesscommittee.org/sites/all/files/publications/2017_wc_pipelinepaper_web_0.pdf at page 4 of 4 of PDF.



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B. Biden shows Trudeau what real climate leadership is with Keystone cancellation

“Today Biden is showing us what real climate leadership looks like,” said Climate Campaigner Peter McCartney. “If Trudeau wants to be the climate warrior he pretends to be, he needs to walk away from the Trans Mountain pipeline.”

Two federal government reports confirm the Trans Mountain pipeline is in direct conflict with Trudeau’s own climate goals. In November, the Canadian Energy Regulator released a report showing Keystone XL and Trans Mountain would both be unnecessary if the country even tries to meet its climate targets, let alone more ambitious plans for net-zero emissions. Weeks later a report from the Parliamentary Budget Office confirmed new climate policies, like the ones the Liberal government recently introduced, would make the project a waste of Canadians’ money.⁸⁶¹

C. Kenney victory means Trudeau must cancel Trans Mountain pipeline

⁸⁶⁰ <https://www.wildernesscommittee.org/noTMX>

⁸⁶¹ <https://www.wildernesscommittee.org/news/biden-shows-trudeau-what-real-climate-leadership-keystone-cancellation>

After a victory for Jason Kenney's United Conservative Party in last night's Alberta election, Prime Minister Justin Trudeau's justification for the Trans Mountain pipeline expansion and tanker project is gone, says the Wilderness Committee.

Trudeau explicitly and repeatedly linked his government's approval of the pipeline in 2016 to Alberta's Climate Leadership Plan, which the incoming premier has vowed to dismantle. Now Wilderness Committee is calling on the federal government to reject the pipeline.

"Alberta's election changes everything," said Climate Campaigner Peter McCartney. "Trudeau sold this pipeline as a key part of the Pan-Canadian Climate Framework and it is abundantly clear that grand bargain has failed."⁸⁶²

D. The following statement appeared on Western Canada Wilderness committee's website:



Tell Trudeau to Reject Teck

SHARE THIS   

We won! Teck withdrew their application for Frontier Mine!

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679. I have also reviewed evidence that senior members of Western Canada Wilderness Committee have also made statements regarding campaigns in opposition to the construction of certain pipelines, with a connection to Alberta's oil and gas industry.

680. In 2011, a Climate Campaigner for the Western Canada Wilderness Committee made the following statements supporting a protest of the Keystone XL pipeline:

A. 'We've Got You Surrounded': Tar Sands Pipelines Opposed From D.C. to B.C.

As more than 12,000 people surrounded the White House to protest the Keystone XL tar sands pipeline, activists on the other side of North America are making it known that tar sands pipelines will also meet fierce opposition here.

⁸⁶² <https://www.wildernesscommittee.org/news/kenney-victory-means-trudeau-must-cancel-trans-mountain-pipeline>

⁸⁶³ <https://www.wildernesscommittee.org/take-action/tell-trudeau-reject-teck>

“We’re inspired to see the massive opposition to the Keystone XL pipeline in Washington, D.C., because that project would put us one big step further down the road to climate catastrophe by facilitating the dangerous expansion of the tar sands in Alberta,” said Ben West, Climate Campaigner for the Wilderness Committee.” We are fighting pipelines and oil tankers here in B.C. for the same reasons,” said West.

First Nations have overwhelmingly stated their ongoing opposition to the Enbridge pipeline and super-tankers, and last week the Tsleil-Waututh Nation declared its strong opposition to the potential expansion of Kinder Morgan’s existing oil pipeline that ends in Burnaby and would result in major tanker traffic increases in their traditional waters, which include Vancouver Harbour.⁸⁶⁴

681. In addition to my review of Western Canada Wilderness Committee’s website above, I find the foregoing statements relevant evidence. In this regard, I note the specific references to Western Canada Wilderness Committee’s advancement of a divestment tactic to put pressure on Liberty Mutual to drop Trans Mountains insurance, a land-use tactic of the tanker ban, and repeated calls to oppose the expansion of the “tar sands” generally, including the rejection of production facilities like Teck and pipelines, like Keystone XL and TMX, all with a view to delay and frustrate the development of Alberta’s oil sands.

(iii) Funding Applications and Grant Description

682. I have reviewed information regarding certain grants provided to Western Canada Wilderness Committee and find that the evidence demonstrates the following grant was made to Western Canada Wilderness Committee:

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
Tides U.S. Foundation ⁸⁶⁵	2012	\$30,000	\$29,987	research, education and outreach on climate/tar sands related issues

683. The grant description expresses the intended use of funds from the perspective of the organization who granted the funds, and does not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization received funds which were provided for the stated purpose of “research, education and outreach on climate/tar

⁸⁶⁴

web.archive.org/web/20120303022055/http://wildernesscommittee.org/press_release/weve_got_you_surrounded_tar_sands_pipelines_opposed_dc_bc

⁸⁶⁵ Tides Foundation Form 990 for the 2012 calendar year Schedule F Part II page 121 of 131 of PDF.

sands related issues” correlates to the campaigns I reviewed above. Accordingly, I find the grant description opposing the development of Alberta’s oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

(iv) Government Funding

684. I have not found evidence that Western Canada Wilderness Committee received revenue from municipal/regional, provincial/territorial, or federal levels of government.

(v) Conclusion on Participation in an anti-Alberta Energy Campaign

685. In my review of the foregoing I specifically noted the following in respect of Western Canada Wilderness Committee: (a) its direct advocacy against the development of Alberta’s oil sands in its webpages and statements that I reviewed above; and (b) the receipt of a grant described above whose object appears to be consistent with the webpages and statements I have reviewed above, which I find to be evidence tending to establish broad and general objections to the development of Alberta’s oil and gas resources.

686. Moreover, I also noted Western Canada Wilderness Committee participation in: (a) the research paper reviewed above; and (b) direct citizen engagement, tanker-ban, and divestment tactics.

687. On the basis of the totality of this evidence, I find that Western Canada Wilderness Committee has engaged in opposition to the development of Alberta’s oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

(k) ***Sierra Club Canada Foundation (“Sierra Club Canada”)***

(i) Background

688. Sierra Club Canada is a registered charity that includes four chapters: Atlantic, Quebec, Ontario and Prairie, plus the Sierra Youth Coalition.⁸⁶⁶

689. As of 2018 the value of its assets was \$217,580.⁸⁶⁷

690. I have reviewed a substantial body of materials relating to Sierra Club Canada regarding its campaigns and activism. I also note that they are specifically referenced in both Background Documents,⁸⁶⁸ and CorporateEthic’s webpage listing members of the “No Tar Sands Coalition”.⁸⁶⁹

(ii) Campaigns, Advocacy Efforts, and Statements

⁸⁶⁶ <https://sierraclub.ca/en/about>

⁸⁶⁷ Sierra Club Canada Foundation 2018 CRA Tax Return – line 4200

⁸⁶⁸ The RBF Document. Page 12. The Corporate Ethics Document. Page 15.

⁸⁶⁹ <https://web.archive.org/web/20100714080115/http://www.corpethics.org/section.php?id=371>

691. Sierra Club Canada's website details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per Sierra Club Canada's web page:

A. The Dirty Truth about Canada's Tar Sands Industry

The screenshot shows the Sierra Club Canada website. The header includes the logo, navigation tabs (SHRRE, Media, Campaigns, Latest, Get involved, Chapters, Program Areas, About Us, Foundation, JOIN THE CLUB), and a 'Make a difference Donate today' button. The main content area features a large image of a tar sands extraction site and the title 'The Dirty Truth about Canada's Tar Sands Industry'. Below the title is a detailed paragraph about the location and environmental impact of tar sands in Alberta, Canada. To the right, there is a sidebar with a 'Save Canada's Environment Laws' section containing a list of links (Main Page, Campaign News, Making News, Action Alerts, Publications and Resources) and a 'Campaigner Profile' section featuring photos and names of individuals like Dustin Johnson, Sheila Muxlow, and Lindsay Telfer.

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B. Alberta Tar Sands and Mackenzie River Delta

ACTION ALERT: Demand Indigenous Water Rights are protected in the Athabasca River!

[The website then invites readers to sign a petition to this effect before stating, among other things:]

Treaty rights for the Indigenous people of the Athabasca Chipewyan and Mikisew Cree Nations have been undermined by increasingly low water quality and quantity within the Athabasca river. It points out concerns with the impacts of climate change and industrial development along the

⁸⁷⁰ <https://web.archive.org/web/20101103032516/http://www.sierraclub.ca/en/tar-sands>

river, and makes specific requests with regards to water use and future tar sands development.⁸⁷¹

C. Campaign News and Publication

Rethink Alberta video

This video is causing quite a stir around the world, and especially here at home in Alberta. See for yourself what all the fuss is about.

[A link is then provided to the Rethink Alberta video and a commentary by Sierra Club Canada's executive director.]

Canada Pension Plan Investment Board's response to John Bennett

[A link is then proved to the respond from CPP to Sierra Club Canada's objection to CPP's investment in "a Calgary based tar sands company" (see below),]

Syncrude Canada on Trial

Syncrude Canada is on trial for the death of 1600 migrating birds. The ducks landed in a Syncrude toxic tailings pond in northern Alberta in April 2008. The destruction and toxicity of the tar sands was largely brought to the World's attention after this deadly incident. The company is charged with failing to employ measures to protect the birds as required by federal and provincial law. This is the first case in which a tar sands company is facing criminal charges as a result of routine operations.

The charges came about only after Sierra Club Canada filed a Private Prosecution against Syncrude in January 2009. The embarrassed federal and provincial governments then took over the case.

[I discuss this matter in more detail below]

Tar Sands and Water

A Toxic Legacy

Tar Sands Development Means...

Boreal forest destruction

Global warming acceleration

⁸⁷¹ <https://web.archive.org/web/20110104203332/http://www.sierraclub.ca/en/category/program-areas/mackenzie-valley-pipeline-and-alberta-tar-sands>

Environmental injustice

- D. [Other “tar sands” related items follow for the balance of the webpage.]⁸⁷²
- E. FOSSIL FUELS - Pull Together

"Our last legal challenge stopped this dangerous and risky project in its tracks. We plan to do that again with this new appeal, and the support of the Pull Together Community is instrumental to our success."

RUBEN GEORGE
TSLEIL WAUTUTH NATION

 pull-together.ca

Indigenous Nations are going back to court to fight the Trans Mountain pipeline and tankers again.

Sierra Club BC and RAVEN are inviting you to stand behind them by organizing a fundraising initiative or event through our shared Pull Together campaign.

Will you join us?

Visit our Pull Together website to learn more and sign up!

Elsewhere on the same webpage a link is provided to the “Pull Together” campaign, which provides:

Pull Together - with our partner organizations RAVEN and Sierra Club BC— is committed to networked change: we know we can't take on the huge issues we are facing without a strong movement of people all across the country who are passionate about defending Indigenous rights.

You organize, and we support you: sometimes that means we provide posters and promotional materials; sometimes it means we set you up with connections to volunteers and Indigenous guests in your area. We do whatever we can to amplify your event through our social media channels and the media so you get a great result.⁸⁷³

⁸⁷² <https://web.archive.org/web/20100805105303/http://www.sierraclub.ca/en/tar-sands/news>

⁸⁷³ <https://pull-together.ca/organize/>. <https://sierraclub.bc.ca/campaigns/fossil-fuels/>

F. Obama to visit Canada Feb. 19th

In advance of President Obama's trip to Canada, Sierra Club, along with other environmental groups, sent him a letter outlining our hopes for his approach to tackling climate change.

Let's hope he takes our ideas to heart as he tries to "roll back the spectre of a warming planet," as promised in his inauguration speech.

Please take a minute to send your own letter to President Obama to congratulate him for his support for renewable energy.

Let's ask him not to buy the Canadian government's attempts to sell the tar sands as a viable energy solution.⁸⁷⁴

692. I find that the foregoing review of Sierra Club Canada's website establishes that it advocated: (a) against the development of the oil sands in support of Boreal forest and Mackenzie Valley land use programs, (b) for "an end to tar sands injustices"; (c) the 'Rethink Alberta' social media campaign; (d) Canada Pension Plan to deinvest from a Calgary based company involved in the oil sands; (e) the criminal prosecution of a participant in the oil sands in respect of the tragic death of 1600 migrating birds;(f) for stopping the Kinder Morgan pipeline and stopping the expansion of the Alberta tar sands; and (g) continually in respect of: (i) the "toxic legacy"; (ii) Boreal forest destruction; and (iii) "environmental injustice", all of which I find oppose the development of Alberta's oil and gas resources.

693. I further find that Sierra Club Canada was an author or co-author of the following reports:

<u>Title</u>	<u>Date</u>
Tar Sands Invasion - How dirty and expensive oil from Canada threatens America's New Energy Economy ⁸⁷⁵	May, 2010
Watered Down: Overcoming Federal Inaction on the Impact of Oil Sands Development to Water Resources ⁸⁷⁶	November, 2009
Dirty Oil Diplomacy: The Canadian Government's Global Push to Sell the Tar Sands ⁸⁷⁷	March, 2012
Cooking the books: How the State Department analyses ignores the true	April, 2013

⁸⁷⁴ <https://web.archive.org/web/20090224193431/https://www.sierraclub.ca/>

⁸⁷⁵ <https://www.nrdc.org/sites/default/files/TarSandsInvasion-full.pdf>.

⁸⁷⁶ <https://web.archive.org/web/20111121215453/http://www.water-matters.org/docs/watered-down.pdf>.

⁸⁷⁷ <https://www.nrdc.org/sites/default/files/TarSandsInvasion-full.pdf>.

climate impact of the Keystone XL Pipeline ⁸⁷⁸	
FAIL: How the Keystone XL Tar Sands Pipeline Flunks the Climate Test ⁸⁷⁹	September, 2013
Lockdown: The end of growth in the Tar Sands ⁸⁸⁰	October, 2015
Funding Tar Sands: Private Banks vs. the Paris Climate Agreement ⁸⁸¹	November, 2017

694. I have reviewed each of these reports and make the following comments regarding their content and my assessment of the same.
695. The paper entitled “Tar Sands Invasion - How dirty and expensive oil from Canada threatens America’s New Energy Economy”, suggests that the “tar sands” are undergoing “reckless expansion”⁸⁸² of what is arguably the most destructive project on earth. The report is critical of tar sands expansion, which plans to triple the export of “dirty and expensive tar sands oil”⁸⁸³ to the U.S. despite North America being on the verge of a cleaner, more energy independent future. The report says the project entails the destruction of pristine forests and bird habitat and will create a wasteland of an area that is the size of Florida. It advises that pipelines and refineries will crisscross the Northern Plains and the Midwest that will affect farmers, ranchers Native Americans and the residents of industrial areas.
696. The paper entitled “Watered Down: Overcoming Federal Inaction on the Impact of Oil Sands Development to Water Resources” is critical of what is described as the damaging impact of oilsands activity on water resources; toxic water in tailings ponds, which seeps into ground water and source water; the destruction of forests and wetlands; the negative impact on First Nations water sources; emissions that contaminate lakes in Saskatchewan; and significant bird deaths.
697. The paper entitled “Dirty Oil Diplomacy: The Canadian Government’s Global Push To Sell The Tar Sands” outlines what are perceived to be the changing domestic and international policies of the federal government in promoting the expansion of the tar sands, Canada’s fastest growing source of greenhouse gas pollution. It describes what it says is a collaborative effort of the Canadian and Alberta governments, along with industry to ensure no door is closed in selling the highly polluting tar sands.
698. The paper entitled “Cooking the books: How the State Department analyses ignores the true climate impact of the Keystone XL Pipeline” suggests that America does not need this “extreme

⁸⁷⁸ http://priceofoil.org/content/uploads/2013/04/Cooking_the_Books_FINAL-SCREEN.pdf.

⁸⁷⁹ <http://priceofoil.org/content/uploads/2013/08/kxl-climate-report.pdf>.

⁸⁸⁰ http://priceofoil.org/content/uploads/2015/10/Lockdown_Final.pdf.

⁸⁸¹ http://priceofoil.org/content/uploads/2017/11/Funding_Tar_Sands-RAN-report.pdf.

⁸⁸² <https://www.nrdc.org/sites/default/files/TarSandsInvasion-full.pdf>. Page 25.

⁸⁸³ <https://www.nrdc.org/sites/default/files/TarSandsInvasion-full.pdf>. Page 5.

- source of oil”.⁸⁸⁴ It states that Keystone is a disaster for the climate - Keystone will emit 181 metric tons of CO₂ each year, which the report says is equivalent to the tailpipe emissions of 37.7 million cars. The report calls for the rejection of Keystone to limit the growth of the “tar sands”.
699. The paper entitled “FAIL: How the Keystone XL Tar Sands Pipeline Flunks the Climate Test” describes the “tar sands” as one of the most carbon polluting sources of oil on the planet. It describes Keystone as a “climate disaster”⁸⁸⁵ – the tar sands are a land-locked asset that needs pipelines in order to grow. The paper states that approval of Keystone could lead to a 36% expansion of the tar sands and that oil from the tar sands may be 22% more carbon intensive than oil in the U.S. The paper also comments on the implications of destroying the boreal forest through expanded production.
700. The paper entitled “Lockdown: The end of growth in the Tar Sands” states that the “tar sands” are among the most carbon intensive sources of oil in the world and that the vast majority of the tar sands can’t be burned if we are to avoid the worst impacts of climate change. The report postulates that industry is facing increasing headwinds that could limit the expansion of tar sands- high costs and low prices have helped and citizen engagement has successfully stopped or delayed pipeline infrastructure. The report suggests that expansion plans are no longer inevitable as public support for climate action and opposition to pipelines has directly limited the viability of expansion plans in the landlocked tar sands. The report says that shipping by rail is a high-cost back-up and can turn a profitable project into a loser. They state a belief that the development of new projects is highly unlikely and that without pipelines, some 34.6 billion metric tons of carbon will stay in the ground, meaning a better chance to maintain a safer climate future.
701. The paper entitled “Funding Tar Sands: Private Banks vs. the Paris Climate Agreement” says that meeting Paris agreement commitments must mean halting the rapid expansion of the “tar sands”, followed by rapid phase out of fossil fuels. The paper states that the phase out must begin with the most environmentally damaging fuels, including the tar sands. The tar sands, the paper says, occupy a unique place given high extraction costs, difficulties in getting to market, huge reserves, GHG intensity, major local and Indigenous rights impacts and immediate substitutability by less carbon intensive and cheaper alternatives. The paper also suggest that many banks have supported the Paris agreement so they must necessarily end their financial support for the tar sands.
702. The CBI’s (Canadian Boreal Initiative) website suggests that early members of CBI include Bird Studies Canada, Boreal Forest Network, Boreal Songbird Initiative, Canadian Nature Federation, Canadian Parks and Wilderness Society, Ducks Unlimited Canada, Global Forest Watch, National Aboriginal Forestry Association, Sierra Club of Canada, The Forest Products Association of Canada, and the World Wildlife Fund of Canada.⁸⁸⁶

⁸⁸⁴ http://priceofoil.org/content/uploads/2013/04/Cooking_the_Books_FINAL-SCREEN.pdf. Page 3

⁸⁸⁵ <http://priceofoil.org/content/uploads/2013/08/kxl-climate-report.pdf>. Page 5.

⁸⁸⁶ https://web.archive.org/web/20030609213955/http://www.borealcanada.ca/related_sites_e.cfm

703. I also noted that in the course of these campaigns, Sierra Club Canada released a number of statements on its website. These statements include the following in regards to Sierra Club Canada's campaigns and other campaigns:

A. Submitted by Kristina Jackson on Tue, 2011-11-08 11:41

Sierra Club in the States worked hard on getting Obama into office. Now they are at the forefront pushing Pres. Obama to deny the Keystone XL Pipeline permit to carry tar sands oil all the way from Alberta to the Gulf of Mexico.

Obama recently indicated that the decision on the permit will come from The White House rather than the State Department. And now he's said it will not come until further investigation takes place. Go to Sierra Club online activism center to send Pres. Obama a thank you.

WASHINGTON, (Reuters) - Stung by months of protests, President Barack Obama's advisers are worried that administration approval for a planned oil pipeline from Canada could cost him political support from Democrats in 2012.... Read more »⁸⁸⁷

B. Maybe Alberta should rethink

Submitted by John Bennett on Thu. 2010-07-15 13:34

So Premier Stelmach's blood pressure is up over the "Rethink Alberta" ad campaign. My question is, What did he expect?

There have been numerous opportunities for the Alberta government to do the right thing over the years, but in the face of potentially catastrophic climate change, massive air and water pollution and an incredible industrial accident rate, it has always opted for unbridled tar sands expansion.⁸⁸⁸

C. Syncrude cannot duck from charges in death of 500 waterfowl

Custer, a representative of Sierra Club Canada, is taking legal action to ensure the oily death of hundreds of ducks in northern Alberta does not become status quo in the Tar Sands. Last spring, approximately 500 ducks died after landing on one of Syncrude's tailings ponds which cover more than 50 square kilometres north of Fort McMurray.

⁸⁸⁷ <https://web.archive.org/web/20111117152231/http://www.sierraclub.ca/en/category/program-areas/alberta-tar-sands-pipelines>

⁸⁸⁸ <https://web.archive.org/web/20110106034510/http://www.sierraclub.ca/en/blog/john-bennett/maybe-alberta-should-rethink>

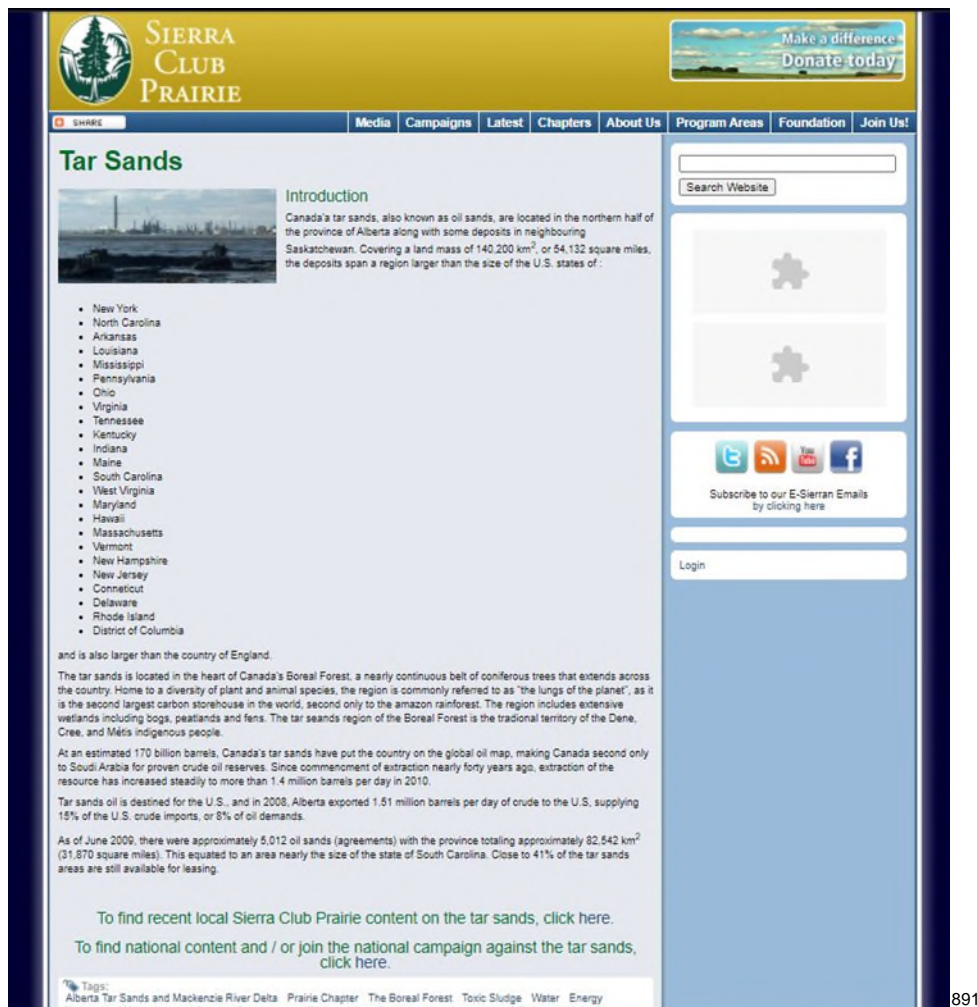
This morning, Custer took the first steps toward launching a private prosecution in provincial court against Syncrude under the Federal Migratory Birds Convention Act, which prohibits the deposit of a harmful substance in an area frequented by migratory birds. Launched by Ecojustice (formerly Sierra Legal Defence Fund) on behalf of Custer, the prosecution is also supported by Sierra Club Canada and Forest Ethics.⁸⁸⁹

704. In addition to my review of Sierra Club Canada's website above, I find the foregoing statements to be relevant evidence. In this regard, I find the foregoing statements additional evidence of a broad and general opposition to the development of Alberta's oil and gas resources. In particular, I note: (a) the use of political activism in corresponding to the U.S President to advance its opposition to the Keystone XL pipeline project; (b) the circulation and endorsement of the "Rethink Alberta" campaign; and (c) the private prosecution of a participant in the oil sands (which I will comment on further below), all with a view to delay and frustrate the development of Alberta's oil sands.
705. I also note that the website for Sierra Club Prairie, which I find is a chapter of Sierra Club Canada, details a number of advocacy efforts.⁸⁹⁰ As Sierra Club Prairie is a chapter of Sierra Club Canada, I find that any campaigns of Sierra Club Prairie are properly considered as campaigns of Sierra Club Canada. These efforts include the following campaigns and descriptions as per Sierra Club Prairie's web page:

⁸⁸⁹ <https://web.archive.org/web/20100916214028/http://www.sierraclub.ca/en/node/1298>

⁸⁹⁰ <https://web.archive.org/web/20110311221910/http://www.sierraclub.ca/en/chapters>

A.



B. Oppose Canadian Pension Plan Investment in Tar Sands

July 6th 2010, the Canada Pension Plan Investment Board (CPPIB) announced a \$250-million private placement in a Calgary based tar sands company. Instead of gambling with our future, we want investment in clean, green and just solutions!

[The webpage then provides a link to enable the reader to “Read More to take [sic] action...”⁸⁹²]

706. I find that the foregoing review of Sierra Club Prairie’s website establishes that it advocated: (a) against the development of the oil sands in support of Boreal forest land use program; and (b)

⁸⁹¹ <https://web.archive.org/web/20140803085908/http://prairie.sierraclub.ca/en/tar-sands>

⁸⁹² <https://web.archive.org/web/20100807212314/http://prairie.sierraclub.ca/>

Canada Pension Plan to deinvest from a Calgary based company involved in the oil sands, all of which I find oppose the development of Alberta's oil and gas resources on a general basis. Moreover, I note the reference to "join the national campaign against the tar sands" which is not only an expression of anti-Alberta energy, but provides a link to a "sierraclub.ca" web address, thereby purporting to adopt the content from that website (including what I reviewed above) to that of Sierra Club Prairies. I find that this is the effect of that link and adopt my earlier findings in respect of Sierra Club Canada's website as being included in my findings in respect of Sierra Club Prairie's website, such that I find the campaigns described in that website oppose the development of Alberta's oil and gas resources.

707. I also noted that in the course of these campaigns, Sierra Club Prairie released a statement on its website related to the campaigns and campaigns described above, as follows:

A. Sierra Club Prairie published an article regarding a trial involving Syncrude:

For immediate release

It's official: Syncrude is a tar sands criminal

By Mike Hudema and Sheila Muxlow | June 30, 2010

After a two-and-a-half-month trial, tar sands oil giant Syncrude has been found guilty of the criminal charges laid in connection with the deaths of 1,606 ducks that in one of its mining tailings lakes in April 2008 [sic]. Syncrude was charged under the Alberta Environmental Protection and Enhancement Act and the Federal Migratory Birds Convention Act with failing to undertake due diligence to ensure its toxic tailings do not cause harm to migratory birds.

The ducks are just one page of the tar sands horror story but the trial has been very revealing about the nature of tar sands operations. Nevertheless, while the verdict is in and sentencing is still to come, justice is still a long way from being served.⁸⁹³

708. Not only is there significant discussion of this event on the Sierra Club Canada website that was linked to the Sierra Club Prairie's website above, I found it noteworthy in its connection to the litigation tactic outlined in the Corporate Ethics Document where a stated objective was to:

We also seek to maintain a steady drumbeat of media about problems and solutions;...undertake a successful private prosecution of Syncrude for the death of 500 ducks on their tailings pond...⁸⁹⁴

(iii) Other Campaigns

⁸⁹³ <https://web.archive.org/web/20100807212314/http://prairie.sierraclub.ca/>

⁸⁹⁴ The Corporate Ethics Document. Page 8.

709. The CBI's (Canadian Boreal Initiative) website suggests that an early member of CBI included Sierra Club of Canada.⁸⁹⁵

710. Additionally, the Sierra Club Canada was a signatory to the Obama Letter,⁸⁹⁶ the ENGO Declaration,⁸⁹⁷ and the ENGO Open Letter⁸⁹⁸

(iv) Funding Applications and Grant Description

711. I have reviewed information regarding certain grants provided to Sierra Club Canada Foundation and find that the evidence demonstrates the following grants were made to Sierra Club Canada Foundation:

<u>Grantmaker Name</u>	<u>Recipient Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
Tides U.S. Foundation ⁸⁹⁹	Sierra Club Canada Foundation	2014	\$23,102	\$25,515	CAD\$25,000.00 For research, education and organizing on dirty fuels and pipelines
Tides U.S. Foundation ⁹⁰⁰	Sierra Club Canada Foundation	2009	\$20,000	\$22,840	Tar Sands Campaign
Tides U.S. Foundation ⁹⁰¹	Sierra Club Canada Foundation	2009	\$90,000	\$102,778	Tar Sands Campaign
Tides U.S. Foundation ⁹⁰²	Sierra Club of Canada-Prairie Chapter	2013	\$30,000	\$30,897	research, education and organizing on dirty fuels and pipelines

⁸⁹⁵ https://web.archive.org/web/20030609213955/http://www.borealcanada.ca/related_sites_e.cfm

⁸⁹⁶ <https://www.pembina.org/reports/engo-obama-tarsands.pdf>

⁸⁹⁷ <https://www.pembina.org/reports/us-can-ceo-declaration.pdf>

⁸⁹⁸

https://web.archive.org/web/20130829060500/http://www.sierraclub.org/pressroom/downloads/Tar%20Sands_letter-0701.pdf

⁸⁹⁹ Tides Foundation Form 990 for the 2014 calendar year Schedule F Part II page 52 of 178 of PDF.

⁹⁰⁰ Tides Foundation Form 990 for the 2009 calendar year Schedule F Part II page 21.

⁹⁰¹ Tides Foundation Form 990 for the 2009 calendar year Schedule F Part II page 21.

⁹⁰² Tides Foundation Form 990 for the 2013 calendar year Schedule F Part II page 62 of 228 of PDF.

Tides U.S. Foundation ⁹⁰³	Sierra Club of Canada-Prairie Chapter	2012	\$30,000	\$29,987	research, education and outreach on climate/tar sands related issues
Tides U.S. Foundation ⁹⁰⁴	Sierra Club of Canada-Prairie Chapter	2011	\$120,000	\$118,688	Sierra Club of Canada - Prairie Chapter's research, education, and outreach on climate/tar sands related issues, in collaboration with the Keepers of Athabasca.

712. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization received funds which were provided for the stated purpose of "For Tar Sands Campaign", "research, education and outreach on dirty fuels and pipelines" or "climate/tar sands related issues" to correlate to the campaigns and statements of Sierra Club that I reviewed above. Accordingly, I find the grant descriptions opposing the development of Alberta's oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

(v) Government Funding

713. I have found that during the years 2003 to 2018, Sierra Club Canada received revenue from municipal/regional, provincial/territorial, and federal levels of government in the following amounts⁹⁰⁵:

<u>Federal</u>	<u>Provincial/Territorial</u>	<u>Municipal/Regional</u>
\$158,049	\$102,493	\$20,427

(vi) Conclusion on Participation in an anti-Alberta Energy Campaign

⁹⁰³ Tides Foundation Form 990 for the 2012 calendar year Schedule F Part II page 121 of 131 of PDF.

⁹⁰⁴ Tides Foundation Form 990 for the 2011 calendar year Schedule F Part II page 13.

⁹⁰⁵ CharityData summary for Sierra Club Canada Foundation at page 2, Sierra Club Canada Foundation T3010 Registered Charity Information Return : Schedule 6 for Fiscal Period January 1, 2018 to December 31, 2018 at pages 3 and 4.

714. In my review of the foregoing I specifically noted the following in respect of Sierra Club Canada and: (a) it being specifically referenced in both Background Documents and listed on CorporateEthic's webpage listing members of the "No Tar Sands Coalition"; (b) its direct advocacy against the development of Alberta's oil sands in the webpages and statements that I Reviewed above; and (c) the receipt of grants described above whose objects appear to be to publicize controversy around the "tar sands", organize dirty fuels initiatives, and advance the "Tar Sands Campaign", which I find to be evidence tending to establish broad and general objections to the development of Alberta's oil and gas resources.
715. Moreover, I also noted Sierra Club Canada's participation in: (a) the ReThink Alberta Campaign; (b) the Dirty Oil Sands Network; (c) the Obama Letter; (d) the ENGO Declaration; (e) the ENGO Open Letter; (f) the research papers discussed above; (g) the Mackenzie Valley and Boreal Forest land-use tactics; (g) the litigation tactic to advance a private prosecution expressly mentioned in the Tar Sands Campaign, (h) the political activism tactic to seek to influence the U.S. President; (i) the Tar Sands Solutions Network; and (j) the divestment tactic to encourage Canada Pension Plan not to invest in participants in Alberta's oil and gas industry.
716. On the basis of the totality of this evidence, I find that Sierra Club Canada has engaged in opposition to the development of Alberta's oil and gas industry in a broad and general sense, and therefore have participated in an anti-Alberta energy campaign.

(l) ***Sierra Club of British Columbia Foundation***

(i) Background

717. Sierra Club of British Columbia Foundation ("**Sierra Club BC**") is a registered Canadian charity.⁹⁰⁶

718. As of 2018 the value of its assets was \$792,167.⁹⁰⁷

719. I have reviewed a substantial body of materials relating to Sierra Club BC regarding its campaigns and activism.

(ii) Campaigns, Advocacy Efforts, and Statements

720. Sierra Club BC's website details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per Sierra Club BC's web page:

A. FOSSIL FUELS

The science tells us that 80 per cent of the world's fossil fuel reserves have to stay in the ground if we are to have any chance to keep global warming under 2°C. The exploitation of the tar sands is causing

⁹⁰⁶ <https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyRprtngPrd?q.srchNm=Sierra+Club+of+British+Columbia&q.stts=0007&selectedCharityBn=119149797RR0001&dsrdPg=1>

⁹⁰⁷ Sierra Club of British Columbia Foundation 2018 CRA Tax Return – line 4200

environmental destruction on a mindboggling scale, both where it is dug out of the ground in Alberta and in the form of greenhouse gas emissions, contributing to the acceleration of climate change.

Here in BC, communities, wild spaces and coast are threatened by the Trans Mountain pipeline and tankers project. [A link entitled “TAKE ACTION TO STOP THE TRANS MOUNTAIN PIPELINE AND TANKERS! Is then provided].⁹⁰⁸

TRANS MOUNTAIN PIPELINE AND TANKERS

- B. The proposed Trans Mountain pipeline expansion would bring another 400 tankers a year to the Salish Sea, putting salmon rivers and the BC coast at much greater risk of catastrophic oil spills. Even without a spill, the noise from these tankers could cause endangered orca whales to go extinct.

The proposed route would cross through the unceded territories of numerous First Nations who do not consent to this pipeline. Trudeau promised to respect First Nations but his government’s support of this project tramples over Indigenous rights and title. We [sic] need to stand strong in solidarity with Indigenous peoples and continue to say no.

We also need to look at the big picture. We should be shifting investment toward energy efficiency and renewable energy, not building new infrastructure to expand the exploitation of the world’s dirtiest oil – Alberta’s tar sands.

Trans Mountain Timeline

In November 2016, the federal government approved the pipeline, making BC—and especially the south coast—a sacrifice zone. In January 2017, the province of BC gave its approval. This failure of former Premier Christy Clark to stand up for BC’s interests was a sell-out and a betrayal.

However, in May 2018, the federal government announced it would indemnify and, if necessary, purchase the project outright. This taxpayer-funded bailout could cost up to \$15 billion! Our pressure convinced Kinder Morgan to walk away from this risky investment, but the fight isn’t over yet. While Trudeau searches for new investors, we’re continuing to ramp up our opposition to ensure this disastrous project never gets built.

In June of 2019, the federal government re-approved this carbon bomb of a tarsands [sic] pipeline and the 700% increase in tanker traffic it will bring to the coast. This decision was the result of another hasty and

⁹⁰⁸ <https://sierraclub.bc.ca/campaigns/fossil-fuels/>

deeply flawed review process that failed to satisfy the duty to consult, accommodate and seek consent from Indigenous Nations. In the fall of 2019, a new round of court challenges from six Indigenous Nations was given the green light to proceed.

Sierra Club BC will continue to stand up for whales, for salmon, for communities, for our climate and for Indigenous rights. That's why we've relaunched our Pull Together campaign in partnership with RAVEN to support the Indigenous Nations who are now back in court challenging the federal approval again. Through grassroots fundraising, this campaign has helped raise well over \$1 million for Indigenous legal challenges that saw the Enbridge Northern Gateway project cancelled and the initial Trans Mountain pipeline approval quashed. The idea is simple: hundreds of individuals and groups host local events to raise funds that are processed by RAVEN and used to help pay the legal fees of the Squamish, Tsleil-Waututh, Coldwater and Stk'emlupsemc te Secwepemc Nations.⁹⁰⁹

[A link is then provided to the following website:]



721. I find that the foregoing review of Sierra Club BC's website establishes that it advocated: (a) on multiple platforms to stop the Kinder Morgan pipeline and advance land use tactics in the form of

⁹⁰⁹ <https://sierraclub.bc.ca/campaigns/fossil-fuels/>

the Great Bear Rain Forest Program and the tanker ban (b) for the advancement of legal precedents for Aboriginals; (c) stopping the expansion of the Alberta tar sands; (d) withdrawing financial support and investment from participants in Alberta's oil and gas industry; and (e) to implement further grassroots tactics under the "Pull Together" platform, all of which I find oppose the development of Alberta's oil and gas resources.

722. I also noted that in the course of these campaigns, Sierra Club BC released a number of statements on its website. These statements include the following in regards to Sierra Club BC's campaigns and other campaigns:

A. Victory! Bill C-48 and C-69 are passed!

This month, Bill C-48 – the *Oil Tanker Moratorium Act* – and Bill C-69 – the Impact Assessment Act – both finally became law! YES!!

Crude oil tankers are now formally banned from the waters of the Great Bear Rainforest!

On both Bill C-48 and Bill C-69, you made hundreds of phone calls, sent thousands of letters, tweeted senators, donated and called on your friends and family to step up too.

From our office here, I was doing the same, calling and emailing senators. In 2017, I traveled to Ottawa to present to a parliamentary committee on the tanker ban. I applied to present to the Senate, twice, but was turned down both times—despite them making space to hear from oil lobbyists. So instead I supported other groups, and helped coordinate multiple joint letters.

In the end, the Senate passed Bill C-48 by a mere 3 votes. I am convinced that it passed because of a heroic effort from people like you across BC standing up for the coast, following the leadership of Indigenous Nations, and doing everything in our power to counter the oil industry's slick efforts.

The bills were passed with just one single day left in the federal government's spring session before breaking for the summer, at which point they would have died – and may never have returned following this fall's election. It was truly down to the wire.

This is a huge moment. It's not an understatement to say Bill C-48 has been in the making for half a century. Communities in northern BC have been working since the 1970s to get a tanker ban formalized for BC's north coast. To get it passed Sierra Club BC was in close coordination with West Coast Environmental Law, Living Oceans Society, and Northwest Institute, as well as other organizations and community groups across the north.

910

B. Oil Tanker Moratorium Act worth celebrating, and can be strengthened

Sierra Club BC traveled to Ottawa this week to present to the Transport Committee about Bill C-48, ...the Oil Tanker Moratorium Act for BC's north coast. There is nowhere else on earth like the north coast – and so we commend the government for introducing a legislated tanker ban.

What about the south coast?

This government has broad-based public support for a tanker ban. However the expectation is that the Bill prohibit *all* tankers, not just *some* tankers.

⁹¹⁰ <https://sierraclub.bc.ca/victory-bill-c-48-and-bill-c-69/>

This can be done through the amendments outlined above that continue to allow for community fuel supply but prohibit articulated tank barges and tankers carrying refined oil.

And while Bill C-48 focuses on the north coast, oil tankers also pose a huge risk to the economy, communities and wildlife on the south coast of BC. And LNG tankers are a safety hazard.

True coastal protection would ban oil and gas tankers in both the north and the south.

And then instead of investing in spill response, we could support the wild salmon economy and expand renewable energy production that can generate jobs without damaging our climate or putting the coast at risk of spills.⁹¹¹

- C. Twenty-Seven Years after Exxon Valdez: Federal government needs to legislate a tanker ban

On the 27th anniversary of the Exxon Valdez oil spill that devastated the community of Cordova, Alaska and left Prince William Sound with an oily legacy that persists to this day, Sierra Club BC and Living Oceans Society say that a legislated oil tanker ban is the only certain way to protect B.C.'s north coast from a similar fate.⁹¹²

- D. TRANS MOUNTAIN PIPELINE AND TANKERS

The proposed Trans Mountain pipeline expansion would bring another 400 tankers a year to the Salish Sea, putting salmon rivers and the BC coast at much greater risk of catastrophic oil spills. Even without a spill, the noise from these tankers could cause endangered orca whales to go extinct.

The proposed route would cross through the unceded territories of numerous First Nations who do not consent to this pipeline. Trudeau promised to respect First Nations but his government's support of this project tramples over Indigenous rights and title. We [sic] need to stand strong in solidarity with Indigenous peoples and continue to say no.⁹¹³

723. Another statement I found regarding Sierra Club BC's campaigns and campaigns was issued by the Province of B.C. on February 7, 2006 speaking about the combined Central Coast and North Coast Land and Resource Management Plan – a precursor to the Great Bear Rain Forest – which provided, in part as follows:

⁹¹¹ <https://sierraclub.bc.ca/oil-tanker-moratorium-act-worth-celebrating-can-strengthened/>

⁹¹² <https://sierraclub.bc.ca/twenty-seven-years-exxon-valdez-federal-government-needs-legislate-tanker-ban/>

⁹¹³ <https://sierraclub.bc.ca/campaigns/fossil-fuels/>

- A. "...Sierra Club of Canada, BC Chapter, [was] intimately involved in building this collaborative solution for more than five years. These organizations are expressing strong support for the land use decisions reached between First Nations and the Province and are looking forward to its on-the-ground implementation."⁹¹⁴

724. I also became aware of a 2009 report entitled "Cleaning up Our Ocean: A report on pollution from shipping related sources in the Pacific North Coast Integrate Management Area (Pncima) on the British Columbia Coast" that was issued jointly by Living Oceans, Sierra Club BC, and the David Suzuki Foundation. Among other things it recommended:

"11. Strengthen and enforce the ban on crude oil tankers on the north and central coast.

The inland waters of Pncima have been protected since 1972 by a federal moratorium on crude oil tanker traffic. The moratorium was implemented to mitigate concerns over potential environmental impacts, is referenced in government documents and has since been upheld by eight Canadian prime ministers. Today the federal government is denying the existence of a ban on tankers, claiming there is a "voluntary exclusion zone" only. With six oil and gas terminal projects in various stages of application and approval in Kitimat and Prince Rupert, all of which would necessitate tanker traffic, the risk of environmental degradation to Pncima is heightened. A permanent ban on crude oil tankers on the north and central coast is required to mitigate ecological damage and avoid the reinterpretation of history."⁹¹⁵

725. Sierra Club BC also supported the PNCIMA program discussed, above, providing a landing page for link from the PNCIMA website.⁹¹⁶

726. In addition to my review of Sierra Club BC's website above, I find the foregoing statements to be relevant evidence in my review. In this regard, I note the specific references to Sierra Club BC's advancement of tanker ban and Great Bear Rainforest land-use tactics, as well as continued opposition to the Trans Mountain pipeline and related tanker traffic, all with a view to delay and frustrate the development of Alberta's oil sands.

727. My research also revealed Sierra Club BC's opposition to the Northern Gateway pipeline, where Sierra Club BC wrote to the National Energy Board and encouraged that body to reject a sunset clause extension request:

"We strongly urge the National Energy Board to reject Northern Gateway's recent sunset clause extension request. Since the conclusion of the Joint Review Panel process, new

⁹¹⁴ https://web.archive.org/web/20110817025626/http://www2.news.gov.bc.ca/news_releases_2005-2009/2006AL0002-000066.htm

⁹¹⁵ <https://davidsuzuki.org/wp-content/uploads/2009/04/cleaning-up-ocean-pollution-shipping-pacific-north-coast-integrated-management-area-british-columbia.pdf>. Page 5.

⁹¹⁶ See here: <https://web.archive.org/web/20120125230241/http://www.pncima.org/site/document-library.html>; and here: <https://web.archive.org/web/20110907050718/http://www.sierraclub.bc.ca/quick-links/publications/seafood-oceans-1/seafood-oceans>.

developments have provided further support to our position that the Great Bear Rainforest is no place for pipelines and tankers.”⁹¹⁷

(iii) Funding Applications and Grant Description

728. I have reviewed information regarding certain grants provided to Sierra Club BC and find that the evidence demonstrates the following grants were made to Sierra Club BC:

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
Wilburforce Foundation ⁹¹⁸	2014	\$20,000	\$22,089	OurCoast,OurCall NoTankers In the Great Bear Rainforest 2014
Tides U.S. Foundation ⁹¹⁹	2015	\$23,319	\$29,818	CAD\$30,000 for research, education, and organizing on dirty fuels and pipelines.
Tides U.S. Foundation ⁹²⁰	2014	\$27,563	\$30,442	research, education and organizing on dirty fuels and pipelines
Tides U.S. Foundation ⁹²¹	2013	\$30,000	\$30,897	research, education and organizing on dirty fuels and pipelines
Tides U.S. Foundation ⁹²²	2015	\$20,000	\$25,574	Pull Together against Enbridge: Mobilizing Grassroots Support for First Nations Legal Challenges.

⁹¹⁷ https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/384192/620327/2982078/3003862/Letter_of_Comment_-_Enbridge_Northern_Gateway_request_for_extension_-_A5D2G3.pdf?nodeid=3003444&vernum=-2

⁹¹⁸ Wilburforce Foundation Form 990-PF for the 2014 calendar year Attachment A page 54 of 89.

⁹¹⁹ Tides Foundation Form 990 for the 2015 calendar year Schedule F Part II page 72.

⁹²⁰ Tides Foundation Form 990 for the 2014 calendar year Schedule F Part II page 50 of 178 of PDF.

⁹²¹ Tides Foundation Form 990 for the 2013 calendar year Schedule F Part II page 62 of 228 of PDF.

⁹²² Tides Foundation Form 990 for the 2015 calendar year Schedule F Part II page 72 of PDF.

Tides U.S. Foundation ⁹²³	2014	\$15,000	\$16,567	To strengthen and diversify opposition to the Kinder Morgan pipeline
Tides U.S. Foundation ⁹²⁴	2015	\$15,000	\$19,181	Putting the Kinder Morgan Pipeline and Tankers to a Climate Test campaign.
Tides U.S. Foundation ⁹²⁵	2012	\$25,000	\$24,990	research, education and outreach on climate/tar sands related issues

729. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization received funds which were provided for the stated purpose of “research, education and outreach on climate/tar sands related issues”, which I acknowledge is ambiguous but is also aligned with the presentation of issues by Sierra Club of BC on the webpages and statement reviewed above. Similarly, I note the fact that grant descriptions for “NoTankers”, “dirty fuels and pipelines” and “mobilizing grassroots support for First Nations Legal Challenges” correlate to the campaigns of Sierra Club BC that I reviewed above. Accordingly, I find the grant descriptions opposing the development of Alberta’s oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

(iv) Government Funding

730. I have found that during the years 2003 to 2018, Sierra Club BC received revenue from municipal/regional, provincial/territorial, and federal levels of government in the following amounts⁹²⁶:

<u>Federal</u>	<u>Provincial/Territorial</u>	<u>Municipal/Regional</u>
\$449,726	\$1,157,622	\$22,021

⁹²³ Tides Foundation Form 990 for the 2014 calendar year Schedule F Part II page 58 of 178 of PDF.

⁹²⁴ Tides Foundation Form 990 for the 2015 calendar year Schedule F Part II page 72 of PDF.

⁹²⁵ Tides Foundation Form 990 for the 2012 calendar year Schedule F Part II page 121 of 131 of PDF.

⁹²⁶ CharityData summary for Sierra Club Of British Columbia Foundation at page 2, Sierra Club Of British Columbia Foundation T3010 Registered Charity Information Return : Schedule 6 for Fiscal Period January 1, 2018 to December 31, 2018 at pages 3 and 4.

(v) Conclusion on Participation in an anti-Alberta Energy Campaign

731. In my review of the foregoing I specifically noted the following in respect of Sierra Club BC: (a) its direct and repeated advocacy against the development of Alberta's oil sands in the webpages and statements reviewed above; and (b) the receipt of grants described above whose objects appear consistent with the campaigns of Sierra Club BC, which I find to be evidence tending to establish broad and general objections to the development of Alberta's oil and gas resources.
732. Moreover, I also noted Sierra Club BC's participation in: (a) the tactic of achieving legal precedents for Aboriginals; (b) the tactic of creating grassroots campaigns to advance other anti-Alberta energy initiatives; (c) the Dirty Oil Sands Network; (d) the Tar Sands Solutions Network; and (e) the tanker-ban and Great Bear Rainforest land use campaigns.
733. On the basis of the totality of this evidence, I find that Sierra Club BC has engaged in opposition to the development of Alberta's oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

(m) ***Raincoast Conservation Foundation***

(i) Background

734. Raincoast Conservation Foundation is a "charitable, non-profit conservation science organization..."⁹²⁷
735. As of 2018, the value of its assets was \$4,717,715.⁹²⁸
736. I have reviewed a substantial body of materials relating to Raincoast Conservation Foundation regarding its campaigns and activism
- (ii) Campaigns, Advocacy Efforts, and Statements

737. The Raincoast Conservation Foundation's website details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per Raincoast Conservation Foundation's web page:

A. Groundswell: take action

The Northern Gateway project invites the world's largest supertankers and dirtiest oil to the unspoiled waters of coastal British Columbia. In addition to the possibility of oil spills in a place that hosts some of world's most ecologically productive waters, Enbridge's pipelines and tankers provide a key commercial outlet for tar sands oil, exacerbating the staggering impact from this massive industrial development and

⁹²⁷ <https://www.raincoast.org/about/>

⁹²⁸ Raincoast Conservation Foundation 2018 CRA Tax Return – line 4200

accelerating Canada's contribution to atmospheric carbon and climate change.

Send a Message

Use the box below to send a personal message to Prime Minister Stephen Harper. Your message, along with that of thousands of Canadians has impact.

As well as this message to Stephen Harper, a letter to BC Premier Christy Clark premier@gov.bc.ca and Federal Minister of Natural Resources Joe Oliver joe.oliver@parl.gc.ca will ensure that your opinion is counted. [Click here for our sample letter.](#)

Sample letter

I am gravely concerned about the proposed Enbridge Northern Gateway Pipeline, which would transport crude bitumen from the tar sands in northern Alberta to Kitimat, British Columbia; the heart of the Great Bear Rainforest. If the pipeline is constructed, an estimated 225 oil tankers at least as big as the Exxon Valdez would navigate the Great Bear's rocky northern coastline annually. Twice a week, over 500,000 barrels of tar sands crude would be shipped out and condensate shipped in. Quite simply, no amount of benefit can offset the risk our coast would accept.

This incredible coastline borders the last intact temperate rainforest in the world, and is as close to pristine as anywhere left on earth. Marine life abounds in this hotspot for whales, seabirds, and commercial seafood. Adjacent forests are the last remaining refuge for great predators like grizzly bears and wolves, which have been lost elsewhere. Like other species in these forests, they too depend on healthy marine ecosystems and their resources for their livelihood.

Oil spills in this environment would not only threaten these natural assets but also economic opportunities. This includes a burgeoning eco-tourism industrial as well as aboriginal, commercial and recreational fishing industries and aquaculture.

I urge you to stand with a clear majority of British Columbians, coastal First Nations communities and the growing numbers of Canadians and citizens around the world who want to keep oil tankers out of the waters of the Great Bear Rainforest and who want to keep BC's north coast oil-free.

Sincerely,
(your name)

929

B. Supreme Court of Canada asked to weigh-in on future of Environmental Assessment Law

Environmental groups are asking Canada's highest court to overturn a legal precedent that restricts the public's ability to challenge flawed environmental assessments.

In June, the Federal Court of Appeal quashed the approval of Enbridge's Northern Gateway Pipeline, which would have shipped diluted bitumen from Alberta's tar sands through the Great Bear Rainforest to the British Columbia's rugged northern coast. While the ruling was feted as a major success, particularly for First Nations communities who fought long and

⁹²⁹ <https://www.raincoast.org/2012/10/groundswell-take-action/>

hard to oppose this project, it failed to address fundamental concerns about Canada's environmental assessment process.

Ecojustice lawyers, acting on behalf of Raincoast Conservation Foundation, have filed an application to bring this matter before the Supreme Court of Canada.⁹³⁰

- C. Environmental groups are in court today making the case for why the federal government's approval of Enbridge's Northern Gateway pipeline should be revoked.

"There's too much at stake to let the Panel's flawed report be the final word on Northern Gateway," said Ecojustice lawyer Karen Campbell. "The federal government should never have given this project the go-ahead, and our clients will be asking the Court to overturn the approval of this risky project."

Ecojustice lawyers will appear before the court on behalf of ForestEthics Advocacy, Living Oceans Society and Raincoast Conservation Foundation.

Raincoast and partners go to court to quash Enbridge pipeline approval

Hearing continues today on Enbridge's Northern Gateway pipeline project

Published on 2015-10-01 by Raincoast



931

⁹³⁰ <https://www.raincoast.org/2016/09/northern-gateway-appeal/>.

⁹³¹ <https://www.raincoast.org/2015/10/rcf-goes-to-court-enbridge/>

D. A Crude Proposal: The Trans Mountain Expansion

Raincoast Conservation Foundation also issued a paper entitled “Wild Salmon, Pipelines, and the Trans Mountain Expansion – Canada’s wild salmon habitat at risk” in 2018 that provided:⁹³²

This report characterizes the risks posed to wild salmon by a Trans Mountain pipeline spill into the Lower Fraser River or a tanker spill into the Salish Sea. The Lower Fraser River flows from Hope past Mission, through Metro Vancouver, and into the estuary where it meets the Pacific Ocean.

738. I find that the foregoing review of Raincoast Conservation Foundation’s website establishes that it advocated: (a) to stop the Northern Gateway project, including by encouraging individuals to lobby elected officials to oppose the project on a repeated and general basis (I also find it important that one of the stated reasons for Raincoast Conservation Foundation’s opposition to the Northern Gateway project was that the project would provide an outlet for the commercial sale of product from the oil sands); and (b) to stop the Kinder Morgan pipeline utilizing the land use tactics of the tanker ban and the Great Bear Rainforest, all of which I find oppose the development of Alberta’s oil and gas resources.

739. In 2016, a Senior Scientist at the Raincoast Conservation Foundation made the following statement regarding the Northern Gateway Project in response to a ruling issued regarding the project:

Court ruling shuts door on Enbridge’s Northern Gateway pipeline

Landmark court decision strikes down the federal government’s approval of Enbridge’s controversial pipeline project.

Northern Gateway opponents are celebrating a landmark court decision that strikes down the federal government’s approval of Enbridge’s controversial pipeline project.

“The prime minister recognized the importance of B.C.’s north coast when he promised to ban tanker traffic in the region. Now that the courts have also recognized the importance of protecting this fragile ecosystem, we need the government to uphold its commitment. We cannot risk an oil spill in this critical ecosystem. There is too much at stake.”

Dr. Paul Paquet, senior scientist at Raincoast Conservation Foundation⁹³³

740. In addition to my review of Raincoast Conservation Foundation’s website above, I find the foregoing statement relevant evidence in my review. In this regard, I note the continued

⁹³² <https://www.raincoast.org/reports/salmon-oil-pipeline/>.

⁹³³ <https://www.raincoast.org/2016/06/court-ruling-ngp/>

references to the Northern Gateway pipeline project and land use tactics such as the tanker ban and the Great Bear Rainforest program to delay and frustrate the development of Alberta's oil sands, all with a view to delay and frustrate the development of Alberta's oil sands.

741. I also note that the Raincoast Conservation Foundation was a signatory to the ENGO Open Letter.⁹³⁴

(iii) Funding Applications and Grant Description

742. I have reviewed information regarding certain grants provided to Raincoast Conservation Foundation and find that the evidence demonstrates the following grants were made to Raincoast Conservation Foundation:

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
Wilburforce Foundation ⁹³⁵	2012	\$85,000	\$84,964	Grizzly bear ecosystem-based management in the GB Rainforest & Enbridge Northern Gateway Environmental Assessment
Tides U.S. Foundation ⁹³⁶	2013	\$10,000	\$10,299	research, education and organizing on dirty fuels and pipelines

743. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization received funds which were provided for the stated purpose of "research and organizing on dirty fuels and pipelines" and "Enbridge Northern Gateway Environmental Assessment" correlate to the campaigns of Raincoast Conservation Foundation that I reviewed above. Accordingly, I find the grant descriptions opposing the development of Alberta's oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

⁹³⁴

https://web.archive.org/web/20130829060500/http://www.sierraclub.org/pressroom/downloads/Tar%20Sands_letter-0701.pdf

⁹³⁵ Wilburforce Foundation Form 990-PF for the 2012 calendar year Attachment A page 53 of 89 of PDF.

⁹³⁶ Tides Foundation Form 990 for the 2013 calendar year Schedule F Part II page 83 of 228 of PDF.

(iv) Government Funding

744. I have found that during the years 2003 to 2018, Raincoast Conservation Foundation received revenue from the federal level of government in the amount of \$897,220.⁹³⁷ I have not found evidence that Raincoast Conservation Foundation received revenue from municipal/regional or provincial/territorial levels of government.

(v) Conclusion on Participation in an anti-Alberta Energy Campaign

745. In my review of the foregoing I specifically noted the following in respect of Raincoast Conservation Foundation: (a) its direct advocacy against the development of Alberta's oil sands in the webpages and statements that I reviewed above; and (b) the receipt of grants described above whose objectives appear to be consistent with the objectives set forth in the webpages and statements I have reviewed above, which I find to be evidence tending to establish broad and general objections to the development of Alberta's oil and gas resources.

746. Moreover, I also noted Raincoast Conservation Foundation's participation in: (a) the ReThink Alberta Campaign; (b) the tanker ban; (c) the ENGO Open Letter; (d) the Tar Sands Solutions Network; and (e) Great Bear Rainforest land use campaigns.

747. On the basis of the totality of this evidence, I find that Raincoast Conservation Foundation has engaged in opposition to the development of Alberta's oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

(n) ***International Institute for Sustainable Development ("IISD")***

(i) Background

748. IISD is a registered Canadian charity and has 501(c)(3) status in the United States.⁹³⁸ As of 2019 the value of its assets was \$51,299,476.⁹³⁹

749. I have reviewed a substantial body of materials relating to IISD regarding its campaigns and activism.

(ii) Campaigns, Advocacy Efforts, and Statements

750. IISD's website details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per IISD's web page:

A. CLIMATE

⁹³⁷ CharityData summary for Raincoast Conservation Foundation at page 2, Raincoast Conservation Foundation T3010 Registered Charity Information Return : Schedule 6 for Fiscal Period January 1, 2018 to December 31, 2018 at pages 3 and 4.

⁹³⁸ <https://www.iisd.org/donate>

⁹³⁹ International Institute for Sustainable Development 2019 CRA Tax Return – line 4200

IISD is actively involved in the two main responses to climate change: adaptation and mitigation. We partner with countries to help them cope with a changing climate and transition to clean energy as quickly as possible. *By backing major initiatives like fossil fuel subsidy reform and climate adaptation planning, we use our expertise to lessen the flow and concentration of heat-trapping greenhouse gases and help people build a more resilient future.* [emphasis added]⁹⁴⁰

[The webpage then identifies the Global Subsidies Initiative as a “Flagship initiative”]

B. GLOBAL SUBSIDIES INITIATIVE

ENERGY SUBSIDIES IN CANADA

The GSI program of work for Canada undertakes research and policy engagement on subsidies for fuel consumers and producers at the provincial and national level. It’s key focus is on identifying the scale of subsidie [sic], and strategies for their reform and ultimate removal, in line with Canada’s commitments to the G7 and G20.

OBJECTIVES

Reduce expenditure on fossil fuel subsidies that promote unsustainable environmental and social impacts

COLLABORATIONS

In carrying forward this work the Global Subsidies Initiative has collaborated with a number of organizations including Equiterre, Oil Change International, Environmental Defence and Climate Action Network Canada [A link is provided to each of these organizations].⁹⁴¹

751. I find that the foregoing review of IISD’s website establishes that it advocated, and stated as its objective, to reduce and ultimately remove all subsidies for fuel producers at the provincial and national level, which I find opposes the development of Alberta’s oil and gas resources.
752. I also noted that in the course of this campaign, IISD released a number of reports and statements on its website. These statements include the following in regards to IISD’s campaigns and other campaigns:
- A. Canada’s Federal Fossil Fuel Subsidies in 2020

⁹⁴⁰ <https://www.iisd.org/focus-areas/climate>

⁹⁴¹ <https://www.iisd.org/gsi/where-we-work/canada>

[Features a paper co-authored by IISD, Environmental Defence, and Equiterre in February 2020]⁹⁴² and concludes:

IISD identified nearly CAD 600 million in federal fossil fuel subsidies in 2019. This figure does not include figures where data was lacking, such as for tax measures or potential subsidies related to Export Development Canada and the Trans Mountain pipeline expansion.

Canada should complete the peer review in 2020, release quantified information on all federal fossil fuel subsidies on an annual basis and commit to not introducing new fossil fuel subsidies.

Canada should also accelerate the phase-out of existing fossil fuel subsidies and develop a roadmap to meet or exceed the 2025 phase-out commitment.⁹⁴³

753. The report identifies the federal government’s ownership and support of the Trans Mountain pipeline and expansion as “likely involves several subsidy elements both to Trans Mountain entities and to other fossil fuel industry participants”.⁹⁴⁴
754. The report also identifies a subsidy of \$275 million to the LNG Canada project from the Strategic Innovation Fund and Western Economic Diversification.⁹⁴⁵
755. The report also states that “EDC, Canada’s export credit agency, provides billions of dollars in public financing for fossil fuel production each year, including domestically..... Although EDC states that it offers financing at commercial rates, this is impossible to prove given the data available. As a public institution, EDC could offer terms and arrangements that, in some cases, may be more favorable than market terms (Doukas & Scott, 2018). In addition, risks and liabilities for EDC’s financing are borne by the government and, therefore, by Canadians.”⁹⁴⁶
756. Other “Quantifiable non-tax subsidies” included the following:
- Electric Vehicle and Alternative Fuel Infrastructure Deployment Initiative - \$4.2 million for natural gas refuelling stations.⁹⁴⁷
 - Energy Innovation Program - \$29.3 million- allocations for several streams that went towards projects in the oil and gas sector.⁹⁴⁸

⁹⁴² <https://www.iisd.org/system/files/publications/canada-fossil-fuel-subsidies-2020-en.pdf>

⁹⁴³ <https://www.iisd.org/publications/canadas-federal-fossil-fuel-subsidies-2020>

⁹⁴⁴ <https://www.iisd.org/system/files/publications/canada-fossil-fuel-subsidies-2020-en.pdf> at p 10.

⁹⁴⁵ <https://www.iisd.org/system/files/publications/canada-fossil-fuel-subsidies-2020-en.pdf> at p 4.

⁹⁴⁶ <https://www.iisd.org/system/files/publications/canada-fossil-fuel-subsidies-2020-en.pdf> at p 10.

⁹⁴⁷ <https://www.iisd.org/system/files/publications/canada-fossil-fuel-subsidies-2020-en.pdf> at p 4.

⁹⁴⁸ <https://www.iisd.org/system/files/publications/canada-fossil-fuel-subsidies-2020-en.pdf> at p 4.

- Low Carbon Economy Fund- \$40.0 million to Titanium Corporation for technology to remediate oil sands tailings.⁹⁴⁹
- Clean Resource Innovation Network \$10 million plus another \$90 million to be allocated from 2020-2022.⁹⁵⁰

A. Canada's federal fossil fuel subsidies jumped more than 200% from 2019 to 2020

[Features a paper authored by IISD in February 2020]⁹⁵¹ which recommends, among other things:

...to government to phase out fossil fuel subsidies as Canada recovers from the impacts of COVID-19 [and] [c]ommit to not introducing new subsidies for fossil fuels unless no other viable alternatives exist.⁹⁵²

[...and is accompanied by a statement that includes...]:

“With the Canadian government expected to release its budget for the upcoming year in March, policy-makers need to carefully consider how to spend billions of stimulus dollars in a way that accelerates the transition away from fossil fuels and towards zero emissions while also protecting workers and communities,” says Vanessa Corkal of IISD, lead author of *Federal Fossil Fuel Subsidies in Canada: COVID-19 edition*. “How recovery funds are spent could make or break the success of Canada’s newly strengthened climate plan, and ultimately, our ability to ensure an equitable and climate-safe future.”

“Any serious plan to address the climate crisis must include a phase-out of subsidies and public finance for fossil fuels,” says Corkal. “Among G20 OECD member countries, Canada was recently ranked as the worst performer in terms of the scale of government support for oil and gas production. However, with the right policies and political will, a genuine turning point for Canada’s climate action is within reach.”⁹⁵³

B. G20 Needs an Ambitious Timeline to Remove Oil and Gas Subsidies

As Prime Minister Justin Trudeau joins other G20 leaders in China this weekend, he should push for an ambitious timeline to remove fossil fuel subsidies.

⁹⁴⁹ <https://www.iisd.org/system/files/publications/canada-fossil-fuel-subsidies-2020-en.pdf> at p 4.

⁹⁵⁰ <https://www.iisd.org/system/files/publications/canada-fossil-fuel-subsidies-2020-en.pdf> at p 5.

⁹⁵¹ <https://www.iisd.org/system/files/2021-02/fossil-fuel-subsidies-canada-covid-19.pdf>

⁹⁵² <https://www.iisd.org/publications/fossil-fuel-subsidies-canada-covid-19>

⁹⁵³ <https://www.iisd.org/gsi/news-events/canadas-federal-fossil-fuel-subsidies-jumped-more-200-2019-2020>

“Fossil fuel subsidies work against Canada’s commendable progress in putting a price on carbon—they give money and tax breaks to the sources of carbon pollution that we’re trying to scale back,” said Amin Asadollahi, North American Lead on Climate Change Mitigation at the International Institute for Sustainable Development.

According to the latest estimate by IISD, federal and provincial governments provide about CAD\$3.3 billion to oil and gas producers annually.

Examples of federal programs include the Canadian Development Expense and Canadian Exploration Expense, with a yearly average value of CAD\$1 billion and CAD\$148 million, over 2013 to 2015. Examples of provincial programs include Crown Royalty Reductions in Alberta with an average value of CAD\$1.16 billion and the Deep Drilling Credit in British Columbia valued at CAD\$271 million, over the same years.⁹⁵⁴

C. Doubling Down on Alberta’s Oil and Gas Sector Is a Risk Canadians Can’t Afford to Take

For Alberta and the federal government, this should mean investing tens of billions of dollars in sectors that can bring long-term prosperity for Alberta’s workers and families, such as hydrogen, health sciences, renewable energy, clean transport, sustainable agriculture, innovation in oil and gas well reclamation, and prevention of fugitive methane emissions, building on the province’s world-class institutions and infrastructure and the strengths of its people. It’s frustrating to watch Alberta charge full steam away from that course, committing billions to support the Keystone XL pipeline after using austerity as a rationale to axe popular investment tax credits for high-tech entrepreneurs, and laying off tens of thousands of education workers—the foundation for future prosperity.⁹⁵⁵

D. G20 Support to Fossil Fuel Production: Who are the leaders and the laggards?

When it comes to phasing out subsidies to the production of polluting oil, gas and coal—something G20 leaders have committed to every year since 2009—we’re seeing little progress.

Canada phases out national subsidies, including to tar sands

Canada is phasing out several subsidies to oil, gas and mining, including ending targeted support to tar sands which are now subject to the same tax regime as other oil, mining and gas development. It is also phasing

⁹⁵⁴ <https://www.iisd.org/articles/g20-needs-ambitious-timeline-remove-oil-and-gas-subsidies>

⁹⁵⁵ <https://www.iisd.org/articles/alberta-oil-gas-risk>

out the Atlantic Investment Tax Credit, which applies to oil, gas and mining.

At the same time, however, Canada has introduced new subsidies to fossil fuel producers, particularly new tax breaks for natural gas production.⁹⁵⁶

E. Step Off the Gas: International public finance, natural gas, and clean alternatives in the Global South - IISD REPORT

[While ostensibly a report on the “Global South”, the report concludes:

“International public finance has led the way in steering investments away from coal over the last decade. It is time—following the lead of the European Investment Bank and the United Kingdom—to also move away from financing oil and gas.

We recommend that international financial institutions:

- End all direct and indirect support to gas exploration and production, new gas power plants, and other long-lived gas infrastructure, such as pipelines and LNG terminals.”⁹⁵⁷

[The reference to “international financial institutions” includes Canada’s Export Development Corporation⁹⁵⁸ - an important link to Alberta’s oil and gas industry because, as stated in the article:]

“While accounting for only a small portion of total energy finance, international public finance plays a disproportionate role: it both unlocks private finance by reducing project risk and gives signals that influence wider investment trends.”⁹⁵⁹

757. In addition to my review of IISD’s website above, I find the foregoing statements additional evidence of a broad and general opposition to the development of Alberta’s oil and gas resources. In particular I note:

- A. the repeated advocacy of eliminating subsidies available to organizations in the fossil fuels industry, including grants for innovation and technology intended to advance efficiencies in the oil and gas industry and reduce emissions;

⁹⁵⁶ <https://www.iisd.org/articles/g20-support-fossil-fuel-production-who-are-leaders-and-laggards>

⁹⁵⁷ <https://www.iisd.org/system/files/2021-06/natural-gas-finance-clean-alternatives-global-south.pdf> . Page 57.

⁹⁵⁸ <https://www.iisd.org/system/files/2021-06/natural-gas-finance-clean-alternatives-global-south.pdf>. Page 81 ; and “Still Digging: G20 Governments Continue to Finance the Climate Crisis” (May 2020) Oil Change International - <http://priceofoil.org/content/uploads/2020/05/G20-Still-Digging.pdf> - at page 37.

⁹⁵⁹ <https://www.iisd.org/system/files/2021-06/natural-gas-finance-clean-alternatives-global-south.pdf>. Page (v).

- B. Objections to support for the Trans Mountain Pipeline as approved by Cabinet, and at the same time ignoring economic development benefits, and support by First Nations interested in acquiring an ownership interest therein;
- C. Objections to support for LNG Canada, a \$40 billion dollar project that is supported by “First Nations, the community, all levels of government, business, and labour...”⁹⁶⁰
- D. Criticism of EDC Canada, a federal Crown Corporation, for facilitating the export of Canadian oil and gas; and
- E. opposing the Northern Gateway project , all of which supports my finding that IISD has engaged in anti-Alberta energy campaigns.

(iii) Funding

758. While IISD is the recipient of grants from foreign organizations for a variety of programs, I do not find any such grants focused on Anti-Alberta energy campaigns. I do note that their 2019-2020 Annual Report indicates that of their total designated grant revenue of \$30.34 million, 24% was provided by the Government of Canada, 10% by Governments of provinces and territories and 40% by Governments of other nations.⁹⁶¹

(iv) Government Funding

759. I have found that during the years 2003 to 2019, IISD received revenue from provincial/territorial and federal levels of government in the amount of \$24,039,454 and \$60,886,815, respectively.⁹⁶² I have not found evidence that IISD received revenue from the municipal/regional level of government.

(v) Conclusion on Participation in an anti-Alberta Energy Campaign

760. In my review of the foregoing I specifically noted IISD’s stated objective to be the ultimate removal of all subsidies for fuel producers, including those that would advance research in reducing emissions and against such matters as Northern Gateway, the Trans Mountain Pipeline, and Economic Development Corporation’s support of the fossil fuels industry, which I find to be evidence tending to establish broad and general objections to the development of Alberta’s oil and gas resources.

761. On the basis of the totality of this evidence, I find that IISD has engaged in opposition to the development of Alberta’s oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

⁹⁶⁰ <https://www.lngcanada.ca/about-lng-canada/>

⁹⁶¹ <https://www.iisd.org/system/files/2020-09/iisd-annual-report-2019-2020.pdf>

⁹⁶² CharityData summary for International Institute For Sustainable Development/Institutinternational Du Developpement Durable at page 3.

(o) **World Wildlife Fund Canada (“WWF”)**

(i) Background

762. WWF was identified in both Background Documents.⁹⁶³ World Wildlife Fund Canada is a Canadian registered charity.⁹⁶⁴ World Wildlife Fund Canada Foundation is a Canadian registered public foundation.⁹⁶⁵

763. As of June 30, 2020, the value of their consolidated assets was \$31,599,000.⁹⁶⁶

764. World Wildlife Fund Canada describes its relationship with World Wildlife Fund Canada Foundation as follows:

A. These combined financial statements represent the combined financial statements of the individual entities, World Wildlife Fund Canada - Fonds mondial pour la nature Canada (the “Fund”) and World Wildlife Fund Canada Foundation - Fondation du fonds mondial pour la nature Canada (the “Foundation”), collectively (“WWF-Canada”). The Fund is a national registered charity formed to collect, manage and disburse funds through suitable bodies or individuals for the conservation of fauna, flora, forests, landscape, water, soils and other natural resources in Canada and elsewhere, by research and investigation, education at all levels, information and publicity, coordination of efforts, cooperation with other interested parties and all other appropriate means. The Foundation is a registered Canadian charitable foundation and is the legal body responsible for administering assets donated to be held in trust and other capital funds designated by the Board of Directors. The Fund and the Foundation were incorporated on May 16, 1967 and August 17, 1982, respectively, by letters patent issued under Part 2 of the Canada Corporations Act, without share capital, and were continued under the Canada Not-for-profit Corporations Act on July 22, 2013. Both organizations are registered charities under the Income Tax Act (Canada) and, accordingly, are exempt from income taxes. The Fund and the Foundation share a common board.⁹⁶⁷

765. Given the relationship between these two entities, and in particular given that they share a common board, I will address them as though they are consolidated in terms of their campaigns.

⁹⁶³ The RBF Document. Page 12. The Corporate Ethics Document. Page 15.

⁹⁶⁴ <https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyRprntngPrd?q.srchNm=world+wildlife&q.stts=0007&selectedCharityBn=119304954RR0001&dsrdPg=1>

⁹⁶⁵ <https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/chrtydtls?selectedCharityBn=872998471RR0001&isSingleResult=false&dsrdPg=1&q.srchNm=world+wildlife+fund+canada&q.stts=0007>.

⁹⁶⁶ <https://wwf.ca/wp-content/uploads/2020/12/WWF-Canada-combined-signed.pdf> at page 1.

⁹⁶⁷ <https://wwf.ca/wp-content/uploads/2020/12/WWF-Canada-combined-signed.pdf> at page 5.

766. I have reviewed a substantial body of materials relating to World Wildlife Fund Canada regarding its campaigns and activism. I also note that they are specifically referenced in both Background Documents,⁹⁶⁸ and CorporateEthic's webpage listing members of the "No Tar Sands Coalition".⁹⁶⁹

(ii) Campaigns, Advocacy Efforts, and Statements

767. World Wildlife Fund Canada details a number of advocacy efforts. These efforts include the following campaigns and descriptions, found primarily on World Wildlife Fund Canada's web page:

A. Conservation Initiatives – Mackenzie Gas Project

...

Large areas of land need to be set aside for conservation and traditional purposes before any pipeline is built thereby protecting ecological and cultural values of the land.⁹⁷⁰

B. Canada's Dirty Shame. (2009)

Canada's tar sands are a natural wonder. What we are doing with them is a national disgrace.

...

We need to move away from using fossil fuels – and quickly – if we are to avoid catastrophic climate change. This means switching to electric vehicles and renewable energy sources such as wind power, as well as using energy far more efficiently.

...

WWF-Canada is helping to shape national and international policies that will limit the scope and damage caused by the tar sands. We're working with citizens, governments and corporations to wean our economy off of dirty oil and onto clean energy.⁹⁷¹

[The webpage then provides access to a number of related sites (including, through a banner across the top of the webpage, describing WWF-Canada's involvement in a number of initiatives, including

⁹⁶⁸ The RBF Document. Page 12. The Corporate Ethics Document. Page 15.

⁹⁶⁹ <https://web.archive.org/web/20100714080115/http://www.corpethics.org/section.php?id=371>

⁹⁷⁰

<http://web.archive.org/web/20070703000812/http://www.wwf.ca/AboutWWF/WhatWeDo/Initiatives/Initiatives.asp?project=mgp>

⁹⁷¹ https://web.archive.org/web/20090905081509/http://wwf.ca/conservation/global_warming/tarsands/

PNCIMA,⁹⁷² and Mackenzie Valley⁹⁷³), encourages the public to “take action”, connects to an op-ed published by the president and CEO of WWF-Canada (discussed below); and directs viewers to a “three-minute slide show [that] was made by WWF to highlight some of the devastating effects of the tar sands”].

C. Canadians for the Great Bear (2012)

Say no to oil tankers and crude oil pipelines in the Great Bear.

Choose a future for the Great Bear that protects healthy oceans, rainforests and communities. Choose a future for Canada that works for nature and for people.

Yes! I am a Canadian for the Great Bear.⁹⁷⁴

D. NO TO NORTHERN GATEWAY

...

WWF-Canada submitted our concerns in writing to the Joint Review Panel in August 2012.

We outlined the incredible value of the Pacific North Coast's unique, interconnected ecosystem—the Great Bear region—where river, rainforest, and sea meet. It is impossible to quantify the cultural and spiritual benefits of conserving one of the most spectacular places on earth—a place where rare Spirit bears and fishing wolves thrive; where at-risk species of whales and caribou endure. However, the economic value is unquestionable.

...

Simply put, Enbridge's Northern Gateway oil pipeline proposal puts these values at too much risk. Those risks, including that of a major bitumen spill in turbulent coastal waters, outweigh any benefit this project could offer. As we told the JRP: “the risk assessment approach advanced by the proponent [Enbridge] is inadequate...the potential impacts are significantly higher than the proponent suggests.”⁹⁷⁵

E. NORTHERN GATEWAY: AN UNACCEPTABLE DECISION

⁹⁷² <https://web.archive.org/web/20090627170037/http://wwf.ca/conservation/pacific/wwf/>

⁹⁷³ <https://web.archive.org/web/20090718223333/http://wwf.ca/conservation/mackenzie/>

⁹⁷⁴ https://web.archive.org/web/20120707165941mp_/http://www.wwf.ca/conservation/oceans/greatbearsea/take_action_great_bear_sea

⁹⁷⁵ <https://wwf.ca/stories/northern-gateway/>

Last week, 20,000 individuals signed a letter to the Prime Minister telling him that “No” is the only acceptable response to Enbridge’s Northern Gateway oil pipeline proposal. Today, they received an unacceptable answer.

It is unacceptable by the standards of 300 scientists, who outlined serious and troubling flaws in the Joint Review Panel’s report recommending the project. Unacceptable to over 100 First Nations communities that have expressed deep concern, both with the process and the impacts of the project on their families and livelihoods. The people of Kitimat, at the center of the project, called for a “no” decision as did the majority of British Columbians, who will bear the brunt of the project’s risk. Indeed, tens of thousands of Canadians across this country have stood together in opposition to this plan. A plan that will bisect the Great Bear rainforest and its pristine salmon rivers with oil pipelines. A plan that will bring 220 massive oil tankers every year into a rare and globally significant ecosystem.⁹⁷⁶

F. JOB ONLY HALF DONE TO PROTECT GREAT BEAR REGION

...

Off the coast of the newly protected Great Bear Rainforest lies the Great Bear Sea, one of the richest cold-water marine environments in the world. Its pristine, thriving waters are packed with nutrients, supporting an abundance of whales, all five species of Pacific salmon, as well as dolphins, porpoises, sea birds and other marine life.

The Great Bear Sea, however, is virtually unprotected and faces risks from proposed oil and gas pipelines that would terminate at the region’s vulnerable coast. That would require the construction of new terminals for the transfer of oil and gas to tankers, increasing shipping and the threat of spills in the sensitive area⁹⁷⁷

G. PROTECT OUR GREAT BEAR SEA (2014)

I urge you to support the plans developed by the Marine Planning Partnership between First Nations and the Province of British Columbia. Years of work have brought together diverse interests with the best available science and local knowledge to develop a long-term plan for how we manage and protect the Great Bear Sea.⁹⁷⁸

⁹⁷⁶ <https://wwf.ca/stories/unacceptable-decision/>

⁹⁷⁷ <https://wwf.ca/stories/job-only-half-done-to-protect-great-bear/>

⁹⁷⁸ <https://web.archive.org/web/20140723200205/http://action2.davidsuzuki.org/greatbearsea>

H. Conservation Successes in Canada (2008)

...

Here are some projects that we are currently working on:

...

Forest Protection: The conservation of over 500 million hectares of boreal forest - an area half the size of Canada - in partnership with other conservation organizations, industry, First Nations and governments. This bold initiative would see 50% of Canada's boreal forest legally protected, and the rest managed to the highest environmental standards.

Mackenzie Valley: Through community-led initiatives, WWF is working on the protection of ecologically and culturally significant areas and wildlife in the Mackenzie Valley before construction of a Mackenzie natural gas pipeline.⁹⁷⁹

768. I find that the foregoing review of World Wildlife Fund Canada's website establishes that it advocated: (a) the use of land-use tactic to object to the Mackenzie pipeline; (b) against the development of Alberta's oil sands generally under its "Canada's Dirty Shame" webpage; and (c) repeatedly for the cessation of the Northern Gateway pipeline project (including through advancing a petition to the Prime Minister, advancing land-use programs such as the Great Bear Rainforest, the tanker ban (Great Bear Sea), the Boreal forest, and others through the Mackenzie Valley): all of which I find oppose the development of Alberta's oil and gas resources.

769. I also noted that in the course of these campaigns, statements were made by senior members of World Wildlife Fund Canada and on its webpages and elsewhere including the following:

A. On its website – "Canada's impact on global warming":

Canada's Dirty Shame - The Tar Sands

One of the world's most environmentally destructive projects is taking place in our own backyard. WWF-Canada's goal is to reduce demand for Canada's dirty oil and encourage widespread adoption of renewable energy sources. [Read more...](#)

B.

980

C. On February 27, 2009 the President of WWF wrote an op-ed in the Toronto Star critical of the development of the oil sands observing, among other things:⁹⁸¹

⁹⁷⁹ <https://web.archive.org/web/20080630214339/http://www.wwf.ca/AboutWWF/WhatWeDo/Success.asp>

⁹⁸⁰ https://web.archive.org/web/20090917221553/http://www.wwf.ca:80/conservation/global_warming/

⁹⁸¹ https://www.thestar.com/opinion/2009/02/27/carbon_capture_no_silver_bullet_for_tar_sands.html

From hewers of wood and drawers of water to makers of moonscapes and creators of toxic tailing ponds. What a face for Canada to show the world.

- D. On January 11, 2012 the President of WWF wrote an op-ed in The Globe and Mail titled “Our ecological treasure is the issue with Northern Gateway” critical of the Northern Gateway pipeline, which stated among other things⁹⁸²:

I suspect most Canadians would be surprised that the proposed route of the Northern Gateway pipeline bisects this ecological treasure. Pipeline proponents would rather frame this issue around developing an Asian market for oil sands bitumen – and the allegedly nefarious U.S.-based interests who would prevent us from doing so – than have a science-based debate about the real risks associated with getting it there by this route.

770. In addition to my review of World Wildlife Fund Canada’s website above, I find the foregoing statements relevant evidence in my review. In this regard, I note the specific references to World Wildlife Fund Canada’s continual broad and general criticism of Alberta’s oil sands and its advancement of the Great Bear Rainforest campaign, all with a view to delay and frustrate the development of Alberta’s oil sands.

(iii) Additional Campaigns

771. The CBI’s (Canadian Boreal Initiative) website suggests that early members of the CBI included World Wildlife Fund of Canada.⁹⁸³

772. Additionally, World Wildlife Fund Canada was a signatory to the ENGO Declaration.⁹⁸⁴

(iv) Funding Applications and Grant Description

773. I have reviewed information regarding certain grants provided to World Wildlife Fund Canada and find that the evidence demonstrates the following grants were made to World Wildlife Fund Canada:

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
Tides U.S. Foundation ⁹⁸⁵	2009	\$160,000	\$182,716	Tar Sands Campaign

⁹⁸² <https://www.theglobeandmail.com/opinion/our-ecological-treasure-is-the-issue-with-northern-gateway/article554316/>

⁹⁸³ https://web.archive.org/web/20030609213955/http://www.borealcanada.ca/related_sites_e.cfm

⁹⁸⁴ <https://www.pembina.org/reports/us-can-ceo-declaration.pdf>

⁹⁸⁵ Tides Foundation Form 990 for the 2009 calendar year Schedule F Part II page 24.

774. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization received funds which were provided for the stated purpose of “For Tar Sands Campaign” to correlate to the campaigns and statements of World Wildlife Fund Canada that I reviewed above. Accordingly, I find the grant descriptions opposing the development of Alberta’s oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

(v) Government Funding

775. I have found that during the years 2003 to 2019, World Wildlife Fund Canada received revenue from the provincial/territorial and federal levels of government in the amount of \$1,640,318 and \$8,955,964, respectively.⁹⁸⁶ I have not found evidence that World Wildlife Fund Canada received revenue from the municipal/regional level of government.

776. I have not found evidence that World Wildlife Fund Canada Foundation received revenue from the municipal/regional, provincial/territorial, or federal level of government.

(vi) Conclusion on Participation in an anti-Alberta Energy Campaign

777. In my review of the foregoing I specifically noted the following in respect of World Wildlife Fund Canada: (a) it being specifically referenced in both Background Documents, including CorporateEthic’s webpage listing members of the “No Tar Sands Coalition”; (b) its direct advocacy against the development of Alberta’s oil sands in a number of its webpages and statements that I reviewed above; and (c) its receipt of the grant described above whose object appears to be to advance the “Tar Sands Campaign”, which I find to be evidence tending to establish broad and general objections to the development of Alberta’s oil and gas resources.

778. Moreover, I also noted World Wildlife Fund Canada’s participation in: (a) land use tactics surrounding the Mackenzie valley pipeline, the tanker ban, Great Bear Rainforest, and the Boreal Forest; (b) a social media campaign under the banner “Canada’s Dirty Shame”; and (c) the ENGO Declaration.

779. On the basis of the totality of this evidence, I find that World Wildlife Fund Canada has engaged in opposition to the development of Alberta’s oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

(p) ***Makeway, formerly Tides Canada***

(i) Background

780. MakeWay comprises two associated organizations:

⁹⁸⁶ CharityData summary for World Wildlife Fund Canada Fonds Mondial Pour La Nature Canada at page 2, World Wildlife Fund Canada/Fonds Mondial Pour La Nature Canada T3010 Registered Charity Information Return : Schedule 6 For Fiscal Period July 1, 2018 to June 30, 2019 at pages 2 and 3.

- A. **MakeWay Foundation**, a national charity and public foundation with a goal to enable nature and communities to thrive together, and
- B. **MakeWay Charitable Society**, an operating charity that houses social change projects ranging from neighbourhood-scale initiatives to national conservation efforts on a shared administrative and governance platform.⁹⁸⁷
781. Makeway Foundation, formerly Tides Canada Foundation, is a registered charitable organization.⁹⁸⁸ As of 2019 the value of its assets was \$60,362,970.⁹⁸⁹
782. MakeWay Charitable Society, formerly Tides Canada Initiatives Society, is also a registered charity.⁹⁹⁰ As of 2019 the value of its assets was \$11,957,631.⁹⁹¹
783. MakeWay Foundation and MakeWay Charitable Society describe their relationship with one another as follows:
- A. Audited Financial Statements
- MakeWay Foundation and MakeWay Charitable Society are registered non-profit societies and registered charities under the Income Tax Act. MakeWay Foundation and MakeWay Charitable Society operate together as MakeWay and pursue a common mission and vision. They are separate legal entities but share staff and Board members.
- In April 2005, the Boards decided to operate both organizations under common control. Consequently, and in accordance with Canadian Generally Accepted Accounting Practice, the audited financial statements cover both organizations.⁹⁹²
784. Given the relationship between these two entities, and in particular given that they pursue a common mission, share staff and Board, and their financial statements cover both organizations, I will address them as though they are consolidated in terms of their campaigns. In this Report, I will refer to “Makeway” and “Tides Canada” interchangeably. Use of these names interchangeably and consideration of their campaigns in this Report on an aggregated basis should not be construed as a finding that any particular activity discussed was undertaken by one

⁹⁸⁷ <https://makeway.org/contact/#charreg>

⁹⁸⁸ <https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyRprtngPrd?q.srchNm=Makeway&q.stts=0007&selectedCharityBn=868947797RR0001&dsrdPg=1>

⁹⁸⁹ Information has been obtained from Tides Canada Foundation 2019 CRA Tax Returns – line 4200

⁹⁹⁰ <https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyRprtngPrd?q.srchNm=Makeway&q.stts=0007&selectedCharityBn=130560188RR0001&dsrdPg=1>

⁹⁹¹ Information has been obtained from Tides Canada Initiatives Society 2019 CRA Tax Return – line 4200

⁹⁹² <https://makeway.org/about-us/financials/>

entity or the other in any consideration of whether such entity is in compliance with requirements in respect of such entity by virtue of its status as a charity or otherwise.

785. Tides Canada Foundation is separate and distinct from “Tides Foundation”, which is a 501(c)(3) organization based in San Francisco, U.S.⁹⁹³ To distinguish between the two I will refer to the U.S. 501(c)(3) organization as “Tides U.S. Foundation”.

(ii) History

786. Tides Canada’s 2015 website described its history as follows:

“In 2000, Carol Newell of the Endswell Foundation and a small group of social entrepreneurs and philanthropists asked: how can we foster a healthy planet and just Canadian society?

Their answer: grow the capital and build the community dedicated to solving the key environmental and social issues of our time.

Since then, thousands of donors, on-the-ground initiatives, and partners have transformed this vision into the vibrant community that is Tides Canada today. There have been many key milestones along the way.

In 2000, we pioneered a unique shared platform that powers social change initiatives across the country from our shared in-house governance and administration expertise. Donor dollars go further, and more time and money go to mission and impact.

In 2007, we coordinated landmark financing for the Great Bear Rainforest agreements, resulting in \$120-million to support conservation management and sustainable economic development in the region—transforming the way the region is managed now and for future generations.

In 2014, we built on our history of socially responsible investment practices by launching ChangeCapital, a donor advised fund that brings impact investing and philanthropy together to generate greater environmental and social change.

Today, Tides Canada has grown to be a recognized national leader in social change philanthropy. We have supported over 2,500 initiatives with grants totaling \$158,403,260 in support of environmental and social change. We support nearly 40 initiatives on our shared platform and manage about 200 donor advised funds.”⁹⁹⁴

⁹⁹³ <https://www.tides.org/contact/>

⁹⁹⁴ <https://web.archive.org/web/20150506060542/https://tidescanada.org/about-us/our-story/>

787. The “shared platform” was described in more detail on a 2011 webpage on Tides Canada's website, as follows:

“Create a Project for the Common Good

Are you thinking about starting your own organization?

Starting your own organization is not the only way to change the world. You can partner with Tides Canada to carry out project campaigns without having to incorporate or start your own charity.

As Canada's leader in shared services for the charitable sector, Tides Canada simplifies and amplifies your work by making it easier to start and operate new projects and programs without investing in costly infrastructure.

How we work

Tides Canada is actively looking for initiatives that advance our charitable purposes and mission. Our projects and programs are dedicated to:

- > environmental conservation
- > education and research in the environment, social, community, and arts sectors
- > leadership development
- > social inclusion and civic engagement
- > strengthening the charitable sector

If you create a project with Tides Canada, you can focus on results without worrying about the day-to-day financial, legal, and administrative details.

Let our team of experts support you with:

- > financial management
- > human resources
- > accounting
- > risk management
- > collaboration

> good governance

Why create a charitable project through Tides Canada?

Establishing the administrative side of a non-profit organization is often a change maker's biggest challenge and expense.

Each new non-profit organization reinvents the need for the same financial, legal, and human resources services. With Tides Canada, projects leverage a single infrastructure – increasing efficiencies and amplifying the impact of donor dollars. We free you up to focus on your mission and program work while you rely on our support infrastructure.

By making our services available to many cutting-edge projects, we can provide services and benefits most non-profits could not otherwise afford.

Types of projects

Tides Canada projects come in the form of community collaborations, coalitions of charities, pilot projects, and time-limited initiatives, as well as projects set up by international organizations and individuals.

Why do we do this?

Tides Canada is dedicated to strengthening and enabling the work of social entrepreneurs who are addressing environmental and social issues in Canada. We realize our vision for change by providing alternative operating models and shared services that create efficiencies and encourage collaboration among these innovators.⁹⁹⁵

788. Another webpage from Tides Canada's 2011 website outlined the projects it supported on a webpage entitled "Our Projects" and included the following:

"Our Projects

Tides Canada projects are some of the most innovative charitable initiatives in Canada and on the planet. They run sustainable and strategic campaigns that hold great potential for lasting change.

Our projects are led by individuals, coalitions, and international organizations working in Canada and focus on the following program areas.

⁹⁹⁵ <https://web.archive.org/web/20110317080644/http://tidescanada.org/create-a-new-charitable-project>

Click on the link below to learn more about our projects. You can also donate online, via cheque, or using other options by clicking on the name of a project listed below each program area.

Environmental Conservation

BC Marine Conservation Analysis

BC Marine Conservation Analysis helps advance marine planning initiatives in British Columbia by identifying potential areas of high conservation value. This highly collaborative, science-based analysis involves key stakeholders on the BC coast including First Nations community members and all levels of government.

Boreal Solution Space Secretariat

The Boreal Solution Space Secretariat is responsible for overseeing and proving project management, logistical, convening, communications, government relations and technical support to the joint implementation of the Canadian Boreal Forest Agreement.

ForestEthics Canada

ForestEthics Canada works to protect endangered forests by transforming the paper and wood industries in North America and by supporting forest communities in the development of conservation-based economies. The project also focuses on climate initiatives in several ways: mitigating dirty energy projects, encouraging resource conservation and use of clean energy sources, and protection of existing resources that contribute to a healthy climate.

...

GreenThink

GreenThink believes that education is key to building the attitudes and behaviours needed to create a sustainable future. GreenThink develops hands on workshops, community and school-based action projects and interactive education media to bring about positive change for the environment.

...

Oceans Initiative Marine Wilderness Project

Oceans Initiative conducts research projects on whales, dolphins and other marine wildlife in British Columbia and around the world.

Pacific Wild Initiative

Pacific Wild works to achieve long-term environmental protection for marine and terrestrial wildlife on Canada's north Pacific coast. Using field research, web-based educational tools and other broad-based education and community outreach projects. Pacific Wild collaborates with existing environmental groups to raise awareness about the region.

Rainforest Action Network Canada

Rainforest Action Network Canada protects forests, their inhabitants and the natural systems that sustain life by transforming the global marketplace through education, civic engagement and community education.

Rainforest Solutions Project

The Rainforest Solutions Project is a joint initiative of ForestEthics, Greenpeace Canada, and Sierra Club of BC. It promotes conservation options and economic alternatives to industrial logging on British Columbia's Central Coast, North Coast and Haida Gwaii.

Rivers Without Borders

Rivers Without Borders works with communities, scientists, First Nations, conservation allies and others to encourage the adoption of long-term conservation-based planning to protect the diversity and abundance of fish and wildlife species and their habitat in the transboundary watersheds of Canada and southeast Alaska.⁹⁹⁶

789. The "ForestEthics Canada" project was the subject of discussion when the President and CEO of Tides Canada stated the following on January 31, 2012:

"Andrew Frank had the wrong facts but the right idea. Last week, Frank incorrectly charged that the Prime Minister's Office had demanded I cut support for his former employer -- *ForestEthics Canada* -- a project of my organization, *Tides Canada*. As I stated in a subsequent media release, Frank's comments were inaccurate."⁹⁹⁷ [Emphasis added]

790. The statement was made in reaction to an affidavit sworn by Andrew Frank, an employee of ForestEthics, sworn January 23, 2012. The affidavit is unusual in that it is not sworn in connection with any particular legal proceedings but, rather, in response to an alleged exchange between then Prime Minister Harper's office and Mr. Ross McMillan. A copy of the Affidavit (the "**Frank Affidavit**") is attached as Schedule "H" to this Report.

⁹⁹⁶ <https://web.archive.org/web/20110221172902/http://tidescanada.org/create-a-new-charitable-project/projects-a-z/>

⁹⁹⁷ <https://thetyee.ca/Opinion/2012/01/31/Tides-Canada-Joe-Oliver/>

791. I have not made any investigation into the veracity of the Frank Affidavit (the Prime Minister's Office denied its content⁹⁹⁸, Tides Canada indicated it was inaccurate,⁹⁹⁹ and ForestEthics supported it¹⁰⁰⁰), but did note the description of Mr. Frank's position, as follows:

"I currently am employed by ForestEthics Canada ("ForestEthics"). I have been employed by ForestEthics as a Senior Communications Manager since October 2011, and before that from 2007 to 2010 as Communications Officer on contract. My primary job duties include envisioning, planning and executing communications strategies for ForestEthics' Tar Sands and Sacred Headwaters campaigns, and I provide ongoing advice about media aspects of each campaign. ForestEthics is a charitable project of Tides Canada ("Tides"), a charitable foundation. I am technically employed by Tides. Tides holds charitable funds in trust for its respective charitable projects, including ForestEthics."¹⁰⁰¹

792. ForestEthics confirmed the Frank Affidavit, providing a release on January 25, 2012 as follows:

"Yesterday, my colleague Andrew Frank went to the press with claims that the Harper Government has taken aim at ForestEthics, going as far as calling us an "Enemy of the Government of Canada."

While a spokesman for the Prime Minister's Office denied using this language, he refused to comment when asked whether ForestEthics was targeted by the government. There's a good reason they wouldn't comment: it's true. It's now being reported that in private meetings the Prime Minister's Office pointed to ForestEthics as an example of a group acting "against the government of Canada and the people of Canada" by opposing Big Oil's attempts to bring pipelines and oil tankers into the Great Bear Rainforest.

...

To be clear, this IS about oil spills in 600+ salmon rivers, our pristine West coast, and the majestic Great Bear Rainforest. But it's ALSO about millions of Canadians, democracy, freedom of speech, and not being intimidated by our own government."¹⁰⁰²

(iii) Exchange Fund

⁹⁹⁸ <https://www.ctvnews.ca/affidavit-accuses-pmo-of-threatening-environmental-group-1.758063>

⁹⁹⁹ <https://thetyee.ca/Opinion/2012/01/31/Tides-Canada-Joe-Oliver>.

¹⁰⁰⁰ <https://www.globenewswire.com/en/news-release/2012/01/26/1435671/0/en/ForestEthics-Confirms-Whistleblower-Andrew-Frank-s-Account-of-Harper-Government-s-Attempts-to-Silence-Citizen-Critics.html>

¹⁰⁰¹ The Frank Affidavit. Paragraph 1.

¹⁰⁰² <https://www.yumpu.com/en/document/read/6727637/gmail-i-will-not-be-silenced-andrew-frank-communications>

793. In 2001, Tides Canada's first operational year, it described the "Exchange Fund" program that it developed with Tides U.S. Foundation as follows:

Exchange Fund

Through ties with our sister organization in San Francisco, Tides Foundation, we make cross-border giving and strategic alliances possible. This makes it easy for Canadian and American donors to make donations and recommend grants on either side of the border, allowing for maximum tax efficiency.¹⁰⁰³

794. A brochure from Tides Canada in September of 2011 described the program in more detail, as follows:

Through Tides Canada's unique international grant-making capability, U.S. donors can give to Canadian charities.

Tides Canada – in partnership with Tides Foundation in the United States – has worked with a wide range of Canadian charities to facilitate gifts from U.S. individuals, corporations, and foundations. Over the past 10 years, Tides Canada has enabled over \$22.6 million USD in charitable gifts to Canadian federally registered charities including: [intentionally deleted].

Making a gift to a Canadian charity is simple:

- (1) Contact Tides Canada to obtain a U.S. donation form.
- (2) Send the completed form and the gift (in USD) to Tides Foundation in the U.S. The gift can be made by cheque or securities and must be a minimum of \$1,000 USD.
- (3) Within three to six weeks of receiving the donation, Tides Foundation provides the donor a U.S. 501(c)(3) official donation receipt that can be used for U.S. income tax purposes. *For gifts from U.S. foundations Tides Foundation provides a letter to acknowledging receipt of the gift, instead of a donation receipt.* [Emphasis included]
- (4) Within four to six weeks, the Canadian charity receives a grant for the Canadian dollar equivalent of the U.S. dollar gift (less 2% retained by Tides Foundation). There are no additional costs for the Canadian charity.

Tides Canada has created an uncommon solution.

Tides Canada holds a donor-advised fund at the Tides Foundation in the U.S. "the U.S. fund." The U.S. fund accepts donations from donors with

¹⁰⁰³ <https://web.archive.org/web/20030310133321/http://www.tidescanada.org/services/files/annreport2001.pdf>

U.S.-sourced income who wish to make recommendations to support charities in Canada. In Canada, Tides Canada maintains a fund “the Canadian fund,” which accepts donations from donors with Canadian-sourced income, who wish to make recommendations to support charities in the U.S. and internationally.

When a donor in the U.S. makes a gift to the U.S. fund at Tides Foundation in support a [sic] Canadian charity, their recommendation may be approved by funds from the Canadian fund. When a donor in Canada makes a gift to the Canadian fund at Tides Canada in support of a U.S. or international charity, their recommendation may be approved through the U.S. fund. This unique solution provides donors the flexibility to support international charities and gives charities the flexibility to receive gifts without money ever crossing the border.

Reasons to work with Tides Canada

Unlike U.S. foundations, Canadian foundations cannot make grants outside of Canada, this leaves Canadian donors who wish to support international charities with limited options. By using the international grant-making capability at Tides Canada, you double your impact with each donation. Every charitable dollar you recommend to a Canadian charity enables a donor in Canada to recommend an equivalent gift to a U.S. or international charity.

Our uncommon solution offers U.S. foundations a simplified process for making grants to Canadian charities. We eliminate the need to complete a public support test – because your foundation is supporting a U.S. 501(c)(3) charity.¹⁰⁰⁴

795. The Exchange Fund was discontinued at the end of 2016.¹⁰⁰⁵
796. While the Exchange Fund undoubtedly broadened the giving network, it also had the effect of obscuring the source of funds such that the ultimate recipient of funds was receiving funds from a Canadian donor when, in fact, it may well have been initiated by a foreign donor. The Deloitte Report provides further commentary on such matters.

(iv) Campaigns, Advocacy Efforts, and Statements

¹⁰⁰⁴

https://web.archive.org/web/20130512081548/http://icfcanada.org/docs/About_donating_through_Tides_Foundation.pdf

¹⁰⁰⁵

https://www.canadiancharitylaw.ca/blog/tides_canada_closing_international_donation_matching_system_with_tides_us_f/

I have reviewed a substantial body of materials relating to Tides Canada regarding its campaigns and activism.

797. In the course of my review I have become aware of a number of efforts undertaken by Tides Canada. These efforts include the following:

A. In 2012 Tides Canada published a document entitled “Towards a Clean Energy Accord” which provided, among other things, that:

“Further, Canada should eliminate any unnecessary public support, subsidy or tax-break for the oil and gas sector, and redirect that support to low-carbon renewable energy innovation and generation.”¹⁰⁰⁶

B. The following appeared on Tide Canada’s website in 2015:

“Our Toronto Star series monthly round-up: investing green, Keystone, real estate, and more

Our partnership with *The Toronto Star* to produce a series of articles about pressing climate issues in Canada leading up to and following the United Nations Climate Change Conference in Paris, December 2015 continued in November.

From the impact of climate change on coastal real estate to the Keystone XL rejection, here are November’s articles:

[12 articles are then listed, none of which are supportive of the oil and gas industry and 9 of which report on matters that serve to delay or frustrate the development of oil and gas in Alberta. The articles are as follows:]

“Paris 2015: Day 1” – November 30, 2015

[Which reports on the call for the phase out of subsidies for fossil fuels]

“Green companies leading the way in Ontario” – November 28, 2015

“It’s adapt or die for Canada’s energy sector” – November 28, 2015

[Which reports on the obsolescence of the fossil fuels industry]

“\$2 trillion in planned oil, coal spending not needed by 2025” – November 24, 2015

¹⁰⁰⁶ “Towards a Clean Energy Accord - How and Why a Canadian Energy Strategy Can Accelerate the Nation’s Transition to a Low-Carbon Economy”, at page 15. <https://sierraclub.bc.ca/wp-content/uploads/2015/08/Energy-Towards-a-Clean-Energy-Accord-July-2012.pdf>, at 15 of 19.

[Which reports on fossil fuels at risk of being stranded and related shareholder activism]

“Most of Canada’s GDP not hurt by price on carbon: report” – November 18, 2015

[Which reported on why carbon pricing would not have an adverse effect on the nation’s economy]

“Ontario pension funds lost \$2.4B from oil, coal investments: report” – November 16, 2015

[Which reported on disclosure of climate risks, and divestment of fossil-fuel investments]

“Rising sea levels leaving Canadian coastal real estate vulnerable” – November 14, 2015

“How coastal real estate is being impacted by climate change” – November 14, 2015

“Keystone XL rejection signals change in the pipeline: analysis” – November 12, 2015

[Which reported on the cancellation of the Keystone pipeline, and the ExxonMobil investigation]

“Canadian fossil-fuel industry gets \$2.74B handout: report” – November 11, 2015

[Which reported on the complete phase out of subsidies to the fossil-fuel industry]

“Keystone XL rejection signals ‘new normal’ for climate change approach” – November 6, 2015

[Which reported on the cancellation of the Keystone pipeline, and the ExxonMobil investigation]

“Dropping oil and investing green” – November 2, 2015

[Which reported on the divest-invest movement away from investment in the fossil fuels industry]

Each month we will share a round-up of the published articles, as *The Star* explores a range of climate change impacts on Canada's economy and communities.¹⁰⁰⁷

- C. The following history of MakeWay on its website:

"Great Bear and MakeWay: An Uncommon Origin Story

MakeWay's birthplace is one of the most unique places on Earth—the globally significant and biologically rich Great Bear Rainforest.

From this uncommon place was born an uncommon way of dealing with tough problems, a way of operating that has become "a fundamental part of Tides Canada's [now MakeWay's] DNA," says former President and CEO Ross McMillan, who has been with Tides Canada/MakeWay from our initial days. "The approach that Tides Canada adopted in our early work in the Great Bear Rainforest is key to how we still operate today. We don't shy away from thorny, intractable problems that are going to take years, and involve multiple parties working together, to solve. We've learned much about collaboration, perseverance, and creativity from all of our partners in the Great Bear Rainforest—lessons that help us shape our work across the country in fundamental ways." It's an approach that involves considerable time, expertise, sensitivity, and effort, but the results can be extraordinary.

Meanwhile, controversy and tensions were mounting over plans to ramp up logging in the Great Bear Rainforest. First Nations were concerned about the environmental impacts of destructive logging practices and the lack of economic benefits for their communities from ongoing logging, with some First Nations blockading logging campaigns in their territories. Environmental organizations were running effective public campaigns in Europe, the United States, and Asia to target BC forest product customers, urging them to boycott products from the province's logging companies and calling for more protection of important habitat in the area. Industry was feeling the pressure from all sides.

Tides Canada (now MakeWay) was officially founded in 2000 by a group of philanthropists with financial support from the Endswell Foundation. That same year, our first shared platform project—the Rainforest Solutions Project—was launched. The project was initiated in partnership with a group of environmental organizations, including the Sierra Club of BC, Greenpeace Canada, and ForestEthics Canada. Ross was recruited as the Rainforest Solutions Project's first director, and he soon began to advise MakeWay on its broader work in the region.

¹⁰⁰⁷ <https://makeway.org/blog/our-toronto-star-series-monthly-round-up-november/>

As negotiations in the multi-party land use planning process continued to unfold, MakeWay's work expanded, and the integrated approach we are now known for began to be formed. In addition to housing the work of the Rainforest Solutions Project on our shared platform, MakeWay pursued a variety of initiatives, often in collaboration with other parties. We supported First Nations in the Great Bear Rainforest so they could convene, share information, develop common strategies and negotiating positions, and conduct specific studies and mapping within their respective territories. We collaborated with environmental organizations, government, industry, and academic institutions to design and fund studies on everything from biodiversity values to economic activity, which supported all participants in the land use planning negotiations. And in 2002, Ross began to coordinate the work of a group of international foundations to help build a plan for conservation financing in Great Bear Rainforest.

The conservation financing work was a critical condition for success in the Great Bear Rainforest. All parties realized that significant resources would be needed to provide participating First Nations with revenue to fund conservation management initiatives *and to transition the region away from reliance on unsustainable resource extraction...*¹⁰⁰⁸
[Emphasis added]

- D. MakeWay also published the following on its website regarding its connection with the Moore Foundation:

The Moore Foundation's support first helped organizations collaborating on the MakeWay platform to develop the Great Bear Rainforest Agreements, a monumental piece of conservation legislation that incorporated Indigenous rights with still unresolved Indigenous leadership within that vast geographical space, and saw that traditional values were protected. To this day the Moore Foundation's financial support, with the guidance of MakeWay advisors, helps preserve pristine salmon habitats in Northern BC. MakeWay is incredibly proud of their work with the Moore Foundation.

Ivan Thompson, a senior advisor with MakeWay who previously spent a decade working at the Moore Foundation, says that there are several enticing reasons why a large-scale US philanthropic funder of conservation projects would want to support projects in Canada. "Firstly, here in Canada we have a tremendous richness and diversity of ecosystems. Secondly, Canada is a place where it seems possible to succeed in making a difference, where various stakeholders are able to

¹⁰⁰⁸ <https://makeway.org/impact-story/great-bear-and-makeway-an-uncommon-origin-story/>

collaborate in order to make things happen,” Thompson explains, “this became most apparent in the formation of the Great Bear Rainforest.”

The focus of relationship has expanded to include ongoing partnership campaigns between Moore’s Marine Conservation Initiative and MakeWay in British Columbia and the Canadian North.”

Utilizing the MakeWay suite of tools

Over the course of MakeWay’s relationship with the Moore Foundation, they have taken advantage of most of the tools available on the platform. At a most basic level, MakeWay has made it simple for a donor like the Moore Foundation to put a significant amount of money into Canadian projects, connecting them with grassroots action that matches their mandates. “From the Moore Foundation’s perspective, the value of MakeWay has always been as a platform providing a suite of tools to make philanthropy much more effective when operating in Canada,” Thompson says.

The ability to pool funds with other likeminded funders in order to work collaboratively on projects, and have projects set up for limited amounts of time in order to serve a definite and set purpose, are both appealing aspects of working with MakeWay. The right leaders are found for projects and brought on board by MakeWay rather than being limited to set staff who work on all projects. This is part of what makes MakeWay so effective, and agile. “These big organizations don’t always have those relationships and connections in Canada, they need someone that they can trust. The projects have someone who is more closely connected on the ground,” Thompson says. “Part of what MakeWay provides is that platform for the trusted advisor.”

This platform enabled the Foundation to make charitable donations from its Wild Salmon Ecosystem Initiative. “This included making full use of MakeWay’s donor advised funds, funder collaboratives, pooled grant-making, shared platform projects and agile project-focused expertise,” says Thompson. “These responsive and flexible services allowed the Foundation to optimize its financial support to Canadian civil society leadership.”

During the decade that Thompson spent as a program officer at the Moore Foundation, he found MakeWay to be an invaluable partner. “The single most valuable thing for me in my decade at the Moore Foundation was my relationship with MakeWay,” Thompson says. “I do not believe I

could have had anywhere near the level of success had it not been for MakeWay and the range of tools that it has available.”¹⁰⁰⁹

798. I find that the foregoing review of MakeWay’s efforts establishes a general opposition to the development of Alberta’s oil and gas resources through its objection to any “public support, subsidy or tax-break for the oil and gas sector” and support of a series of articles that were generally opposed to the development of Alberta’s oil sands (as described in more detail above in respect of each article). I also note MakeWay’s involvement in (a) the evolution of the Great Bear Rainforest land-use program in conjunction with organizations that I have found to be Participants in anti-Alberta energy campaigns; and (b) the development of an infrastructure that facilitated raising and pooling foreign funding and developing/coordinating support to implement such programs.

(v) Funding Applications and Grant Description

799. I have reviewed information regarding certain grants provided to Tides Canada and find that the evidence demonstrates the following grants were intended to be made to Tides Canada:

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
The Oak Foundation, U.S.A. ¹⁰¹⁰	2010	\$50,000	\$51,497	To develop a five-year strategic plan to convince Canada to accept the long-term goal of dramatically lowering the country’s GHG emissions, while creating jobs and opportunities, and lessening the country’s dependence on fossil fuels; and to determine the feasibility of creating a Canadian Energy Fund, similar to the Energy Foundation, with a budget of up to USD 30 million sourced from 100 to

¹⁰⁰⁹ <https://makeway.org/impact-story/moore-foundation-saving-salmon-runs-and-coastal-rainforests-in-british-columbia/>

¹⁰¹⁰ The Oak Foundation, U.S.A. Form 990-PF for the 2010 calendar year grant listing obtained from website page 63.

				200 high-net worth Canadian and international donors
Rockefeller Brothers Fund, Inc. ¹⁰¹¹	2008	\$50,000	\$53,301	To develop web site: Oil Sands Tourism
Wilburforce Foundation ¹⁰¹²	2015	\$45,000	\$57,542	Dogwood Initiative Society – Coastal Oil Tanker Campaign 2015
The William and Flora Hewlett Foundation ¹⁰¹³	2010	\$400,000	\$411,976	For efforts to reduce fossil fuel development

800. Tides Canada indicated in their response that they could not immediately reconcile to their records of revenue received the above grants from The Oak Foundation U.S.A. and Wilburforce Foundation, and that while the timing and amount of the grant from Rockefeller Brothers Fund appeared correct, the description could not at this time be verified.

801. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization was the intended recipient of funds which were provided for the stated purpose of reducing Canada's dependence on fossil fuel development, the Coastal Tanker Ban and the development of a website to create a negative image for Alberta Tourism due to its support of oil sands development, which correlate to the campaigns that I have reviewed above. Accordingly, I find the grant descriptions opposing the development of Alberta's oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

(vi) Government Funding

802. I have found that during the years 2003 to 2019, MakeWay Foundation (and its predecessors) received revenue from municipal/regional, provincial/territorial, and federal levels of government in the following amounts¹⁰¹⁴:

<u>Federal</u>	<u>Provincial/Territorial</u>	<u>Municipal/Regional</u>
\$364,253	\$3,260,972	\$38,300

¹⁰¹¹ Rockefeller Brothers Fund, Inc. Form 990-PF for the 2008 calendar year Schedule 18 Part XV page 32.

¹⁰¹² Wilburforce Foundation Form 990-PF for the 2015 calendar year Attachment A page 46 of 88 of PDF.

¹⁰¹³ The William and Flora Hewlett Foundation Form 990-PF for tax year beginning 01-01-2010 and ending 12-31-2010 Part XV page 72 of 155 of PDF.

¹⁰¹⁴ See Schedule 5.4.1 of Deloitte Report.

803. I have found that during the years 2003 to 2019, MakeWay Charitable Society (and its predecessors) received revenue from municipal/regional, provincial/territorial, and federal levels of government in the total amount of \$26,341,652.¹⁰¹⁵

(vii) Conclusion on Participation in an anti-Alberta Energy Campaign

804. In my review of the foregoing I specifically noted the following in respect of MakeWay: (a) its opposition to the development of Alberta's oil and gas resources through its objection to any "public support, subsidy or tax-break for the oil and gas sector"; (b) its support of a series of articles that were generally opposed to the development of Alberta's oil sands (as described in more detail above in respect of each article); and (c) its receipt of the grant described above whose object appears to be to advance "lessening the country's dependence on fossil fuels", "oil sands tourism", and "Dogwood's oil tanker campaign", which I find to be evidence tending to establish broad and general objections to the development of Alberta's oil and gas resources.

805. Moreover, I also noted MakeWays involvement in: (a) housing the charitable project of "ForestEthics Tar Sands campaign"; (b) the "Exchange Fund" that allowed funds from foreign countries to indirectly fund matters in Canada; (c) the funding and infrastructure support of the Great Bear Rain Forest, including facilitating foreign funding generally and supporting transition away from "reliance on unsustainable resource extraction" as further evidence tending to establish support and facilitation of a broad and general objections to the development of Alberta's oil and gas resources.

806. On the basis of the totality of this evidence, I find that MakeWay has engaged in opposition to the development of Alberta's oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

(q) ***West Coast Environmental Law and Research Foundation***

(i) Background

807. West Coast Environmental Law is made up of three provincially incorporated societies. The relationship between West Coast Environment Law Association and West Coast Environmental Law Research Foundation, which are considered in this Report, can be described as follows:

- A. West Coast Environmental Law Association ("**Association**"). The Association is a not for profit society that provides legal services to individuals and organisations who have concerns regarding the environment. In addition, the Association advocates for legislative reforms to protect the environment and ensure public participation in environmental decision making. The Association publishes West Coast's Environmental Law Alert blog and our Legal e-Brief e-newsletter
- B. West Coast Environmental Law Research Foundation ("**Foundation**"). The Foundation is a registered charity which produces legal research to develop laws, regulations,

¹⁰¹⁵ See Schedule 5.4.3 of Deloitte Report.

standards and objectives that will promote the maintenance of environmental quality. The Foundation educates the public about environmental law issues and advocates on behalf of individuals and communities to prevent legal violations and improve existing environmental laws and regulations

808. Given the relationship between these entities, and in particular that (a) they describe themselves as “sister organizations”, (b) the organizations jointly issued a single annual “impact report” akin to an annual report,¹⁰¹⁶ and (c) common directors over the organizations,¹⁰¹⁷ I find that the organizations are affiliated and will refer to them collectively as “West Coast Environmental Law”. This collective reference and my consideration of these entities’ campaigns in this Report on an aggregated basis should not be construed as a finding that any particular activity discussed was undertaken by one entity or another in any consideration of whether such entity is in compliance with requirements in respect of such entity by virtue of its status as a charity or otherwise.

(ii) Campaigns, Advocacy Efforts, and Statements

809. I have reviewed a substantial body of materials relating to West Coast Environmental Law regarding its campaigns and activism.

810. West Coast Environmental Law’s website details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per West Coast Environmental Law’s web page:

A. **Tar Sands, Pipelines & Tankers**

West Coast works with First Nations and communities fighting against tar sands pipelines in the courtroom, in boardrooms, on the land and on the water.

Proposed tar sands infrastructure projects are being pushed forward in BC, despite the fact that many affected Indigenous Nations have refused consent under their own laws, and in the face of widespread community opposition.

West Coast Environmental Law is working to prevent the expansion of the tar sands by opposing pipelines and tanker projects in BC in order to protect our watersheds, marine and terrestrial ecosystems, our climate, and the human communities that rely on them. We do this by providing legal and strategic advice to First Nation clients, and by offering legal information and tools to the public.

After more than a decade of work, West Coast and our allies celebrated the defeat of the Enbridge Northern Gateway pipelines and tankers project in 2016. In 2019, we celebrated the passing of the federal *Oil*

¹⁰¹⁶ https://www.wcel.org/sites/default/files/file-downloads/2019-2020_wcel_impactreport-web_0.pdf (the (“**19/20 Impact Report**”))

¹⁰¹⁷ The 19/20 Impact Report. Page 2.

Tanker Moratorium Act, after decades of work to permanently protect BC's north coast from oil tankers through legislation.

We draw inspiration and lessons from the victory against Enbridge for the ongoing fight against the Trans Mountain pipeline expansion, which would see a sevenfold increase in tar sands tanker traffic in Burrard Inlet and the Salish Sea.

We support our First Nation clients in numerous strategic areas – including litigation, law reform, community engagement and the application and enforcement of Indigenous law.¹⁰¹⁸

B. Trans Mountain Expansion Project

The Trans Mountain Expansion Project is all risk, little reward for BC and the coast. Find out what we're doing to stop it.¹⁰¹⁹

C. Enbridge Northern Gateway Project

In the face of other major projects like Trans Mountain, the defeat of Northern Gateway reminds us just how powerful communities can be.¹⁰²⁰

D. Environmental leaders from across Canada converge at ground zero for Kinder Morgan pipeline

Today environmental leaders from across Canada will converge at ground zero for the Kinder Morgan pipeline and tankers project, on the water in Burrard Inlet. Groups who were instrumental in defeating the Energy East pipeline proposal, those at the forefront of Kinder Morgan opposition, and others from across the country will be joined by representatives of the Tsleil-Waututh Sacred Trust Initiative and will paddle past the Kinder Morgan marine terminal.¹⁰²¹

E. West Coast Enbridge Northern Gateway Oil Supertanker and Pipeline Project Brochure

The Canadian government is presently considering approval of a 1,172 km pipeline that would carry 525,000 barrels per day of crude oil from the Alberta tar sands to the BC coast and load it onto supertankers bound for China and the west coast of the US. Enbridge's oil tanker and pipeline plan is all about exporting massive quantities of Canadian oil just so tar

¹⁰¹⁸ <https://wcel.org/program/tar-sands-pipelines-tankers>

¹⁰¹⁹ <https://wcel.org/program/tar-sands-pipelines-tankers>

¹⁰²⁰ <https://wcel.org/program/tar-sands-pipelines-tankers>

¹⁰²¹ <https://wcel.org/media-release/environmental-leaders-across-canada-converge-ground-zero-kinder-morgan-pipeline>

sands oil companies can get a better price than they already get for their crude in Canada.

The Enbridge project will threaten the coast of BC and the Great Bear Rainforest with hundreds of oil supertankers a year and the threat of an oil spill catastrophe.¹⁰²²

811. I find that the foregoing review of West Coast Environmental Law's website establishes that it advocated: (a) for stopping the Enbridge Northern Gateway pipeline and stopping the expansion of the Alberta tar sands; (b) for the enactment of the *Oil Tanker Moratorium Act* (Canada); (c) to stop the Trans Mountain pipeline expansion to limit tar sands tanker traffic; and (d) using legal precedent for aboriginal and non-aboriginal people to prevent the expansion of the "tar sands", all of which I find oppose the development of Alberta's oil and gas resources.

812. I also noted that in the course of these campaigns, West Coast Environmental Law released a number of statements on its website. These statements include the following in regards to West Coast Environmental Law's campaigns and other campaigns:

A. This Earth Day: Celebrating the campaign to get local government out of the fossil fuel business

This Earth Day we'd like to celebrate the remarkable work of Divest Victoria and their campaign – with help from our Environmental Dispute Resolution Fund (EDRF) – to allow communities across BC to divest from fossil fuels. As a result of their work, this September BC's local governments will be considering a resolution calling for fossil fuel-free investment options for their own investment portfolios. If the resolution goes forward, this good news story has the potential to send a powerful message to the fossil fuel industry.

What is divestment?

Divestment is the opposite of an investment – it simply means getting rid of stocks, bonds, or investment funds that are unethical or morally ambiguous.

The Fossil Fuel Divestment Movement is one of the fastest-growing parts of the global climate movement. Since 2011, with students on a half dozen campuses asking their colleges to sell their investments in fossil fuel companies, it has grown to 515 institutions representing US\$3.4 trillion in investments, including cities from around the world.

Each institution that pulls its support from the fossil fuel industry sends a strong message about the moral problems posed by our fossil fuel economy, broadly, and for the institutions and companies that benefit financially from it. Fossil fuel investments generate profits primarily

¹⁰²² <https://wcel.org/publication/west-coast-enbridge-northern-gateway-oil-supertanker-and-pipeline-project-brochure>

because the industry isn't paying when its products degrade our atmosphere, and, as a result, destroy countries and kill people. To change this, fossil fuel companies must begin to take "cradle to grave" responsibility for their products, including responsibility for the harm caused by fossil fuels.¹⁰²³

[In its submissions to the Inquiry, West Coast Environmental Law clarified that EDRF is merely administered by West Coast Environmental Law, and is funded in full by a single Canadian entity.]

B. Environmental leaders from across Canada converge at ground zero for Kinder Morgan pipeline.

Groups who were instrumental in defeating the Energy East pipeline proposal, those at the forefront of Kinder Morgan opposition, and others from across the country will be joined by representatives of the Tsleil-Waututh Sacred Trust Initiative and will paddle past the Kinder Morgan marine terminal.

"The demise of the Energy East proposal last week demonstrates that strong, unified Indigenous, community and environmental opposition, combined with a weak economic case, can defeat tar sands pipeline projects," said Jessica Clogg, Executive Director & Senior Counsel, West Coast Environmental Law.¹⁰²⁴

C. Trans Mountain pipeline and Tanker Project

Our ongoing work to stop the Trans Mountain pipeline and tanker expansion project (TMX) includes providing legal and strategic support for Indigenous nations and a vast movement of environmental organizations, grassroots community groups and passionate individuals committed to climate justice and protecting the coast.

This year, our work focused on three areas: legal challenges to the re-approval of TMX, the lack of transparency from the federal government (which owns the project), and the collapse of the business case for the pipeline.¹⁰²⁵

D. Youth are leading the climate movement – in court and on the streets

[After a detailed review of "Children's Lawsuits" (discussed in more detail earlier in Part II of this Report) it continued ...]

¹⁰²³ <https://wcel.org/blog/earth-day-celebrating-campaign-get-local-government-out-fossil-fuel-business>

¹⁰²⁴ <https://wcel.org/media-release/environmental-leaders-across-canada-converge-ground-zero-kinder-morgan-pipeline>

¹⁰²⁵ The 19/20 Impact Report. Page 11.

The youth advocacy group, Generation Squeeze, has also been raising the impacts of climate change on youth in Canadian courts – by intervening in the cases brought by Saskatchewan and Ontario against Canada’s carbon pricing law.

Finally, four climate strikers (one of whom is my daughter), known as Youth Stop TMX, applied to the Federal Court of Appeal for permission to challenge the federal approval of the TransMountain pipeline expansion.

West Coast is proud to have provided support to both Generation Squeeze and Youth Stop TMX.¹⁰²⁶

E. With Keystone shelved, Northern Gateway must not go ahead

We agree with our colleagues at other groups, like Pembina Institute and Environmental Defence that suggest that Prime Minister Harper could learn from the example of President Obama – and take an open-minded look at the advisability of the Northern Gateway Pipeline, and the expansion of the Tarsands.

However, regardless of the Canadian government’s approach to the pipeline, we are confident that this pipeline – and the associated oil tanker traffic – will not proceed in BC, for many reasons.

Legal talk aside, the deep power of people – of Indigenous people and their neighbours, standing side-by-side – will be the wall that these dangerous proposals can’t push through. Using their legal powers, using their political strength, and using their endless creativity. From the Rockies to the coast, it is people who will protect the rivers, people who will protect the land, people who will protect the Great Bear Rainforest, and people who will protect the coast and the waters of the ocean.¹⁰²⁷

813. In addition to my review of West Coast Environmental Law’s website above, I find the foregoing statements relevant evidence in my review. In this regard I find the foregoing statements additional evidence of opposition to the development of Alberta’s oil and gas resources. In particular, I note: (a) the repeated opposition to Energy East and Kinder Morgan pipeline projects to “defeat tar sands pipeline projects”; (b) the advocacy of divestment tactics – both generally and towards B.C. municipal governments - to divest of their interests in participants in the fossil fuels industry; (c) the support to direct citizen action of youth movements, including the support of the “Children’s lawsuit”; and (d) the advocacy of land-use tactics in respect of the Great Bear Rainforest the tanker ban.

¹⁰²⁶ <https://wcel.org/blog/youth-are-leading-climate-movement-in-court-and-streets>

¹⁰²⁷ <https://wcel.org/blog/keystone-shelved-northern-gateway-must-not-go-ahead>. [Footnote citation added subsequent to Participant for Response phase.]

814. I also became aware of West Coast Environmental Law's support of the Tar Sands Solutions Network.¹⁰²⁸

(iii) Funding Applications and Grant Description

815. I have reviewed information regarding certain grants provided to West Coast Environmental Law Association and West Coast Environmental Law Research Foundation, and find that the evidence demonstrates the following grants were made to West Coast Environmental Law Association and West Coast Environmental Law Research Foundation:

<u>Grantmaker Name</u>	<u>Recipient Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
The Oak Foundation. ¹⁰²⁹	West Coast Environmental Law Association	2010	\$97,131	\$100,039	To constrain development of Alberta's tar sands through a legislative ban on crude oil tankers on British Columbia's north coast. This would necessitate the cancellation of the Enbridge Northern Gateway Pipeline proposal to transport tar sands oil and bitumen to Asian markets. WCEL aims to establish the conditions under which a) opposition parties holding a parliamentary majority work together to enact a legislative tanker ban under a minority

¹⁰²⁸ <https://web.archive.org/web/20130915004856/http://tarsandssolutions.org/about/network-members>

¹⁰²⁹ The Oak Foundation, U.S.A. grant listing obtained from website page 68.

					government and/or incorporate a ban promise into their manifestos, committing them to act following election that produces a majority government; and b) First Nations declare their own bans on transportation of tar sands crude oil through their territories and waters
The Oak Foundation. ¹⁰³⁰	West Coast Environmental Law Association	2016	\$292,250	\$387,175	To support strategic actions to uphold indigenous, federal and international law to cap the expansion of the tar sands in Alberta, Canada. WCEL is dedicated to safeguarding the environment through law. It uses legal analysis to empower citizens, mobilise allies and influence decision-makers.

¹⁰³⁰ The Oak Foundation, U.S.A. grant listing obtained from website page 68.

Tides U.S. Foundation ¹⁰³¹	West Coast Environmental Law Association	2017	\$19,900	\$20,311	CAD 25,000.00 research, education, and organizing on dirty fuels and pipelines
Rockefeller Brothers Fund, Inc. ¹⁰³²	West Coast Environmental Law Research Foundation	2006	\$100,000	\$113,409	To prevent development of pipeline and tanker port that endangers Great Bear Rainforest protected area
Wilburforce Foundation ¹⁰³³	West Coast Environmental Law Research Foundation	2012	\$50,000	\$49,979	Protecting the Great Bear Rainforest from Oil Supertankers
Wilburforce Foundation ¹⁰³⁴	West Coast Environmental Law Research Foundation	2011	\$35,000	\$34,617	Protecting the Great Bear Rainforest from Oil Supertankers Legal Strategies
Wilburforce Foundation ¹⁰³⁵	West Coast Environmental Law Research Foundation	2016	\$40,000	\$52,992	Legal strategies to protect the Great Bear from Tankers/NGP
Wilburforce Foundation ¹⁰³⁶	West Coast Environmental Law Research Foundation	2013	\$50,000	\$51,496	Protecting the GB Rainforest from Oil Supertankers 2013
Wilburforce Foundation ¹⁰³⁷	West Coast Environmental	2009	\$25,000	\$28,549	Protecting the Great Bear Rainforest from

¹⁰³¹ Tides Foundation Form 990 for the 2017 calendar year Schedule F Part II page 51 of 115 of PDF.

¹⁰³² Rockefeller Brother Fund, Inc. Form 990-PF for the 2006 calendar year Schedule 20 Part XV page 190 of 196 of PDF.

¹⁰³³ Wilburforce Foundation Form 990-PF for the 2012 calendar year Attachment A page 54 of 89 of PDF.

¹⁰³⁴ Wilburforce Foundation Form 990-PF for the 2011 calendar year Attachment A page 58 of 98 of PDF.

¹⁰³⁵ Wilburforce Foundation Form 990-PF for the 2016 calendar year Attachment A page 30 of 42 of PDF.

¹⁰³⁶ Wilburforce Foundation Form 990-PF for the 2013 calendar year Attachment A page 56 of 76 of PDF.

¹⁰³⁷ Wilburforce Foundation Form 990-PF for the 2009 calendar year Attachment A page 12.

	Law Research Foundation				Oil Supertankers: Legal Strategies
Tides U.S. Foundation ¹⁰³⁸	West Coast Environmental Law Research Foundation	2013	\$46,500	\$47,891	research, education and organizing on dirty fuels and pipelines
Tides U.S. Foundation ¹⁰³⁹	West Coast Environmental Law Research Foundation	2014	\$42,140	\$46,542	research, education and organizing on dirty fuels and pipelines
Tides U.S. Foundation ¹⁰⁴⁰	West Coast Environmental Law Research Foundation	2011	\$75,000	\$74,180	research, education, and legal work on tanker and oil spill related issues
Tides U.S. Foundation ¹⁰⁴¹	West Coast Environmental Law Research Foundation	2012	\$21,000	\$20,991	research, education, and outreach on climate/tar sands related issues

816. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. In its submissions to the Inquiry, West Coast Environmental Law indicated that its review indicated all but a fraction of these funds were devoted to representation of specific First Nations clients in efforts to defend their title, rights and legal interests potentially affected by specific pipeline and tanker projects, and related to regulatory and court proceedings about these specific projects. Notwithstanding the limitations I have identified, I do find that the fact the organization received funds which were provided for the stated purpose to:

- "constrain development of Alberta's tar sands through a legislative ban on crude oil tankers on British Columbia's north coast. This would necessitate the cancellation of the Enbridge Northern Gateway Pipeline proposal to transport tar sands oil and bitumen to Asian markets";

¹⁰³⁸ Tides Foundation Form 990 for the 2013 calendar year Schedule F Part II page 57 of 228 of PDF.

¹⁰³⁹ Tides Foundation Form 990 for the 2014 calendar year Schedule F Part II page 45 of 178 of PDF.

¹⁰⁴⁰ Tides Foundation Form 990 for the 2011 calendar year Schedule F Part II page 15.

¹⁰⁴¹ Tides Foundation Form 990 for the 2012 calendar year Schedule F Part II page 121 of 131 of PDF.

- “establish the conditions under which a) opposition parties holding a parliamentary majority work together to enact a legislative tanker ban under a minority government and/or incorporate a ban promise into their manifestos, committing them to act following election that produces a majority government; and b) First Nations declare their own bans on transportation of tar sands crude oil through their territories and waters”;
- “support strategic actions to uphold indigenous, federal and international law to cap the expansion of the tar sands in Alberta”;
- “prevent development of pipeline and tanker port that endangers Great Bear Rainforest protected area”;
- “protecting the Great Bear Rainforest from Oil Supertankers Legal Strategies”; and
- “research, education and organizing on dirty fuels and pipelines”.

correlate to the campaigns of West Coast Environmental Law that I reviewed above. Accordingly, I find the grant descriptions opposing the development of Alberta’s oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

(iv) Government Funding

817. I have found that during the years 2003 to 2019, West Coast Environmental Law received revenue from municipal/regional, provincial/territorial, and federal levels of government in the following amounts¹⁰⁴²:

<u>Federal</u>	<u>Provincial/Territorial</u>	<u>Municipal</u>
\$430,393	\$53,400	\$10,153

818. I note that in its submission to the Inquiry West Coast Environmental Law indicated that the above government funding numbers were greater than actual amounts received and were not in accordance with their audited financial statements. I have not been able to locate West Coast Environmental Law’s audited financial statements for the entire review period on any publicly accessible source, nor did West Coast Environmental Law provide their audited financial statements for the review period. I have accordingly been unable to confirm if the numbers in their audited financial statements reconcile with the above.

(v) Conclusion on Participation in an anti-Alberta Energy Campaign

819. In my review of the foregoing I specifically noted the following in respect of West Coast Environmental Law: (a) its direct advocacy against the development of Alberta’s oil sands in the

¹⁰⁴² CharityData summary West Coast Environmental Law Research Foundation at page 2, West Coast Environmental Law Research Foundation T3010 Registered Charity Information Return : Schedule 6 for Fiscal Period May 1, 2018 to April 30, 2019 at page 4.

webpages and statements that I reviewed above; and (b) the receipt of grants described above whose objective appears to be to advance a number of initiatives that delay and frustrate the development of Alberta's oil and gas industry, which I find to be evidence tending to establish broad and general objections to the development of Alberta's oil and gas resources.

820. Moreover, I also noted West Coast Environmental Law's participation in: (a) the tanker-ban and Great Bear Rainforest land use campaigns; (b) divestment campaigns as outlined above; (c) the Tar Sands Solutions Network; and (d) legal tactics, including advancing precedents for Aboriginal and non-Aboriginals and the Children's Lawsuits.

821. On the basis of the totality of this evidence, I find that West Coast Environmental Law has engaged in opposition to the development of Alberta's oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

822. It must be acknowledged that as a provider of legal services, West Coast Environmental Law frequently advocates on behalf of its clients in respect of legal proceedings. A party's ability to have access to legal representation in legal proceedings is a legitimate and important interest. In its capacity as legal counsel, West Coast Environmental Law will undertake actions and make statements, and these actions and statements may not necessarily reflect the views of West Coast Environmental Law as an organization itself. Accordingly, I wish to make it clear that my findings are based on evidence concerning West Coast Environmental Law itself as an organization, and not with reference to campaigns it may undertake as it provides legal services to its clients.

(r) ***Environmental Defence Canada Inc. ("Environmental Defence Canada")***

(i) Background

823. Environmental Defence Canada is incorporated without share capital and is a registered charity under the Income Tax Act (Canada).¹⁰⁴³ As at March 31, 2020 it held assets of \$1,336,065.¹⁰⁴⁴

824. I have reviewed a substantial body of materials relating to Environmental Defence Canada regarding its campaigns and activism. I also note that they are specifically referenced in both Background Documents,¹⁰⁴⁵ and CorporateEthic's webpage listing members of the "No Tar Sands Coalition".¹⁰⁴⁶

¹⁰⁴³ Environmental Defence Canada Inc. Financial Statements, March 31, 2020.

<https://d3arzg0d19si6f.cloudfront.net/wp-content/uploads/2020/10/EDC-03312020-FS-Final-signed.pdf> Page 7.

¹⁰⁴⁴ Environmental Defence Canada Inc. Financial Statements, March 31, 2020.

<https://d3arzg0d19si6f.cloudfront.net/wp-content/uploads/2020/10/EDC-03312020-FS-Final-signed.pdf>. Page 4.

¹⁰⁴⁵ The RBF Document. Page 12. The Corporate Ethics Document. Page 15.

¹⁰⁴⁶ <https://web.archive.org/web/20100714080115/http://www.corpethics.org/section.php?id=371>

(ii) Campaigns, Advocacy Efforts, and Statements

825. Environmental Defence Canada's website details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per Environmental Defence Canada's web page:

A. TAR SANDS

THE PROBLEM: The Alberta tar sands are the largest industrial project on earth. They are Canada's fastest growing source of global warming pollution. And they're damaging the land, air, water, climate and the health of communities. Industry wants to triple tar sands production by 2030, but Canada cannot meet its commitments to cut climate pollution if expansion of the tar sands continues.

THE TAR SANDS ARE BIG ENOUGH. We cannot keep expanding production of this high cost, high carbon fossil fuel. We need to reject risky proposals for new fossil fuel infrastructure like pipelines that would lock us into rising carbon pollution from the tar sands for decades to come.

THE SOLUTION: It's time to build a low carbon, clean energy economy that doesn't damage our air or climate. We must also clean up damage that has been done. That means cleaning up the massive tailings ponds, which are leaking toxic liquid waste from the tar sands into the Athabasca River. It also means reclaiming much more of the land that has been disturbed by industrial activity. To date, only 0.15 per cent of land disturbed by the tar sands has been certified as reclaimed.

TAKE ACTION: [The webpage then provides a link – no longer active - to a "Stop Tar Sands Expansion" Petition, described in the next section].¹⁰⁴⁷

B. PETITION: Action on climate change in Canada is needed – and it's needed now.

We urge Prime Minister Justin Trudeau and the newly-elected federal government to become climate leaders.

Climate leadership from Canada would mean:

Developing a climate change strategy that includes regulating the tar sands, the fastest rising source of carbon pollution in Canada

¹⁰⁴⁷ <https://environmentaldefence.ca/tar-sands/>

Stopping the flawed reviews of major energy projects like Energy East and Kinder Morgan; And [sic] creating a process to rebuild our broken regulatory system for energy projects¹⁰⁴⁸

- C. Export Development Canada has a poor history on transparency – and these new COVID programs follow that pattern.

We should shift EDC's finance towards a just transition to clean energy

EDC's ongoing backing for the expansion of fossil fuels is entirely incompatible with Canada's climate commitments. It's also out of step with momentum across the international finance community to shift financial flows away from fossil fuels to clean energy. Many financial institutions, such as the World Bank Group and the European Investment Bank, are already taking steps to stop investing in oil and gas exploration and development.¹⁰⁴⁹

- D. CAPPING TAR SANDS POLLUTION

THE PROBLEM: The Alberta tar sands are the largest industrial project on earth. They are Canada's fastest growing source of carbon pollution. And they're damaging the land, air, water, climate and the health of First Nations and other communities. In November 2015, the government of Alberta announced a sweeping new climate change strategy that if implemented, would include a cap on climate pollution from the sands and put a price on carbon pollution. Without such a cap in place, Canada will be unable meet its commitments to cut climate pollution.

THE SOLUTIONS:

1. CAP TAR SANDS POLLUTION: Tar sands climate pollution cannot continue to grow indefinitely. That's why the Alberta government's promise to put a hard cap on tar sands carbon emissions is so important. We will work with the province to ensure this plan becomes written into law without delay.

2. REDUCE OUR USE OF FOSSIL FUELS: to ensure a better, safer and more prosperous future for Canadians, we must move quickly to reduce our economy's dependency on fossil fuels and the fossil fuel industry while ensuring a just transition for workers into a clean

¹⁰⁴⁸

https://web.archive.org/web/20151217185233/http://action.environmentaldefence.ca/p/dia/action3/common/public/index.sjs?action_KEY=16444

¹⁰⁴⁹ <https://environmentaldefence.ca/2020/05/27/meet-export-development-canada-secretive-crown-agency-financing-big-oil-bailout/>

economy. It's time to build a low carbon, clean energy economy that doesn't damage our environment.

3. APPLY A CLIMATE TEST: A climate test must be applied to all proposals for new energy infrastructure in Canada. This test should measure projects against government policy, such as the federal government's commitment to do its part to limit global warming to 1.5 degrees Celsius, and Alberta's proposed cap on tar sands. Projects that undermine Canada's efforts to cut carbon are not in our national interest.

4. CLEAN UP THE DAMAGE: We must also clean up damage that has been done. That means cleaning up the massive tailings ponds, which are leaking toxic liquid waste from the tar sands into the Athabasca River. It also means reclaiming much more of the land that has been disturbed by industrial activity. To date, only 0.15 per cent of land disturbed by the tar sands has been certified as reclaimed.¹⁰⁵⁰

E. PETITION: Tell our elected federal officials to reject the risky Energy East pipeline.

Across Canada, a growing number of concerned Canadians are saying no to risky tar sands projects that tip us closer to dangerous climate change, and put our water, air, land, climate and communities at risk.

Join the growing movement by signing the letter below, and tell our elected officials to reject the Energy East pipeline and invest in safer, cleaner energy sources, which are better for our economy and our environment.

Your postal code is required to find your MP/local representative.¹⁰⁵¹

826. I find that the foregoing review of the Environmental Defence Canada's website establishes that it advocated: (a) generally for the restriction of further growth of the oil sands, including by advancing a petition for delivery to the Prime Minister; (b) generally and continually against the development of Energy East and Kinder Morgan pipeline projects; (c) for EDC's divestment from supporting the fossil fuels industry; (d) the use of the political tactic to petition the federal government not support "tar sands" projects; and (e) generally and continually for the limitation on development of the oil sands, all of which I find opposes the development of Alberta's oil and gas resources in a broad and general sense and as such constitute anti-Alberta energy campaigns.

827. I also noted that in the course of these campaigns, Environmental Defence Canada released a number of statements on its website. These statements include the following in regards to Environmental Defence Canada's campaigns and other campaigns:

¹⁰⁵⁰ <https://environmentaldefence.ca/capping-tar-sands-pollution/>

¹⁰⁵¹ <https://web.archive.org/web/20150315003128/https://environmentaldefence.ca/tell-our-elected-federal-officials-reject-risky-energy-east-pipeline>

A. Adding to the chorus of No.

June 5, 2014

A decision from federal cabinet on Enbridge's Northern Gateway tar sands pipeline is just around the corner. Today, organizations representing millions of North Americans sent a letter to B.C. decision-makers, calling on them to do everything they can to ensure this high-risk project never sees the light of day.

Enbridge's Northern Gateway pipeline would transport half a million barrels of tar sands oil per day across more than 800 rivers and streams, over the Rocky Mountains, and through the Great Bear Rainforest. In Kitimat it would be loaded onto tankers, which would have to navigate some of the most treacherous waters in the Pacific Northwest.

The tar sands are among the most high carbon oils on the planet and in order to avoid the worst of dangerous global warming we need to put the breaks [*sic*] on tar sands expansion. That means no new mines, pipelines, trains, and tankers.

Signatories to the letter include groups like 350.org, Greenpeace Canada, NRDC, Sierra Club and many more!¹⁰⁵²

[The webpage then provided a link to the referenced letter. This link is no longer active, but the letter can be located on the wayback machine]¹⁰⁵³

B. Northern Gateway will not be built. Not now. Not ever.

June 18, 2014

Yesterday, the federal government announced its approval of Enbridge's Northern Gateway tar sands pipeline (with 209 conditions suggested by the Joint Review Panel). The approval is reckless, and flies in the face of an overwhelming amount of evidence against the project. First Nations said no, British Columbians said no, the B.C. government said no, and countless experts, scientists, and concerned citizens have said no.

But, despite the government's approval, the pipeline won't be built. The pipeline is destined for legal purgatory for years.

The government may rubber stamp resource projects, but it can't steamroll First Nations rights, the B.C. government, and an entire

¹⁰⁵² <https://environmentaldefence.ca/2014/06/05/adding-to-the-chorus-of-no/>

¹⁰⁵³ <https://web.archive.org/web/20140905150513/https://environmentaldefence.ca/lettertoBCMPs>

province that has said all along that no means no. Expect this project to be tied up in the courts for years and face opposition throughout the province and across Canada. Environmental Defence will support First Nations and British Columbians as long as it takes to finally put an end to this pipeline in the courts and on the ground.

The pipeline would carry half a million barrels of tar sands oil over the Rocky Mountains, through the Great Bear Rainforest, cross over 800 rivers and streams before being loaded onto tankers that would have to navigate some of the most dangerous waters in the Pacific Northwest. The risks to the coast, forest, water, ecosystems and our climate are astronomical.

Northern Gateway would enable the expansion of the tar sands, Canada's fastest growing source of global warming emissions and one of the highest polluting oils on the planet. And with a world weaning itself off its dangerous addiction to oil, it just doesn't make sense to build major, new, and risky infrastructure projects to move last century's dirty fossil fuels.¹⁰⁵⁴

C. Total implosion in the tar sands

August 7, 2020

Unfortunately for those big polluters, investors are starting to notice the gap between Canada's rhetoric and actual environmental performance. Just this year, major financial institutions pulling out of the tar sands includes:

- BlackRock
- Norges Bank – Norway's pension fund blacklisted four Canadian oil companies due to unacceptable emissions
- Deutsche Bank – won't back new tar sands projects, given its new climate policy.
- Coutts, the private banker to royal British family, dropped its investments in the tar sands
- Zurich Insurance – decided not to renew cover for the Canadian government's Trans Mountain oil pipeline

It's time for us to listen to what the companies and capital markets are telling us about the future of the tar sands.

¹⁰⁵⁴ <https://environmentaldefence.ca/2014/06/18/northern-gateway-will-not-be-built-not-now-not-ever/>

This is further evidence that Canada's post-COVID recovery must focus on transitioning workers and communities away from the oil and gas sector, instead of doubling down on an industry that no longer has a strong economic foundation.¹⁰⁵⁵

D. Seven oil multinationals that are pulling out of Canada's tar sands

March 14, 2017

[After listing seven companies that were either scaling back or eliminating their holdings in the "tar sands"]

The world's largest oil companies are finally starting to see the writing on the wall. The world is flooded with cheap oil that can't be burned as we ramp up global climate action. The oil industry's business model is becoming obsolete and the first casualties will be high-cost, high-carbon sources like tar sands oil that can't compete in a world of low prices and declining demand.

It's time for Canada to get serious about a managed decline of the tar sands and a just transition for workers and communities. The first thing we can do is stop building new fossil fuel infrastructure that is no longer needed. Tell the federal government to reject the risky Energy East pipeline.¹⁰⁵⁶

E. The Greatest Canadian Migration – the Tar Sands Pipeline (wink)

January 16, 2015

But we also know that more people will pay attention to a serious issue if we use a bit of humour. As unpleasant as the tar sands are, it's our job to raise awareness about the damages they cause. And that means getting creative to get the message out.

[A link is then provided to the video "Great Canadian Migrations", which ends with the message "Reject Energy East.ca"]

Tune in, and watch what is likely the greatest of all Canadian migrations (wink.) And if you like it, share it with your friends so more people can learn about the tar sands risks.

Oh, and sign our petition, so we can stop this migration, stop the expansion of the tar sands and begin to move toward the clean economy Canadians want.

¹⁰⁵⁵ <https://environmentaldefence.ca/2020/08/07/total-implosion-tar-sands/>

¹⁰⁵⁶ <https://environmentaldefence.ca/2017/03/14/seven-oil-multinationals-pulling-canadas-tar-sands/>

[The webpage then provides a link – no longer active - to a “Reject the risky Energy East pipeline” Petition, described above].¹⁰⁵⁷

F. Time to get serious about a managed decline of the tar sands

February 22, 2017

The first thing we can do is stop building new fossil fuel infrastructure that would exceed the cap. Tell the federal government to reject the risky Energy East pipeline.¹⁰⁵⁸

G. Victory! Energy East is dead

October 5, 2017

The reason for Energy East’s cancellation is simple: New tar sands pipelines can’t be justified during a time of low oil prices, declining investment in the tar sands, pipeline overcapacity, and an unstoppable transition to renewable energy.

Together, we helped raise the profile of these issues. And we told our elected officials and TransCanda that these risks are not acceptable. Today, our efforts have been rewarded!¹⁰⁵⁹

H. New study in Nature confirms tar sands need to stay in the ground

January 12, 2015

A groundbreaking new study, released last week, puts a further damper on Canada’s tar sands and the industry’s desire to recklessly increase production from the tar sands in the coming years.

We already knew from the Intergovernmental Panel on Climate Change that the vast majority of fossil fuel reserves—coal, oil, and natural gas—must stay in the ground if the world is going to stay below 2 degrees of average global warming and avoid the worst of global warming catastrophes.¹⁰⁶⁰

I. Meet Export Development Canada, the secretive crown agency financing the big oil bailout

May 27, 2020

¹⁰⁵⁷ <https://environmentaldefence.ca/2015/01/16/the-greatest-canadian-migration-the-tar-sands-pipeline-wink/>

¹⁰⁵⁸ <https://environmentaldefence.ca/2017/02/22/time-get-serious-managed-decline-tar-sands/>

¹⁰⁵⁹ <https://environmentaldefence.ca/2017/10/05/victory-energy-east-dead/>

¹⁰⁶⁰ <https://environmentaldefence.ca/2015/01/12/new-study-in-nature-confirms-tar-sands-need-to-stay-in-the-ground/>

This is the second in our series of blogs about how governments are bailing out the oil and gas sector during the COVID-19 crisis. Read the first in our series, about why it's a bad idea to pin Canada's recovery on oil and gas, here.

What's the link between Canada's export credit agency, Export Development Canada, the COVID-19 pandemic and the climate crisis?

In a nutshell, Export Development Canada (EDC) – a crown corporation – has been funneling [*sic*] over ten billion dollars a year in financial support to the oil and gas sector. This is despite Canada's long standing commitment to phase out fossil fuel subsidies. And now, the federal government has tapped EDC as the agency of choice for a significant portion of its pandemic response plan, including a bailout of oil and gas companies.¹⁰⁶¹

J. Seven facts Canadians should know about climate change and forests

But while changing how we protect and manage land is important and can help us deal with climate change, it can't possibly do all the work. I want to say this at the outset – “both solutions are needed, but reducing fossil fuel usage is even more important for climate change than fixing our forest management practices.”

So far I've only discussed forests. But there are other ecosystems found in Canada that are important in addressing climate change too: wetlands (including peatlands) and grassland.

- Wetlands store a lot of carbon, mostly in its soil.

- Peatlands are a type of wetland. They include bogs and swamps and are especially large carbon vaults. Though they make up a much smaller area on the Canadian landscape, peatlands hold almost twice as much carbon as Canada's boreal forest.

- Grasslands, historically mostly found on the Prairies but now quickly vanishing, also store a lot of carbon in its soil.

- Agricultural soils can also hold a lot of carbon but that depends on farming practices. Undertaking farming in certain ways—such as not tilling the land—can increase soil carbon. Other practices can lead to net emissions of carbon from the soil. Integrating natural features such as tree buffers and wetlands can help increase biodiversity and stored carbon on farms.

¹⁰⁶¹ <https://environmentaldefence.ca/2020/05/27/meet-export-development-canada-secretive-crown-agency-financing-big-oil-bailout/>

Nature-based climate solutions such as preserving forests and improving agricultural practices have a role in limiting climate change. But they couldn't possibly do all the work. Reducing fossil fuel usage is even more important. Continuing to use fossil fuels will just dig the hole deeper and deeper and deeper, no matter how many trees we plant.

Sure, every country including Canada has to improve its policies on forestry, protected areas, and agriculture. BUT ALSO significantly reduce carbon emissions from fossil fuels like oil and natural gas.

Canada is a Top 10 global polluter. To become carbon neutral in the next two or three decades means phasing out fossil fuels and taking advantage of the benefits that nature can provide.¹⁰⁶²

- K. Exxon will leave 3.6 billion barrels of tar sands oil in the ground

February 22, 2017

Exxon's decision didn't come lightly. The company has spent \$20 billion in an effort to make the tar sands the centre of its expansion plans. Exxon only admitted that their tar sands plan isn't panning out due to an investigation by the U.S. Securities and Exchange Commission, who questioned Exxon's assessment of the value of their oil reserves, given the lower price for oil.

But Exxon's decision should be a wake up call. It should tell us that we need to plan for the managed decline of the tar sands. And Exxon's \$20 billion dollar mistake should serve as a cautionary tale and prompt a rethink of plans to invest in new projects and infrastructure like pipelines.¹⁰⁶³

828. In addition to my review of the Environmental Defence Canada's website, I find the foregoing statements relevant evidence in my review. In this regard I find the foregoing statements additional evidence of a broad and general opposition to the development of Alberta's oil and gas resources. In particular, I note advocacy advanced in respect of: (a) the general opposition to the Northern Gateway and Energy East pipeline projects; (b) divestment programs involving BlackRock, Norges Bank, Deutsche Bank, Coutts, Zurich Insurance, and EDC; (c) political advocacy in favour of the federal government to stop building new fossil fuel infrastructure, including Energy East pipeline; (d) land use programs such as the Great Bear Rainforest, the Boreal Forest, and tanker ban to oppose the further development of the oil sands; (e) the "Exxonknew" litigation tactic, each of which supports my finding that Environmental Defence Canada has engaged in anti-Alberta energy campaigns.

(iii) Additional Campaigns

¹⁰⁶² https://environmentaldefence.ca/2020/04/10/forest_carbon_canada/

¹⁰⁶³ <https://environmentaldefence.ca/2017/02/22/exxon-will-leave-3-6-billion-barrels-tar-sands-ground/>

829. I also find that Environmental Defence Canada was a signatory to the Obama Letter,¹⁰⁶⁴ the ENGO Declaration,¹⁰⁶⁵ the ENGO Open Letter,¹⁰⁶⁶ and the EDC Divestment Letter.¹⁰⁶⁷

830. I further find that Environmental Defence Canada was an author or co-author of the following reports, the content of which I summarize as follows:

<u>Title</u>	<u>Date</u>
Canada's Toxic Tar Sands: The Most Destructive Project on Earth ¹⁰⁶⁸	February, 2008
11 Million Litres A Day - The Tar Sands' Leaking Legacy ¹⁰⁶⁹	December, 2008
Freedom from dirty oil: Ontario's Tar Sands Decision ¹⁰⁷⁰	January, 2009
Divided we fall: The Tar Sands vs. The Rest of Canada ¹⁰⁷¹	May, 2009
Submission to the Commission for Environmental Cooperation - Pursuant to Article 1.4, North American Agreement on Environmental Cooperation ¹⁰⁷²	April, 2010
The Elephant in the Room: Canada's Fossil Fuel Subsidies Undermine Carbon Pricing Efforts ¹⁰⁷³	November, 2016
Risking it all: How Export Development Canada's Support For Fossil Fuels Drives Climate Change ¹⁰⁷⁴	November, 2018

¹⁰⁶⁴ <https://www.pembina.org/reports/engo-obama-tarsands.pdf>

¹⁰⁶⁵ <https://www.pembina.org/reports/us-can-ceo-declaration.pdf>

¹⁰⁶⁶

https://web.archive.org/web/20130829060500/http://www.sierraclub.org/pressroom/downloads/Tar%20Sands_letter-0701.pdf

¹⁰⁶⁷ <https://cela.ca/wp-content/uploads/2021/01/CSO-Letter-Export-Development-Canada-Dec-2020.pdf>

¹⁰⁶⁸ <https://environmentaldefence.ca/report/report-canadas-toxic-tar-sands-the-most-destructive-project-on-earth/>.

¹⁰⁶⁹ <https://environmentaldefence.ca/report/report-11-million-litres-a-day-the-tar-sands-leaking-legacy/>.

¹⁰⁷⁰ <http://mediatoil.ca/Search/getpdf/1001>.

¹⁰⁷¹ <http://mediatoil.ca/Search/getpdf/1000>.

¹⁰⁷² <https://environmentaldefence.ca/report/report-tar-sands-submission-to-the-commission-for-environmental-cooperation/>.

¹⁰⁷³ <http://priceofoil.org/content/uploads/2016/11/Elephant-in-the-Room-Canada-Subsidies.pdf>.

¹⁰⁷⁴ http://priceofoil.org/content/uploads/2018/11/Risking-It-All-report_web.pdf.

Canada's TAR SANDS what the government doesn't want you to know ¹⁰⁷⁵	May, 2008
King Carbon-How Enbridge Damages Our Climate as the World's Largest Tar Sands Shipper ¹⁰⁷⁶	April, 2011
Media Backgrounder – New Environmental Review For Keystone XL Tar Sands Pipeline ¹⁰⁷⁷	November, 2011
Reality Check: Water and the Tar Sands ¹⁰⁷⁸	September, 2013
Reality Check: Climate Change and the Tar Sands ¹⁰⁷⁹	April, 2014
Energy East: A Threat to our Drinking Water ¹⁰⁸⁰	April, 2016
Not Just a Canadian Phenomenon: Citizen Opposition to oil and gas production around the world ¹⁰⁸¹	July, 2020

831. I have reviewed each of these reports and make the following comments regarding their content and my assessment of the same.
832. The paper entitled “Canada’s Toxic Tar Sands: The Most Destructive Project on Earth”, speaks to what are described as detrimental environmental and health impacts of “tar sands” development and suggests that there is polluted water, poisoned fish and wildlife, the potential for acid rain, exposure to harmful emissions all the way to Ontario and concludes that Canada is the world’s dirty energy superpower.
833. The paper entitled “11 Million Litres A Day - The Tar Sands’ Leaking Legacy” describes what the author believes to be significant leakage of contaminated “tar sands” tailings ponds.
834. The paper entitled “Freedom from dirty oil: Ontario’s Tar Sands Decision” states that “tar sands” oil is the most carbon heavy oil in the world. The report advises that Enbridge’s Trailbreaker

¹⁰⁷⁵ https://www.wildernesscommittee.org/sites/default/files/publications/2008_tarsands_report_web.pdf

¹⁰⁷⁶ <https://environmentaldefence.ca/report/report-king-carbon-how-enbridge-damages-our-climate-as-the-worlds-largest-tar-sands-shipper/>.

¹⁰⁷⁷ <https://environmentaldefence.ca/report/report-media-backgrounder-new-environmental-review-for-keystone-xl-tar-sands-pipeline/>.

¹⁰⁷⁸ <https://environmentaldefence.ca/report/report-reality-check-water-and-the-tar-sands/>

¹⁰⁷⁹ <https://environmentaldefence.ca/report/report-reality-check-climate-change-and-the-tar-sands/>.

¹⁰⁸⁰ <https://environmentaldefence.ca/report/energy-east-a-threat-to-our-drinking-water/>.

¹⁰⁸¹ <https://environmentaldefence.ca/report/not-just-a-canadian-phenomenon/>.

- proposal would cut off Ontario's access to sweet light crude from overseas and make it dependent on dirty Alberta oil, which is the fastest growing source of emissions in Canada, has three times more GHG emissions than conventional oil, is leading to the destruction of the boreal forest, creates toxic lakes that can be seen from space and leads to increased water and air pollution.
835. The paper entitled "Divided we fall: The Tar Sands vs. The Rest of Canada" states that the tar sands are the fastest growing source of GHG emissions in Canada and that special treatment for the tar sands will have negative economic impacts for other Canadian industries.
836. The paper entitled "Submission to the Commission for Environmental Cooperation - Pursuant to Article 1.4, North American Agreement on Environmental Cooperation" concerns an allegation that tailings ponds are leaking "deleterious substances"¹⁰⁸² in breach of Canada's commitment in the North American Agreement on Environmental Cooperation. The report suggests that tailings ponds substances are deleterious to fish and substances leak into the environment. The report concludes that the Canadian government has failed to regulate or prosecute issues relating to the leakages.
837. The paper entitled "The Elephant in the Room: Canada's Fossil Fuel Subsidies Undermine Carbon Pricing Efforts" states that fossil fuel subsidies are an incentive to produce and consume more fossil fuels, which is a policy conflict with carbon pricing that is intended to reduce carbon emissions from producing and consuming fossil fuels. By giving polluters big breaks, says the paper, fossil fuel subsidies pull in the opposite direction of a carbon price. Each year according to the paper, Canada gives \$3.3 billion in subsidies to oil and gas companies. The paper calls for the phasing out of all these subsidies by 2020 at the latest.
838. The paper entitled "Risking it all: How Export Development Canada's Support For Fossil Fuels Drives Climate Change" is critical of EDC, which the report claims provides billions of dollars of support for fossil fuels companies every year. The report says this support is incompatible with Canada's Paris commitments and is out of step with moves by the financial community to move away from supporting fossil fuel companies. The report states that from 2013-2017, EDC facilitated at least \$4.4 billion in support of oil sands expansion and transportation. In 2018 the report says that EDC guaranteed \$1 billion or more in financing the construction of Trans Mountain.
839. The paper entitled "King Carbon – How Enbridge Damages Our Climate as the World's Largest Tar Sands Shipper" says Enbridge wants to expand when scientists are "begging us to go in the opposite direction". The paper cites a massive pipeline proposal through Northern B.C., that would have oil carried by supertankers through fragile and pristine coastal waters. The paper says Enbridge also wants to get Ontario on to "tar sands" oil by cutting off access to oil from the east. The paper says that Enbridge is responsible for the impacts of the pipelines as well as the product that goes through them. The paper goes on to talk of leaking and aging pipes. It also says that expansion will lead to more water consumption; destroy more land; produce enormous

¹⁰⁸² <https://environmentaldefence.ca/report/report-tar-sands-submission-to-the-commission-for-environmental-cooperation/>. Page 3.

- amounts of GHG emissions; produce toxic tailings ponds; cross First Nations lands, earthquake and avalanche prone areas and sensitive rivers and streams.
840. The paper entitled “Media Backgrounder- New Environmental Review for Keystone XL Tar Sands Pipeline” supports an environmental review of Keystone focusing on the impact to the Nebraska Sandhills and climate change in general. The paper raises concerns about threats to people, farms, rivers and aquifers. The paper says the proposed pipeline will not help with long term jobs, will not replace Mideast oil and will take America backwards in dealing with climate change. The paper suggests a lack of regulatory framework and oversight for “tar sands” development. Canada, says the report, is pushing a product that others are moving away from. The report is also critical of large subsidies to oil and gas and the withdrawal of subsidies to renewables.
841. The paper “Reality Check: Water and the Tar Sands” says “Big Oil” is failing to prevent irreversible damage to our water, our air, our communities, our health, and our wildlife. It talks of devastating impacts on water- water draws could impact the Athabasca so that it will no longer support the ecosystems that depend on it. The report says that 11 million litres of toxic waste leak into the Athabasca watershed daily. As well, it alleges, there is little regulatory oversight on toxic tailings ponds and what regulations there are, it says, are inadequately enforced.
842. The paper, “Reality Check: Climate Change and the Tar Sands” describes the “tar sands” as the fastest growing source of emissions and that proposed pipelines and the resulting expansion will lead to devastating climate impacts. The paper goes on to say that meaningful climate action cannot occur in Canada if tar sands expand. We must, it says, reduce our dependence on dirty fossil fuels and it says that carbon capture and storage are unproven and pricey. The paper suggests that the industry is “fighting tooth and nail behind closed doors”¹⁰⁸³ to continue polluting recklessly without paying a dime. It states that global warming from the tar sands is soaring and if the tar sands are allowed to expand between now and 2020, their pollution alone will cancel out every other effort in the country to reduce emissions.
843. The paper entitled “Energy East: a Threat to our Drinking Water”, states that the Energy East Pipeline would threaten the drinking water of 5 million Canadians. It says there are 3000 lakes, rivers, streams and aquifers from Manitoba to N.B., which are relied on by millions of Canadians as sources of clean drinking water which would be at risk of oil spills. Just one rupture it says, could contaminate a water source for years to come. It describes Energy East as massive – it would be the largest pipeline in North America and thus even a greater risk of a spill. The paper says that Canadian regulators, oil companies, and pipeline companies refuse to acknowledge the added hazard of shipping dilbit, which is even more difficult to clean up than a spill from conventional oil. TransCanada, it says, has a very poor record in terms of spills and ruptures. The paper suggests that Energy East is an export pipeline with 90% of its product expected to be shipped overseas unrefined.
844. The paper entitled “Not Just a Canadian Phenomenon: Citizen Opposition to oil and gas Production Around the World”, states that new fossil fuel projects are being contested by citizens, Indigenous peoples, environmental organizations and governments everywhere. The paper suggests there are enough projects in place or being built to take the world beyond 2 degrees of

¹⁰⁸³ <https://environmentaldefence.ca/report/report-reality-check-climate-change-and-the-tar-sands/>. Page 4.

warming and into an era of catastrophic natural disasters. The paper says that citizens are opposing pipelines and raising concerns about spill and water pollution to habitat destruction and air pollution. Canadians are opposing Northern Gateway, Energy East, and Coastal Gas Link but projects are being opposed around the world – the paper suggests this is not just a Canadian phenomenon. Most supply side initiatives, says the paper, are driven by citizen opposition and intervention and there is growing support for ending fossil fuel development across the country. Like Teck Frontier, it is often First Nations and other Indigenous communities and organizations that lead the opposition effort.

(iv) Funding Applications and Grant Description

845. I have reviewed information regarding certain grants provided to Environmental Defence Canada and find that the evidence demonstrates the following grants were made to Environmental Defence Canada:

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
Tides U.S. Foundation ¹⁰⁸⁴	2015	\$116,063	\$148,411	CAD \$150,000.00 For research, education, and organizing on dirty fuels and pipelines.
Tides U.S. Foundation ¹⁰⁸⁵	2017	36,465	\$47,353	CAD 45,000.00 research, education, and organizing on dirty fuels and pipelines
Tides U.S. Foundation ¹⁰⁸⁶	2014	\$137,826	\$152,224	For CAD\$150,000.00 For research, education and organizing on dirty fuels and pipelines
Tides U.S. Foundation ¹⁰⁸⁷	2013	\$212,500	\$218,857	research, education and outreach on climate/tar sands related issues

¹⁰⁸⁴ Tides Foundation Form 990 for the 2015 calendar year Schedule F Part II page 58 of PDF.

¹⁰⁸⁵ Tides Foundation Form 990 for the 2017 calendar year Schedule F Part II page 39 of 115 of PDF.

¹⁰⁸⁶ Tides Foundation Form 990 for the 2014 calendar year Schedule F Part II page 38 of 178 of PDF.

¹⁰⁸⁷ Tides Foundation Form 990 for the 2013 calendar year Schedule F Part II page 45 of 228 of PDF.

Tides U.S. Foundation ¹⁰⁸⁸	2012	\$185,000	\$184,922	research, education, and outreach on climate/tar sands related issues
Tides U.S. Foundation ¹⁰⁸⁹	2011	\$250,000	\$247,267	research, education, and outreach on climate/tar sands related issues
Tides U.S. Foundation ¹⁰⁹⁰	2009	\$55,000	\$62,809	Tar Sands Campaign
Tides U.S. Foundation ¹⁰⁹¹	2009	\$150,000	\$171,297	Tar Sands Campaign

846. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization received funds which were provided for the stated purpose of “research, education and outreach on climate/tar sands related issues”, “organizing on dirty fuels and pipelines” and for a “Tar Sands Campaign” correlate to the campaigns of Environmental Defence Canada that I reviewed above. Accordingly, I find the description has a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

(v) Government Funding

847. I have found that during the years 2003 to 2019, Environmental Defence Canada received revenue from municipal/regional, provincial/territorial, and federal levels of government in the following amounts¹⁰⁹²:

<u>Federal</u>	<u>Provincial/Territorial</u>	<u>Municipal/Regional</u>
<u>\$599,279</u>	<u>\$2,095,702</u>	<u>\$672,666</u>

¹⁰⁸⁸ Tides Foundation Form 990 for the 2012 calendar year Schedule F Part II page 116 of 131 of PDF.

¹⁰⁸⁹ Tides Foundation Form 990 for the 2011 calendar year Schedule F Part II page 6.

¹⁰⁹⁰ Tides Foundation Form 990 for the 2009 calendar year Schedule F Part II page 10.

¹⁰⁹¹ Tides Foundation Form 990 for the 2009 calendar year Schedule F Part II page 10.

¹⁰⁹² CharityData summary for Environmental Defence Canada Inc. at page 2, Environmental Defence Canada Inc. T3010 Registered Charity Information Return : Schedule 6 for Fiscal Period April 1, 2018 to March 31, 2019 at page 2.

(vi) Conclusion on Participation in an anti-Alberta Energy Campaign

848. In my review of the foregoing I specifically noted the following in respect of Environmental Defence Canada: (a) its being specifically referenced in both Background Documents and CorporateEthic's webpage listing members of the "No Tar Sands Coalition"; (b) its direct advocacy against the development of Alberta's oil sands in the webpages and statements that I reviewed above; and (c) the receipt of grants described above whose objects appear consistent with the campaigns of Environmental Defence Canada, each of which I find to be a broad and general objections to the development of Alberta's oil and gas resources.

849. Moreover, I also noted Environmental Defence Canada's participation in: (a) the Dirty Oil Sands Network; (b) the Tar Sands Solutions Network (including its Steering Committee); (c) the Obama Letter; (d) the ENGO Declaration; (e) the ENGO Open Letter; (f) the EDC Divestment Letter; (g) the series of research papers discussed above; (h) divestment campaigns; (i) the Exxonknew litigation campaign; and (j) land conservation programs like Great Bear Rainforest, Boreal Rainforest, and tanker-ban programs.

850. On the basis of the totality of this evidence, I find that Environmental Defence Canada has participated in a generalized opposition to the development of Alberta's oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

(s) ***Ecojustice Canada Society ("Ecojustice")***

(i) Background

851. Ecojustice is a registered Canadian charitable organization. It describes itself as "Canada's largest environmental law charity".¹⁰⁹³ As of October 31, 2020 its total assets were \$6,843,595.¹⁰⁹⁴

852. Ecojustice describes its background on its website as follows:

SCLDP [Ecojustices' predecessor, Sierra Club Legal Defence Fund] was founded by a group of visionary American lawyers who believed that the law can be harnessed to preserve the environment. No one was sure if the American model developed by SCLDF would work in Canada, but it didn't take long to identify a group of champions for the idea. The Sierra Legal Defence Fund, now called Ecojustice, set up shop in Vancouver and was incorporated as a charity in 1990 with lawyer Greg McDade in the role of executive director. Stewart Elgie, Don Lidstone, Dr. Michael M'Gonigle, John Rich, Don Rosenbloom, Rick Sutherland, Dr. Andrew Thompson, and Joan Vance were the founding board members of Ecojustice.¹⁰⁹⁵

¹⁰⁹³ <https://ecojustice.ca/approach/>

¹⁰⁹⁴ <https://ecojustice.ca/wp-content/uploads/2021/03/2020-Ecojustice-Canada-Society-Financial-Statements.pdf>

¹⁰⁹⁵ <https://ecojustice.ca/about/our-story/>

853. I have reviewed a substantial body of materials relating to Ecojustice regarding its campaigns and activism. I also note that they are specifically referenced in the Corporate Ethics Document¹⁰⁹⁶ and CorporateEthic’s webpage listing members of the “No Tar Sands Coalition”.¹⁰⁹⁷

(ii) Campaigns, Advocacy Efforts, and Statements

854. Ecojustice details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per Ecojustice’s web page:

A. Climate Change

We go to court to keep fossil fuels in the ground and accelerate the shift to clean energy sources.

At Ecojustice, we take on dirty energy projects that threaten ecosystems, put people at risk, and increase Canada’s greenhouse gas emissions.¹⁰⁹⁸

B. Ecojustice 101: How we pick our cases

Ecojustice’s mission is to use the courts and power of the law to defend nature, combat climate change, and fight for a healthy environment for all. While we would love to work ourselves out of a job, the reality is across Canada, countless potential legal cases crop up every year related to the protection of nature, climate and our communities. There is simply more work than we can take on.

At any given time, we can have upwards of 60 cases active or in development. Going through the courts requires a lot of hard work, but it’s often a necessary course of action for ensuring our communities, our health and the environment are protected by the full weight of the law.

We are strategic about the cases we take on because we know firsthand that litigation can be time-consuming, extraordinarily expensive, and demand an astounding number of resources. For example, we challenged Enbridge’s Northern Gateway pipeline project and, in partnership with a wide coalition of First Nations, environmental, and labour groups, persuaded the court to overturn the federal government’s approval of the controversial project. It took a decade to secure this major victory — and that’s just one case.

We often get asked how we decide which cases to take to court. Here, we break down the selection process we use to determine which cases to take on.

¹⁰⁹⁶ The Corporate Ethics Document. Page 15.

¹⁰⁹⁷ <https://web.archive.org/web/20100714080115/http://www.corpethics.org/section.php?id=371>

¹⁰⁹⁸ <https://ecojustice.ca/approach/climate-energy/>

1) Deciding which issues need our help most

We strive for long-term results that build the case for a better earth, which is why we select cases that have the potential to set precedents and redefine how environmental laws are applied and enforced in Canada.

Is this issue an environmental priority?

Does it meet the following criteria? (Click to expand) [Omitted]

Is this issue a legal priority?

Does it meet the following criteria? (Click to expand) [Omitted]

How will this case help change the future? [Read more.](#)

Can this case help advance the goals set out in our 2017-2020 strategic plan? [Read more.](#)

2) Case development: Getting down to work

Once we've determined that an environmental issue warrants Ecojustice's involvement, we begin the case development process. This typically involves gathering information, researching, and building the legal theory we will bring forward in the appropriate court. This is also where we start identifying the clients we will represent in the case. Thanks to the generosity of Ecojustice supporters, we represent every one of our clients free of charge.

A special alchemy of legal theory, fact pattern, clients, and timing make for the ideal case. As a result, we can spend weeks, months, even in some special cases — years developing a case before it launches. Some of our legal victories end up going through multiple levels of court and appeal processes before being finalized, which a [*sic*] testament to the dedication of Ecojustice staff and the durability of the cases we build.

3) Gut check

Once a case is developed, we review it to ensure we have the resources and organizational commitment to see the case through to the end. From firsthand experience, we know that court cases can be long, arduous processes that demand a ton of financial and human resources. Luckily, some of Canada's best and brightest environmental experts work at Ecojustice. And it's thanks to the support of people like you that they get to do what they do.

The final test for proceeding on the case is approval by our board of directors. During case review, we have our common goals and the future of the earth in mind. Determining the long-term benefits or challenges presented by a case is not always easy, which is why we're grateful we can count on the experts on our litigation committee for their advice and support.

4) Launch!

Once a case has been developed and approved, it's time to fire up the rest of the organization. While our legal team gets ready to file the case, our fundraisers get on the phone to secure gifts to support this work, our communicators start developing a strategy to get the word out to the world, and our operations team ensures we have the people in place who make all this happen.

What happens to the work that doesn't get selected for litigation?

Despite our best efforts, limited resources and the lengthy nature of a legal challenge mean we cannot take on everything (though it would be nice!) Occasionally, circumstances change and we are eventually able to take on a case. As an environmental law charity, we do our best to take on as many cases as possible, keeping our lawyers and staff busy (and people and companies who threaten the environment on their toes.) In situations where we cannot take on a case, we put folks in touch with another organization we think can help, or refer them to other counsel.

What can I do to help?

Ecojustice functions because of the dedication and generosity of supporters and donors who believe in the work we do. We would not be where we are today without our supporters: Whether you're a monthly donor, someone who signed an advocacy action, or a passionate social media follower helping spread the word about our work — thank you! Every one of your contributions helps us build the case for a better earth.¹⁰⁹⁹

C. The facts on Ecojustice funding

We're in Alberta for a reason: to provide legal support to the many organizations and individuals who want to meaningfully combat climate change, confront the toxic impacts of Canada's tar sands, and pave the way for a just transition to clean energy.

¹⁰⁹⁹ <https://ecojustice.ca/ecojustice-101/>

Ecojustice didn't decide to focus on the tar sands because a funder dangled money in front of us.

Beginning in the early 2000s, as Canadians began to understand the monumental environmental impacts of tar sands expansion, Ecojustice recognized that, if we were going to achieve our mission of protecting Canada's environment, we needed to be in Alberta.

Ecojustice opened its Calgary office in 2008.

We knew then that if we were serious about combatting climate change, we couldn't turn a blind eye on the tar sands. We also knew that, in order to be effective, we needed to have lawyers and experts on the ground, engaging with communities, First Nations, and clients, and taking action in provincial courts.

The tar sands are one of the most destructive energy projects on earth, their tailings ponds so huge in scale that they can be seen from space. Tar sands development is responsible for decimating critical species habitat and poisoning downstream communities with toxins.¹¹⁰⁰

855. I find that the foregoing review of Ecojustice's website establishes that it advances advocacy in its own right and on behalf of strategically accepted litigation to "keep fossil fuels in the ground and accelerate the shift to clean energy sources", which I find opposes the development of Alberta's oil and gas resources on a general basis and, as such, constitutes an anti-Alberta energy campaign.

856. I also noted that in the course of these campaigns, Ecojustice released a number of statements on its website. These statements include the following in regards to Ecojustice's campaigns and other campaigns:

A. Federal Environmental Review System for Tar Sands is Broken

"For now, we feel that we've done what we could through the courts," said Ecojustice lawyer Sean Nixon. "The federal government has shown that it will spare no effort to rubber-stamp tar sands development, by pretending that some of the largest industrial projects in human history have no environmental impacts. The obscene rush to develop the tar sands without controlling their impacts is degrading our environment and harming our international reputation."¹¹⁰¹

B. Pending approval of new oil sands mine cause for concern

CALGARY – Environmental law group Ecojustice and the Pembina Institute are concerned about the potential climate impacts of the Teck

¹¹⁰⁰ <https://ecojustice.ca/the-facts-on-ecojustice-funding/>

¹¹⁰¹ <https://ecojustice.ca/pressrelease/federal-environmental-review-system-for-tar-sands-is-broken/>

Resources' Frontier oilsands open pit mine, following the release of a Joint Review Panel report today that recommends its approval.

Despite finding that the mine would have significant adverse impacts on the environment – including the irreversible loss of 14,000 hectares of wetlands – the Panel concluded that those impacts are justified and that the project is in the public interest.¹¹⁰²

C. Conservation groups launch new case challenging Trans Mountain Pipeline

Margot Venton, nature program director, Ecojustice:

“Cabinet cannot justify approving a project that will lead to the extinction of a critically endangered population— legally or morally. The government itself says endangered Southern Resident killer whales face imminent threats under their current conditions. This iconic population simply cannot handle increased, unmitigated threats from the Trans Mountain expansion.

“Beyond its immediate impacts on the Southern Resident killer whales, Ecojustice remains concerned about the threat Trans Mountain poses to our collective climate future. We are in a climate emergency. We simply can't afford to build a project that will increase emissions at precisely the moment the science says we need to dramatically reduce our carbon footprint to avoid climate breakdown.”¹¹⁰³

D. Enbridge's Northern Gateway pipeline bites the dust

Enbridge's Northern Gateway pipeline is dead, and hopefully gone for good.

Today, the Court issued a strong ruling that overturns the government's approval of the project, effectively shutting the door on Enbridge's risky proposal.

We are thrilled. This decision is a major victory for people and the planet — and one that would not have been possible without the support of people like you.¹¹⁰⁴

857. In addition to my review of Ecojustice's website above, I find the foregoing statements relevant evidence in my review. In this regard, I note further examples of the Ecojustice's stated objective to “keep fossil fuels in the ground and accelerate the shift to clean energy sources”, including numerous statements to that effect emphasized above and repeated opposition to the Trans

¹¹⁰² <https://ecojustice.ca/pressrelease/pending-approval-of-new-oil-sands-mine-cause-for-concern/>

¹¹⁰³ <https://ecojustice.ca/pressrelease/environmental-groups-launch-new-trans-mountain-case/>

¹¹⁰⁴ <https://ecojustice.ca/enbridges-northern-gateway-pipeline-bites-the-dust/>

Mountain and Northern Gateway pipeline projects and further evidence of Ecojustice’s participation in an anti-Alberta energy campaign.

(iii) Other Campaigns

858. I also note that Ecojustice was a signatory to the ENGO Declaration.¹¹⁰⁵

(iv) Funding Applications and Grant Description

859. I note from a review of Ecojustice’s website that Ecojustice has published a funding breakdown entitled “Donations from U.S. sources earmarked for tar sands work”¹¹⁰⁶ which indicated that from the period 2010-2018 Ecojustice received \$1,325,263 as “Donations from U.S. sources earmarked for tar sands work”. As discussed in Part IV of this Report:

- A. I have no visibility on funding that may have been provided from a foreign source to a Canadian organization who may, in turn, have re-granted funding to Ecojustice.
- B. Similarly, I have no visibility on how foreign funding that was not “earmarked for tar sands” may have ultimately been used. In many cases, grant descriptions are general in nature.
- C. Ecojustice’s receipts from foreign funding for the period 2000-2018 equals \$6,957,639.

(v) Funding Applications and Grant Description

860. I have reviewed information regarding certain grants provided to Ecojustice Canada and EcoJustice Canada Society and find that the evidence demonstrates the following grants were made to Ecojustice Canada and EcoJustice Canada Society:

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
Global Greengrants Fund ¹¹⁰⁷	2017	\$25,000	\$32,465	Ecojustice Canada Society will use the funds to push for meaningful action to ensure that orca populations in the Salish Sea can thrive and to advance litigation compelling the government to

¹¹⁰⁵ <https://www.pembina.org/reports/us-can-ceo-declaration.pdf>

¹¹⁰⁶ <https://ecojustice.ca/wp-content/uploads/2019/11/Ecojustice-funding-breakdown-donations-from-US-sources-earmarked-for-tar-sands-work.pdf>

¹¹⁰⁷ [Global Greengrants Fund Form 990 for tax year beginning 07-01-2017 and ending 06-30-2018 Schedule F Part II. https://fconline.foundationcenter.org/saved-profiles/pdf/60d9ff376ce906.13929015.pdf.](https://fconline.foundationcenter.org/saved-profiles/pdf/60d9ff376ce906.13929015.pdf)

				<p>verify that farmed fish are free of piscine reovirus (PRV) before authorizing their transfer into open-net pens in the ocean, where they have the potential to infect wild salmon stocks. A recent study showed that southern resident orcas lose 97 percent of their acoustic space crucial to navigation, prey detection and communication at peak times for vessel traffic. Two projects, Kinder Morgan's pipeline expansion and the Roberts Bank Terminal 2 port expansion, will make this situation much worse by increasing tanker and container shipping traffic. In addition, in 2016 possible symptoms of PRV were detected in BC farmed salmon for the first time. Despite this finding, the Canadian Minister of Fisheries and Oceans refuses to test farmed salmon for PRV before licensing their transfer into the ocean, putting wild salmon at great risk. Ecojustice will</p>
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				challenge the pipeline in court, enable environmental assessments for the pipeline expansion, and monitor implementation of all aspects of the orca action plan, building a record for a lawsuit if implementation is delayed or inadequate. The organization will also litigate against the Minister of Fisheries and Oceans to test farmed fish for PRV prior to their transfer into open-net pens.
Global Greengrants Fund Inc ¹¹⁰⁸	2015	\$25,000	\$31,968	Ecojustice Canada will work to secure meaningful legal protection for threatened marine species and their habitats. With populations of wild salmon and resident killer whales at critically low levels, it is vital to promote marine conservation on the British Columbia coast. Two tanker expansion projects that will greatly impact the marine environment are imminent and many other large scale

¹¹⁰⁸ [Global Greengrants Fund Form 990 for tax year beginning 07-01-2015 and ending 06-30-2016, https://fconline.foundationcenter.org/saved-profiles/pdf/60d9ffa17effd0.58969269.pdf.](https://fconline.foundationcenter.org/saved-profiles/pdf/60d9ffa17effd0.58969269.pdf)

				<p>industrial developments are being proposed. Farmed salmon infected with disease are allowed to be transferred into the ocean, putting wild salmon at risk. Through litigation, participation in environmental reviews, policy reform, and public outreach, Ecojustice will ensure the government takes action to allow the continued survival and recovery of orcas and salmon and that industrial approvals include strong protective measures for the marine environment.</p>
Global Greengrants Fund ¹¹⁰⁹	2016	\$25,000	\$33,120	<p>The Ecojustice Canada Society will use the funds to defend a court victory for wild salmon while strengthening the law to protect fish habitats. Ecojustice will also raise awareness of the impacts on tanker and container ship traffic to the resident orca population and ensure that these orcas remain</p>

¹¹⁰⁹[Global Greengrants Fund Form 990 for tax year beginning 07-01-2015 and ending 06-30-2016.](https://fconline.foundationcenter.org/saved-profiles/pdf/60d9ffa17effd0.58969269.pdf)
<https://fconline.foundationcenter.org/saved-profiles/pdf/60d9ffa17effd0.58969269.pdf>

				<p>protected. In 2015 Ecojustice gained a victory when the Federal Court struck down conditions in an aquatic license issued to Marine Harvest by the Department of Fisheries and Ocean (DFO) allowing a private company to transfer fish infected with the piscine reovirus (PRV) into open pens in the ocean. The company and the DFO are appealing the court decision in late 2016, and the DFO is suggesting new conditions to the license. While the new conditions are an improvement, they still fail to successfully satisfy precautionary interpretations of fishery laws. Ecojustice also will focus on issues surrounding the orca population. Resident killer whales, or orcas, are at risk of acoustic disturbances, diminished prey and marine pollution from the increase in traffic by oil tankers as a result of the proposed Trans Mountain pipeline and the Roberts</p>
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				<p>Bank Terminal 2 (T2) project. By 2030 tanker and container ships' traffic could almost double, which has the potential to deeply impact the orca's environment. Ecojustice will participate in a number of campaigns to help against issues both concerning salmon and orcas. To help defend the court victory for wild salmon and the strengthening of laws surrounding their habitat, Ecojustice will have their lawyers provide strategic and content advice to environmental and legal partners as well as create a modern Act that will provide modern safeguards and protections for wild salmon. These modern safeguards will include important language such as: habitat protection, pollution prevention provisions and public participation. To protect the resident orca population from increased tanker and container ship traffic, Ecojustice will represent its four clients (David Suzuki Foundation, Georgia</p>
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				<p>Strait Alliance, Raincoast Conservation Foundation and Western Canada Wilderness Committee) at the 2016/2017 panel reviewing the T2 project. Finally, Ecojustice provides all their legal and scientific work with communications that distils complicated information to create reliable and accessible formats. This allows the public to be aware of important environmental issues surrounding them.</p>
Global Greengrants Fund ¹¹¹⁰	2014	\$25,000	\$27,612	<p>Ecojustice Canada will use the funds from this grant for timely and strategic opportunities to inform regulatory processes and policy implementation in order to securing protections for the critical habitat of southern resident killer whales and humpback whales. It provide scientific and expert opinion on the impacts of a Kinder Morgan proposal for a oil pipeline to carry up to 890,000 barrels</p>

¹¹¹⁰ Global Greengrants Fund Form 990 for tax year beginning 07-01-2014 and ending 06-30-2015, <https://fconline.foundationcenter.org/saved-profiles/pdf/60da01399db3b9.86620899.pdf>

				<p>of oil sands product per day from Edmonton to Greater Vancouver.</p> <p>Ecojustice Canada's will show the projects potential impacts on the southern resident killer whale habitat, and will help to provide binding conditions to protect the areas if the project is approved. Ecojustice Canada will continue its lawsuit aim ad [sic] compelling the court to reconsider evidence and recommend strong protection for humpback whales under the Species at Risk Act (SARA). Finally, it will work to push for better identification of critical habitat in the marbled murrelet recovery strategy.</p>
Global Greengrants Fund ¹¹¹¹	2013	\$25,000	\$25,748	<p>For GGF grant will be used to work with regulatory bodies to enforce Critical Habitat Protection Order and Species at Risk Act. The potential increased transit of petroleum (from 80 to 400 tankers per year) through critical</p>

¹¹¹¹ Global Greengrants Fund Form 990 for tax year beginning 07-01-2013 and ending 06-30-2014 Schedule F-1 Part II, <https://fconline.foundationcenter.org/saved-profiles/pdf/60da015f5be799.58169756.pdf>

				<p>habitat areas of Southern Resident Killer Whale and the Pacific Humpback Whale pose a serious environmental threat. The group plans to develop and bring a legal challenge for tanker authorization and test the interpretation of the Protection Order in the Courts with a request that section 77 provisions of SARA be applied when tankers are authorized to transit through critical habitat. Ecojustice plans to launch a recovery strategy case for the Pacific Humpback Whale and include a demand for three other recovery strategies (for representative avian, terrestrial, and freshwater SARA listed species). The group hopes to make sure that campaigns conducted within the critical habitat areas are designed to avoid jeopardizing the species' survival and recovery.</p>
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The Bullitt Foundation ¹¹¹²	2017	\$50,000	\$64,930	For continued litigation and program support related to fossil fuel transport and export infrastructure.
The Bullitt Foundation ¹¹¹³	2012	\$50,000	\$49,979	For efforts to advance sustainable water governance in British Columbia, and for legal oversight of proposals to expand oil export port facilities and tanker traffic in urban Vancouver waters
Tides U.S. Foundation ¹¹¹⁴	2015	\$66,071	\$84,486	CAD \$85,000 for research, education and organizing on dirty fuels and pipelines
Tides U.S. Foundation ¹¹¹⁵	2017	\$31,840	\$41,346	CAD 40,000.00 research, education, and organizing on dirty fuels and pipelines
Tides U.S. Foundation ¹¹¹⁶	2014	\$78,309	\$86,490	research, education and organizing on dirty fuels and pipelines
Tides U.S. Foundation ¹¹¹⁷	2011	\$150,000	\$148,360	research and legal work related to tar sands issues

¹¹¹² Ecojustice Canada Society-2017a | The Bullitt Foundation, <https://fconline.foundationcenter.org/saved-profiles/pdf/60da59d385bd38.14817395.pdf>

¹¹¹³ The Bullitt Foundation Form 990-PF for the 2012 calendar year Attachment A page 58 of 76 of PDF, <https://fconline.foundationcenter.org/saved-profiles/pdf/60da58d922b289.74823813.pdf>

¹¹¹⁴ Tides Foundation Form 990 for tax year beginning 01-01-2015 and ending 12-31-2015 page 58 of PDF.

¹¹¹⁵ Tides Foundation Form 990 for the 2017 calendar year Schedule F Part II page 39 of 115 of PDF.

¹¹¹⁶ Tides Foundation Form 990 for the 2014 calendar year Schedule F Part II page 41 of 178 of PDF.

¹¹¹⁷ Tides Foundation Form 990 for the 2011 calendar year Schedule F Part II page 5.

Tides U.S. Foundation ¹¹¹⁸	2012	\$120,000	\$119,950	research, education and outreach on climate/tar sands related issues
Tides U.S. Foundation ¹¹¹⁹	2009	\$50,000	\$57,099	Tar Sands Campaign

861. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization received funds which were provided for the stated purpose to:

- A. "Ecojustice will challenge the pipeline in court, enable environmental assessments for the pipeline expansion, and monitor implementation of all aspects of the orca action plan, building a record for a lawsuit if implementation is delayed or inadequate";
- B. "Two tanker expansion projects that will greatly impact the marine environment... Through litigation, participation in environmental reviews, policy reform, and public outreach, Ecojustice will ensure the government takes action to allow the continued survival and recovery of orcas and salmon";
- C. "Ecojustice will also raise awareness of the impacts on tanker and container ship traffic to the resident orca population";
- D. "It [sic] provide scientific and expert opinion on the impacts of a Kinder Morgan proposal for a oil pipeline to carry up to 890,000 barrels of oil sands product per day from Edmonton to Greater Vancouver. Ecojustice Canada's will show the projects potential impacts on the southern resident killer whale habitat, and will help to provide binding conditions to protect the areas if the project is approved. Ecojustice Canada will continue its lawsuit aim and compelling the court to reconsider evidence and recommend strong protection for humpback whales under the Species at Risk Act (SARA).";
- E. Stated opposition to expanded port and tanker traffic, the Trans Mountain pipeline, and Roberts Bank Terminal.
- F. "For continued litigation and program support related to fossil fuel transport and export infrastructure";
- G. "Fossil Fuel Legal Strategy work";
- H. "For Tar Sands Campaign"; and

¹¹¹⁸ Tides Foundation Form 990 for the 2012 calendar year Schedule F Part II page 116 of 131 of PDF.

¹¹¹⁹ Tides Foundation Form 990 for the 2009 calendar year Schedule F Part II page 9.

I. “research, education and organizing on dirty fuels and pipelines”.

and correlate to the campaigns of Ecojustice that I reviewed above. Accordingly, I find the grant descriptions opposing the development of Alberta’s oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

(vi) Government Funding

862. I have not found evidence that Ecojustice received revenue from municipal/regional, provincial/territorial, or federal levels of government.

(vii) Conclusion on Participation in an anti-Alberta Energy Campaign

863. In my review of the foregoing I specifically noted the following in respect of Ecojustice: (a) its direct advocacy against the development of Alberta’s oil sands in the webpages and statements that I reviewed above; and (b) the receipt of grants described above whose objective appears to be to advance a number of initiatives that delay and frustrate the development of Alberta’ oil and gas industry, which I find to be evidence tending to establish broad and general objections to the development of Alberta’s oil and gas resources.

864. Moreover, I also noted Ecojustice’s participation in: (a) the tanker-ban and Great Bear Rainforest land use campaigns; (b) the ENGO Declaration; and (c) legal tactics, including advancing precedents for Aboriginal and non-Aboriginals.

865. On the basis of the totality of this evidence, I find that Ecojustice has engaged in opposition to the development of Alberta’s oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

866. It must be acknowledged that as a provider of legal services, Ecojustice frequently advocates on behalf of its clients in respect of legal proceedings. A party’s ability to have access to legal representation in legal proceedings is a legitimate and important interest. In its capacity as legal counsel, Ecojustice will undertake actions and make statements, and these actions and statements may not necessarily reflect the views of Ecojustice as an organization itself. Accordingly, I wish to make it clear that my findings are based on evidence concerning Ecojustice itself as an organization, and not with reference to campaigns it may undertake as it provides legal services to its clients.

(t) ***Dogwood Initiative***

(i) Background

867. Dogwood Initiative describes itself as “an independent, non-partisan, non-profit organization working in the unceded Indigenous territories known as British Columbia”.¹¹²⁰

¹¹²⁰ <https://dogwoodbc.ca/wp-content/uploads/2021/05/Dogwood-Strategic-Framework-2021-2024-web-1.pdf>

868. It has offices in both Victoria and Vancouver.¹¹²¹
869. I was unable to access a complete set of financial statements subsequent to 2014, however, as of March 31, 2014, the value of its assets was \$578,933.¹¹²²
870. I have reviewed a substantial body of materials relating to the Dogwood Initiative regarding its campaigns and activism. In addition to what I discuss below, I noted that the Dogwood Initiative is listed on CorporateEthic's webpage listing members of the "No Tar Sands Coalition".¹¹²³

(ii) Websites and Statements

871. Dogwood's website Initiative details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per Dogwood Initiative's web page:

A. Stop taxpayer-funded climate change.

Together, we made this a big issue in the provincial election. Now, the new government needs to move immediately to cancel the handouts propping up the destructive and dying oil and gas industry, and invest instead in the clean economy of the future.

A petition is then presented to "call on the B.C. government to end taxpayer-funded climate change".¹¹²⁴

B. Cancel Trans Mountain!

A petition is then present to "Tell Finance Minister Chrystia Feeland to defund the Trans Mountain expansion project".¹¹²⁵

C. Enbridge Comes to Town – "No-Tankers" campaign

To date we are best known for our No Tankers campaign, aimed at stopping the expansion of oil tankers off British Columbia's magnificent but fragile coast. What began as a small, focused Enbridge campaign with northern First Nations grew into a political juggernaut that arguably contributed to the Harper government's 2015 defeat, after the pro-tanker Conservative party lost more votes in B.C. than in the rest of the country combined.

The No Tankers campaign first gained prominence with the "Oil Tankers are Loonie" initiative, where people put No Tankers decals onto Canada's \$1 coins, turning people's pocket change into a viral

¹¹²¹ <https://dogwoodbc.ca/wp-content/uploads/2021/02/Dogwood-2020-AnnualReport-web.pdf>

¹¹²² Dogwood 2014 Annual Report – page 24 of 26

¹¹²³ <https://web.archive.org/web/20100714080115/http://www.corpethics.org/section.php?id=371>

¹¹²⁴ <https://dogwoodbc.ca/petitions/taxpayer-funded-climate-change/>

¹¹²⁵ <https://dogwoodbc.ca/petitions/finance-minister-stop-tmx/>

advertisement for stopping the expansion of oil tankers off BC's coast. At one point there were more than 1.5 million decaled coins in circulation.¹¹²⁶

D. Enbridge Comes to Town – “Mob the Mic”

Next, our “Mob the Mic” campaign signed up thousands of concerned No Tankers supporters of all political allegiances to participate in public hearings on the Enbridge Northern Gateway proposal. Although the vast majority of those who testified opposed the proposal, Stephen Harper's cabinet approved the project anyway. Spotting a powerful wedge issue, Justin Trudeau committed to rejecting the Enbridge pipeline and legislating a crude oil tanker ban on British Columbia's North Coast.¹¹²⁷

E. The next big battle is in southern B.C., as citizens fight to stop Kinder Morgan's proposal to load more than 400 oil tankers a year in Burnaby.¹¹²⁸

F. Victory in Courtenay-Comox

May 24, 2017

Today the BC NDP's [candidate] was officially declared the winner here by 189 votes.

Like the 43 other Green and NDP MLAs who now hold a majority in the B.C. legislature, Leonard won on a clear promise to stop Kinder Morgan and get Big Money out of politics.¹¹²⁹

872. Other campaigns and descriptions of Dogwood Initiative advocacy efforts appear on earlier versions of Dogwood Initiative's website, as follows:

A. From October 2007. No Tankers Home – Keep BC's Coast Oil Tanker Free

The wild and pristine coastal waters of Northern BC have been protected by a moratorium on oil tanker traffic since 1972. This ban on tankers through the Dixon Entrance, Hecate Strait and Queen Charlotte Sound is now under threat. [P]rojects proposed [such as the Enbridge and Pembina pipelines] for the north coast would necessitate tanker.¹¹³⁰

The webpage then goes on to provide:

¹¹²⁶ <https://dogwoodbc.ca/about-2/history/>

¹¹²⁷ <https://dogwoodbc.ca/about-2/history/>

¹¹²⁸ <https://dogwoodbc.ca/about-2/history/>

¹¹²⁹ <https://dogwoodbc.ca/news/victory-courtenay-comox/>

¹¹³⁰ <https://web.archive.org/web/20071026145419/http://www.notankers.ca/>

- (a) A petition to the House of Commons which provides, in part:

Oil and gas projects proposed for the northern coast are primarily to facilitate the growth of the tar sands, the largest contributor to Canada's growth in greenhouse gas emissions and climate change. Tanker traffic on our coast poses an unacceptable risk. An oil spill would be devastating to the fragile marine ecosystem of northern coastal BC and the First Nations and coastal communities that rely on it for their livelihoods.¹¹³¹

- (b) An "Activist Tool Kit", which provides links to an "Introduction", "Backgrounder", "Petition", "Postcards", "Poster", and a "Donation Form".¹¹³²

- (c) 5 Reasons to Stop Tankers In Our Northern Coastal Waters, including #5:

5. Global warming

Oil tankers in BC are to facilitate the massive projected expansion of the Alberta tar sands, the single largest contributor to the growth of Canada's greenhouse gas emissions. A barrel of tar sands crude takes 5 to 10 times more energy to produce than a barrel of conventional oil.¹¹³³

873. Other campaigns and descriptions of Dogwood Initiative advocacy efforts appear on other websites supported by Dogwood Initiative, as follows:

A. "RethinkEnbridge.com"

- (1) Remnants of a website "RethinkEnbridge.com" was identified on the "wayback machine". An excerpt from a capture of the home page on December 3, 2010 provides as follows:¹¹³⁴

^{1131A} <https://web.archive.org/web/20071008151032/http://www.notankers.ca/sign>

^{10B} https://web.archive.org/web/20071008151032/http://www.notankers.ca/sign_style.php

¹¹³²

<https://web.archive.org/web/20071126135609/http://www.dogwoodinitiative.org/getinvolved/moratoriumtoolkit/mortorium%20toolkit%20page>

¹¹³³ <https://web.archive.org/web/20071027135001/http://www.dogwoodinitiative.org/notankers/>

¹¹³⁴ <https://web.archive.org/web/20101203183541/http://rethinkenbridge.com/>

Consider Saying No to Enbridge Gas

A brief introduction to the relationship between Enbridge Gas New Brunswick and its oily parent company Enbridge Inc.

We need your help. As potential customers, the people of New Brunswick have a great deal of influence in shaping how Enbridge conducts its business. We're reaching out as British Columbians from one coast to another and asking New Brunswickers to pledge not to use Enbridge gas *until the company cleans up their act*.

[pledge](#)

Why say No to Enbridge? You may know Enbridge as a supplier of natural gas. But the company's main business is building and operating pipelines that transport Tar Sands oil.

Enbridge has a record of oil disasters, including their recent spill of over 3 million litres into Michigan's Kalamazoo River. Now, Enbridge is pushing its 'Northern Gateway' plan to pipe oil from the Tar Sands to the coast of BC despite the fierce opposition of British Columbians.

Paid for by Dogwood Initiative.

- powered by [P1one](#)
- and served with [clean energy](#)
- [Site Map](#)
- [Accessibility](#)
- [Contact](#)

(2) Another page on the site, again captured as of December 3, 2010, provides in part:¹¹³⁵

Important Facts

Some key facts regarding Enbridge's record of oil spills and disasters, and the company's plan to bring 220 Exxon Valdez-sized supertankers to Canada's Great Bear Rainforest

Natural gas is cleaner burning than fuel oil and coal. But natural gas sold by Enbridge comes with a shocking environmental price.

1. Enbridge's Business is Tar Sands Oil

Enbridge Inc distributes and markets natural gas for use in homes and businesses via subsidiary companies in Ontario, Quebec, New York State and New Brunswick. What many existing and potential gas customers may not know is that Enbridge's main business is pipelines that carry Tar Sands oil across North America.

2. Enbridge Has a Record of Oil Spills

Data from Enbridge's own reports show that 713 spills occurred on Enbridge pipelines between 1999 and 2009. These spills released approximately 21.3 million litres (133,856 barrels) of oil into the environment. This past summer, an Enbridge pipeline ruptured and spilled over 3 million litres of crude oil into Michigan's Kalamazoo River, making people sick, and coating the shoreline, vegetation and wildlife in oil. Enbridge is making promises of safety, but their own record of spills suggests otherwise.

3. Enbridge is Eyeing Our Coast

Enbridge's 'Northern Gateway' proposal would bring the first ever crude oil supertankers to Canada's world-renowned Great Bear Rainforest, on the Pacific Coast. Once oil hits the water, you can never clean it all up. A single spill like the Exxon Valdez could devastate coastal economies, environments, and cultures. [Watch this video to learn more.](#)

4. Enbridge: Not so Clean

According to estimates, every year Tar Sands expansion related to Enbridge's supertanker proposal would:

- Produce greenhouse gas emissions equivalent to putting 1.6 million cars on the road;
- Use the same amount of water consumed by a city of 250,000; and
- Create enough toxic tailings to fill 1,606 Olympic-sized swimming pools.

[pledge](#)

Want to help stop Enbridge's oil supertanker plan for Canada's Great Bear Rainforest? [Take the pledge](#) to not use Enbridge natural gas *until the company cleans up its act*.

Paid for by Dogwood Initiative.

(3) While at first glance the website is addressing Enbridge's supply of natural gas to the people of New Brunswick, I find it is broader than that, proceeding on the presumption that Enbridge must "clean up their act" and the reason to say "no" to Enbridge is because "the company's main business is building and operating pipelines that transport Tar Sands oil.". Moreover, it opposes Enbridge's plan to "bring 220 Exxon Valdez-sized supertankers to Canada's Great Bear Rainforest"

¹¹³⁵ <https://web.archive.org/web/20101203021841/http://rethinkenbridge.com/important-facts>

- (4) I also note that elsewhere on the same webpage it is indicated that the site was operated by "... a group of individual British Columbians..." and "we are spearheaded by Dogwood Initiative, a Victoria B.C.-based community and environmental advocate."

whoweare

We are a group of [individual British Columbians](#) asking for the help of New Brunswickers to fight an oil company: Enbridge Inc. Enbridge has a pipeline and supertanker plan that threatens our livelihoods, cultures and environment.

We are spearheaded by [Dogwood Initiative](#), a Victoria, BC-based community and environmental advocate.

- (5) In addition to the video referenced on the website, another "Rethink Enbridge" video was made available on vimeo¹¹³⁶ that largely mirrors the content of this website.



Rethink Enbridge

More from SyndiKast
 Autoplay next video

B. "notankers.ca"

- (1) The "notankers.ca" website¹¹³⁷ was linked to Dogwood Initiative and housed the petition, toolkit, and "5 Reasons" discussed above.

874. I find that the foregoing review of the websites supported by Dogwood Initiative establishes that Dogwood Initiative advocated: (a) for the B.C. provincial government to cease all subsidies to the oil and gas industry, and divest from that industry, (b) for the cancellation of the Trans Mountain pipeline project, (c) tanker-ban programs (including through the "No-Tankers" and "Oil Tankers

¹¹³⁶ <https://vimeo.com/77073639>

¹¹³⁷ <https://web.archive.org/web/20071026145419/http://www.notankers.ca/>

are Loonie” campaigns), (d) the defeat of the “pro-tanker Conservative party” through the use of political activism tactic, (e) against the Enbridge pipeline through both the mentioned political activism and by advancing the “Mob the Mic” program; (f) against the Kinder Morgan pipeline; (g) for a tanker-ban to stop the “massive projected expansion of the Alberta tar sands”; (h) against Enbridge using the social media tactic launched under the “RethinkEnbridge” campaign; (i) for a tanker-ban under the social media tactic of the “notankers.ca” campaign; and (j) the political activism tactic in the 2017 B.C. provincial election to support political parties on the “clear promise to stop Kinder Morgan”, all of which I find oppose the development of Alberta’s oil and gas resources.

875. I also noted that in the course of these campaigns, statements were made by senior members of Dogwood Initiative and on its webpage, including the following:

- A. Dogwood Initiatives’ 2008-2009 Annual Report cited, among other things, Dogwood’s participation in the “No Tanker Campaign”, the “NoTanker Loonie decals” campaign, the “Tar Sands – The Dark Side of the Boom” speaking tour, and targeting Royal Bank of Canada “because of their role as a major financier of the Canadian oil and gas industry including the Alberta Tar Sands”.¹¹³⁸ The Report goes on to list among others “Tides Foundation USA – Tar Sands Fund” as funders,¹¹³⁹ providing a description of the “No Tanker Campaign” as follows:¹¹⁴⁰

The No Tanker Campaign has generated lots of momentum over the last year. Our focus was to lay the groundwork for the implementation of a legislated tanker ban that will prohibit all present and future tar sands-related tanker and pipeline projects from being built on BC’s north coast. This is a key battle in the growing efforts to reign in the tar sands, the most destructive project on earth, and wean the world away from the sources of heat-trapping pollution that cause climate change.

[The program goes on to describe working with its partners to implement a detailed program that includes: (A) collecting over 35,000 signature, creating media features from over 50 different national and provincial outlets; and (B) “all three major federal opposition parties to commit to legislating an oil tanker ban”.]¹¹⁴¹

¹¹³⁸ https://dogwoodbc.ca/wp-content/uploads/2016/06/2008-2009_AnnualReport-1.pdf

¹¹³⁹ https://dogwoodbc.ca/wp-content/uploads/2016/06/2008-2009_AnnualReport-1.pdf. Page 12.

¹¹⁴⁰ https://dogwoodbc.ca/wp-content/uploads/2016/06/2008-2009_AnnualReport-1.pdf. Page 6.

¹¹⁴¹ Dogwood Initiative - 2008-2009 Annual Report, PDF p. 6-7, online: <https://dogwoodbc.ca/wp-content/uploads/2016/06/2008-2009_AnnualReport-1.pdf>.

...a description of the “NoTanker Loonie” campaign as follows:¹¹⁴²

- Over 300,000 NoTanker Loonie decals have been put into circulation across Canada through our network of individual and business supporters. Our goal is to distribute 1 million awareness raising decals before the end of 2009-2010. The NoTanker Loonie decals are a small static cling film. When applied to a Canadian one dollar coin the decal turns the water and the loon black simulating an oil spill and directs people to visit our petition website at www.NoTankers.ca.

...and a description of the efforts “targeting Royal Bank of Canada” as follows¹¹⁴³

- We also began targeting Royal Bank of Canada (RBC)- in partnership with Rainforest Action Network (RAN) – because of their role as a major financier of the Canadian oil and gas industry including the Alberta Tar Sands. We jointly organized a shareholder information picket outside RBC’s AGM in Vancouver generating lots of buzz.

B. Dogwood Initiatives’ 2009-2010 Annual Report provided a review of various of its programs, including:

- (1) “No Tankers” Campaign – which sought a federal government ban on oil tanker traffic on Canada’s Pacific north coast and for Enbridge to suspend its ‘Northern Gateway’ proposal. The review stating: “The battle to protect BC’s coast from oil tankers is also a key battle in the growing worldwide effort to reign in Canada’s Tar Sands, called ‘the most destructive project on earth’”.¹¹⁴⁴
- (2) “Save Sara” Campaign – where “Dogwood Initiative is among nine litigants that have filed two law suits against the Federal Government for its failure to fully protect the critical habitat of BC’s endangered orcas.” Of interest to me was the

¹¹⁴² https://dogwoodbc.ca/wp-content/uploads/2016/06/2008-2009_AnnualReport-1.pdf. Page 7.

¹¹⁴³ https://dogwoodbc.ca/wp-content/uploads/2016/06/2008-2009_AnnualReport-1.pdf. Page 7.

¹¹⁴⁴ Dogwood Initiative 2009-2010 Annual Report, at pages 6-7. See also: https://dogwoodbc.ca/wp-content/uploads/2016/06/2009-10_Dogwood_AnnualReport_Web-1.pdf.

final comment which provided “[i]f successful, it will also provide a useful tool for stopping oil tanker traffic in BC waters.”¹¹⁴⁵

C. Dogwood Initiative’s 2019 Annual Report provided, in part:

Where we’re going

At the end of the fiscal year, coming out of by-election mobilizations in Nanaimo and Burnaby South, it was clear that our volunteers and supporters were in need of a new way to frame our long-fought pipeline battles. In particular, the political rhetoric around the Trans Mountain expansion had reached a fevered pitch, turning friends and relatives in Alberta and B.C. against each other and making reasoned conversation impossible. To address this impasse, our organizers held three speaker events in Vancouver, Victoria and Nanaimo called “Polluted Discourse: Building Grassroots Power Amid Pipeline Propaganda”. The sold out events provided a needed opportunity to hear from people on the ground and to launch a new, broader campaign to eventually replace No Tankers: Dogwood’s Climate Campaign. Its first objective is to end subsidies to fossil fuel companies.

In this federal election year, we will also be focusing on building our base in key swing ridings, including Burnaby North Seymour, home of the TMX port and tank farm.¹¹⁴⁶

D. Communities take a stand along the Trans Mountain pipeline route and online on Family Day

Trans Mountain recently announced that it was re-starting construction after an extended shut-down. Alongside this project’s devastating climate impacts and Indigenous rights violations, pipeline construction threatens land, water and neighbourhoods across B.C. — including 1308 trees slated to be chopped down in violation of Burnaby city laws.

Spurred on by signs of Trans Mountain construction popping up in the Lower Mainland, frontline communities came together to call for a #FamiliesFortheFuture day of action on February 15.¹¹⁴⁷

E. Indigenous leaders, environmental groups and local citizens vow to protect Lower Mainland forest from Trans Mountain pipeline construction

¹¹⁴⁵ Dogwood Initiative 2009-2010 Annual Report, at page 11. See also: https://dogwoodbc.ca/wp-content/uploads/2016/06/2009-10_Dogwood_AnnualReport_Web-1.pdf.

¹¹⁴⁶ Dogwood Initiative 2019 Annual Report, at page 7. See also: <https://dogwoodbc.ca/wp-content/uploads/2019/08/Dogwood-2019-AnnualReport-web.pdf>

¹¹⁴⁷ <https://dogwoodbc.ca/news/stop-tmx-day-of-action/>

August 8, 2020, Burnaby, British Columbia — Today, hundreds of people are touring a conservation area where Trans Mountain is planning to clear trees near the Brunette River in Burnaby. The tours include a visit to public health doctor Tim Takaro’s treetop camp, and are followed by legal briefings for those wanting to learn more about how to stop pipelines.

Dr. Takaro said: “I was forced to choose civil disobedience to block construction of Trudeau’s pipeline because I have tried working through official channels, but the government has chosen to ignore or disallow the evidence presented on the health impacts of the project. Mine is a far lesser crime than that of leaving a dying planet to our children.”

Construction delays are already mounting against Trans Mountain’s \$12.6 billion pipeline, with most major milestones in British Columbia already months behind schedule.¹¹⁴⁸

- F. Nothing is inevitable. And if police or government ministers hit the wrong button this summer, they could trigger a chain reaction that grinds both pipelines to a halt and upends B.C. politics. Frustration over climate and Indigenous rights have piled up like kindling. Young people, who feel justifiable despair over the direction our planet is headed, could be the match that lights the flame.¹¹⁴⁹
- G. The massive expansion of the tar sands can only take place if there is a way to get the oil to market. Currently this means piping the oil south to the U.S., but fossil fuel companies want to open up new pipeline routes to the north coast of BC. From Kitimat, oil tankers can ship tar sands crude to new markets in Asia, most notably China.

You can stop the tankers

Stopping the foray of the tar sands into our wild and beautiful coast may seem like a mammoth task, but it is a strong case for how a little organized local action can make a huge difference to carbon emissions and the environment. It shows how protecting our livelihoods can help protect the world for future generations.

The future of the tanker moratorium can be decided by just two men: Prime Minister Stephen Harper and Gary Lunn, Minister of Natural Resources and MP for Saanich and the Gulf Islands. The lone Conservative MP on the BC coast, Gary Lunn would no doubt like to keep his job. It’s time to tell him he’ll lose it if he fails to support and strengthen the moratorium on oil tankers.¹¹⁵⁰

¹¹⁴⁸ <https://dogwoodbc.ca/news/stop-tmx-construction/>

¹¹⁴⁹ <https://dogwoodbc.ca/news/b-c-pipeline-construction-could-trigger-major-unrest/>

¹¹⁵⁰ <https://dogwoodbc.ca/news/tarsandstokitimat/>

H. KN: Why did you agree to join the board at Dogwood?

SK: I've followed and been impressed with Dogwood's work for many years. In recent years, I've felt a lot of gratitude for Dogwood's role fighting the Trans Mountain pipeline expansion and other fossil fuel infrastructure projects – I think Dogwood has been an important player in that space. I appreciate how Dogwood has connected the climate fight with the defence of Indigenous rights and title, and sought to act in solidarity with Indigenous communities.¹¹⁵¹

I. Still, we should thank all the nations and groups that stepped up to challenge Ottawa's re-approval of Trans Mountain, and send our very best wishes to the six legal teams that made it through to the next step. Many of these folks were part of the stunning legal victory last August that stopped the pipeline the first time. They've mustered innovative and compelling legal arguments before and they can do it again — but they need all of us to pull together.

Stand with Indigenous peoples leading the fight against Trans Mountain: donate to the legal war chest that represents one of our last, best chances to defeat this toxic, dangerous project.¹¹⁵²

J. The 2015 election

This time last year the pro-tanker Conservative Party commanded a majority in Ottawa, with 21 out of 36 seats in B.C. coloured Tory blue and six new ridings being added to the map that would have gone Conservative in the previous election.

Enbridge was sitting on an approval certificate from the federal cabinet while Kinder Morgan was cruising through the NEB's rubber-stamp process. It appeared that oil tanker proponents had all their ducks in a row—if the Conservatives won again, the bulldozers were ready to roll.

However, the electorate had a different idea.

Here in B.C., a series of local telephone polls commissioned by Dogwood showed the Conservatives in serious trouble in coastal battleground ridings. The government was off-side with a significant proportion of its former supporters on issues like oil tankers, government surveillance and climate change.

¹¹⁵¹ <https://dogwoodbc.ca/news/seth-klein-joins-dogwood-board/>

¹¹⁵² <https://dogwoodbc.ca/news/first-nations-head-back-to-court-to-stop-trans-mountain/>

As rumours of an early election call swirled in Ottawa, Dogwood organizers began laying the groundwork for the largest third-party 'Get Out the Vote' (GOTV) campaign in B.C. political history. We built a customized 42-riding website to deliver vital information to local voters and began surveying candidates on the top issues of concern to Dogwood supporters.

The Conservatives finally dropped the writ on August 2, 2015, kicking off a marathon 11-week campaign. The early election call was designed to curtail the influence of third-party advertisers, in particular unions that had lined up millions of dollars' worth of anti-Harper TV ads.

Luckily Dogwood is not reliant on traditional advertising to get our message out, so we were free to talk to voters our way. As the campaign progressed we held seven live candidate debates, put up lawn signs and billboards, ran targeted radio and web ads, and signed up voters by clipboard and mobile phone at 475 local events.

Every day for 78 days we wondered what dirty tricks the governing party might pull to stay in power: More fraudulent robocalls? Hidden election spending? Voter suppression? Meanwhile, the battle raged between Green, Liberal and NDP partisans, each accusing the next of splitting the vote and bettering Stephen Harper's chances of being re-elected.

We put our heads down and focused on two things: securing commitments on our key issues from candidates and getting our supporters out to the polls to make their choice. On both counts we were highly successful.

At a campaign stop in Esquimalt in August, Justin Trudeau told Dogwood on video that the National Energy Board wasn't going to approve Kinder Morgan's oil tanker project after the election: "...we're going to change the government. And that process needs to be redone." With the Greens and NDP already in agreement, that left the Conservatives isolated in their pro-tanker position. Further, Trudeau reiterated his promise that Enbridge's Northern Gateway project "will not be built".

We communicated the candidates' positions by e-mail to 179,683 B.C. supporters throughout the campaign. As advance polling dates approached, 854 of our volunteers hit the phones. We had 42,551 live calls with voters to talk them through the identification requirements. Starting the evening before election day, we sent 35,288 text message reminders over the course of 24 hours.

When the election finally arrived, turnout in B.C. surged from 60.4 to 70.4 per cent, outpacing Alberta, Ontario and Quebec. 471,397 more voters in the province cast a ballot in 2015 compared to 2011. Together we

elected the country's most eclectic mix of MPs, including 17 Liberals, 14 New Democrats, 10 Conservatives and one Green.

In the B.C. ridings where Dogwood teams did not work, average turnout was 69.25 per cent and the decline in Conservative vote share was 12.87 per cent. In the ridings where Dogwood teams did work, average turnout was 71.64 per cent and the pro-tanker party saw its vote decline by an average of 22.9 per cent.

Outside of B.C. the Conservative party experienced a net loss of just 85,669 votes compared to the previous election. But here in B.C. the collapse was dire: a net loss of 149,075 votes, or 64 per cent of the national total. In the 19 ridings where Dogwood worked in the election, Conservative candidates lost 82,257 votes—nearly as many as in the rest of the country put together.¹¹⁵³

- K. That means channeling the momentum of the Global Climate Strike into our riding-level election races, because that's where the power truly lies. We can't vote for a president or a prime minister. We can only vote for an MP. So we need to pick representatives who we trust to put the interests of their constituents ahead of preserving the status quo.

At a bare minimum, we need our MPs to stop throwing billions of public dollars into oil and gas expansion — including the Trans Mountain pipeline and oil tanker project. But the Canadians flooding the streets this week expect much bolder action as well.

Find out who's running in your riding (<https://dogwoodbc.ca/votelocal/>) and stay tuned for more resources to help you pin down your candidates' climate commitments.¹¹⁵⁴

- L. "I hope Minister Wilkinson will fight to implement the bold climate policies we need," said youth organizer Harrison Johnston, a constituent in Wilkinson's North Vancouver riding. "If he doesn't, he should expect to be hearing from myself and the Sustainabiliteens quite regularly.

The Sustainabiliteens are a collective of Vancouver-area high school students and recent graduates affiliated with Climate Strike Canada. Their Youth Climate Strike action in September brought out more than 100,000 marchers in Vancouver, according to police.

"How can Wilkinson show he's serious? He can start by hunting down and cancelling fossil fuel subsidies in the first 100 days of his mandate," said Kai Nagata, spokesperson for B.C. climate and democracy group

¹¹⁵³ <https://dogwoodbc.ca/wp-content/uploads/2016/06/Dogwood2016AnnReport-web.pdf>

¹¹⁵⁴ <https://dogwoodbc.ca/news/youth-climate-strike-momentum>

Dogwood. “We cannot afford to give another dollar of public money to oil companies.”¹¹⁵⁵

- M. In 2020, a campaign organizer of Dogwood Initiative made the following statement about the Dogwood Initiative’s efforts on the No Tankers campaign to the National Post:

Recent protests and blockades are only the beginning of the civil disobedience that lies ahead as Ottawa pushes ahead with the controversial Trans Mountain expansion project, claims an activist group.

“I really do see this as a taste of things to come,” said Alexandra Woodsworth, campaign organizer at the British Columbia-based Dogwood Initiative.

Woodsworth likened the coming fight to “the War in the Woods, round two,” alluding to a 1993 anti-logging protest on Vancouver Island that led to nearly 1,000 arrests.¹¹⁵⁶

876. In addition to my review of the websites supported by Dogwood Initiative above, I find the foregoing statements relevant evidence in my review. In this regard I find the foregoing statements additional evidence of a broad and general opposition to the development of Alberta’s oil and gas resources. In particular, I note: (a) the “No Tanker Campaign”, the “NoTanker Loonie Campaign”, “The Dark Side of the Boom” speaking tour, and the divestment tactics advanced against the Royal Bank of Canada” reported in its 2008-2009 Annual Report; (b) the repeated opposition to Trans Mountain, including through a tactic of direct citizen engagement; (c) engagement in political activism in the 2015 and 2019 federal elections, as well as the 2019 B.C. provincial by-election; (d) advancing legal precedent on behalf of First Nations; and (e) further direct citizen engagement in the form of protests and blockades.

877. I also reviewed Dogwood Initiative’s Twitter account and found the following Tweets:

- A. October, 2015¹¹⁵⁷

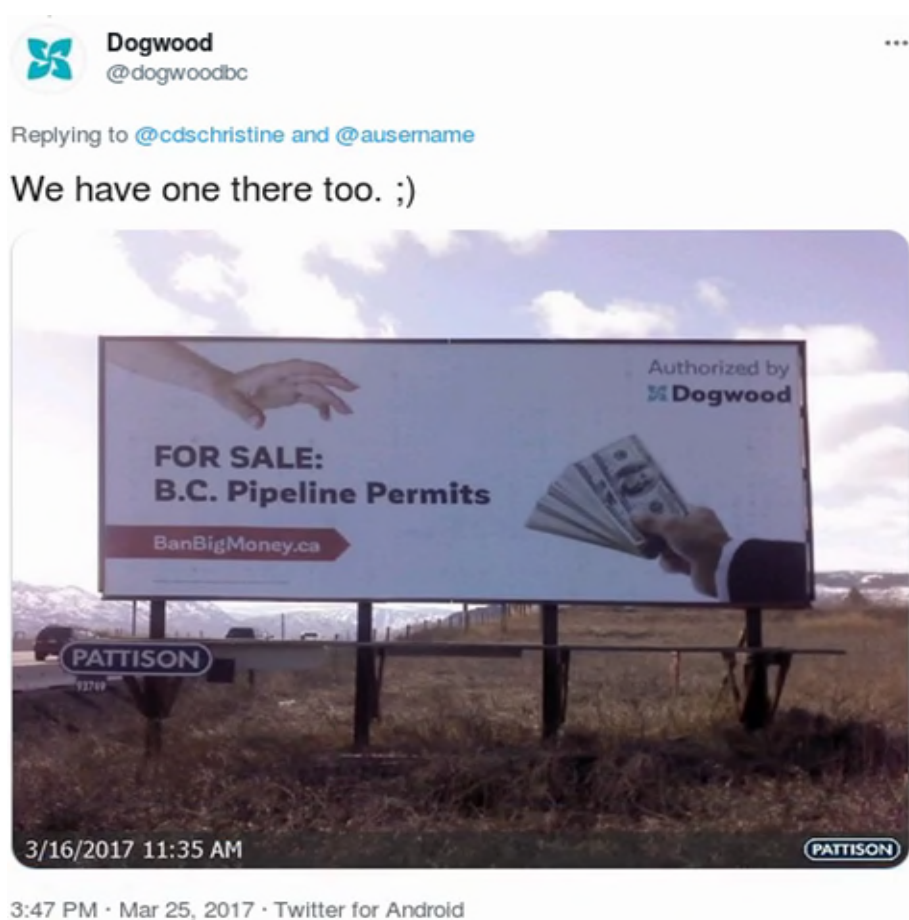
¹¹⁵⁵ <https://dogwoodbc.ca/news/climate-strikers-welcome-wilkinson/>

¹¹⁵⁶ <https://nationalpost.com/news/war-in-the-woods-round-two-amid-civil-unrest-activists-gear-up-for-bigger-battle-over-trans-mountain>

¹¹⁵⁷ <https://twitter.com/search?f=tweets&q=@dogwoodbc%2060,000+%20phone%20calls&src=typd>



B. March, 2017¹¹⁵⁸



¹¹⁵⁸ <https://twitter.com/dogwoodbc/status/845754041057497088>

878. I find the foregoing tweets further evidence of a broad and general opposition to the development of Alberta's oil and gas resources. In particular, I note: (a) further evidence of political activism in the 2015 federal election that I reviewed above, and (b) further oppositions to pipelines generally.

(iii) Other Campaigns

879. My review also revealed that Dogwood Initiative supported a letter-writing and intervenor-application campaign targeting a pipeline project.¹¹⁵⁹ In encouraging the public to write to the National Energy Board, Dogwood Initiative stated:

Remember Enbridge? And the oil tanker proposal that should be dead and gone?

They're about to miss their National Energy Board deadline. This should mean the end of the Northern Gateway project, but instead of heading home to lick their wounds, they've gone crawling back to the NEB to beg for an extension on their permits. Why? Because they haven't managed to convince a single oil company to sign a shipping contract with them, not to mention gain an ounce of social license.

Can't take a hint, eh Enbridge?

The NEB will be considering the company's request to drag this Northern Gateway thing out but, in a shocking twist, is accepting comments from the public before making their decision. Sweet! We have until June 27, 2016, to remind the federal pipeline regulator where British Columbians stand on this ridiculous proposal.

880. Additionally, the Dogwood Initiative was signatory to the EDC Divestment Letter.¹¹⁶⁰

881. I have also reviewed evidence of a job posting by Dogwood Initiative seeking an organizer:

We currently have an opportunity for a talented organizer to join one of the most successful organizing programs in the province. As a Dogwood Provincial Organizer you would build and support grassroots volunteer teams who are the powerhouses behind Dogwood's campaigns to stop dangerous crude oil and thermal coal export projects and ban big money in politics.¹¹⁶¹

(iv) Funding Applications and Grant Description

¹¹⁵⁹Christina Smethurst, "Send your letter to NEB to block Energy East Permit" (17 June 2017), online: *The Harbinger* <nbharbinger.wordpress.com/2016/06/17/send-your-letter-to-neb-to-block-energy-east-permit/>.

¹¹⁶⁰ <https://cela.ca/wp-content/uploads/2021/01/CSO-Letter-Export-Development-Canada-Dec-2020.pdf>

¹¹⁶¹ <http://www.catchajob.ca/job/dogwood-provincial-organizer-full-time-in-burnaby-bc/>

882. I have reviewed information regarding certain grants provided to Dogwood Initiative and find that the evidence demonstrates the following grants were made to Dogwood Initiative:

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
The Oak Foundation ¹¹⁶²	2017	\$450,000	\$584,370	To support the Dogwood to limit the expansion of fossil fuels in British Columbia. Dogwood is a Canadian not-for-profit organisation based in Victoria, British Columbia that works on environmental issues.
Tides U.S. Foundation ¹¹⁶³	2015	\$15,000	\$19,181	Coastal Oil Tanker Campaign
Tides U.S. Foundation ¹¹⁶⁴	2011	\$150,000	\$148,360	research, education, and outreach on the issue of tankers and oil spills
Tides U.S. Foundation ¹¹⁶⁵	2013	\$25,000	\$25,748	To cultivate widespread public opposition to tar sands oil tankers and pipeline proposals in British Columbia

883. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization received funds which were provided for the stated purpose of “research, education and outreach on climate/tar sands related issues”,

¹¹⁶² The Oak Foundation Form grant listing obtained from website page 17.

¹¹⁶³ Tides Foundation Form 990 for tax year beginning 01-01-2015 and ending 12-31-2015 page 57 of 160 of PDF.

¹¹⁶⁴ Tides Foundation Form 990 for the 2011 calendar year Schedule F Part II page 5.

¹¹⁶⁵ Tides Foundation Form 990 for the 2013 calendar year Schedule F Part II page 65 of 228 of PDF.

“limit[ing] the expansion of fossil fuels”, “to cultivate widespread public opposition to tar sands oil tankers and pipeline proposals in British Columbia”, and other references to tankers and tanker bans correlate to the campaigns of Dogwood Initiative that I reviewed above. Accordingly, I find the grant descriptions opposing the development of Alberta’s oil and gas resources have a degree of evidentiary value in determining whether the organization has participated in an anti-Alberta energy campaign.

(v) Government Funding

884. I have not found evidence that Dogwood Initiative received revenue from municipal/regional, provincial/territorial, or federal levels of government.

(vi) Conclusion on Participation in an anti-Alberta Energy Campaign

885. In my review of the foregoing I specifically noted the following in respect of Dogwood Initiative: (a) its direct advocacy against the development of Alberta’s oil sands in the webpages and statements that I reviewed above; and (b) the receipt of grants described above whose objects appear consistent with the campaigns of Dogwood Initiative, which I find to be evidence tending to establish broad and general objections to the development of Alberta’s oil and gas resources.

886. Moreover, I also noted Dogwood Initiative’s participation in: (a) the Dirty Oil Sands Network; (b) a number of tanker ban land-use programs, including the “NoTankers” campaign, the “Oil Tankers are Loonie” campaign”; (c) political activism tactics surrounding the 2015 and 2019 federal elections, the 2017 B.C. provincial election, and certain 2019 by-elections in the B.C. provincial election; and (d) the EDC Divestment Letter.

887. On the basis of the totality of this evidence, I find that Dogwood Initiative has engaged in opposition to the development of Alberta’s oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

(u) **Leadnow**

(i) Background

888. Leadnow describes itself as a registered non-profit society, and describes itself as “by nature a political organization.”¹¹⁶⁶ For clarity, notwithstanding that Leadnow describes itself as a “registered” non-profit society, I find that Leadnow is a “not for profit” organization as that term is defined later in this Report, as it does not appear to meet the criteria to be a registered charity.

889. As of 2015, the value of its assets was \$274,026.¹¹⁶⁷

890. Leadnow was founded in 2010¹¹⁶⁸, but its origins can be traced to Citizens Engagement Lab (“CEL”).

¹¹⁶⁶ <https://www.leadnow.ca/faq/>.

¹¹⁶⁷ Leadnow 2015 Financial Statements

¹¹⁶⁸ <https://www.leadnow.ca/faq/>

891. CEL is an Oakland, California-based 501(c)(4) organization. Founded in 2008, it described itself as “a home for people and projects working to shift culture and transform society” that operated three initiatives - “Powerful Communities”, “Innovation”, and “Collaboration”.¹¹⁶⁹

892. Under CEL’s “Collaboration” initiative an ‘incubation and international programs’ emerged to provide advocacy groups with logistics and training during their start-up phase.¹¹⁷⁰ One of these groups was Leadnow.¹¹⁷¹ Ultimately, a number of these advocacy groups, including Leadnow, collaborated to form the “Online Progressive Engagement Network” (“**OPEN**”), which describes itself as:

The online progressive engagement network (OPEN) is the leading global organisation seeking to build a sustainable global movement for progressive change.

We connect and support national digital campaigning organizations around the world who provide opportunities for activists to influence national and international politics.¹¹⁷²

893. I have reviewed a number of materials related to OPEN’s efforts, including the following:

A. OPEN is a sisterhood of grassroots campaigning organizations from around the world.

Our member organizations use a common model of member-led, large-scale campaigning to help a combined 15+ million supporters act together for the common good. OPEN exists to help this unique global family of national movements collaborate, share and grow.¹¹⁷³

B. Job Announcement – Director of Development and Storytelling for OPEN

Our Members

OPEN’s founding member organizations include MoveOn in the United States, Campact in Germany, GetUp in Australia, 38 Degrees in the UK, and Leadnow in Canada. We are currently supporting start-up organizations in India, South Africa, Sweden, Ireland, France, Austria, New Zealand and nearly 15 other countries across the globe.

¹¹⁶⁹ <https://web.archive.org/web/20130329204153/http://engagementlab.org/what-we-do/>

¹¹⁷⁰ <https://www.thenation.com/article/archive/netroots-goes-global/>

¹¹⁷¹ <https://www.thenation.com/article/archive/netroots-goes-global/>. See also: <https://web.archive.org/web/20130502101621/http://Leadnow.ca/en/about>, and the ‘Advisor’ listed as “International practitioner & trainer in online organizing, Former Director of New Media for Barack Obama, Founding Adviser/Board Member of 38Degrees.org.uk and Avaaz.org, Advocacy Director for MoveOn.org”. See also <https://web.archive.org/web/20150108052830/https://dl.dropboxusercontent.com/u/7345808/OPEN%20Summit/OPE%20NSummitHandbook.pdf>, at page 20.

¹¹⁷² <https://the-open.net/about-us>

¹¹⁷³ <https://web.archive.org/web/20160410015348/http://www.the-open.net/>

Collectively our founding members engage over 15 million individual activists, averaging over 1 out of every 15 voters in the federal elections of their respective nations. In 2013 and 2014 alone, OPEN groups turned out a confirmed total of 424,942 volunteers to offline campaigns, ranging from local petition deliveries to major rallies.

All OPEN member organizations campaign on a wide range of progressive issues, as shaped by their national debates and the preferences of their individual supporters. Top issue campaigns include combating climate change, pushing back on anti-democratic trade deals, addressing economic inequality, preserving net neutrality, promoting LGBT rights, stopping tax dodging by the super rich, defending workers rights, and expanding and defending public services, especially health care.

The core of the organizing model is surprisingly simple: when key issues their community cares about reach a tipping point (in legislation, elections, corporate decisions, or other channels) OPEN groups engage their members through email, social networks, and mobile channels to offer timely information, strategic analysis and tools for collective action to shape the outcome. The choice of tactic depends on what form of collective action would be most effective at any given time -- but they nearly always include a mix of online and offline action.

Our Program

OPEN was founded in 2013 by our Executive Director Ben Brandzel and the original member organizations with a four-part mission and program:

- (1) Connect these groups to share expertise, best practices, technology, and resources seamlessly across borders. We do this in person through staff exchanges and summits, and virtually through a range of facilitated and ad-hoc communication channels.
- (2) Coordinate efforts between groups to do joint-campaigning and strategically leverage trans-national partnerships. Our highest priority joint issues in 2015-16 are trade and climate.
- (3) Enhance their impact with world class expertise, technology and support, by leveraging network efficiencies and a global reach to make these resources more far accessible and affordable. Our current focus is on spreading best-in-class management training, video production, and collaborative technology development.
- (4) Grow the network by catalyzing and supporting new start-ups in key nations. While we have start ups in 4 continents, our top priority growth region for 2015 is Europe.

Note: OPEN is a “B2B” organization with a very low public profile (i.e. Google won’t tell you very much). This is intentional, as the political implications of an international association can be sensitive in some of the countries in which we work.¹¹⁷⁴

C. The OPEN Summit

In the last decade, a unique model of grassroots campaigning organization has taken root. Starting with MoveOn.org in the United States, the model has spread to Australia, the United Kingdom, Canada, Germany, New Zealand and is now moving into the global south with initiatives in India and Papua [sic] New Guinea.

While extremely valuable, systematic exchanges between these groups have been difficult to come by. It dawned on leading organizers in late 2012 that very few had even met in person. Thus the seed was planted for the Online Political Engagement Networks (OPEN) Summit, which CEL helped to sponsor in early January 2013.¹¹⁷⁵

D. [Four representatives of Leadnow attended the OPEN Summit¹¹⁷⁶, which was sponsored, in part, by the Rockefeller Brothers Fund.¹¹⁷⁷]

894. Leadnow’s early material also provides, in part:

A. LeadNow A l’Action – an introduction

an independent, member-driven organization bringing Canadians into the political process

Social movements drive historic progress. From the abolition of slavery to the transformation of gender roles, social movements have been the lifeblood of democracy. Now, the revolution in online organizing is opening up new possibilities for citizens to work together to improve their communities and nations. This new, proven method of progressive political organizing, launched by MoveOn.org in the United States, honed by GetUp.org in Australia, and taken global by Avaaz.org, is at last coming to Canada.¹¹⁷⁸

¹¹⁷⁴ https://docs.google.com/document/d/18223G4KuDzKFe_wK7BaWT909stgcdnIMk7PCY9sxKro/edit#

¹¹⁷⁵ <https://web.archive.org/web/20130329082648/http://engagementlab.org/who-we-work-with/open-summit>

¹¹⁷⁶

<https://web.archive.org/web/20150108052830/https://dl.dropboxusercontent.com/u/7345808/OPEN%20Summit/OPENSummitHandbook.pdf>. Pages 10-13.

¹¹⁷⁷

<https://web.archive.org/web/20150108052830/https://dl.dropboxusercontent.com/u/7345808/OPEN%20Summit/OPENSummitHandbook.pdf>, at page 28.

¹¹⁷⁸ <https://fairquestions.typepad.com/files/leadnow-investor-package-2-pgs-18aug2010.pdf>. Page 2.

- B. “Leadnow - Canadians building a more progressive Canada - strategies and opportunities 2010 2011 2012 2013” – “DRAFT”

thesummary [sic]

It’s time for a new model of progressive movement organizing to come to Canada.

Opportunity

Around the world, a new model of progressive political organizing is using technology to connect people and coordinate their actions with previously unheard of speed, scale and efficiency. In the US, UK, Australia and global campaigns the model has proven its ability to engage people in the political process and change the game.

Model

LeadNow’s three-part model builds on the proven organizing strategies of pioneering organizations MoveOn (USA), GetUp (Australia) and Avaaz (Global), with new innovations for Canada. The first part of the model is responsive, issue-based online campaigns that drive media attention and develop a member base large enough to garner real political influence. The second part of the model deepens member engagement to build up member enthusiasm, on-the-ground capacity and giving. The third part of the model allows members to share stories and find the common ground that will provide a foundation for sustaining progressive change.”¹¹⁷⁹

(ii) Campaigns, Advocacy Efforts, and Statements

895. LeadNow details a number of advocacy efforts. These efforts include the following campaigns and descriptions as per LeadNow’s web page:

- A. Prime Minister Trudeau and Minister Wilkinson: Cancel TMX

Sign the petition calling on Prime Minister Trudeau and Minister Wilkinson to cancel TMX as part of their new climate plan.¹¹⁸⁰

- B. URGENT: we only have a few hours left to convince the federal government to scrap subsidies to fossil fuel companies.

¹¹⁷⁹ <https://fairquestions.typepad.com/files/leadnow-business-plan-2010-2013.pdf>, at page 4.

¹¹⁸⁰ <https://www.leadnow.ca/cancel-tmx/>

Right now the government's planning how to spend money to tackle the climate emergency. They want to hear from everyday people across Canada -- but we only have until midnight to have a say.¹¹⁸¹

- C. Big Oil lobbyists are pulling out all the stops to convince unelected Senators to advance their toxic oil agenda.

Right now, a bill that would ban dangerous crude oil tanker traffic from the tip of Vancouver Island up to the Alaskan Panhandle is making its way through the Senate. It's an important step to affirm the longstanding ban on north coast oil tanker traffic in Indigenous laws and to protect the coastal Great Bear Rainforest -- home of endangered species like orcas and white Spirit Bears -- from oil spills.¹¹⁸²

- D. Will you make a phone call to stop the pipeline?

If we can flood Liberal MPs and Ministers with phone calls today it could be what it takes to convince the government to back down on Kinder Morgan.

Will you call your MP now to demand that they put pressure on Trudeau to back down on Kinder Morgan?

*Our tool will transfer you to your MP's office to leave a message on their voicemail or with their staff. **Make sure your phone is handy, and then enter your information (including your phone number) on this page, and we'll connect you to your MP's office.***

Not sure what to say? **Feel free to use these simple talking points:**

- My name is _____ and I live in this riding. My postal code is _____. (this is so the staffers can confirm you are a constituent of the MP they work for)
- I'm calling to express my opposition to the Kinder Morgan pipeline.
- The pipeline doesn't have the consent of impacted First Nations, and it would put BCs coast and our climate in danger. It should not be built.

¹¹⁸¹ <https://www.leadnow.ca/scrap-subsidies/>

¹¹⁸² <https://www.leadnow.ca/tanker-ban/>

- I'm calling to urge my MP to put pressure on Trudeau to stop trying to force the Kinder Morgan pipeline through without consent. [emphasis as per original text]¹¹⁸³

E. Stop the Kinder Morgan pipeline

Kinder Morgan's pipeline and tanker project would put our drinking water, and our coastline at risk of a major oil spill.

But Christy Clark approved the pipeline, after taking more than \$700,000 in political donations from Kinder Morgan and their backers. It's time for a government that will defend our water from oil spills. Add your name if you agree.

Authorized by Leadnow, registered sponsor under the Election Act, 1-855-532-3609¹¹⁸⁴

- F. To put as much pressure as [sic] we can on key decision makers, hundreds of Leadnow community members are flooding the phone lines of key MPs in cabinet and the Energy and Climate Change Committee with messages opposing Kinder Morgan. If we can flood their phone lines in the coming weeks, they will know that voters across the country expect them to reject this pipeline.¹¹⁸⁵

- G. Canada's National Energy Board is about to review TransCanada's proposed Energy East pipeline to send toxic tar sands bitumen from Alberta to the Atlantic Ocean – and we need your help to make sure the government can't use a sham review process created during the Harper era to pass this pipeline.¹¹⁸⁶

- H. Environment Minister Jonathan Wilkinson is deciding whether to rubberstamp the largest tar sands mine Canada has ever seen -- and his decision could come any day.

The \$20-billion Teck Frontier Mine in Alberta will unleash a flood of global warming pollution equivalent to adding a million new cars on the road, and make it impossible for Canada to meet its climate targets. It infringes on the rights of Indigenous peoples. And economists say it's not financially viable.¹¹⁸⁷

- I. RBC - Stop funding climate destruction and the violation of Indigenous rights

¹¹⁸³ <https://www.leadnow.ca/defend-the-water-phone-action/>

¹¹⁸⁴ <https://www.leadnow.ca/stop-km/>

¹¹⁸⁵ <https://www.leadnow.ca/call-against-km-targeted/>

¹¹⁸⁶ <https://www.leadnow.ca/energy-east/>

¹¹⁸⁷ <https://act.leadnow.ca/chip-in-to-supercharge-our-campaign-to-stop-teck/>

Out of all the banks, RBC is Canada's biggest funder of fossil fuels. In just five years, they financed \$183 billion in climate-killing fossil fuel projects.

That's not all. Even though they promised their oil and gas clients have "policies and processes consistent with the standard of free prior and informed consent" with First Nations, RBC also funds the Coastal Gaslink and Line 3 pipelines —both of which violate Indigenous rights and do not have free, prior and informed consent to proceed.¹¹⁸⁸

- J. Sign the open letter demanding Trans Mountain's insurers drop TMX immediately

Insuring Trans Mountain is to actively participate in a system that continues to uphold harmful, colonialist structures of oppression.

It is to actively participate in an extractive industry whose continued existence is blocking the world from taking bold, concrete action to prevent a climate crisis.

We call on you to immediately, and publicly cancel your insurance policy with the Trans Mountain pipeline and tanker project.¹¹⁸⁹

- K. Chubb is Trans Mountain's biggest remaining insurer, and they've made big promises to their shareholders to protect our environment and climate.

If we can unleash one last flood of pressure on Chubb's top executives today, we could force them to drop the Trans Mountain pipeline or risk alienating their shareholders. It could send a signal to other insurance companies to follow suit — and stop the planet-killing project in its tracks.¹¹⁹⁰

- L. Insurers for the pipeline are already dropping like flies. If Zurich rejects Trans Mountain's request to renew their insurance too, it could convince other insurers that the project is simply too risky to support. It would leave Trans Mountain scrambling to find coverage — and might just be enough to stop the project in its tracks.¹¹⁹¹

- M. **We're visiting cabinet ministers and Liberal MPs all week (Feb 10-14 - when they are in their home ridings) across the country to let them know that there's a strong opposition to the Teck Frontier mine** in their riding and that we expect them to be accountable to us, their constituents, and to the future generations that are counting on

¹¹⁸⁸ <https://www.leadnow.ca/rbc-divest-FF/>

¹¹⁸⁹ <https://www.leadnow.ca/TMXinsurer-openletter/>

¹¹⁹⁰ <https://www.leadnow.ca/chubb-ett-tmx/>

¹¹⁹¹ <https://www.leadnow.ca/zurich-TMX/>

us to get this right. **Can you join us in North Vancouver for a group drop-in to Jonathan Wilkinson?**

What: Group drop in to Jonathan Wilkinson to Reject Teck

When: Thursday Feb 13th at 11am

Where: Minister Wilkinson's office - 310 Esplanade E #201, North Vancouver

We'll gather at 11am, take a photo (there also might be media there), and then head inside to deliver our fact sheet and message directly to Jonathan Wilkinson.

RSVP so we can make sure we have enough people for this group drop in!

Rachel ¹¹⁹²

N. The fight to stop the Trans Mountain pipeline is about to heat up.

What: Rally and March Against the Trans Mountain Pipeline (organized by the Climate Convergence)

When: Friday Feb. 22nd - Rally at 5:00pm (march starting at the NEB office at 4:30pm)

Where: Rally will be at the CBC Building at 700 Hamilton @ Georgia. If you can make it for the March at 4:30pm, meet at the National Energy Board Office, 800 Burrard St.¹¹⁹³

O. Send a message to the Kinder Morgan review panel before the end of September!

Update: Anonymous government sources leaked to Bloomberg this week rumours that the federal government is getting ready to approve the Kinder Morgan TransMountain pipeline. This is most likely an attempt by government to reassure the oil patch it can get a pipeline built after the recent delays with the Energy East pipeline. This makes it even more crucial that we send in online comments today to make it clear we will not forgive or forget a pipeline approval.¹¹⁹⁴

P. Here's the question on everyone's lips: as oil prices slide to their lowest point in decades, what's Stephen Harper going to do about it?

Our government has a habit of propping up giant oil companies with generous subsidies and cushy tax cuts — a habit that's cost Canada billions of dollars every year. We're talking big money – in 2011, the

¹¹⁹² <https://www.leadnow.ca/reject-teck-wilkinson/>

¹¹⁹³ <https://www.leadnow.ca/feb22notmx/>

¹¹⁹⁴ www.leadnow.ca/kinder-morgan-panel/

International Monetary Fund pegged Canada's oil subsidies at \$34 billion per year.¹¹⁹⁵

Q. Investigate Imperial Oil

Thanks to everyone who has signed the petition calling for an investigation into Imperial Oil for their climate change deceit. While the campaign isn't over, we're waiting for new opportunities and will respond when they arise. If you haven't already done so and want to keep updated with the campaign, sign the petition.

Recently unearthed internal reports by Imperial Oil — known for operating Esso gas stations in Canada — show that the company has had “no doubt” about the link between burning fossil fuels and climate change since at least 1980.

...

Sign the petition calling on the Environment Committee to launch hearings into Imperial Oil.

Sound familiar? This comes on the heels of Imperial Oil's parent company, Exxon, currently being investigated by 17 different attorneys general in the US, due to similar allegations that the company concealed what it knew about climate change. Without public pressure demanding Exxon be held accountable, these allegations could have been swept under the rug.¹¹⁹⁶

896. I find that the foregoing review of Leadnow's website establishes that it advocated: (a) generally and repeatedly to stop the Kinder Morgan TMX pipeline project, through a number of means including petitions and calls to various elected representative; (b) that land-use programs like the tanker-ban and the Great Bear Rainforest be utilized in opposition to the development of oil and gas generally; (c) generally and repeatedly that projects like the Energy East pipeline and the Teck Frontier Mine should not be advanced; (d) divestment programs against financial supporters of the oil and gas industry like banks, insurance companies, and “general subsidies” provided by government; (e) citizen engagement regarding demonstrations opposing the Teck Frontier mine project and the TMX pipeline project; (f) political activism in efforts to encourage voters to ask that their elected officials to end a number of initiatives, including the TMX pipeline project, the Teck Frontier mine, and subsidies to oil and gas companies; and (g) the #Exxonknew litigation tactic by calling for a petition to investigate a Canadian Exxon affiliate.

¹¹⁹⁵ <https://www.leadnow.ca/no-bail-out-for-big-oil/>

¹¹⁹⁶ <https://www.leadnow.ca/imperialknew/>

(iii) Other Campaigns

897. In my review I found that Leadnow was a signatory to the EDC Divestment Letter.¹¹⁹⁷

898. Based on the evidence set forth below, I have found that Leadnow was involved in political activism. Moreover, I have found that Leadnow was largely opposed to the policies of the federal Conservative government, including in respect of their environmental policies. In this regard I note the webpage on Leadnow's website entitled "We heard you! - Results from the 2015 Community Survey" which provided, in part:

Clean Environment

...

This suggests that there remains widespread support within the Leadnow community *both for restoring and improving the environmental protections gutted by Harper*, as well as taking urgent action to address the climate crisis from a policy perspective, solutions-based approaches to renewables, *and through opposing fossil fuel projects like pipelines, tankers, and fracking*. [emphasis added]¹¹⁹⁸

899. Leadnow ran a "Vote Together" campaign during the 2015 federal election. Leadnow described the "Vote Together" campaign on their webpage as follows:

A. This election, we can defeat the Harper Conservatives by uniting people in swing ridings where a few thousand votes will be all that's standing in the way of another Harper majority.

The Vote Together campaign connects people who want change with the tools and information they need to select and support the best local candidates to defeat the Harper Conservatives.

*Together, we can elect a government that reflects the priorities and values of the majority of Canadians - to stand together for a strong democracy, a fair economy, and a clean environment.*¹¹⁹⁹

900. The "Vote Together" website also included the following information regarding the campaign:

A. Vote Together Recommended Candidates

The Vote Together campaign picked 29 ridings where Conservatives won last time and ran an unprecedented series of local polls; then asked the local Leadnow community to recommend the best candidate to defeat the Harper Conservative in these ridings. Leadnow members

¹¹⁹⁷ <https://cela.ca/wp-content/uploads/2021/01/CSO-Letter-Export-Development-Canada-Dec-2020.pdf>

¹¹⁹⁸ <https://www.leadnow.ca/weheardyou/>

¹¹⁹⁹ <http://www.votetogether.ca/pages/about/>

pledged to “Vote Together” to support that candidate, and volunteered to reach local voters on the phones, at their doorsteps, and in their mailboxes, urging them to do the same.

These are the results:

- The NDP and Liberals took 25 of the 29 targeted seats away from the Conservatives. That’s an 86% success rate in seats the Conservatives won in 2011. A HUGE shift and far more dramatic than the national average.
- Local Leadnow members recommended 13 NDP candidates and 16 Liberal candidates as the most likely to defeat their Conservative opponent. In the seats Conservatives lost, our recommended candidate was the winner 96% of the time (24 out of 25 ridings).¹²⁰⁰

901. Leadnow reported on the Vote Together campaign in its December 2015 report, “Defeating Harper: Reflections on the vote together campaign”,¹²⁰¹ which provided, among other things:

...

It was an ambitious strategy and for a first time effort, it paid off well. In this report, we document how we went about building this campaign, how we executed the strategy in Conservative swing ridings, our first reflections on its success – as well as what we could have done better.[page 7]

...

Our Organizing Model

In order to have an impact, we knew we needed to build a massive campaign on a tight budget. Since a top-down and centralized staff-driven model would never be able to reach the necessary scale, we decided to focus on developing volunteer leaders who could play core leadership roles within the campaign.

Drawing inspiration from organizing structures developed by many social movements, and the digitally-enabled, distributed field organizing model used in Barack Obama’s 2008 and 2012 presidential campaigns, we developed an organizing model centred around a network of interrelated teams.

¹²⁰⁰ <http://www.votetogether.ca/pages/recommendations/>

¹²⁰¹ <https://s3.amazonaws.com/leadnow/vtreport/vtreport.pdf>

Each team was led by a volunteer leader, who coordinated a core team of volunteers responsible for specialized roles such as canvass coordination, data entry coordination, and volunteer recruitment. This core team coordinated canvassers, phone callers, and data entry volunteers.

This structure allowed a staff team of just seven organizers to support a massive field campaign, engaging 5,626 volunteers who had over 51,617 live, voter-to-voter conversations through canvassing door-to-door and by making phone calls through the virtual phone team.[page 12]

...

Investing in organizers and the local context was key. Being flexible with our model allowed teams to adapt their structure and tailor communication to what worked in their communities. Once we increased our staff organizer capacity, we saw a significant increase in distributed leadership, and impact in ridings where organizers were physically present. Remote support for the teams proved challenging, but possible once we had a network of leaders in place. (pg.28)

902. Leadnow was also involved in the 2017 B.C. provincial election, as per the following pages from Leadnow's website:

- A. We've also had an impact in provincial elections, such as in BC, where in 2017 we helped defeat Christy Clark's Liberal government and encouraged the NDP and Greens to form a governing alliance founded on core issues that the Leadnow community cares about.¹²⁰²

[In my review of Leadnow's website above, I had found that Leadnow had been a critic of premier Christy Clark and her liberal party in respect of oil and gas issues that adversely impacted on Alberta's oil and gas industry]

903. In the 2019 federal election Leadnow opposed the federal Conservatives based on their climate policies, the Leadnow website providing:

- A. SIGN NOW – Tell the Liberals, NDP and Greens: Cooperate for Climate

...

The Liberals need support from other parties to form government -- and that means that bold climate champions within the NDP and Greens could hold the balance of power in a minority parliament.

¹²⁰² <https://www.leadnow.ca/faq/>

Together, the NDP, Greens and Liberals could deliver ambitious climate solutions in line with a made-in-Canada Green New Deal: slashing emissions, investing billions in the clean economy, *and phasing out toxic fossil fuels* while creating good jobs and tackling inequality. [emphasis added]¹²⁰³

B. Will you chip in to power your 2019 climate election campaign?

Together we can make 2019 a turning point for climate by electing MPs committed to working across party lines in the fight for bold climate action, and by preventing the Conservatives from winning a majority of seats.

We'll challenge candidates to put forward their boldest solutions to the climate emergency. We'll highlight climate champions willing to work across party lines. We'll expose the truth about the Conservative's dangerous agenda, and turn out thousands of climate voters on election day.¹²⁰⁴

904. In the 2020 B.C. provincial election Leadnow similarly opposed the provincial Liberal party based on their climate policies, the Leadnow Facebook account providing:

A. (October 20, 2020) BC Election top demand highlight End fossil fuel subsidies

The climate crisis has not stopped for #COVID19. We can't keep giving a billion dollars annually to bail out the dying fossil fuel industry while skies fill with smoke and marginalized communities are disproportionately affected by climate change. We need to put an end to fossil fuel subsidies and invest in a Green and Just Recovery instead.

This is why we are asking #BCElection candidates to commit to ending fossil fuel subsidies as part of their platform. Let's make sure we elect progressive BC Greens and BC NDP candidates who are willing to fight for a Just Recovery. Add your voice here

https://act.leadnow.ca/transformational_change/?source=fb.¹²⁰⁵

905. This Facebook page was linked to Leadnow's website, which provides:

Four election commitments for a Green and Just Recovery

To win a Green and Just Recovery, we need bold leaders in both NDP and Green caucuses pushing for transformational change.

¹²⁰³ <https://web.archive.org/web/20191118145734/https://act.leadnow.ca/minority/>

¹²⁰⁴ <https://www.leadnow.ca/power2019/>

¹²⁰⁵ <https://www.facebook.com/leadnowcanada/posts/4006925429323615>

...

Send a message to your local candidates now.

[A platform is then provided for the reader to send a prescribed message to “your local candidate”, providing...]

Dear [recipient name will go here],

...

To achieve transformational change, we need an end to for-profit senior’s care and an end to fossil fuel subsidies. We need big investments in green social housing solutions to homelessness. And for true reconciliation, we must return provincially owned land to Indigenous Peoples.”¹²⁰⁶

(iv) Funding Applications and Grant Description

906. I have reviewed information regarding certain grants provided to LeadNow and find that the evidence demonstrates the following grants were made to LeadNow:

<u>Grantmaker Name</u>	<u>Year Authorized</u>	<u>Amount (USD)</u>	<u>Amount (CAD)</u>	<u>Description of Grant</u>
Tides U.S. Foundation ¹²⁰⁷	2014	\$78,546	\$86,751	research, education and organizing on dirty fuels and pipelines

907. The grant descriptions express the intended use of funds from the perspective of the organization which granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the organization received funds which were stated for the purpose of “research, education and organizing on dirty fuels and pipelines” to correlate to the campaigns I have reviewed above. I find that the grant description opposing the development of Alberta’s oil and gas resources to have a degree of evidentiary value in determining whether the organization has participated in anti-Alberta energy campaigns.

¹²⁰⁶ https://act.leadnow.ca/transformational_change/?source=fb

¹²⁰⁷ Tides Foundation Form 990 for the 2014 calendar year Schedule F Part II page 41 or 178 of PDF.

(v) Government Funding

908. As LeadNow is a not for profit, I was not able to find any publicly accessible sources that would provide evidence regarding what government funding may or may not have been received by LeadNow.

(vi) Conclusion on Participation in an anti-Alberta Energy Campaign

909. In my review of the foregoing I specifically noted the following in respect of LeadNow: (a) the direct advocacy contained on its website against various aspects surrounding the development of Alberta's oil sands, including opposition to a number of specific projects, calling for the cessation of all subsidies to the oil and gas industry, and exerting pressure on a number of financial supporters to divest their investments in, or insurance coverage of, companies involved in the development of Alberta's oil and gas industry; and (b) a specific grant description for "research, education and organizing dirty fuels and pipelines" received from the Tides Foundation, which I find to be evidence tending to establish broad and general objections to the development of Alberta's oil and gas resources.

910. Moreover, I also noted Leadnow's participation in a number tactics, including: (a) political activism, including: (i) the "Vote Together" initiative in the 2015 federal election, (ii) the opposition to B.C. Liberals in the 2017 B.C. provincial election, (iii) the opposition to the federal Conservatives in the 2019 federal election; and (iii) opposition to the provincial Liberals in the 2020 B.C. provincial election, all of which were advanced in a repeated and general opposition to the development of Alberta's oil and gas resources; and (b) was signatory to the EDC Divestment Letter.

911. On the basis of the totality of this evidence, I find that LeadNow has engaged in efforts to frustrate the development of Alberta's oil and gas industry in a broad and general sense, and therefore has participated in an anti-Alberta energy campaign.

E. FUNDERS

912. For each organization identified as a Funder, I have considered the grants made by that organization to various Participants and others. In some cases I have identified individual grants, the description of which contains language that indicates support of an effort to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense, and I have listed samples of such grants made by various Funders. I have also reviewed numerous grants made by Funders, which contain descriptions such as for general purposes, or other generic language but have not listed samples of these grants.

913. I cannot say with any certainty that the grants whose description appears supportive of an effort to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense were in fact utilized for such purpose – the grant description is only taken by me as an indication of the intentions of the grantor as to the use of the funds. By the same token, I cannot determine the exact purpose for which grants with a generic description were deployed by the recipient. Money is fungible – once funds are deployed to an organization in some manner, they are deployed to advance the mission and the campaigns of that organization, which are often varied and complex.

914. It is for this reason that for each Funder, I have included a table showing the total funds provided by that Funder to each organization that I have found to be a Participant in anti-Alberta energy campaigns. The information in this table has been taken from the Deloitte Report. I have concluded that funding was provided to that organization to help advance its mission and campaigns, which are highlighted in detail for each Participant identified in this section of the report.
915. Again, I emphasize that it is not my intention to impugn this conduct in any way. It is indeed a common practice for not-for-profits and businesses alike. In developing my recommendations I will be supporting greater transparency, and improved disclosure for not-for-profit and charitable organizations.
916. In accordance with the Terms of Reference, I have also commented whether I have found, on a balance of probabilities, that a funder has evinced an intent harmful or injurious to the Alberta oil and gas industry. In doing so, I have considered statements that the Funder made and the actions of the Funder, either alone or in concert with statements of the entity.
917. I will consider the totality of evidence in respect of each Funder to determine whether on a balance of probability I am satisfied the Funder has evinced a broad and general opposition to the continued operation or expansion of either all or a part of Alberta's oil and gas industry, and where so satisfied will make a finding that the Funder has evinced an intent harmful or injurious to Alberta's oil and gas industry.
918. I clarify that I do not find that evincing an intent harmful or injurious to Alberta's oil and gas industry constitutes misconduct on the part of any party that should be viewed as impugnable in any way.
919. In respect of certain of the evidence I will refer to in my analysis:
- A. A substantial body of the evidence before me consists of disclosures filed by entities with the Canadian and American governments under applicable law, which include statements on the intended purpose of financial contributions such as grants to charitable organizations, except where satisfied by the submissions of an entity as to the unreliability of any specific disclosure. I find that these disclosures are reliable evidence upon which I may draw conclusions on the intent for which funds were provided by one entity to another, where the stated purpose is sufficiently ascertainable for me to do so, in particular on whether the funds were advanced to assist in participation in an anti-Alberta energy campaign, which I consider a partial basis upon which to conclude that an entity held an intent injurious to the Alberta oil and gas industry in making that financial contribution.
 - B. I have at times relied on archives of internet sites in this section. These archives were made by the Internet Archive and are hosted on its site, the Wayback Machine. The Internet Archive is an American non-profit organization and member of the American Library Association working to build a digital library of internet sites, claiming to host over 475 billion web pages and vast amounts of other information. I consider the Internet Archive and the content accessible through its Wayback Machine to be a reliable

resource. Absent good reason demonstrating a particular archived page is not reliable, I find that the archived web pages hosted on the Wayback Machine reflect the web pages as they existed at the specified time and are a sound basis upon which I may make findings based on the content on those web pages.

- C. I have at times referred to reports authored or co-authored by an organization and have provided comments regarding their content and my assessment of the same. I have provided such comments and assessment for the purposes of understanding the viewpoint expressed in the report, and have not considered the veracity of the content of the report. I have not considered nor make any finding that the content of any report I discuss is false or misleading.
- D. I have at times referred to statements made by an individual associated with an organization. Where a statement is made by a person on behalf of an organization, I will consider the nature of the statement and the position of the person in order to determine whether that statement can be imputed to the entity.
- E. I have at times relied on information obtained from Foundation Directory Online (“**FDO**”) and charitydata.ca. FDO is a website published by Candid, which is a charitable organization monitoring site based in the United States. Charitydata.ca is a website developed and maintained by Blumberg Segal and The Wire (Blumbergs). The Charitydata website developed by Blumberg Segal and The Wire (“**Charitydata**”) maintains Canada’s largest charity information portal with up to 17 years of information on every Canadian registered charity. All of the information on Charitydata is obtained from annual T3010 Registered Charity information Returns (“**T3010**”) filed with the Canada Revenue Agency (“**CRA**”) and is provided “as is”, subject to Charitydata’s limitations and caveats, which are described in detail in Appendix “B.2” to the Deloitte Report (referenced below). Absent good reason demonstrating information taken from FDO or Blumbergs is not reliable, I find that the information is accurate and reliable and are a sound basis upon which I may make findings based on the information.
- F. Certain amounts referenced below were converted from US dollars to Canadian dollars using the average annual exchange rates published by the Bank of Canada.¹²⁰⁸
920. The following section outlines the evidence in respect of those entities I have found are Funders. I note that all of the Funders, with one exception, are headquartered in the U.S.

¹²⁰⁸ See attached chart.

(a) **Rockefeller Brothers Fund**

(i) Background

921. Rockefeller Brothers Fund, Inc. is a Section 501(c)(3) exempt private foundation.¹²⁰⁹ The organization's 2019 Form 990-PF provides that the organization's address is in the U.S.¹²¹⁰

922. As of December 31, 2019 its total asset value was \$1,296,117,807 (USD).¹²¹¹

923. Rockefeller Brothers Fund plays a prominent role in the RBF Document, which purports to be presented by Michael Northrop, a program director for Rockefeller Brothers Fund.

(ii) Funding

924. In considering the grants made by the Rockefeller Brothers Fund to various organizations, I have determined that the below grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense:

<u>Recipient</u>	<u>Date</u>	<u>Amount USD</u>	<u>Amount CAD</u>	<u>Grant Description</u>
New Venture Fund ¹²¹²	2018	\$300,000	\$ 388,710	For its Fossil Fuel Reduction campaign
New Venture Fund ¹²¹³	2016	\$300,000	\$397,442	For its Fossil Fuel Reduction project
New Venture Fund ¹²¹⁴	2015	\$325,000	\$415,581	For Fossil Fuel Reduction project
Sierra Club of BC ¹²¹⁵	2013	\$200,000	\$205,983	For its Beyond Coal and Tar Sands projects
Corporate Ethics International ¹²¹⁶	2011	\$300,000	\$296,721	For its Tar Sands Campaign
Corporate Ethics International ¹²¹⁷	2010	\$300,000	\$308,982	For its Tar Sands Campaign

¹²⁰⁹ https://www.rbf.org/sites/default/files/2019_rbf_990pf.pdf at page 1 box H.

¹²¹⁰ https://www.rbf.org/sites/default/files/2019_rbf_990pf.pdf at page 1.

¹²¹¹ https://www.rbf.org/sites/default/files/2019-rbf-financial-statement_audited.pdf at page 3.

¹²¹² Rockefeller Brothers Fund, Inc. Form 990-PF for the 2018 calendar year page 127.

¹²¹³ Rockefeller Brothers Fund, Inc. Form 990-PF for the 2016 calendar year Schedule 13 Part XV at page 96.

¹²¹⁴ Rockefeller Brothers Fund, Inc. Form 990-PF for the 2015 calendar year Schedule 13 Part XV at page 31.

¹²¹⁵ Rockefeller Brothers Fund, Inc. Form 990-PF for the 2013 calendar year Schedule 13 Part XV at page 102 of pdf.

¹²¹⁶ Rockefeller Brothers Fund, Inc. Form 990-PF for the 2011 calendar year page 92.

¹²¹⁷ Rockefeller Brothers Fund, Inc. Form 990-PF for the 2010 calendar year Schedule 13 Part XV at page 13.

<u>Recipient</u>	<u>Date</u>	<u>Amount USD</u>	<u>Amount CAD</u>	<u>Grant Description</u>
Corporate Ethics International ¹²¹⁸	2008	\$200,000	\$213,203	To support a markets campaign to stem demand for tar sands derived fuels in the United States
Tides Canada Initiatives Society ¹²¹⁹	2008	\$ 50,000	\$ 53,301	To develop a website: Oil Sands Tourism, which works to educate American tourists and tour operators about the damage being done by Alberta by the unsustainable extraction of tar sands, and to reflect the Fund's interests in biodiversity protection mitigating climate change, and promoting clean energy alternatives.
Pembina Foundation for Environmental Research & Education ¹²²⁰	2007	\$ 50,000	\$ 53,739	To prevent the development of a pipeline and tanker port that endangers the Great Bear Rainforest protected area
West Coast Environmental	2007	\$ 50,000	\$ 53,739	To prevent the development of a

¹²¹⁸ Rockefeller Brothers Fund, Inc. Form 990-PF for the 2008 calendar year Schedule 18 Part XV at page 12.

¹²¹⁹ Rockefeller Brothers Fund, Inc Form 990-PF for the 2008 calendar year Schedule 18 Part XV at page 32

¹²²⁰ Rockefeller Brothers Fund, Inc. Form 990-PF for the 2007 calendar year Schedule 20 at page 33.

<u>Recipient</u>	<u>Date</u>	<u>Amount USD</u>	<u>Amount CAD</u>	<u>Grant Description</u>
Law Research Foundation ¹²²¹				pipeline and tanker port that endangers the Great Bear Rainforest protected area
Pembina Foundation for Environmental Research & Education ¹²²²	2006	\$ 50,000	\$ 56,705	To prevent the development of a pipeline and tanker port that endangers the Great Bear Rainforest protected area

925. My reasons for finding that these grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense may be separated into the following bases:

- A. Certain of the grant descriptions to New Venture Fund reference a "Fossil Fuel Reduction" program. One of these grants describes this program saying "The Fossil Fuel Reduction project is a multi-funder and multi-year project of the New Venture Fund. Its purpose is to reduce the impacts on people, wildlife, water, soil, and air from the development of unconventional types of oil. The extraction and processing of unconventional oils in North America have high carbon intensity and other environmental and human impacts. To ensure that atmospheric concentrations of carbon not exceed 450 parts per million, about two-thirds of oil reserves should be kept in the ground."¹²²³ I find that when used in a discussion of North American oil and gas resources, "unconventional types of oil" refers to oil sands. As such, I find that the "Fossil Fuel Reduction" program would be opposed to the development of Alberta's oil sands resources, and that grants in support of this would necessarily support opposition to the development of Alberta's oil and gas resources in a broad and general sense.
- B. The term "Tar Sands" is a reference that is frequently used to describe Alberta's oil and gas resources, in particular Alberta's oil sands resources. I find that where grants were made to an entity that I have elsewhere found participated in anti-Alberta energy campaigns related to "Tar Sands" campaigns or projects, this is sufficient to demonstrate

¹²²¹ Rockefeller Brothers Fund, Inc. Form 990-PF for the 2007 calendar year Schedule 20 at page 43.

¹²²² Rockefeller Brothers Fund, Inc. Form 990-PF for the 2006 calendar year Schedule 20 at page 177 of the pdf.

¹²²³ The William & Flora Hewlett Foundation Form 990-PF for the calendar year 2016 Part XV at page 142 of pdf.

the grants refer to campaigns generally opposed to the development of Alberta's oil and gas resources.

- C. The development of a website for Oilsands Tourism is consistent with the project, Rethink Alberta, which is described in detail in Part II as a project that could have been used to directly or indirectly delay the timely, economic, efficient and responsible development of Alberta's oil and gas resources and/or the transportation of those resources to commercial markets.
- D. An express reference to "damage being done to Alberta by the unsustainable extraction of tar sands" is explicit in its opposition to the further development of Alberta's oil and gas resources.
- E. An express reference to "stem demand for tar sands derived fuels in the United States" is explicit in its opposition to the further development of Alberta's oil and gas resources.
- F. As discussed in Part II the "Great Bear Rainforest" campaign may be, but is not necessarily in every case, an effort opposed to the further development of Alberta's oil and gas resources. I find that where a grant is made in relation to the Great Bear Rainforest and also makes references to "prevent the development of a pipeline and tanker port" and the grant is made to an entity that I have found has participated in an anti-Alberta energy campaign, this constellation of factors is sufficient to convince me that such grants are for an anti-Alberta energy campaign.

926. There are a significant number of grants made by the Rockefeller Brothers Fund to organizations that I have found participated in anti-Alberta energy campaigns, including those listed in this section:

<u>Participant</u>	<u>Total</u>
ForestEthics/STAND	\$1,933,636
Corporate Ethics International	\$1,718,829
International Institute for Sustainable Development	\$1,011,050
David Suzuki Foundation	\$859,400
Sierra Club	\$681,156
Greenpeace Fund	\$576,028
Sierra Club of B.C.	\$315,845
ForestEthics	\$154,842
Tides Canada Foundation	\$148,591
Pembina Foundation for Environmental Research & Education	\$110,444
West Coast Environmental Law Research Foundation	\$110,444
Tides Canada Initiatives Society	\$76,140

Western Canadian Wilderness Committee	\$34,980
Raincoast Conservation	\$6,058
Total	\$7,737,443

927. With respect to these amounts, there was insufficient information available to me to determine whether these grants were intended to be employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, I make no finding with respect to these grants, but recommend in Part VIII that increased transparency requirements should be introduced, requiring clear description of the purpose and aim of any grants made to not for profits and charitable organizations.

928. I have further found Rockefeller Brothers Fund made grants to an entity I found to be a “Re-Granter” as follows:

<u>Organization</u>	<u>Total</u>
New Venture Fund	\$3,253,311

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

929. Rockefeller Brothers Fund is the sponsor of the RBF Document.

930. I have reviewed evidence regarding the campaigns and statements of the Rockefeller Brothers Fund including the following:

A. A publication issued by the Rockefeller Brothers Fund known as the “Sustainable Development Program Review, 2005-2010”, M. Northrop, program director. Jessica Bailey, program officer, November 2010, which provided:

...

Reducing reliance on carbon intensive fuels

Since 2007, the RBF has supported campaigns to slow the demand for carbon intensive fuels, including tar sands. These campaign [*sic*] face a number of challenges: Oil is the richest industry in the world; the Canadian tar sands are one of the few large non-nationalized oil reserves left in the world; the United States is eager to transition away from Middle Eastern oil for “energy security”; Canada is relying on tar sands oil to drive its economy; and, many Americans believe that more oil will keep the price of gas down. Increasing the import of tar sands oil also threatens to delay the U.S. transition to a new energy economy. As a result the Fund is determined to continue to educate Americans about the real costs of increased reliance on tarsands based fuels and to

seeking alternative ways to fuel the U.S. vehicle fleet that are clean and economically beneficial for the country.¹²²⁴

- B. A summary of funding the #Exxonknew campaign and related litigation indicated that Rockefeller Brothers Fund provided support for the campaign.¹²²⁵
- C. An op-ed contributed by Michael Northrop, “Program Director for Sustainable Development at the Rockefeller Brothers Fund” to the Huffpost on March 21, 3013 (updated May 21, 2013) entitled “Let’s Count the Ways Keystone Approval Helps Us: Memo From Houston”. The article listed 22 objections to the approval of the Keystone XL pipeline in a “tongue and cheek” fashion, and concluded:

And once we’ve finished this campaign, we can start pounding the president about Arctic drilling.

The article concludes with disclaimer that “The views expressed are those of the author and do not necessarily represent the views of the Rockefeller Brothers Fund”.¹²²⁶ Notwithstanding this disclaimer, the article specifically identifies the author as “Program Director for Sustainable Development at the Rockefeller Brothers Fund” and as such I find that the views were expressed by the author in their capacity as a Program Director, and can be attributed to Rockefeller Brothers Fund.¹²²⁷

931. In reviewing the totality of the evidence, including the foregoing campaigns and statements and evidence regarding grants made by Rockefeller Brothers Fund summarized above, I am satisfied that the evidence establishes the Rockefeller Brothers Fund has evinced an intent harmful or injurious to Alberta’s oil and gas industry.

(iv) Conclusion

932. In conclusion, I find that the Rockefeller Brothers Fund:

- A. has made grants that constitute funding for a stated purpose that could directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportations of those resources to commercial markets;
- B. has made grants to entities I have found are Participants;
- C. has made grants to an entity I found is a “Re-Granter”; and

¹²²⁴ <https://www.rbf.org/sites/default/files/sustainabledevelopmentprogramreview.pdf>

¹²²⁵ “Private Funders, Public Institutions: ‘Climate’ Litigation and a Crisis of Integrity”, Government Accountability & Oversight, May, 2021 [online: <https://climatelitigationwatch.org/wp-content/uploads/2021/05/GAO-EPA-CCI-RFF-Climate-Paper.pdf>] at pages 18-21.

¹²²⁶ https://www.huffpost.com/entry/keystone-consequences_b_2872262

¹²²⁷ https://www.huffpost.com/entry/keystone-consequences_b_2872262

D. is a foreign organization that has evinced an intent harmful or injurious to Alberta's oil and gas industry.

(b) ***Gordon and Betty Moore Foundation (“Moore Foundation”)***

(i) Background

933. Gordon E. and Betty I. Moore Foundation is a Section 501(c)(3) exempt private foundation.¹²²⁸ The organization's 2019 Form 990-T provides that the organization's address is in the U.S.¹²²⁹

934. As of December 31, 2019 its total asset value was \$7,171,712,288 (USD).¹²³⁰

(ii) Funding

935. There are a significant number of grants made by the Moore Foundation to organizations that I have found participated in anti-Alberta energy campaigns, including those listed in this section:

<u>Participant</u>	<u>Total</u>
World Wildlife Fund Canada	\$20,045,114
West Coast Environmental Law Research Foundation	\$5,588,145
David Suzuki Foundation	\$3,780,515
STAND/ Forest Ethics	\$1,657,086
Raincoast Conservation Foundation	\$1,402,922
Pembina Foundation for Environmental Research & Education	\$1,143,189
Sierra Club of B.C.	\$1,008,040
Total:	\$34,625,011.00

936. With respect to these amounts, there was insufficient information available to me to determine whether these grants were intended to be employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, I make no finding with respect to these grants, but recommend in Part VIII that increased transparency requirements should be introduced, requiring clear description of the purpose and aim of any grants made to not for profits and charitable organizations.

¹²²⁸ <https://www.moore.org/docs/default-source/our-finances/tax-returns-and-990s/2019/2019-form-990-t> at page 1 box B.

¹²²⁹ <https://www.moore.org/docs/default-source/our-finances/tax-returns-and-990s/2019/2019-form-990-t> at page 1.

¹²³⁰ <https://www.moore.org/docs/default-source/our-finances/audited-financial-statements/2019-2018-financial-statements> at page 3.

937. I have further found Moore Foundation made grants to an entity I found to be a “Re-Granter” as follows:

<u>Organization</u>	<u>Total</u>
New Venture Fund	\$6,914,515

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

938. I have reviewed evidence regarding the campaigns and statements of the Moore Foundation including the following:

- A. The Moore Foundation supports two major initiatives that impact Canada’s west coast – the Marine Conservation Initiative and the Wild Salmon Ecosystem Initiative.
- B. The “Marine Conservation Initiative” focuses on two regions, one of which is:

“British Columbia: home to some of the most productive and relatively healthy, intact ocean ecosystems globally—from coastal estuaries and fjords to deep-water corals and glass sponge reefs. Yet high-impact ocean uses, like marine transportation, threaten to disrupt the connections between ecological and socioeconomic systems that otherwise strengthen and tie communities and ecosystems together.”¹²³¹

Which in turn is expounded upon as follows;

“High-priority conservation targets

In our work in the North American Arctic and British Columbia, we are working to protect ecologically important features, manage the range of human uses in those places and establish frameworks for the enduring health of marine ecosystems.

...marine plans collaboratively developed and signed by 17 coastal First Nations and the province of British Columbia for the North Pacific Coast.¹²³²

- C. A posting on the Moore Foundation’s website from February 21, 2020 speaks to the origin of the foundation’s Wild Salmon Ecosystem Initiative, saying:

“Around the time the Gordon and Betty Moore Foundation was founded in 2000, I became aware of an initiative that promised to take conservation to a new scale in the temperate rainforests of the central and north coasts of British Columbia, including the lower Skeena. Conservation organizations, unwilling to accept the limited objectives of

¹²³¹ <https://www.moore.org/initiative-strategy-detail?initiativeld=marine-conservation-initiative>

¹²³² <https://www.moore.org/initiative-additional-info?initiativeld=marine-conservation-initiative>

the British Columbia government's land-use planning processes, had created leverage through international market campaigns and had named the area the Great Bear Rainforest. Indigenous communities, building on recent Supreme Court wins, had come together to collectively affirm their rights through an initiative called Turning Point (later Coast First Nations' Great Bear Initiative). Consequently, the British Columbia government and forest companies had agreed to a logging moratorium for one hundred pristine temperate rainforest watersheds while more ambitious land-use plans informed by Indigenous traditional knowledge and western science were to be negotiated to protect key areas and guide an ecosystem-based approach to forestry and other development.

...

In British Columbia, that meant making grants to place-based organizations focused on strengthening governance arrangements and protection designations for wild salmon ecosystems in the Great Bear Rainforest and the Skeena, Stikine and Taku watersheds. It also meant supporting broader efforts to improve provincial and federal management frameworks for fisheries, aquaculture, major project assessments and freshwater management.

...

Furthermore, wild salmon do more than look after themselves; they sustain the ecosystems that people depend on as well — and people in wild salmon watersheds truly get that. Indigenous and other wild salmon communities pay close attention to what is happening to wild salmon and are quick to work together, and with all those who are willing to support them, to ensure that wild salmon prosper. The guidance of these people, combined with evidence presented from the scientists, was all we really needed to execute an ambitious funding program. Consequently, Moore Foundation grants exceeding \$100 million over fifteen years, along with donations from other funders, supported the achievement of impressive outcomes by Canadians.

Successes

In the Great Bear Rainforest, an area containing a quarter of the world's remaining temperate rainforest, an ecosystem-based approach was developed and 85 percent of the forest was set aside from industrial logging. Through associated government-to-government agreements and conservation financing, First Nations of the area have improved capacity to ensure this approach is implemented in a manner that supports their communities and cultures over time, and to create associated businesses better aligned with their values. A sister Moore Foundation effort, the Marine Conservation Initiative, supports these

same communities to achieve outcomes at a similar scale in the marine environment.

Further north, in the territories of the Taku River Tlingit First Nation, over a million acres of the Taku wild salmon ecosystem has been protected with similar collaborative governance arrangements to those in the Great Bear established and financed. In the Skeena, financial mechanisms are in place to support the ongoing capacity for monitoring and adaptive management of freshwater habitat by the Gitanyow and Wet'suwet'en First Nations.

In the Skeena estuary, a moratorium has been established to protect critical juvenile salmon habitat. In the headwaters area that the Skeena shares with the Stikine, support for the Tahltan people and their neighbors helped establish long-term protection for a sensitive area that was otherwise destined for coal and gas development."¹²³³

- D. In its "2008 Year in Review", the Moore Foundation reported the 2008 highlights of its marine conservation initiative, stating:

"MARINE CONSERVATION INITIATIVE

Area-Based Management

Interest in spatially-explicit integrated ocean management, or Area-Based Management (ABM) is building in Canada...

In British Columbia, Foundation grantees, namely the Coastal First Nations - Turning Point Initiative and Tides Canada Foundation (together with the BC Marine Planning Network), worked to launch an area-based management process through a December 2008 memorandum of understanding between the First Nations and federal government. The MOU formally initiated the Pacific North Coast Integrated Management Area (PNCIMA) integrated spatial planning process.¹²³⁴

...

The Marine Conservation Biology Institute, together with Living Oceans Society and Ecology Action Centre, produced a landmark first analysis of the ecological impacts of Canada's fishing gears. That report will inform Canada's federal government as it works to renew the Fisheries Act and implement related policies in 2009."¹²³⁵

¹²³³ <https://www.moore.org/article-detail?newsUrlName=perspective-a-moore-foundation-program-officer%27s-story>

¹²³⁴ https://www.moore.org/docs/default-source/Annual-Reports/2008-year-in-review.pdf?sfvrsn=95d19f0d_0. Page 4.

¹²³⁵ https://www.moore.org/docs/default-source/Annual-Reports/2008-year-in-review.pdf?sfvrsn=95d19f0d_0. Page 5.

- E. In 2008 the Moore Foundation also provided the first of five grants to Forest Ethics, total \$3,361,853. The grant description included the following:

“Forest Ethics, founded in 2000 and with offices in California, Washington and Vancouver, is a grassroots environmental organization that creates solutions that protect communities, wildlife, wilderness and our climate.

ForestEthics demands environmental responsibility from government and major corporations and uses public education, advocacy, protest, negotiation and non-violent direct action tactics to achieve its goals. The organization’s markets solutions department aims to expose poor environmental business practices and offers solutions for improvement, providing resources for companies who want to do better but who need guidance. Initiatives have included the Healthy Forests Campaign and the Extreme Oil Campaign, among others.”¹²³⁶

- F. 2008 also saw the first of five grants from the Moore Foundation to the T. Buck Suzuki Environmental Foundation for \$2,592,616. The grant description included the following:

“T. Buck Suzuki Environmental Foundation is a British Columbia nonprofit working to protect fish habitat, prevent pollution and promote sustainable fisheries.

...

The foundation focuses on protecting fish habitat and preventing pollution by stopping the impacts of oil spills, pipelines, tankers and energy projects on sensitive land.”¹²³⁷

- G. In 2009 a report entitled “Cleaning up Our Ocean: A report on pollution from shipping related sources in the Pacific North Coast Integrate Management Area (Pncima) on the British Columbia Coast” was issued jointly by Living Oceans, Sierra Club BC, and the David Suzuki Foundation. Among other things it recommended:

“11. Strengthen and enforce the ban on crude oil tankers on the north and central coast.

The inland waters of Pncima have been protected since 1972 by a federal moratorium on crude oil tanker traffic. The moratorium was implemented to mitigate concerns over potential environmental impacts, is referenced in government documents and has since been upheld by eight Canadian prime ministers. Today the federal government is denying the existence of a ban on tankers, claiming there is a “voluntary exclusion zone” only. With six oil and gas terminal projects in various stages of application and approval in Kitimat and Prince Rupert, all of

¹²³⁶ <https://www.moore.org/grantee-detail?granteeid=310>.

¹²³⁷ <https://www.moore.org/grantee-detail?granteeid=1038>

which would necessitate tanker traffic, the risk of environmental degradation to Pncima is heightened. A permanent ban on crude oil tankers on the north and central coast is required to mitigate ecological damage and avoid the reinterpretation of history.”¹²³⁸

The report was “made possible by the generous support of the Gordon and Betty Moore Foundation”.¹²³⁹

- H. In its “2009 Year in Review”, the Moore Foundation reported a sampling of their “grantee accomplishments within our initiative and commitments”¹²⁴⁰ as follows:

“MARINE CONSERVATION INITIATIVE

Canada’s Department of Fisheries and Oceans (DFO) and Coastal First Nations incorporated critical benchmarks for a good Marine Spatial Planning (MSP) process into a framework for the Pacific North Coast Integrated Management Area (PNCIMA). *Contiguous to the Great Bear Rainforest, the PNCIMA can serve as a new international paradigm for both MSP and integrated land-sea conservation.* (Grantees: Turning Point Initiative – Coastal First Nations; Tides Canada Foundation; WWF-Canada; Living Oceans Society; David Suzuki Foundation; and T. Buck Suzuki Environmental Foundation)¹²⁴¹

...

WILD SALMON ECOSYSTEMS INITIATIVE

...

In the Skeena watershed, a large and diverse *coalition has formed to address decision-making around resource development*, with the potential to affect important wild salmon habitat. First Nations, communities, recreation groups, fishing sectors, and conservation organizations *have developed collaborative strategies to facilitate informed social choice based on a full understanding of the cumulative impacts of proposed development projects.* (Grantees: Pacific Salmon Forum, Tides Canada Foundation, Northwest Institute for Bioregional Research Studies, Driftwood Foundation, ForestEthics, Pembina Institute).” [emphasis added]¹²⁴²

¹²³⁸ <https://davidsuzuki.org/wp-content/uploads/2009/04/cleaning-up-ocean-pollution-shipping-pacific-north-coast-integrated-management-area-british-columbia.pdf>. Page 5.

¹²³⁹ <https://davidsuzuki.org/wp-content/uploads/2009/04/cleaning-up-ocean-pollution-shipping-pacific-north-coast-integrated-management-area-british-columbia.pdf>. Page 4.

¹²⁴⁰ <https://www.moore.org/docs/default-source/Annual-Reports/2009-year-in-review>. Page 2.

¹²⁴¹ <https://www.moore.org/docs/default-source/Annual-Reports/2009-year-in-review>. Page 3.

¹²⁴² <https://www.moore.org/docs/default-source/Annual-Reports/2009-year-in-review>. Page 5.

- I. On June 8, 2010 the Moore Foundation co-signed a letter to Secretary Hillary Clinton seeking to suspend the permitting process for the Keystone XL “tar sands” oil pipeline. The letter stated, among other things:
- “Permitting the Keystone XL pipeline is a long-term investment in tar sands oil, one of the most carbon and water intensive fuels available. If constructed this pipeline will undermine the U.S. commitment to a transition to clean, sustainable energy.
- ...
- Financial analysts consider tar sands oil too expensive to compete economically.... Given the costs and liabilities of tar sands oil, we question whether it is in the national economic interest to diverge off the path toward clean energy by committing massive resources to a project that will prolong America’s oil dependence and greatly increase our carbon emissions.”¹²⁴³
- J. In the Moore Foundation’s “2011 Year in Review” the focus on salmon continued in a project described as follows:
- The second project – protecting the function of the Taku Watershed through support for Round River Conservation Society, Tides Canada, and Rivers Without Borders – supported a historic agreement between the Taku River Tlingit First Nation (TRTFN) and the province of British Columbia. The agreement, which provides for habitat protection within a framework for sustainable resource management that the watershed scale, creates a system of protect areas the size of Yellowstone National Park and an array of conservation priority areas within a no commercial logging zone of over seven million acres.
- It also established a joint governing process that empowers the TRTFN to play a significant role in future resource development decisions around mining and other potential threats to wild salmon in the region. Anticipating and minimizing future environmental damage will help maintain healthy wild salmon populations.¹²⁴⁴
- K. The Moore Foundation also worked with the Pew Environment Group and the Hewlett Foundation to develop the Boreal Framework that would protect the boreal forest from “[m]ining for oil, natural gas, gold, diamonds and uranium” including “Alberta’s tar sands,

¹²⁴³

https://web.archive.org/web/20100613123646/http://dirtyoilsands.org/files/E2_KeystoneXL_Letter_June2010FINAL.pdf

¹²⁴⁴ https://www.moore.org/docs/default-source/Annual-Reports/2011-year-in-review.pdf?sfvrsn=a5e39c0d_4. Page 5.

used to make synthetic oil, are strip-mined from a region that could eventually rival the size of Florida”.¹²⁴⁵

939. In reviewing the totality of the evidence, including the foregoing campaigns and statements and evidence regarding grants made by the Moore Foundation summarized above, I am satisfied that the evidence establishes the Moore Foundation has evinced an intent harmful or injurious to Alberta’s oil and gas industry.

(iv) Conclusion

940. In conclusion, I find that the Moore Foundation:

A. has made grants to entities I have found are Participants;

B. has made grants to an entity I have found is a “Re-Granter”; and

is a foreign organization that has evinced an intent harmful or injurious to Alberta’s oil and gas industry.

C.

(c) ***Pew Charitable Trusts (“Pew”)***

(i) Background

941. The Pew Charitable Trusts is a Section 501(c)(3) exempt private foundation.¹²⁴⁶ The organization’s 2019 Form 990 provides that the organization’s address is in the U.S.¹²⁴⁷

942. As of June 30, 2020 its total asset value was \$6,367,262,000 (USD).¹²⁴⁸

(ii) Funding

943. There are a number of grants made by Pew to organizations that I have found participated in anti-Alberta energy campaigns, including those listed in this section:

<u>Participant</u>	<u>Total</u>
World Wildlife Fund Canada	\$1,724,653
David Suzuki Foundation c/o Tides Center	\$141,332
Total:	\$1,865,985

¹²⁴⁵ <https://www.pewtrusts.org/en/research-and-analysis/articles/2011/02/16/success-story-keeping-the-earth-cool-canadas-boreal-forest>

¹²⁴⁶ <https://www.pewtrusts.org/-/media/assets/2021/04/thepecharitabletrustsyear2020form990.pdf> at page 1 box I.

¹²⁴⁷ <https://www.pewtrusts.org/-/media/assets/2021/04/thepecharitabletrustsyear2020form990.pdf> at page 1.

¹²⁴⁸ https://www.pewtrusts.org/-/media/assets/2020/12/financialstatements_pct_2020.pdf at page 5.

944. With respect to these amounts, there was insufficient information available to me to determine whether these grants were intended to be employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, I make no finding with respect to these grants, but recommend in Part VIII that increased transparency requirements should be introduced, requiring clear description of the purpose and aim of any grants made to not for profits and charitable organizations.

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

945. I have reviewed evidence regarding the campaigns and statements of Pew including the following:

- A. As discussed in the Boreal Forest section in Part II of this Report, Pew Environmental Group launched an international campaign to “protect Canada’s boreal forest from destructive development” in 2000, stating in a publication it issued in October, 2010 that:

The opportunity to protect this important part of Earth’s remaining wilderness will not last forever. Global demand for timber, minerals, *energy* and water resources threaten the future of Canada’s boreal forest. Logging already consumes more than 4,000 acres per day, totaling an area larger than the state of Delaware every year. *Booms in mining, oil and gas threaten even more.* Unless it is protected, most of Canada’s boreal wilderness could be gone in a generation [emphasis added].¹²⁴⁹

- B. After 2000, Pew participated in various aspects of the Boreal forest conservation initiative, as follows:

- (1) Canadian Boreal Initiative (“**CBI**”). The CBI was established in 2003 and was supported by Pew. In 2003 it released the Boreal Framework.¹²⁵⁰
- (2) Boreal Leadership Council (“**BCL**”). The BCL was “convened” by the CBI and developed the Boreal Framework “in concert” with the CBI.¹²⁵¹
- (3) International Boreal Conservation Campaign (“**IBCC**”). The IBCC carried on the work of the CBI. I found that the “IBCC was initiated by The Pew Charitable Trusts and operates as a partnership of Pew, The William and Flora Hewlett Foundation, Ducks Unlimited Incorporated, the Gordon and Betty Moore Foundation, Ducks Unlimited Canada, the Indigenous Leadership Initiative, the

¹²⁴⁹ <https://www.pewtrusts.org/-/media/assets/2008/boreal-forest-fact-sheet.pdf>

¹²⁵⁰ https://web.archive.org/web/20070630084337/http://www.borealcanada.ca/about_cbi_e.cfm

¹²⁵¹ https://web.archive.org/web/20070630084337/http://www.borealcanada.ca/about_cbi_e.cfm

Canadian Parks and Wilderness Society, the Boreal Songbird Initiative, and the Boreal Leadership Council.”¹²⁵²

- (4) Boreal Songbird Initiative (“**BSI**”). BSI came to my attention because it is specifically referenced in both Background Documents¹²⁵³ and, when I visited the CBI website, I found that the CBI is no longer operational and its website re-directs to BSI’s website.¹²⁵⁴ BSI is a U.S. based organization that is tax exempt under section 501(c)(3) of the Internal Revenue Code (U.S.).¹²⁵⁵ BSI is a partner in the IBCC and received funding: (a) from Pew of \$1,872,000 (USD) between July 2005¹²⁵⁶ and June, 2006¹²⁵⁷; and (b) from Tides Foundation U.S. a total of \$630,000 (USD) for the “Tar Sands Campaign” in 2009¹²⁵⁸ and for “First nations education and outreach on tar sands related issues”¹²⁵⁹ in 2011.¹²⁶⁰
- (5) BSI features a page on its website entitled “Boreal Forest – Threats to the Forest” which outlines four primary types of industrial activity that demonstrate “the need to conserve large portions of the forest to create a balance in the boreal forest”. It lists logging, mining, hydro, and oil & gas and, in respect of the latter, provides:

Oil & Gas

When most people think of oil extraction in the boreal forest, they’re thinking about the oil sands regions of Alberta and Saskatchewan. This wide-sweeping region contains bitumen (which can be processed into oil) below the surface where it is extracted via large strip mines or networks of pipes that pump it out of the ground using steam. Oil sands activity has already directly impacted 175,000 acres of Alberta’s boreal forest with the potential to grow much larger in the

¹²⁵² <http://borealcanada.ca/>

¹²⁵³ The RBF Document. Page 12. The Corporate Ethics Document. Page 15.

¹²⁵⁴ <http://borealcanada.ca/>

¹²⁵⁵ <https://www.borealbirds.org/about-boreal-songbird-initiative>

¹²⁵⁶ The Pew Charitable Trusts Form 990 for the 2005 period (July 1, 2005- June 30, 2006) Cash Grants Paid Schedule page 21 or 78 of PDF. See also:

https://projects.propublica.org/nonprofits/display_990/562307147/2008_01_EO%2F56-2307147_990_200606

¹²⁵⁷ The Pew Charitable Trusts Form 990 for the 2006 period (July 1, 2005- June 30, 2006) Cash Grants Paid Schedule page 22 or 68 of PDF. See also:

https://projects.propublica.org/nonprofits/display_990/562307147/2008_11_EO%2F56-2307147_990_200706

¹²⁵⁸ Tides Foundation U.S. Form 990 for the 2009 calendar year Cash Grants Paid, Schedule I, page 64 or 153 of PDF. See also: https://projects.propublica.org/nonprofits/display_990/510198509/2010_08_EO%2F51-0198509_990_200912

¹²⁵⁹ This is the first of three grant descriptions. The other two are “research, education and outreach on climate/tar sand related issues” and “research and education on climate/tar sand related issues”

¹²⁶⁰ Tides Foundation U.S. Form 990 for the 2011 calendar year Cash Grants Paid, Schedule I, part II, page 73 or 87 of PDF. See also: https://projects.propublica.org/nonprofits/display_990/510198509/2012_07_EO%2F51-0198509_990_201112

coming decades. More than 66% of the 140,000-km² (34 million-acre) region has been leased to companies for extraction.

However, oil sands extraction is far from the only threat to the boreal forest when it comes to oil and gas. More than 155,000 active gas wells are currently operating in Canada's boreal forest while an additional abandoned 117,000 gas wells remain scattered throughout the boreal, around 87 of which fall within 5 kilometers (3.1 miles) of a lake or river. The western boreal has been hardest hit, with expansive regions in British Columbia, the Northwest Territories, Alberta, and Saskatchewan already experiencing heavy drilling with more wells planned for the future.¹²⁶¹

- C. Pew sponsored a paper entitled "Driving It Home: Choosing the Right Path for Fueling North America's Transportation Future"¹²⁶² which is critical of the environmental impacts of the oilsands through the destruction of boreal forest and the production of "dirty fuels", leading to environmental risks, harm to Indigenous communities, the destruction of wildlife habitats and ecosystems, a negative impact on local water supplies, the pollution of drinking water with toxins and emphasizes that oilsands production is more polluting than conventional energy. The acknowledgements include:

"Thank you to the Pew Charitable Trusts and the International Boreal Conservation Campaign for helping to fund this project."¹²⁶³

- D. A posting on Pew's website made on February 16, 2011 entitled "Success Story: Keeping the Earth Cool - Canada's Boreal Forest" which described Pew's efforts to develop the Boreal Framework and the Canadian Boreal Forest Agreement (both discussed above). The article provides, in part:

...

The Challenge

...

Yet since the early 1800s, the forest products industry has been a mainstay of Canada's economy. In the 1980s, provincial officials offered up large tracts of public land to guarantee future logging. Timber

¹²⁶¹ <https://www.borealbirds.org/threats-canadian-boreal-forest>

¹²⁶² <https://web.archive.org/web/20100706104601/http://www.nrdc.org/energy/drivingithome/drivingithome.pdf>.

¹²⁶³ <https://web.archive.org/web/20100706104601/http://www.nrdc.org/energy/drivingithome/drivingithome.pdf>. Paage 2 of 44.

companies were awarded “tenures,” giving them logging rights covering nearly one-fifth of the boreal—more than 250 million acres.

...

Mining for oil, natural gas, gold, diamonds and uranium are also growing industries in Canada’s boreal. Alberta’s tar sands, used to make synthetic oil, are strip-mined from a region that could eventually rival the size of Florida.

...

Our Goal

By forging alliances between Canadian and international environmental organizations, corporations and First Nations, Pew Environment Group’s International Boreal Conservation Campaign—with support of the William and Flora Hewlett Foundation, as well as the Gordon and Betty Moore Foundation—worked to build support for the Boreal Forest Conservation Framework.

...

The Results

After years of conservation groups’ efforts to slow logging in the boreal, including boycott campaigns and lawsuits, and with a global recession beginning to cause a slowdown for the timber industry, Avrim Lazar, president and CEO of the Forest Products Association of Canada (FPAC), and Steve Kallick, U.S. director of Pew Environment Group’s International Boreal Forest Campaign, decided in 2008 that it was time to develop common ground.

...

During two years of regular negotiations, the forest industry and conservation groups considered how to maintain jobs for loggers while keeping the caribou, a keystone species of the boreal, alive.

On May 18, 2010, the negotiators unveiled an unprecedented agreement between 20 timber companies and nine leading environmental organizations—the Canadian Boreal Forest Agreement. CBFA is designed to protect 72 million hectares (more than 170 million acres—an area the size of Texas), and to provide global recognition and support for corporate partners participating in the agreement.

“The importance of this Agreement cannot be overstated,” said Lazar. “FPAC member companies and their ENGO (environmental non-

governmental organization) counterparts have turned the old paradigm on its head. Together we have identified a more intelligent, productive way to manage economic and environmental challenges in the boreal that will reassure global buyers of our products' sustainability.”

I reviewed the background to the Canadian Boreal Forest Agreement in Part II of this Report, and reiterate here my earlier observation that Agreement was developed without consultation of significant stakeholders, including First Nations groups, the federal government, any provincial government, affected citizens, or other industries - notwithstanding that other industries, including “Alberta’s tar sands” are specifically identified as the “Challenge”.¹²⁶⁴

946. In reviewing the totality of the evidence, including the foregoing campaigns and statements and evidence regarding grants made by Pew summarized above, I am satisfied that the evidence establishes Pew has evinced an intent harmful or injurious to Alberta’s oil and gas industry.

(iv) Conclusion

947. In conclusion, I find that Pew:

- A. has made grants to entities I have found are Participants; and
- B. is a foreign organization that has evinced an intent harmful or injurious to Alberta’s oil and gas industry.

(d) ***William and Flora Hewlett Foundation (“Hewlett Foundation”)***

(i) Background

948. The Hewlett Foundation is a Section 501(c)(3) exempt private foundation.¹²⁶⁵ The organization’s 2019 Form 990-PF provides that the organization’s address is in the U.S.¹²⁶⁶

949. As of December 31, 2019 its total assets equalled \$10,961,138,000 (USD).¹²⁶⁷

(ii) Funding

950. In considering the grants made by the Hewlett Foundation to various organizations I have determined that the below grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta’s oil and gas resources in a broad and general sense:

¹²⁶⁴ <https://www.pewtrusts.org/en/research-and-analysis/articles/2011/02/16/success-story-keeping-the-earth-cool-canadas-boreal-forest>

¹²⁶⁵ <https://hewlett.org/wp-content/uploads/2021/02/2019-Form-990-PF-full-return-with-attachments.pdf> at page 1 Box H.

¹²⁶⁶ <https://hewlett.org/wp-content/uploads/2021/02/2019-Form-990-PF-full-return-with-attachments.pdf> at page 1.

¹²⁶⁷ <https://hewlett.org/wp-content/uploads/2020/08/2019-Audited-Financial-Statements.pdf> at page 2.

<u>Recipient</u>	<u>Date</u>	<u>Amount USD</u>	<u>Amount CAD</u>	<u>Grant Description</u>
Tides Canada Foundation ¹²⁶⁸	2010	\$400,000	\$411,976	For efforts to reduce fossil fuel development
Tides U.S. Foundation ¹²⁶⁹	2007	\$1,000,000	\$1,074,781	For short term support to allow startup and implementation plans to proceed on the Great Bear Project
Tides U.S. Foundation ¹²⁷⁰	2008	\$3,000,000	3,198,043	For reducing the environmental impacts of oil and gas development in Northern Canada
Tides U.S. Foundation ¹²⁷¹	2010	\$2,000,000	\$2,059,878	For reducing the environmental impacts of oil and gas development in Northern Canada
Tides U.S. Foundation ¹²⁷²	2011	\$2,000,000	\$1,978,138	For reducing the environmental impacts of oil and gas development in Northern Canada
Pew Charitable Trusts ¹²⁷³	2004	\$1,835,000	\$2,388,290	For the Western Boreal Forest Public Land Conservation & Responsible Energy Development project

¹²⁶⁸ The William & Flora Hewlett Foundation Form 990-PF for the 2010 calendar year Part XV Line 3 at page 72 of pdf.

¹²⁶⁹ The William & Flora Hewlett Foundation Form 990-PF for the 2007 calendar year Part XV Line 3 at page 72 of pdf.

¹²⁷⁰ The William & Flora Hewlett Foundation Form 990-PF for the 2008 calendar year page 80 of pdf.

¹²⁷¹ The William & Flora Hewlett Foundation Form 990-PF for the 2010 calendar year Part XV Line 3 at page 73 of pdf.

¹²⁷² The William & Flora Hewlett Foundation Form 990-PF for the 2011 calendar year Part XV Line 3 at page 47 of pdf.

¹²⁷³ The William & Flora Hewlett Foundation Form 990-PF for the 2004 calendar year Attachment A at page 139 of pdf.

Pew Charitable Trusts ¹²⁷⁴	2006	\$2,500,000	\$2,835,234	For the Western Boreal Forest Public Land Conservation and Responsible Energy Development program
Pew Charitable Trusts ¹²⁷⁵	2008	\$2,000,000	\$ 2,132,029	For the Boreal Forest Public Land Conservation and Responsible Energy Development program
Pew Charitable Trusts ¹²⁷⁶	2009	\$ 2,000,000	\$2,283,955	For the Boreal Forest Public Land Conservation and Responsible Energy Development program
Pew Charitable Trusts ¹²⁷⁷	2009	\$2,000,000	\$2,283,955	For general support of the International Boreal Conservation Campaign
Pew Charitable Trusts ¹²⁷⁸	2010	\$2,000,000	\$2,059,878	For general support of the International Boreal Conservation Campaign
Pew Charitable Trusts ¹²⁷⁹	2012	\$1,600,000	\$1,599,328	For support of the International Boreal Conservation Campaign

¹²⁷⁴ <https://hewlett.org/grants/pew-charitable-trusts-for-general-support-of-the-western-boreal-forest-public-land-conservation-and-responsible-energy-development-program/>. This appears to be one of three instalments made in respect of this grant. The William & Flora Hewlett Foundation Form 990-PF for the 2004 calendar year at page 67 of pdf.

¹²⁷⁵ <https://hewlett.org/grants/pew-charitable-trusts-for-general-support-of-the-western-boreal-forest-public-land-conservation-and-responsible-energy-development-program/>. This appears to be one of three instalments made in respect of this grant. The William & Flora Hewlett Foundation Form 990-PF for the 2008 calendar year Part XV Line 3 at page 77 of pdf.

¹²⁷⁶ The William & Flora Hewlett Foundation Form 990-PF for the 2009 calendar year Part XV Line 3 at page 52 of pdf.

¹²⁷⁷ <https://hewlett.org/grants/pew-charitable-trusts-for-general-support-of-the-international-boreal-conservation-campaign/>. This appears to be one of two instalments made. The William & Flora Hewlett Foundation Form 990-PF for the 2009 calendar year Part XV Line 3 at page 121 of pdf.

¹²⁷⁸ The William & Flora Hewlett Foundation Form 990-PF for the 2010 calendar year Part XV Line 3 at page 55 of pdf.

¹²⁷⁹ The William & Flora Hewlett Foundation Form 990-PF for the 2012 calendar year Part XV Line 3 at page 55 of pdf.

Pew Charitable Trusts ¹²⁸⁰	2014	\$ 3,000,000	\$ 3,313,399	For support of the International Boreal Conservation Campaign
Pew Charitable Trusts ¹²⁸¹	2015	\$ 3,000,000	\$ 3,836,132	For support of the International Boreal Conservation Campaign
Pew Charitable Trusts ¹²⁸²	2016	\$ 3,000,000	\$ 3,974,419	For support of the International Boreal Conservation Campaign
Pew Charitable Trusts ¹²⁸³	2017	\$ 3,350,000	\$ 4,350,310	For support of the International Boreal Conservation Campaign
New Venture Fund ¹²⁸⁴	2011	\$ 2,000,000	\$ 1,978,138	For the Fossil Fuel Reduction project
New Venture Fund ¹²⁸⁵	2012	\$ 2,000,000	\$ 1,999,160	For the Fossil Fuel Reduction project
New Venture Fund ¹²⁸⁶	2013	\$ 2,150,000	\$ 2,214,317	For the Fossil Fuel Reduction project
New Venture Fund ¹²⁸⁷	2014	\$ 2,750,000	\$ 3,037,283	For the Fossil Fuel Reduction project

¹²⁸⁰ The William & Flora Hewlett Foundation Form 990-PF for the 2014 calendar year Part XV Line 3 at page 58 of pdf.

¹²⁸¹ The William & Flora Hewlett Foundation Form 990-PF for the 2015 calendar year Part XV Line 3 at page 59 of the pdf

¹²⁸² The William & Flora Hewlett Foundation Form 990-PF for the 2016 calendar year Part XV Line 3 at page 155 of the pdf.

¹²⁸³ The William & Flora Hewlett Foundation Form 990-PF for the 2017 calendar year Part XV Line 3 at page 272 of the pdf

¹²⁸⁴ The William & Flora Hewlett Foundation Form 990-PF for the 2011 calendar year Part XV Line 3 at page 38 of the pdf.

¹²⁸⁵ The William & Flora Hewlett Foundation Form 990-PF for the 2012 calendar year Part XV Line 3 at page 51 of pdf.

¹²⁸⁶ The William & Flora Hewlett Foundation Form 990-PF for the 2013 calendar year Part XV Line 3 at page 50 of pdf.

¹²⁸⁷ The William & Flora Hewlett Foundation Form 990-PF for the 2014 calendar year Part XV Line 3 at page 54 of pdf.

951. My reasons for finding that these grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta’s oil and gas resources in a broad and general sense may be separated into the following bases:

- A. As discussed in Part II the “Great Bear Rainforest” campaign and the “Boreal Forest Initiative” may be, but are not necessarily in every case, an effort opposed to the further development of Alberta’s oil and gas resources. I find that where a grant is made in relation to the Great Bear Rainforest or the Boreal Conservation Campaign and the grant is made to an entity that I have found has participated in the Great Bear Rainforest campaign and/or the Boreal Forest Initiative in a manner that constitutes an anti-Alberta energy campaign, such grants support the delay or frustration of the development of Alberta’s oil and gas resources in a broad and general sense, and are accordingly made in furtherance of an anti-Alberta energy campaign.
- B. A grant for the purpose of “efforts to reduce fossil fuel development” to an organization I have found participated in anti-Alberta energy campaigns is sufficient for me to draw the conclusion that such a grant was for the intended purpose of funding the campaigns of the organization that constitute an anti-Alberta energy campaign.
- C. A grant of the purpose of “reducing the environmental impacts of oil and gas development in Northern Canada” to an organization I have found participated in anti-Alberta energy campaigns is sufficient for me to draw the conclusion that such a grant was for the intended purpose of funding the campaigns of the organization that constitute an anti-Alberta energy campaign.
- D. Certain of the grant descriptions to New Venture Fund reference a “Fossil Fuel Reduction” program. One of these grants describes this program saying “The Fossil Fuel Reduction project is a multi-funder and multi-year project of the New Venture Fund. Its purpose is to reduce the impacts on people, wildlife, water, soil, and air from the development of unconventional types of oil. The extraction and processing of unconventional oils in North America have high carbon intensity and other environmental and human impacts. To ensure that atmospheric concentrations of carbon not exceed 450 parts per million, about two-thirds of oil reserves should be kept in the ground.”¹²⁸⁸ I find that when used in a discussion of North American oil and gas resources, “unconventional types of oil” refers to oil sands. As such, I find that the “Fossil Fuel Reduction” program would be opposed to the development of Alberta’s oil sands resources, and that grants in support of this would necessarily support opposition to the development of Alberta’s oil and gas resources in a broad and general sense.

952. There are a significant number of grants made by the Hewlett Foundation to organizations that I have found participated in anti-Alberta energy campaigns, including those listed in this section:

<u>Participant</u>	<u>Total</u>
Tides Canada Foundation	\$15,352,638

¹²⁸⁸ The William & Flora Hewlett Foundation Form 990-PF for the calendar year 2016 Part XV at page 142 of pdf.

David Suzuki Foundation	\$1,542,615
Sierra Club of B.C.	\$852,080
ForestEthics/ STAND	\$836,734
Sierra Club of Canada	\$372,730
Total:	\$18,956,797

953. With respect to these amounts, there was insufficient information available to me to determine whether these grants were intended to be employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, I make no finding with respect to these grants, but recommend in Part VIII that increased transparency requirements should be introduced, requiring clear description of the purpose and aim of any grants made to not for profit and charitable organizations.

954. I have further found Hewlett Foundation made grants to an entity I found to be a “Re-Granter” as follows:

<u>Organization</u>	<u>Total</u>
New Venture Fund	\$18,209,674

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

955. I have reviewed evidence regarding the campaigns and statements of the Hewlett Foundation including the following:

A. The Hewlett Foundation was involved in the preservation efforts surrounding the Great Bear Rainforest (discussed in more detail in Part II of this Report). A posting on Hewlett Foundation’s website on January 21, 2007 provided, in part:

“A consortium of private funders is pleased to announce the latest success in the protection of the Great Bear Rainforest, the world’s largest unprotected tract of intact coastal temperate rainforest. At a ceremony Sunday, January 21st in Vancouver, the Canadian Federal government agreed to contribute \$30 CAD million to a \$120 CAD million financing package to promote conservation management and economic diversification in the Great Bear region.

This unique agreement lays the groundwork for future conservation successes around the globe. *It replaces an outdated model of resource extraction and offers a sustainable approach to protecting the environment and enabling communities to prosper.* That’s why it has attracted conservation dollars from around the world.

The tireless efforts of many players made this agreement possible. We'd like to thank ForestEthics, Greenpeace and Sierra Club of Canada for their innovative work over the last decade. Funders including Tides Canada Foundation, the William and Flora Hewlett Foundation, The Gordon and Betty Moore Foundation, David and Lucile Packard Foundation, Wilburforce Foundation, the Rockefeller Brothers Fund and The Nature Conservancy raised \$60 CAD million for conservation management in First Nation territories.

...

The key to long term sustainability in the Great Bear Rainforest is to follow through on ecosystem based management so that we can build on the commitments of all partners as the land use agreement is implemented. *Furthermore, the conservation financing package is an integral component of long-term plans to protect biodiversity in the region.* Public and private funding will be essential over the coming years to preserve the diversity and health of the Great Bear Rainforest.” [emphasis added]¹²⁸⁹

- B. A posting on March 1, 2007 of Hewlett Foundation's website made additional references to the Great Bear Rainforest and provided, in part:

“In a land of thousand-year-old cedar trees and wolf packs that have never gazed upon humans, the Tsimshian people of British Columbia's north coast tell the story of the spirit bear, a rare white bear that roams among its more common black brethren.

In the Tsimshian's telling, Raven, the creator, transformed every tenth black bear to white as a reminder of the region's pristine state and the importance of its preservation.

Now vast swaths of what remains of that original state, long at risk from clear-cut logging and development, have come a crucial step closer to preservation with the Canadian federal government's January decision to contribute \$30 million CAD to protect what is known as the Great Bear Rainforest.

The federal government's contribution was the final piece of a \$120 million CAD initiative that joined an unlikely allegiance of environmentalists, timber companies, indigenous tribes, governments, and private foundations in a grand effort to preserve the Great Bear in perpetuity.

¹²⁸⁹ <https://hewlett.org/newsroom/celebrating-a-watershed-agreement-to-protect-the-great-bear-rainforest/>

The William and Flora Hewlett Foundation is among more than a half dozen foundations that together will contribute nearly \$60 million CAD to create an endowment fund to support conservation management and sustainable economies with the First Nations, as the indigenous communities are known. About 30,000 people live in the region.

The public funds-\$30 million CAD from the British Columbia provincial government as well as the newly committed \$30 million CAD in Canadian federal funds-will be used for investments in ecologically sustainable business ventures in First Nation territories. This includes the development of ecotourism and sustainable fisheries and forestry.

...

To date, in addition to its \$5.3 million CAD contribution to the endowment fund for conservation management in the Great Bear, the Hewlett Foundation has given an additional \$25.7 million CAD to the Canadian Boreal Forest Initiative, an even broader effort to protect more than 700 million acres forestland.

...

The Hewlett Foundation will continue to support the Great Bear work to assure agreements to protect it are upheld as rigorously as possible.¹²⁹⁰

- C. As indicated, the Hewlett Foundation's efforts continued in the Boreal forest. A Q&A session with the Environment Program Officer of the Hewlett Foundation posted on the Hewlett Foundation's website on May 1, 2008 provided the following:

...

What geographic area does Hewlett's work in the West cover, and what are the conservation issues?

Our grantees' work in the West extends from the Rockies to the Pacific and from western Canada and Alaska down through a bit of northwestern Mexico. One reason for that focus is that environmental protection of the West was an interest of the Hewlett family when it started the Foundation and continues to be a priority for the Board today.

...

The biggest environmental pressures here are the result of urban and rural growth, demand for water, and drilling and mining for oil, gas, and coal.

¹²⁹⁰ <https://hewlett.org/newsroom/deal-struck-to-preserve-canadian-rainforest/>

A formidable list. So how do we tackle all of that?

We support groups working on land, water, and energy issues, and look for opportunities to engage people on the ground where particular issues are unfolding. For example, we've made many grants to hunting and fishing groups throughout the West for their work to conserve roadless areas and prevent inappropriate oil and gas drilling. These are people who know the land, have been enjoying it for years, and are very effective at ensuring that wildlife and habitat are taken care of.

...

In addition to preserving the good, there is stopping the bad, which in the West often means stopping construction of coal-fired power plants and minimizing the harmful effects of oil and gas exploration.

...

Are there intersections between the land and water work that you mentioned and our energy priorities?

One place where all our worries come together is in northeastern Alberta, Canada. There, in an area the size of Florida, is a massive deposit of oil mixed with sand. It's the second largest oil reserve after Saudi Arabia, and work has begun to extract it. Processing these so-called tar sands is a nasty business that involves large amounts of water and natural gas. It's hard to imagine a worse situation.

For starters, extraction and runoff clearly pollutes the rivers up there, one of which-the Athabasca-runs toward the Boreal Forest, the largest intact forest on the planet. Then there are First Nation populations all along that river who drink its water and and [sic] eat its fish. The extraction, refining and burning of tar sands oil also puts a lot of carbon into the atmosphere. It is a major contributor to global warming. Foundation grantees are working on many fronts to slow and stop these problems.¹²⁹¹

- D. This statement was consistent with the Hewlett Foundation's strategic plan, also issued in 2009, entitled "Conserving the West – A five-year Strategic Plan: 2009-2013".¹²⁹² The strategic plan identified its first priority as:

"1. Conservation of the West aligns with Hewlett Foundation Values. The natural splendor, biodiversity, and traditional livelihoods of the West are in danger. Population growth, resource extraction, and climate

¹²⁹¹ <https://hewlett.org/newsroom/foundations-a-qa-with-tom-steinbach-environment-program-officer/>

¹²⁹² https://hewlett.org/wp-content/uploads/2016/08/Environment_Program_Western_Conservation_Strategy_2009_2013.pdf

change create challenges that can only be countered with new and responsible steward-ship.”¹²⁹³

“Resource extraction” is expanded upon later in the report, as follows:

“Resource extraction has also increased rapidly, often without fully accounting for environmental impacts. With the United States focused on energy independence, the environmental and health impacts of oil and gas development in the West threaten to take a back seat in the drive toward greater domestic production. From 2001 to 2006, the rate of well drilling in the Rocky Mountain states was twice as high as in the period from 1993 to 2000 (2,053 wells per year vs. 1,036). For oil and gas, quick and dirty development using old technologies is faster and cheaper than more responsible methods in the short run, and state and federal regulations have failed to set a higher bar for clean extraction methods. Additionally, new technologies to extract high-carbon fuels such as oil shale and tar sands could have devastating ecological and climate consequences. Development in the Tar Sands, in Alberta, will almost surely preclude Canada from meeting its emissions reductions commitments under the Kyoto Protocol.”¹²⁹⁴

And still later:

“ENERGY: SHIFT FROM FOSSIL FUEL DEVELOPMENT TOWARD RENEWABLE ENERGY SOURCES AND ENERGY EFFICIENCY

As public desire grows to be energy independent, so will the footprint of the oil and gas business in the West (Figure 6). Consequently, Western lands will continue to account for a significant portion of the oil and gas production in the US and Canada, with these extractive industries taking a harsh toll on their natural surroundings.

In addition to the oil and gas reserves covering much of Wyoming, Colorado, and Utah, production in the tar sands in Alberta is growing. Canada currently generates 1.4 million barrels a day from these sands, and is planning to triple production in the coming decade.

The oil and gas industry is also attempting to develop oil shale in the Rocky Mountains. Because the technology remains unproven, the extent of the environmental damage from energy and water demands and related pollution is unknown, but anticipated to be significant.

¹²⁹³ https://hewlett.org/wp-content/uploads/2016/08/Environment_Program_Western_Conservation_Strategy_2009_2013.pdf . See page 3.

¹²⁹⁴ https://hewlett.org/wp-content/uploads/2016/08/Environment_Program_Western_Conservation_Strategy_2009_2013.pdf. See page 6.

Lastly, while renewable energy technologies provide hope for a cleaner, more sustainable alternative to meet energy demands, these facilities and transmission lines must be developed in a way that does not excessively fragment the landscape and block species movements.”¹²⁹⁵

With the report concluding:

“To mitigate the harm done by current infrastructure and minimize the effect of future developments, the Foundation will support grantees working to accomplish the following objectives:

...

- Prevent commercial oil shale development.
- Reduce demand and restrict infrastructure for high carbon fuels (tar sands, oil shale, coal).”¹²⁹⁶

E. In 2009, the Hewlett Foundation posted an article on its website entitled “Protecting Forest Goes Mainstream”, which provided:

“An ambitious campaign to protect half of Canada’s 1.1 billion acres of pristine boreal forest from uncontrolled development is succeeding beyond its organizers’ original hopes, and what once seemed likely to be a long, uphill battle has been embraced by the political mainstream.

In an age of global warming and the mass extinction of species, when good environmental news can be tough to find, the work of the International Boreal Conservation Campaign and its constituent nonprofit organizations is a portrait of success on a startling scale.

In November, the Campaign—a Hewlett grant recipient—played a central role in an agreement by Quebec’s provincial government to protect 142 million acres of boreal forest in the province’s northern reaches from mining and development. The protected region is about one and a half times the size of California.

The most recent agreement follows one with the Ontario provincial government last July that promised to protect more than 55 million acres from mining and development. At the time, Steve Kallick, project director of the Campaign, called it one of the largest conservation deals in

¹²⁹⁵ https://hewlett.org/wp-content/uploads/2016/08/Environment_Program_Western_Conservation_Strategy_2009_2013.pdf. See page 14.

¹²⁹⁶ https://hewlett.org/wp-content/uploads/2016/08/Environment_Program_Western_Conservation_Strategy_2009_2013.pdf. See page 15.

history. In little more than four months, it has been dwarfed by the size of Quebec's promise.

Together with a series of earlier commitments to protect approximately 110 million acres of boreal forest in Canada's Northwest Territories, the total area agreed to for protection-about 307 million acres-puts the International Boreal Conservation Campaign more than halfway to its goal of protecting 550 million acres.

...

In addition to Hewlett backing, The International Boreal Conservation Campaign, an initiative of The Pew Charitable Trusts, receives major support from the Lenfest Foundation. Hewlett funds the Campaign through grants to The Pew Charitable Trusts, which have worked to conserve old-growth forests and wilderness in North America for the past fifteen years. To date, Hewlett has made \$6.5 million in grants to support the Campaign's work."¹²⁹⁷

- F. The Hewlett Foundation posted an "Evaluation of the Boreal Forest Conservation Initiative" on its website on December 3, 2018,¹²⁹⁸ which provided, in part:

...

II. The Value Proposition: Why Conservation in Canada Matters

The Biocultural Opportunity — Canada's boreal forests represent a conservation opportunity of global significance for the mutual benefit of both people and nature. The value proposition grows exponentially if one enlarges the conservation frame to consider Northern and Western Canada and the fluid ecological, political, and cultural boundaries that this vital region embody.

...

The Funding & Capacity Gap — Canada's philanthropic landscape is lean, especially in the conservation and Indigenous rights space. This is particularly striking given the accomplishments and impact of the Canadian philanthropic and advocacy community on a range of social and environmental issues. Hewlett's ongoing investment in Canada supports core capacities (strategic engagement, communications and land-use planning, etc.) and has the potential to attract new partners to the conservation conversation. In encouraging Hewlett to deepen and expand its grantmaking frame to look 'Beyond Boreal' and consider other critical geographies in Northern Canada, it is important to note that

¹²⁹⁷ <https://hewlett.org/newsroom/protecting-forests-goes-mainstream/>

¹²⁹⁸ <https://hewlett.org/library/evaluation-of-the-boreal-forest-conservation-initiative/>

several larger philanthropic players are transitioning out of the region to pursue other priorities. The potential effect of new resources on the funding and capacity gap amongst Canadian nonprofit organizations and First Nations and First nation-led organizations shouldn't be underestimated. In most instances, it would be pivotal to increased and more enduring impact.

III. The International Boreal Conservation Campaign: Evaluative Findings

In 2013, the Hewlett Foundation's Board of Directors made the decision to fund a special, five-year \$15M Boreal Forest Conservation Initiative (Boreal Initiative), which is the focus of this evaluation.

[A footnote is included for this statement, providing, "Although some of the grantee work described in this report may reflect the passage of legislation, the Hewlett Foundation does not lobby or earmark its funds for prohibited lobbying campaigns, as defined in the federal tax laws. The foundation's funding for policy work is limited to permissible forms of support only, such as general operating support grants that grantees can allocate at their discretion and project support grants for nonlobbying campaigns (e.g., public education and nonpartisan research).]

High level findings include:

1. The Theory of Change is Appropriately Driven by Indigenous Leadership & Authentic Partnership. The primary theory of change arguably builds on best practices established through the Great Bear Rainforest (GBR) Campaign: a recognition that the role of ENGOs is to support, elevate, and enable First Nations to develop and lead their own conservation strategies....
2. Land-Use Planning Is a Key Driver in Securing Commitments to Conservation & Sustainable Development....
3. Conservation Advocates Need to Employ a Broader Range of Strategies to Create the Conditions for Enduring Conservation....
4. Philanthropy Should Support Indigenous-Led Programs & Organizations....
5. Efforts to Increase Public Awareness About the Conservation Importance of the Boreal Have Had Impact, But Much More Is Still Needed....
6. Grantees Need to Increase and Improve Strategic Collaboration & Deepen Partnerships....
7. Broader Metrics Are Critical to Enduring Outcomes....

The Report concludes with “Retrospective & Prospective Recommendations”, including:

...

3. Diversify Partnerships and Develop Direct Engagement Strategies. We recommend Hewlett identify and support a broad, diverse set of locally-led, community-driven ENGO conservation campaigns, particularly those led by and engaged with Indigenous-led organizations, who are linked to their communities and using strategic communications and relationships to increase awareness and engagement of the public and policy-makers, thus building deeper and stronger support for conservation alongside sustainable development.

...

6. Identify a Carbon Strategy. The conservation significance of a Canadian carbon strategy came through strongly in many of the expert interviews conducted as part of the evaluation. The amount of carbon contained in Canada’s boreal forest and wetland ecosystems is globally significant. The impact that the release of these carbon stores would have on global climate is equally momentous. Strategies that are able keep this carbon in the ground represent a critical opportunity to expand conservation financing opportunities in Canada. Several pilot projects have popped up, where First Nations are drawing on the value of carbon stored in their lands to support and build the capacity for improved conservation and management of their Traditional Territories. There is a need for collaborative investment in research to scale this critical work and identify mechanisms and strategies for carbon mitigation, sequestration, as well as offset opportunities that hold the potential to catalyze the emergence of a larger carbon strategy in Canada.¹²⁹⁹

- G. The evaluation above appears to have been endorsed by the Hewlett Foundation as per its webpage “Lessons from the boreal forest”, posted December 3, 2018.¹³⁰⁰
- H. I found that the Hewlett Foundation increases its efforts in advancing the Boreal forest campaign. In a post on its website on February 10, 2021, it describes its program as follows:

“Re-granting or intermediary organizations—frequently used in philanthropy—are “mission-driven organizations that aim to more effectively link donors (individuals, foundations, and corporations) with organizations and individuals delivering charitable services.” (That’s a definition from the experts at PEAK, the association for grantmaking

¹²⁹⁹ <https://hewlett.org/wp-content/uploads/2018/12/Boreal-Initiative-Evaluation-2018.pdf>

¹³⁰⁰ <https://hewlett.org/lessons-from-the-boreal-forest/>

professionals.) Such organizations play valuable, wide-ranging roles including campaign leadership, coalition-builder, policy expert, and capacity-builder for small and community-based nonprofit groups. Importantly, the Hewlett Foundation's Western Conservation grantmaking strategy's multiple re-granters also allow us to reach and support many more partners than we'd otherwise be able to engage. But there are clear opportunities for us and our re-granters to advance partnerships that are more diversified and reciprocal, and that more closely align with Hewlett's guiding principles on diversity, equity, and inclusion, and collaboration.

...

But I believe that if we are going to build power as a movement, we need to build it together – listening, breaking down silos, and building trust and respect. I recognize this may be significant shift for some, myself included, but as funders and re-granters, it means we need to provide support for the people that live in and value a landscape to co-create and advocate for strategies to conserve it. Good news: This is already happening in the Klamath Basin, Bears Ears, Chaco, the Grand Canyon, Montana's Paradise Valley, *Canada's Boreal Forest*, and Bristol Bay, among many other places." [emphasis added]¹³⁰¹

956. In reviewing the totality of the evidence, including the foregoing campaigns and statements and evidence regarding grants made by the Hewlett Foundation summarized above, I am satisfied that the evidence establishes the Hewlett Foundation has evinced an intent harmful or injurious to Alberta's oil and gas industry.

(iv) Conclusion

957. In conclusion, I find that the Hewlett Foundation:

- A. has made grants that constitute funding for a stated purpose that could directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta's oil and gas resources and/or the transportations of those resources to commercial markets;
- B. has made grants to entities I have found are Participants;
- C. has made grants to an entity I found is a "Re-Grantor"; and
- D. is a foreign organization that has evinced an intent harmful or injurious to Alberta's oil and gas industry.

¹³⁰¹ <https://hewlett.org/evaluation-the-role-of-re-granters-in-advancing-a-more-inclusive-and-collaborative-conservation-movement/>

(e) ***The David and Lucile Packard Foundation (“Packard Foundation”)***

(i) Background

958. The David and Lucile Packard Foundation is a Section 501(c)(3) exempt private foundation.¹³⁰² The organization’s 2018 Form 990-PF provides that the organization’s address is in the U.S.¹³⁰³

959. As of December 31, 2019 its total assets equalled \$8,051,195,000 (USD).¹³⁰⁴

(ii) Funding

960. There are a significant number of grants made by the Packard Foundation to organizations that I have found participated in anti-Alberta energy campaigns, including those listed in this section:

<u>Participant</u>	<u>Total</u>
Tides Canada Foundation	\$17,112,966
David Suzuki Foundation	\$4,000,004
Sierra Club BC	\$2,482,086
Forest Ethics	\$1,006,876
Greenpeace Fund Inc.	\$531,670
World Wildlife Fund Canada	\$519,128
Total:	\$25,652,730

961. With respect to these amounts, there was insufficient information available to me to determine whether these grants were intended to be employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, I make no finding with respect to these grants, but recommend in Part VIII that increased transparency requirements should be introduced, requiring clear description of the purpose and aim of any grants made to not for profits and charitable organizations.

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

962. I have not found evidence establishing that the Packard Foundation has evinced an intent harmful or injurious to Alberta’s oil and gas industry.

¹³⁰² <https://www.packard.org/wp-content/uploads/2019/12/2018-Form-990-PF-.pdf> at page 1 Box H.

¹³⁰³ <https://www.packard.org/wp-content/uploads/2019/12/2018-Form-990-PF-.pdf> at page 1.

¹³⁰⁴ <https://www.packard.org/wp-content/uploads/2020/07/DLPF-2019-Financial-Statements-Final.pdf> at page 4.

(iv) Conclusion

963. In conclusion, I find that the Packard Foundation has made grants to entities I have found are Participants.

(f) **Oak Foundation**

(i) Background

964. Oak Foundation is a Section 501(c)(3) exempt private foundation.¹³⁰⁵ Oak Foundation's main office is in Geneva, Switzerland, and it has offices in other locations, including Denmark, India, the United Kingdom, and the United States.¹³⁰⁶

965. As of 2017 its total assets equalled \$82,818,119.¹³⁰⁷

(ii) Funding

966. In considering the grants made by the Oak Foundation to various organizations, I have determined that the below grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense:

<u>Recipient</u>	<u>Date</u>	<u>Amount USD</u>	<u>Amount CAD</u>	<u>Grant Description</u>
Greenpeace Canada ¹³⁰⁸	2007	\$436,675	\$469,330	To initiate three distinct but interrelated efforts concerning tar sands in Alberta to enhance the ability of Greenpeace Canada to more effectively launch and deliver its 'Phase Out Tar Sands Campaign'; secondly to leverage the growing interest of ranchers and landowners in

¹³⁰⁵ The Oak Foundation U.S.A and The Oak Foundation 2017 Form 990-PF IRS Tax Return – Section H

¹³⁰⁶ <https://oakfnd.org/contact/>

¹³⁰⁷ The Oak Foundation U.S.A and The Oak Foundation Form 990-PF IRS Tax Return – Part II line 16 (\$60,658,161 USD and \$3,116,765 USD converted at 1.2986 as per BOC)

¹³⁰⁸ The Oak Foundation U.S.A grant listing obtained from website page 34.

				limiting unbridled oil and gas exploration and production in southern Alberta; and thirdly to conduct specialised opinion research and media work to identify messaging for these and other efforts that will generate maximum information value among Albertans
World Wildlife Fund Canada Foundation ¹³⁰⁹	2008	\$200,702	\$213,951	To support the development and launch of an e-campaign to mobilise Canadians and send a politically compelling message that they want action on climate change. WWF Canada will develop the infrastructure and capacity necessary for successful e-campaigns that will target a greenhouse gas emissions cap, energy efficiency, and carbon neutral tar sands development

¹³⁰⁹ The Oak Foundation U.S.A grant listing obtained from website page 71.

Tides Foundation ¹³¹⁰	2009	\$700,000	\$799,384	To conduct research to determine whether tar sands mining is adversely impacting the Athabasca River of Canada and its tributaries, and to report the findings. A second goal is to raise the visibility of the tar sands issue and slow the expansion of tar sands production by stopping new infrastructure development, supporting policy reform in the US and Canada and reducing future demand for tar sands oil
Environmental Defence Canada ¹³¹¹	2010	\$426,857	\$439,637	To call for the passage of legislation mandating a reduction of tar sands emissions and introducing additional regulatory requirements for the industry. The project aims to secure agreement to implement and fund incentives for investment in

¹³¹⁰ The Oak Foundation U.S.A grant listing obtained from website page 63.

¹³¹¹ The Oak Foundation U.S.A grant listing obtained from website page 22.

				renewable energies and energy efficiency. EDC seeks to ensure that Canada's cap and trade system is as strong as possible and to close off loopholes for the tar sands industry (such as intensity targets and weak compliance options). It also seeks a federal permit system for tailings ponds and at least USD 5 billion in new incentives for renewable energies and energy efficiency from federal and state governments in 2010.
New Venture Fund ¹³¹²	2011	\$540,000	\$534,097	To raise the visibility of tar sands as a health concern by: supporting more sustainable infrastructure developments; supporting policy reform in the US and Canada; enforcing existing regulations; and encouraging future demand for less polluting energy sources

¹³¹² The Oak Foundation U.S.A grant listing obtained from website page 48.

Equiterre ¹³¹³	2012	\$304,290	\$304,162	To raise public awareness and encourage greater public debate about the social and environmental costs associated with plans to reverse the flow of a pipeline between Maine, Quebec and Ontario
New Venture Fund ¹³¹⁴	2012	\$1,000,000	\$999,580	To scale up work to promote alternative solutions to tar sands expansion in affected provinces and states by expanding communications initiatives and re-granting. The NVF conducts public interest projects and provides professional insight and services to institutions and individuals seeking to foster change
West Coast Environmental Law/Association ¹³¹⁵	2013	\$146,142	\$150,514	To provide legal support to First Nations communities in British Columbia

¹³¹³ The Oak Foundation U.S.A grant listing obtained from website page 24.

¹³¹⁴ The Oak Foundation U.S.A grant listing obtained from website page 48.

¹³¹⁵ The Oak Foundation U.S.A grant listing obtained from website page 68.

				and Alberta, Canada in order to establish indigenous law declarations that protect their territories from unwanted resource development. The First Nations are the various Aboriginal peoples in Canada. Since 1974 WCELA has worked with communities, non-governmental organisations, the private sector and governments to develop proactive legal solutions to protect and sustain the environment
New Venture Fund ¹³¹⁶	2015	\$1,600,344	\$2,046,377	To cap the expansion of the tar sands in Alberta, Canada and eliminate the impact that tar sands extraction, development and transportation has on biodiversity and human health. The New Venture Fund provides philanthropists with an efficient, cost-effective and time-saving

¹³¹⁶ The Oak Foundation U.S.A grant listing obtained from website page 47

				platform to design, launch and operate collaborative charitable projects
West Coast Environmental Law/Association ¹³¹⁷	2016	\$292,250	\$387,175	To support strategic actions to uphold indigenous, federal and international law to cap the expansion of the tar sands in Alberta, Canada. WCEL is dedicated to safeguarding the environment through law. It uses legal analysis to empower citizens, mobilise allies and influence decision-makers
New Venture Fund ¹³¹⁸	2013	\$750,000	\$772,436	Tar sands solutions
New Venture Fund ¹³¹⁹	2016	\$508,049	\$673,067	TAR SANDS SOLUTIONS NETWORK
Stand.earth ¹³²⁰	2012	\$250,000	\$249,895	Flexible tar sands support
Stand.earth ¹³²¹	2013	\$250,000	\$257,479	Flexible tar sands support

¹³¹⁷ The Oak Foundation U.S.A grant listing obtained from website page 68.

¹³¹⁸ The Oak Foundation, U.S.A. c/o P. Roberts, Pricewaterhousecoopers LLP Form 990-PF for the 2013 calendar year Part XV Attachment 15 at page 3.

¹³¹⁹ The Oak Foundation, U.S.A. c/o P. Roberts, Pricewaterhousecoopers LLP Form 990-PF for the 2016 calendar year Part XV Statement 9 at page 2.

¹³²⁰ The Oak Foundation, U.S.A. c/o P. Roberts, Pricewaterhousecoopers LLP Form 990-PF for the 2012 calendar year Part XV Statement 16 at page 6.

¹³²¹ The Oak Foundation, U.S.A. c/o P. Roberts, Pricewaterhousecoopers LLP Form 990-PF for the 2013 calendar year Part XV Statement 15 at page 2.

967. My reasons for finding that these grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense may be separated into the following bases:
- A. A grant for the described purpose to "... initiate three distinct but interrelated efforts concerning tar sands in Alberta to enhance the ability of Greenpeace Canada to more effectively launch and deliver its 'Phase Out Tar Sands Campaign'; secondly to leverage the growing interest of ranchers and landowners in limiting unbridled oil and gas exploration and production in southern Alberta; and thirdly to conduct specialised opinion research and media work to identify messaging for these and other efforts that will generate maximum information value among Albertans" is an explicit example of campaigns seeking to frustrate or delay the development of Alberta's oil and gas resources in a broad and general sense.
 - B. A grant for the described purpose of "successful e-campaigns that will target a greenhouse gas emissions cap, energy efficiency, and carbon neutral tar sands development" made to an entity that I have found has participated in anti-Alberta energy campaigns, at a time contemporaneous with the creation of the "Tar Sands Campaign" I have defined above, is a sufficient constellation of factors for me to find that the grant supports the delay or frustration of the development of Alberta's oil and gas resources in a broad and general sense, and is accordingly made in furtherance of an anti-Alberta energy campaign.
 - C. A grant that has a secondary goal of "stopping new infrastructure development, supporting policy reform in the US and Canada and reducing future demand for tar sands oil", being satisfied that "tar sands oil" is generally a term used to refer to Alberta's oil sands, on its face supports the delay or frustration of the development of Alberta's oil and gas resources in a broad and general sense, and is accordingly made in furtherance of an anti-Alberta energy campaign.
 - D. A grant that expressly seeks to "cap the expansion of the tar sands in Alberta, Canada and eliminate the impact that tar sands extraction, development and transportation has on biodiversity and human health" on its face supports the delay or frustration of the development of Alberta's oil and gas resources in a broad and general sense, and is accordingly made in furtherance of an anti-Alberta energy campaign.
 - E. A grant that expressly seeks to "support strategic actions to uphold indigenous, federal and international law to cap the expansion of the tar sands in Alberta, Canada" on its face supports the delay or frustration of the development of Alberta's oil and gas resources in a broad and general sense, and is accordingly made in furtherance of an anti-Alberta energy campaign.
 - F. I find that grants made to the New Venture Fund for "Tar Sands Solutions" and to raise the visibility of health concerns for the Tar Sands on their face support the delay or

frustration of the development of Alberta’s oil and gas resources in a broad and general sense and are accordingly made in furtherance of an anti-Alberta energy campaign.

G. I find that a grant made to raise public awareness and encourage public debate in Quebec about the social and environmental costs of the reversal of a pipeline that would transport Alberta oil is sufficient for me to conclude that the grant supports the delay or frustration of the development of Alberta’s oil and gas resources in a broad and general sense, and accordingly is made in furtherance of an anti-Alberta energy campaign.

H. I find that a grant for the purpose of “Flexible tar sands support”, when made to an entity that I have found has participated in an anti-Alberta energy campaign, is sufficient for me to conclude that the grant supports the delay or frustration of the development of Alberta’s oil and gas resources in a broad and general sense, and is accordingly made in furtherance of an anti-Alberta energy campaign.

968. There are a significant number of grants made by the Oak Foundation to organizations that I have found participated in anti-Alberta energy campaigns, including those listed in this section:

<u>Participant</u>	<u>Total</u>
Tides Canada Foundation	\$3,933,977
Pembina Institute	\$1,803,976
World Wildlife Fund Canada Foundation	\$1,124,694
Equiterre	\$1,004,631
Greenpeace Canada	\$906,408
Dogwood Initiative	\$820,352
Stand.earth	\$816,231
Environmental Defence Canada	\$439,637
Sierra Club of Canada Foundation	\$264,006
Total:	\$11,113,912

969. With respect to these amounts, there was insufficient information available to me to determine whether these grants were intended to be employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, I make no finding with respect to these grants, but recommend in Part VIII that increased transparency requirements should be introduced, requiring clear description of the purpose and aim of any grants made to not for profit and charitable organizations.

970. I have further found Oak Foundation made grants to an entity I found to be a “Re-Granter” as follows:

Organization	Total
New Venture Fund	\$34,171,879

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

971. I have reviewed evidence regarding the campaigns and statements of Oak Foundation including the following:

A. In its 2010 Annual Report, the Oak Foundation's "Letter from the Trustees" reported that the Oak Foundation supported partners to:

"Safeguard the environment, by securing a ban on trawl fishing in Belize and a moratorium on oil and gas development in key areas of the Arctic, launching a donor collaborative to protect the world's oceans, fostering stronger action against fisheries subsidies worldwide, strengthening climate action at state and local levels in North America and in emerging economies and containing tar sands development." [emphasis added]¹³²²

B. What follows in the report is a list of grant descriptions, including the following:¹³²³

Climate Action Network International (CAN)

To develop an effective strategy for CAN to ensure that as a network, it plays a valuable role in bringing about a fair, ambitious and binding climate agreement, and implements it effectively. There are two main strands within this broader goal: substantive planning (power analysis, political strategy, etc.) and organisational planning.

USD 75,000

¹³²² The Oak Foundation, 2010 Annual Report, at page 1. See also: <https://oakfnd.org/wp-content/uploads/2019/07/Oak-Foundation-Annual-Report-2015.pdf>, at page 1

¹³²³ The Oak Foundation, 2010 Annual Report, at pages 25-29. See also: <https://oakfnd.org/wp-content/uploads/2019/07/Oak-Foundation-Annual-Report-2015.pdf>, at pages 25-29.

Climate Action Network Canada – Réseau action climat Canada (CAN-RAC)

To support a strategic planning process to identify a shared vision, common strategies and a common message platform for more than 50 Canadian organisations to maximise their collective impact on climate change policy in Canada. The process will allow CAN-RAC to assess the overall performance of the Canadian climate change movement in recent years, including an evaluation of the effectiveness

of the secretariat of Climate Action Network Canada; to contribute to the strategic thinking of the member organisations; and to produce a strategy plan and a message framework that will be used to guide their future actions.

USD 47,897

Environmental Defence Canada (EDC)

To call for the passage of legislation mandating a reduction of tar sands emissions and introducing additional regulatory requirements for the industry. The project aims to secure agreement to implement and fund incentives for investment in renewable energies and energy efficiency. EDC seeks to ensure that Canada's cap and trade system is as strong as possible and to close off loopholes for the tar sands industry (such as intensity

targets and weak compliance options). It also seeks a federal permit system for tailings ponds and at least USD 5 billion in new incentives for renewable energies and energy efficiency from federal and state governments in 2010.

USD 426,857 (over three years)

ForestEthics

To minimise Tar Sands impacts by creating awareness of the economic risks whereby Tar Sands imports become less attractive to US corporations; placing a hard cap on Tar Sands emissions to slow expansion and clean up operations; and addressing the environmental impacts of Tar Sands to limit toxic pollution. ForestEthics will work with at least ten Fortune 500 companies to publicly disavow Tar Sands fuel and to encourage them to purchase fuel from less polluting sources. In addition, it will work with at least one of these companies to exert influence within the US Government to stop Enbridge's proposed Northern Gateway pipeline.

USD 299,879 (over two years)

Greenpeace Canada

To create awareness of the financial, regulatory and political uncertainty that surrounds investments in the tar sands so that prominent financial analysts, media, opinion leaders and Members of Parliament will publically express concern about the lack of government regulation of the tar sands industry. Greenpeace Canada aims to publicise the controversy around the tar sands both within and outside Canada. This will encourage the withdrawal of major institutional investors from the tar sands by 2012; the end of France's tar sands subsidies; and the passage of a feed-in-tariff in Alberta utilised by farmers, ranchers, landowners and investors to develop the province's huge wind power potential.

USD 424,373 (over three years)

Pembina Institute

To ensure that emerging opportunities and interest in renewable energy and energy efficiency solutions are not thwarted by opposing forces; to develop and advocate for a suite of complementary sustainable transportation policies in key cities and provinces that reduce demand for fossil fuels and create cleaner and smarter transportation systems; and to equip US policy makers, media and environmental organisations with accurate and unbiased information about Canada's oil sands operations and climate policy.

USD 484,106 (over two years)

Tides Canada Foundation

To develop a five-year strategic plan to convince Canada to accept the long-term goal of dramatically lowering the country's GHG emissions, while creating jobs and opportunities, and lessening the country's dependence on fossil fuels; and to determine the feasibility of creating a Canadian Energy Fund, similar to the Energy Foundation, with a budget of up to USD 30 million sourced from 100 to 200 high-net worth Canadian and international donors.

USD 50,000

West Coast Environmental Law (WCEL)

To constrain development of Alberta's tar sands through a legislative ban on crude oil tankers on British Columbia's north coast. This would necessitate the cancellation of the Enbridge Northern Gateway Pipeline proposal to transport tar sands oil and bitumen to Asian markets. WCEL aims to establish the conditions under which

- a) opposition parties holding a parliamentary majority work together to enact a legislative tanker ban under a minority government and/or incorporate a ban promise into their manifestos, committing them to act following an election that produces a majority government; and
- b) First Nations declare their own bans on transportation of tar sands crude oil through their territories and waters.

USD 97,131 (over two years)

- C. In its 2015 Annual Report, the Oak Foundation reflected on its 2015 "Environment Programme" and commented that one of its major strategies would "put the emphasis on their implementation and enforcement, as well as in large-scale government programmes which target greenhouse gas emissions"¹³²⁴ and then highlighted certain of its grant descriptions, including the following:¹³²⁵

New Venture Fund

USD 1,600,344 (36 months)

To cap the expansion of the tar sands in Alberta, Canada and eliminate the impact that tar sands extraction, development and transportation has on biodiversity and human health.

¹³²⁴ The Oak Foundation, 2015 Annual Report, at page 19. See also: <https://oakfnd.org/wp-content/uploads/2019/07/Oak-Foundation-Annual-Report-2015.pdf>, at page 19.

¹³²⁵ The Oak Foundation, 2015 Annual Report, at page 26. See also: <https://oakfnd.org/wp-content/uploads/2019/07/Oak-Foundation-Annual-Report-2015.pdf>, at page 26

- D. The Oak Foundation's 2016 Annual Report¹³²⁶ also highlighted certain of its grant description, including the following:¹³²⁷



West Coast
Environmental
Law Association
USD 292,250 (35 months)
To support strategic actions
to uphold indigenous, federal
and international law to cap
the expansion of the tar sands
in Alberta, Canada.

972. In reviewing the totality of the evidence, including the foregoing campaigns and statements and evidence regarding grants made by Oak Foundation summarized above, I am satisfied that the evidence establishes the Oak Foundation has evinced an intent harmful or injurious to Alberta's oil and gas industry.

(iv) Conclusion

973. In conclusion, I find that the Oak Foundation:

- A. has made grants that constitute funding for a stated purpose that could directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta's oil and gas resources and/or the transportations of those resources to commercial markets;
- B. has made grants to entities I have found are Participants;
- C. has made grants to an entity I have found is a "Re-Granter"; and
- D. is a foreign organization that has evinced an intent harmful or injurious to Alberta's oil and gas industry.

(g) ***Wilburforce Foundation***

(i) Background

974. Wilburforce Foundation is a Section 501(c)(3) exempt private foundation.¹³²⁸ The organization's 2019 Form 990-PF provides that the organization's address is in the U.S.¹³²⁹

¹³²⁶ The Oak Foundation, 2016 Annual Report; see also: <https://oakfnd.org/wp-content/uploads/2019/07/Oak-Foundation-Annual-Report-2016.pdf>

¹³²⁷ The Oak Foundation, 2016 Annual Report, at page 22; see also: <https://oakfnd.org/wp-content/uploads/2019/07/Oak-Foundation-Annual-Report-2016.pdf>, at page 22.

¹³²⁸ <http://www.wilburforce.org/wp-content/uploads/2021/01/Wilburforce-2019-990PF.pdf> at page 1 Box H.

¹³²⁹ <http://www.wilburforce.org/wp-content/uploads/2021/01/Wilburforce-2019-990PF.pdf> at page 1.

975. The organization's Form 990-PF for the 2019 year reported that the fair market value of all assets at end of year was \$137,577,533 (USD).¹³³⁰

(ii) Funding

976. In considering the grants made by the Wilburforce Foundation to various organizations, I have determined that the below grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense:

Recipient	Date	Amount USD	Amount CAD	Grant Description
Forest Ethics ¹³³¹	2009	\$125,000	\$142,747	New Frontiers in Conservation: Protecting the Great Bear Rainforest and Beyond
Greenpeace Canada ¹³³²	2011	\$60,000	\$59,344	Greenpeace Canada: Great Bear Rainforest A New Reality
Tides Foundation ¹³³³	2010	\$25,000	\$25,748	Dogwood Initiative: Coastal Oil Tanker Campaign
Raincoast Conservation Foundation ¹³³⁴	2013	\$85,000	\$87,543	Ecosystem-based management in the GBR & Enbridge Northern Gateway Environmental Assessment
Raincoast Conservation Foundation ¹³³⁵	2014	\$100,000	\$110,447	Protecting the GBR Carnivores and Enbridge Projects 2014
Tides Canada Foundation ¹³³⁶	2015	\$45,000	\$57,542	Dogwood Initiative Society - Coastal Oil

¹³³⁰ <http://www.wilburforce.org/wp-content/uploads/2021/01/Wilburforce-2019-990PF.pdf> at page 1 Box I.

¹³³¹ Wilburforce Foundation Form 990-PF for the 2009 calendar year Attachment A at page 4.

¹³³² Wilburforce Foundation Form 990-PF for the 2011 calendar year Attachment A at page 55 of pdf.

¹³³³ Wilburforce Foundation Form 990-PF for the 2010 calendar year Attachment A at page 58 of pdf.

¹³³⁴ Wilburforce Foundation Form 990-PF for the 2013 calendar year Attachment A at page 55 of pdf.

¹³³⁵ Wilburforce Foundation Form 990-PF for the 2014 calendar year Attachment A at page 54 of pdf.

¹³³⁶ Wilburforce Foundation Form 990-PF for the 2015 calendar year Attachment A at page 46 of pdf.

				Tanker Campaign 2015
Tides Foundation ¹³³⁷	2009	\$ 25,000	\$ 28,549	Dogwood Initiative: Expanding the Reach - Coastal Oil Tanker Campaign
Tides Foundation ¹³³⁸	2014	\$ 35,000	\$ 38,656	Dogwood Initiative Society - No Tankers Campaign 2014
Tides Foundation ¹³³⁹	2011	\$ 30,000	\$ 29,672	For Dogwood Initiative: Expanding the Reach - Coastal Oil Tanker Campaign
West Coast Environmental Law Research Foundation ¹³⁴⁰	2009	\$ 25,000	\$ 28,549	Protecting the Great Bear Rainforest from Oil Supertankers: Legal Strategies
West Coast Environmental Law Research Foundation ¹³⁴¹	2015	\$ 50,000	\$ 63,936	Supporting First Nation Legal Strategies to Protect the Great Bear Rainforest 2015
West Coast Environmental Law Research Foundation ¹³⁴²	2010	\$ 35,000	\$ 36,048	Protecting the Great Bear Rainforest from Oil Supertankers. Legal Strategies

977. My reasons for finding that these grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense may be separated into the following bases:

- A. As discussed in Part II the "Great Bear Rainforest" campaign may be, but is not necessarily in every case, an effort opposed to the further development of Alberta's oil and gas resources. I find that where a grant is made in relation to the Great Bear Rainforest, or to "GBF", which I find is an abbreviation for "Great Bear Rainforest" and the grant is made to an entity that I have found has participated in the Great Bear Rainforest

¹³³⁷ Wilburforce Foundation Form 990-PF for the 2009 calendar year Attachment A at page 12.

¹³³⁸ Wilburforce Foundation Form 990-PF for the 2014 calendar year Attachment A at page 55 of pdf.

¹³³⁹ Wilburforce Foundation Form 990-PF for the 2011 calendar year Attachment A at page 58 of pdf.

¹³⁴⁰ Wilburforce Foundation Form 990-PF for the 2009 calendar year Attachment A at page 53 of pdf.

¹³⁴¹ Wilburforce Foundation Form 990-PF for the 2015 calendar year Attachment A at page 46 of pdf.

¹³⁴² Wilburforce Foundation Form 990-PF for the 2010 calendar year Attachment A at page 58 of pdf.

campaign in a manner that constitutes an anti-Alberta energy campaign, such grants support the delay or frustration of the development of Alberta's oil and gas resources in a broad and general sense, and is accordingly made in furtherance of an anti-Alberta energy campaign.

- B. As discussed in Part II campaigns supporting a “tanker ban” may be, but are not necessarily in every case, efforts opposed to the further development of Alberta's oil and gas resources. I find that where a grant is made in relation to a “No Tankers Campaign”, “Oil Tanker Campaign”, or in relation to “Oil Supertankers” and the grant is made to an entity that I have found has participated in “tanker ban” campaigns in a manner that constitutes an anti-Alberta energy campaign, such grants support the delay or frustration of the development of Alberta's oil and gas resources in a broad and general sense, and is accordingly made in furtherance of an anti-Alberta energy campaign.

978. There are a significant number of grants made by the Wilburforce Foundation to organizations that I have found participated in anti-Alberta energy campaigns, including those listed in this section:

<u>Participant</u>	<u>Total</u>
Tides Canada Foundation	\$5,061,332
Raincoast Conservation Foundation	\$2,380,180
Sierra Club of B.C.	\$2,070,191
Forest Ethics	\$1,259,405
David Suzuki Foundation	\$1,144,460
Greenpeace Fund	\$802,703
Tides Canada Initiatives Society	\$323,733
West Coast Environmental Law Research Foundation	\$284,048
Sierra Club of Canada Foundation	\$192,094
Pembina Foundation for Enviro. Research & Educ.	\$79,938
Western Canada Wilderness Committee	\$47,753
World Wildlife Fund Canada	\$29,708
Total:	\$13,675,545

979. With respect to these amounts, there was insufficient information available to me to determine whether these grants were intended to be employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, I make no finding with respect to these grants, but recommend in Part VIII that increased transparency requirements should be introduced, requiring clear description of the purpose and aim of any grants made to not for profit and charitable organizations.

980. I have further found Wilburforce Foundation made grants to an entity I found to be a “Re-Granter” as follows:

<u>Organization</u>	<u>Total</u>
New Venture Fund	\$1,146,409

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

981. I have not found evidence establishing that Wilburforce Foundation has evinced an intent harmful or injurious to Alberta’s oil and gas industry.

(iv) Conclusion

982. In conclusion, I find that the Wilburforce Foundation:

- A. has made grants that constitute funding for a stated purpose that could directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportations of those resources to commercial markets;
- B. has made grants to entities I have found are Participants; and
- C. has made grants to an entity I found is a “Re-Granter”.

(h) ***The Marisla Foundation***

(i) Background

983. The Marisla Foundation is a Section 501(c)(3) exempt private foundation.¹³⁴³ The organization’s 2018 Form 990-PF provides that the organization’s address is in the U.S.¹³⁴⁴

984. On its 2018 Form 990-PF, Marisla Foundation reported that the fair market value of all assets at end of year was \$36,174,849 (USD).¹³⁴⁵

(ii) Funding

985. In considering the grants made by the Marisla Foundation to various organizations, I have determined that the below grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta’s oil and gas resources in a broad and general sense:

¹³⁴³ https://projects.propublica.org/nonprofits/display_990/330200133/01_2020_prefixes_32-34%2F330200133_201812_990PF_2020010817003068 at page 1 Box H.

¹³⁴⁴ https://projects.propublica.org/nonprofits/display_990/330200133/01_2020_prefixes_32-34%2F330200133_201812_990PF_2020010817003068 at page 1.

¹³⁴⁵ https://projects.propublica.org/nonprofits/display_990/330200133/01_2020_prefixes_32-34%2F330200133_201812_990PF_2020010817003068 at page 1 Box I.

Recipient	Date	Amount USD	Amount CAD	Grant Description
Corporate Ethics International ¹³⁴⁶	2008	\$150,000	\$159,902	United States Tar Sands Campaign
ForestEthics/STAND ¹³⁴⁷	2013	\$75,000	\$77,244	After Enbridge Blocking The Future Flow of Tar Sands Oil to Protect Our Coast
ForestEthics/STAND ¹³⁴⁸	2017	\$100,000	\$129,860	Fighting Extreme Oil Development through Infrastructure Challenges
New Venture Fund ¹³⁴⁹	2012	\$150,000	\$149,937	Fossil Fuel Reduction Project
New Venture Fund ¹³⁵⁰	2013	\$150,000	\$154,487	Tar Sands Campaign

986. My reasons for finding that these grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense may be separated into the following bases:

- A. A grant for the purpose of a "United States Tar Sands Campaign", being satisfied that "tar sands oil" is generally a term used to refer to Alberta's oil sands made to an organization I have found participated in an anti-Alberta energy campaign at a time contemporaneous with the creation of the "Tar Sands Campaign" I describe in this Report, satisfies me that the grant supports the delay or frustration of the development of Alberta's oil and gas resources in a broad and general sense, and is accordingly in furtherance of an anti-Alberta energy campaign.
- B. A grant for the purpose of "Blocking the Future Flow of Tar Sands Oil", being satisfied that "tar sands oil" is generally a term used to refer to Alberta's oil sands, and "Fighting Extreme Oil Development through Infrastructure Challenges" when made to an organization I have found participated in an anti-Alberta energy campaign, each on their face support the delay or frustration of the development of Alberta's oil and gas resources

¹³⁴⁶ The Marisla Foundation Form 990-PF for the 2008 calendar year Part XV Statement 24 at page 46 of pdf.

¹³⁴⁷ The Marisla Foundation Form 990-PF for the 2013 calendar year Attachment 14 at page 46 of pdf.

¹³⁴⁸ The Marisla Foundation Form 990-PF for the 2017 calendar year Attachment 15 at page 45 of pdf.

¹³⁴⁹ The Marisla Foundation Form 990-PF for the 2012 calendar year Part XV Attachment 14 at page 97 of pdf.

¹³⁵⁰ The Marisla Foundation Form 990-PF for the 2013 calendar year Attachment 14 at page 51 of pdf.

in a broad and general sense, and accordingly are in furtherance of an anti-Alberta energy campaign.

- C. Certain of the grant descriptions to New Venture Fund reference a “Fossil Fuel Reduction” program. One of these grants describes this program saying “The Fossil Fuel Reduction project is a multi-funder and multi-year project of the New Venture Fund. Its purpose is to reduce the impacts on people, wildlife, water, soil, and air from the development of unconventional types of oil. The extraction and processing of unconventional oils in North America have high carbon intensity and other environmental and human impacts. To ensure that atmospheric concentrations of carbon not exceed 450 parts per million, about two-thirds of oil reserves should be kept in the ground.”¹³⁵¹ I find that when used in a discussion of North American oil and gas resources, “unconventional types of oil” refers to oil sands. As such, I find that the “Fossil Fuel Reduction” program would be opposed to the development of Alberta’s oil sands resources, and that grants in support of this would necessarily support opposition to the development of Alberta’s oil and gas resources in a broad and general sense.

987. There are a number of grants made by the Marisla Foundation to organizations that I have found participated in anti-Alberta energy campaigns, including those listed in this section:

<u>Participant</u>	<u>Total</u>
ForestEthics/STAND	\$529,321
Corporate Ethics International	\$485,690
David Suzuki Foundation	\$121,634
Raincoast Conservation Foundation	\$19,523
Total:	\$1,156,168

988. With respect to these amounts, there was insufficient information available to me to determine whether these grants were intended to be employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, I make no finding with respect to these grants, but recommend in Part VIII that increased transparency requirements should be introduced, requiring clear description of the purpose and aim of any grants made to not for profit and charitable organizations.

989. I have further found Marisla Foundation made grants to an entity I found to be a “Re-Granter” as follows:

<u>Organization</u>	<u>Total</u>
New Venture Fund	\$1,122,818

¹³⁵¹ The William & Flora Hewlett Foundation Form 990-PF for the calendar year 2016 Part XV at page 142 of pdf.

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

990. I have not found evidence establishing that Marisla Foundation has evinced an intent harmful or injurious to Alberta's oil and gas industry.

(iv) Conclusion

991. In conclusion, I find that the Marisla Foundation:

- A. has made grants that constitute funding for a stated purpose that could directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta's oil and gas resources and/or the transportations of those resources to commercial markets;
- B. has made grants to entities I have found are Participants; and
- C. has made grants to an entity I found is a "Re-Granter".

(i) ***Global Greengrants Fund Inc.***

(i) Background

992. Global Greengrants Fund, Inc. is a Section 501(c)(3) exempt private foundation.¹³⁵² The organization's 2018 Form 990 provides that the organization's address is in the U.S.¹³⁵³

993. As of June 30, 2019 its total assets equalled \$10,145,691 (USD).¹³⁵⁴

(ii) Funding

994. In considering the grants made by Global Greengrants Fund Inc. to various organizations, I have determined that the below grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense:

<u>Recipient</u>	<u>Date</u>	<u>Amount USD</u>	<u>Amount CAD</u>	<u>Grant Description</u>
Sisu Institute Society ¹³⁵⁵	2016	\$20,000	\$26,496	The Yinka Dene Alliance wants to stop the Enbridge Northern Gateway pipelines in order to protect the land and

¹³⁵² <https://www.greengrants.org/wp-content/uploads/2020/07/Global-Greengrants-Fund-2019-990.pdf> at page 1 Box I.

¹³⁵³ <https://www.greengrants.org/wp-content/uploads/2020/07/Global-Greengrants-Fund-2019-990.pdf> at page 1.

¹³⁵⁴ <https://www.greengrants.org/wp-content/uploads/2020/10/Global-Greengrants-Fund-6-30-19-FS.pdf> at page 3.

¹³⁵⁵ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da08beeff309.13859191.pdf>

				<p>water that support their communities and their way of life. It also want to stop the expansion of the tar sands in order to stop the climate changes that is affecting their lands, animals, and traditional medicines that nurture and feed their communities. This grant will enable the Yinka Dene Alliance to work with other affected nations to build off of the success of Save the Fraser Declaration (signed by 140 First Nations to stop the building of the Enbridge Northern Gateway pipeline) and turn it into a national wall of opposition to tar sands pipeline. This will establish legal barriers to tar sands pipelines, provide a national platform to discuss free, prior, and informed consent (FPIC), and will help halt the expansion of the tar sands and thus climate change. The Institute will create political and legal barriers through a First Nations national wall of opposition,</p>
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				based on ancestral laws, to pipelines and tar sands expansion. The Institute will distribute information about ancestral laws and the risk of pipelines, supporting First Nations as they talk within their governance system about opposing the pipelines, support a gathering of First Nations in the spring of 2016, media events, and other campaigns.
Great Bear Initiative Society ¹³⁵⁶	2016	\$22,500	\$29,808	The Great Bear Initiative will undertake much needed strategic planning at the Board level, and with environmental NGOs and other partners, to assess how best to move forward in order to continue to uphold the oil tanker ban for the Great Bear Rainforest. The plan will also enable a communications strategy and outreach/education campaign to be coordinated and carried out. The strategic planning is critical at this time to

¹³⁵⁶ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da0961a75503.90725501.pdf>

				prepare for two important events that are expected to occur in the fall: 1) a final decision for the joint court challenge (with the Gitga'at First Nation) against the Province of British Columbia on the Northern Gateway review process; and 2) federal elections in mid-october which could influence whether the Northern Gateway Pipeline will be built. Funds will allow for a continued strategic approach to stopping the Northern Gateway Pipeline project and to engage with First Nations, the media, the general public and environmental NGO partners to uphold the oil tanker ban.
Georgia Strait Alliance ¹³⁵⁷	2017	\$35,000	\$45,451	Georgia Strait Alliance (GSA) will use the funds to mitigate the impacts of climate change and protect the ecological and economic health of coastal communities from fossil fuel expansion and increased risk of oil

¹³⁵⁷ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da0a1eeb5462.36380657.pdf>

				<p>spills in the Salish Sea region of the Pacific Northwest. If the proposed fossil fuel projects in the Salish Sea region are approved, an additional 300 million tonnes of CO2 will be released. The largest of these projects, the Kinder Morgan pipeline, would result in a seven-fold increase in tanker traffic, dramatically increasing the risk of a catastrophic diluted bitumen spill, which coupled with ongoing gaps in oil spill preparedness, puts the ecological and economic health of coastal communities of the Pacific Northwest at severe risk. The new British Columbia government, the New Democratic Party, intends to stop the construction of the Kinder Morgan Project, and GSA will push the government to articulate its strategy in order to undermine the industry's legitimacy and make investors nervous. GSA will</p>
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				<p>also mobilize its supporters and the public at large to urge the government to deliver on its promise and contribute to coalition efforts to support fundraising efforts of First Nations partners' legal efforts to block the project. The organization will also engage in the policy space to advocate for stronger marine oil spill planning and response that is more accountable to communities, and will push for the establishment of the Regional Community Advisory Council (RCAC). Finally, GSA will work to establish a "thin-green-line" of moratoria constraining new fossil-fuel export infrastructure and preventing the Salish Sea from becoming a fossil-fuel superhighway; this will involve working with stakeholders and government officials in the United States who can make it more difficult for the</p>
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				<p>Kinder Morgan Project to be successful. Among many campaigns, GSA will meet with officials from different government branches to present the risks of the Kinder Morgan project to the economy, ecosystems and communities, produce factsheets and hold community fora at several annual conferences. Funds will specifically cover salaries for climate staff, travel, conference and event costs, office supplies, communications, rent and office equipment and campaign support.</p>
Ecojustice Canada ¹³⁵⁸	2017	\$25,000	\$32,465	<p>Ecojustice Canada Society will use the funds to push for meaningful action to ensure that orca populations in the Salish Sea can thrive and to advance litigation compelling the government to verify that farmed fish are free of piscine reovirus (PRV)</p>

¹³⁵⁸ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da13577ff057.42087209.pdf>

				<p>before authorizing their transfer into open-net pens in the ocean, where they have the potential to infect wild salmon stocks. A recent study showed that southern resident orcas lose 97 percent of their acoustic space crucial to navigation, prey detection and communication at peak times for vessel traffic. Two projects, Kinder Morgan's pipeline expansion and the Roberts Bank Terminal 2 port expansion, will make this situation much worse by increasing tanker and container shipping traffic. In addition, in 2016 possible symptoms of PRV were detected in BC farmed salmon for the first time. Despite this finding, the Canadian Minister of Fisheries and Oceans refuses to test farmed salmon for PRV before licensing their transfer into the ocean, putting wild salmon at great risk. Ecojustice will challenge the pipeline in court,</p>
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				enable environmental assessments for the pipeline expansion, and monitor implementation of all aspects of the orca action plan, building a record for a lawsuit if implementation is delayed or inadequate. The organization will also litigate against the Minister of Fisheries and Oceans to test farmed fish for PRV prior to their transfer into open-net pens.
Georgia Strait Alliance ¹³⁵⁹	2016	\$30,000	\$39,744	In December 2016, the National Energy Board will decide if they will pursue building the Kinder Morgan pipeline in British Columbia. With this grant, the Georgia Strait Alliance will focus its efforts on it's goal of delaying/stopping progress of the Kinder Morgan pipeline expansion by demonstrating community opposition and lack of social license. Their second goal is to demonstrate how proposed improvements in

¹³⁵⁹ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da150f2eceb1.38912936.pdf>

				spill planning and response cannot address the unique challenges of a diluted bitumen spill. They will make marine oil spill planning and response stronger and more accountable to communities by advocating for policy alternative and moving individuals to call for improvements from all levels of government. GSA's third goal is to build support for a cross-border cumulative effects assessment of all fossil fuel projects proposed for the Salish Sea.
EcoJustice Canada Society ¹³⁶⁰	2013	\$25,000	\$25,748	For GGF grant will be used to work with regulatory bodies to enforce Critical Habitat Protection Order and Species at Risk Act. The potential increased transit of petroleum (from 80 to 400 tankers per year) through critical habitat areas of Southern Resident Killer Whale and the Pacific Humpback Whale pose a serious

¹³⁶⁰ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da1639e44a24.04507217.pdf>

				<p>environmental threat. The group plans to develop and bring a legal challenge for tanker authorization and test the interpretation of the Protection Order in the Courts with a request that section 77 provisions of SARA be applied when tankers are authorized to transit through critical habitat. Ecojustice plans to launch a recovery strategy case for the Pacific Humpback Whale and include a demand for three other recovery strategies (for representative avian, terrestrial, and freshwater SARA listed species). The group hopes to make sure that campaigns conducted within the critical habitat areas are designed to avoid jeopardizing the species' survival and recovery.</p>
Ecojustice Canada ¹³⁶¹	2016	\$25,000	\$33,120	The Ecojustice Canada Society will use the funds to defend a court victory for wild salmon while

¹³⁶¹ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da1695645457.37191123.pdf>.

				<p>strengthening the law to protect fish habitats. Ecojustice will also raise awareness of the impacts on tanker and container ship traffic to the resident orca population and ensure that these orcas remain protected. In 2015 Ecojustice gained a victory when the Federal Court struck down conditions in an aquatic license issued to Marine Harvest by the Department of Fisheries and Ocean (DFO) allowing a private company to transfer fish infected with the piscine reovirus (PRV) into open pens in the ocean. The company and the DFO are appealing the court decision in late 2016, and the DFO is suggesting new conditions to the license. While the new conditions are an improvement, they still fail to successfully satisfy precautionary interpretations of fishery laws. Ecojustice also will focus on issues surrounding the orca population.</p>
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				<p>Resident killer whales, or orcas, are at risk of acoustic disturbances, diminished prey and marine pollution from the increase in traffic by oil tankers as a result of the proposed Trans Mountain pipeline and the Roberts Bank Terminal 2 (T2) project. By 2030 tanker and container ships' traffic could almost double, which has the potential to deeply impact the orca's environment. Ecojustice will participate in a number of campaigns to help against issues both concerning salmon and orcas. To help defend the court victory for wild salmon and the strengthening of laws surrounding their habitat, Ecojustice will have their lawyers provide strategic and content advice to environmental and legal partners as well as create a modern Act that will provide modern safeguards and protections for wild salmon. These</p>
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				<p>modern safeguards will include important language such as: habitat protection, pollution prevention provisions and public participation. To protect the resident orca population from increased tanker and container ship traffic, Ecojustice will represent its four clients (David Suzuki Foundation, Georgia Strait Alliance, Raincoast Conservation Foundation and Western Canada Wilderness Committee) at the 2016/2017 panel reviewing the T2 project. Finally, Ecojustice provides all their legal and scientific work with communications that distils complicated information to create reliable and accessible formats. This allows the public to be aware of important environmental issues surrounding them.</p>
Oceans Initiative ¹³⁶²	2014	\$50,000	\$55,223	GGF Funds will support research on

¹³⁶² <https://fconline.foundationcenter.org/saved-profiles/pdf/60da1816122c54.45724086.pdf>

				<p>the effect on whale populations of routine shipping operations, increased underwater noise from ships, and increased potential for small oil spills in key whale habitats. Tanker traffic from industrialization of British Columbia's coast will increase ocean noise levels and oil spill risk. Oceans Initiative scientists will assess the effects of (a) tanker noise on fish and mammals, and (b) fuel exposure on killer whales. This research will quantify the risks associated with transporting oil by sea and will improve mitigation efforts to protect marine species. Results will be shared with other charities, NGOs, academia and policy makers.</p>
Georgia Strait Alliance ¹³⁶³	2014	\$35,000	\$38,656	<p>Georgia Strait Alliance (GSA) will partner with the T. Buck Suzuki Environmental Foundation (TBSEF) to increase opposition to Kinder</p>

¹³⁶³ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da3114302391.51857858.pdf>

				<p>Morgan's proposal for oil pipeline on the south coast of British Columbia. GSA's efforts will aim to protect the Salish Sea from the threat of oil spill from more than 400 tankers that would come to the area if the pipeline were constructed. GSA will present evidence to the National Energy Board in Canada on the lack of local capacity to prevent or respond to a potential spill and will advocate for improvements for this capacity in order to address existing threats. GSA will raise public awareness of the risks and threats associated with Kinder Morgan's proposal and provide avenues for input from the general public into the policy discussions. In conjunction with these efforts, GSA and TBSEF will develop a one page manifesto to recommend policy changes to improve oil spill prevention.</p>
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EcoJustice Canada Society ¹³⁶⁴	2014	\$25,000	\$27,612	Ecojustice Canada will use the funds from this grant for timely and strategic opportunities to inform regulatory processes and policy implementation in order to securing protections for the critical habitat of southern resident killer whales and humpback whales. It provide scientific and expert opinion on the impacts of a Kinder Morgan proposal for a oil pipeline to carry up to 890,000 barrels of oil sands product per day from Edmonton to Greater Vancouver. Ecojustice Canada's will show the projects potential impacts on the southern resident killer whale habitat, and will help to provide binding conditions to protect the areas if the project is approved. Ecojustice Canada will continue its lawsuit aim ad compelling the court to reconsider evidence and recommend strong
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¹³⁶⁴ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da31f99cb417.18274750.pdf>

				protection for humpback whales under the Species at Risk Act (SARA). Finally, it will work to push for better identification of critical habitat in the marbled murrelet recovery strategy.
Georgia Strait Alliance ¹³⁶⁵	2013	\$35,000	\$36,047	For The Georgia Strait Alliance (GSA) will use the funds provided in this project to help protect the Salish Sea from the from Kinder Morgan's proposal for expanding oil pipeline, which would threaten a unique coastal environment which supports a wide variety of marine life. Through a public outreach initiative, oil spill modeling, and through outreach to marine industries, GSA will seek to increase the public opposition to Kinder Morgan's proposal and increase pressure on government leaders to reject the project. By engaging the public and marine industries, GSA will demonstrate the

¹³⁶⁵ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da3339e9c9a5.14076738.pdf>

				public opposition as well as the interests of those employed in tourism, commercial fishing, and other industries whose jobs could be risked by a major oil spill. GSA will partner with the Raincoast Conservation Foundation on a project to map the trajectory of a potential oil spill in the Salish Sea. This project will provide credible, publicly available data, which is currently lacking, to better understand the risks of the proposed pipeline.
EcoJustice Canada ¹³⁶⁶	2017	\$25,000	\$32,465	Ecojustice Canada Society will use the funds to push for meaningful action to ensure that orca populations in the Salish Sea can thrive and to advance litigation compelling the government to verify that farmed fish are free of piscine reovirus (PRV) before authorizing their transfer into open-net pens in the ocean, where they have the potential to

¹³⁶⁶ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da33fe7227b0.37246608.pdf>

				<p>infect wild salmon stocks. A recent study showed that southern resident orcas lose 97 percent of their acoustic space crucial to navigation, prey detection and communication at peak times for vessel traffic. Two projects, Kinder Morgan's pipeline expansion and the Roberts Bank Terminal 2 port expansion, will make this situation much worse by increasing tanker and container shipping traffic. In addition, in 2016 possible symptoms of PRV were detected in BC farmed salmon for the first time. Despite this finding, the Canadian Minister of Fisheries and Oceans refuses to test farmed salmon for PRV before licensing their transfer into the ocean, putting wild salmon at great risk. Ecojustice will challenge the pipeline in court, enable environmental assessments for the pipeline expansion, and monitor</p>
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				implementation of all aspects of the orca action plan, building a record for a lawsuit if implementation is delayed or inadequate. The organization will also litigate against the Minister of Fisheries and Oceans to test farmed fish for PRV prior to their transfer into open-net pens.
Keepers of the Athabasca Watershed Society ¹³⁶⁷	2013	\$3,000	\$3,090	For GGF grant will be used to help cover the cost of travel and accommodations for elders and grassroots community people to take part in the Tar Sands Healing walk. The Tar sands are described as some of the most destructive projects on the planet as they use open pit mining and SAGD for extracting bitumen. The Healing Walk brings spiritual healers to pray for the land, air, water, people and all living things. It is a grassroots led event, where all people from the area and visiting

¹³⁶⁷ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da35bf99f3a1.60452234.pdf>

				<p>guests can participate without feeling they are involved in a protest. As the awareness and participation of the Tar Sands Healing Walk continues to grow, the world is becoming more and more aware of what a dirty energy addiction looks like and how destructive it is. The group hopes that bringing elders and leaders together gives them a chance to unite, hear others talk about what is happening in the land and come up with a strategy on moving forward when they return to their communities</p>
<p>Bluewater EcoAlliance¹³⁶⁸</p>	<p>2012</p>	<p>\$5,000</p>	<p>\$4,998</p>	<p>To provide the seed money to develop a campaign to educate communities and begin to organize around opposition to the region becoming the primary processing station for Alberta tar sands. Bluewater EcoAlliance will develop a needs assessment and organize a series of</p>

¹³⁶⁸ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da369d8a6d09.15861348.pdf>

				strategic planning sessions focusing on funding, outreach and campaign strategies. Funding will be used to develop outreach materials
Yinka Dene Alliance ¹³⁶⁹	2011	\$5,000	\$4,945	To support Environmental Action Camp to train grassroots members from the Alliance's member Nations threatened by the proposed Enbridge Tar Sands Northern Gateway Pipeline project. This comprehensive three day training will be facilitated by Indigenous trainers from Canada and the US. The objective will be to raise more awareness; to build capacity at the community organizing level, and to utilize the experience, training, and skills attained by grassroots organizers from member Nations. Participants will learn non-violent direct action theory and planning, legal rights, media/messaging, as well as tactical

¹³⁶⁹ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da37c4095da6.75218353.pdf>

				sessions introducing actions and developing creative visuals
Tsewedielh-Unist'ot'en Camp ¹³⁷⁰	2010	\$5,000	\$5,150	For Action Camp in July to be held in the path of several proposed pipelines, including the Northern Gateway which threaten to traverse the sensitive ecosystems of the Unist'ot'en territories. The camp has three main goals: to build a strategic action plan for the next year to stop the pipelines, to educate and train the participants on Non-Violent Direct Action; and to educate the participants on carbon trading. The camp will bring together 200-300 participants including tar sands extraction impacted community members from Alberta, pipeline impacted communities from Minnesota and North Dakota, and environmental groups at the proposed Energy

¹³⁷⁰ <https://fconline.foundationcenter.org/saved-profiles/pdf/60da3a7fd3a287.38018313.pdf>

				Corridor' for four days to learn and strategize
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995. The foregoing chart indicates a broad range of recipients of grants from Global Greengrants Fund, Inc. Based on my view of the grant descriptions, the grants speak to funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense. Among the various descriptions, I note grants provided for purposes such as: opposing Northern Gateway (generally and in the context of court challenges and federal elections); stopping or halting the expansion of the tar sands; creating a "national wall of opposition to tar sands pipelines"; funding "The Great Bear Initiative will undertake much needed strategic planning at the Board level, and with environmental NGOs and other partners, to assess how best to move forward in order to continue to uphold the oil tanker ban for the Great Bear Rainforest"; protecting "the ecological and economic health of coastal communities from fossil fuel expansion"; opposing Kinder Morgan; creating a "'thin-green-line' of moratoria constraining new fossil-fuel export infrastructure and preventing the Salish Sea from becoming a fossil-fuel superhighway"; ensuring orca populations thrive by opposing Kinder Morgan and tanker traffic; enforcing critical habitat protection orders to opposing tanker traffic; to fund Ecojustice to represent various clients in respect of various tactics to oppose tanker traffic; funding research to 'quantify the risks associated with transporting oil by sea' with results to 'be shared with other charities, NGOs,...'; and in support of training and facilitating demonstrations against "Tar Sands' and Northern Gateway.

996. There are a number of grants made by Global Greengrants Fund Inc. to organizations that I have found participated in anti-Alberta energy campaigns, including those listed in this section:

<u>Participant</u>	<u>Total</u>
Tides Canada Foundation	\$639,355
David Suzuki Foundation	\$209,614
Ecojustice Canada	\$257,336
Environmental Defence Canada	\$143,882
Tides Canada Initiatives Society	\$61,795
Raincoast Research Society	\$15,449
Total:	\$1,327,431

997. With respect to these amounts, there was insufficient information available to me to determine whether these grants were intended to be employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, I make no finding with respect to these grants, but recommend in Part VIII that increased transparency requirements should be introduced, requiring clear description of the purpose and aim of any grants made to not for profit and charitable organizations.

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

998. I have reviewed evidence regarding the campaigns and statements of Global Greengrants Fund Inc. including the following:

A. A posting on GGF's website from January of 2013 provides, in part:

"Firing up Canada's indigenous rights movement

Environmental and social justice movements often seem to ignite as if by magic. But they are actually more like slow burns, building strength year after year before spreading like wildfire.

[an interview then follows providing, in part...]

In Canada in the last few decades, I don't think there's been a major environmental victory that wasn't the result of a movement lead by First Nations or that didn't have the significant participation of First Nations. Because they have a constitutionally protected right to be consulted and accommodated, they are bulwarks against development.

This environmental justice movement is about all Canadians and everyone on the planet. Canada is now ground zero in the battle to stop climate change because our government is one of the worst on that issue and because the tar sands are a ticking time bomb that will really destroy the planet. So indigenous communities are really the best line of defense for all of us. The more support we give them in that struggle, the better off we'll all be."¹³⁷¹

B. A posting on GGF's website from June, 2018 provides in part:

"Canadian Government Nationalizes the Kinder Morgan Pipeline

...

Environmental and indigenous rights activists – including our grantees – have been resisting the Kinder Morgan pipeline project for years. In fact, Global Greengrants Fund has given seven grants totaling \$220,000 to grassroots groups fighting the expansion of the Kinder Morgan pipeline. And since 2006, we have given 22 grants totaling \$468,000 to pipeline-opposing work in Canada."¹³⁷²

C. A posting on GGF's website from September, 2018 provides, in part:

¹³⁷¹ <https://www.greengrants.org/2013/01/29/canadas-indigenous-rights-movement/>

¹³⁷² <https://www.greengrants.org/2018/06/04/kinder-morgan/>

VICTORY: Canadian Court Overturns Approval of Kinder Morgan Pipeline

On August 30, 2018, the Canadian Court of Appeal overturned the approval of the highly controversial Kinder Morgan Trans Mountain Pipeline, siding unanimously with indigenous groups who have been fighting the project for years.

Citing the government's failure to consult with First Nations communities, the Court ruled to stop the expansion projects indefinitely.

The decision is a momentous – and long-awaited – victory for activists across Canada, who have been resisting the environmentally detrimental tar sands project for years. Many of these activists are Global Greengrants Fund grantees: we have given seven grants totaling \$220,000 to grassroots groups fighting the expansion of the Kinder Morgan Pipeline.

So today, we say thank you to the brave indigenous and environmental activists who have been fighting tirelessly for their land, water, and community. This victory would simply not have been possible without their tenacity, dedication, and years of hard work – and we are thrilled to celebrate alongside them today.¹³⁷³

D. GGF's 2018 Annual Report provided:

“VICTORY IN CANADA

On August 30, 2018, the Canadian Court of Appeals overturned the approval of the highly controversial Kinder Morgan Trans Mountain Oil Pipeline, siding unanimously with indigenous groups who have been fighting the project for years. Citing the government's failure to consult with First Nations communities, the Court ruled to stop the expansion of the project indefinitely.

The decision is a momentous – and long-awaited – victory for activists across Canada who have been resisting the environmentally detrimental tar sands project for years. Many of these activists are Global Greengrants Fund grantees: we have awarded seven grants totaling \$220,000 to groups defending their legal rights.”¹³⁷⁴

E. A posting on GGF's website from February, 2020 provides:

¹³⁷³ <https://www.greengrants.org/2018/09/10/kinder-morgan-victory/>

¹³⁷⁴ <https://www.greengrants.org/wp-content/uploads/2019/03/2018-GGF-Annual-Report-9.5x8.5-Spreads-no-cropmarks.pdf>. Page 6.

“Solidarity with the Wet’suwet’en

...

For Indigenous Peoples in Canada, this treatment is nothing new. In fact, it’s the latest in a decades-long trend of the government prioritizing Canada’s rich oil and gas reserves at the expense of Indigenous lives and the environment – a continuation of colonialism. For example, this news comes at the heels at the court of appeals’ decision to move forward with the Kinder Morgan Trans Mountain Pipeline, and as the Alberta Tar Sands continue to unearth 2.6 million barrels of oil per day.

We at Global Greengrants Fund are outraged by the actions of the Canadian police, the massive financial support from banks that are funding the pipeline, and the atrocities being committed against Canada’s Indigenous Peoples and our shared planet.”¹³⁷⁵

999. In reviewing the totality of the evidence, including the foregoing campaigns and statements and evidence regarding grants made by Global Greengrants Fund Inc. summarized above, I am satisfied that the evidence establishes Global Greengrants Fund Inc. has evinced an intent harmful or injurious to Alberta’s oil and gas industry.

(iv) Conclusion

1000. In conclusion, I find that Global Greengrants Fund Inc.:

- A. has made grants that constitute funding for a stated purpose that could directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportations of those resources to commercial markets;
- B. has made grants to entities I have found are Participants; and
- C. is a foreign organization that has evinced an intent harmful or injurious to Alberta’s oil and gas industry.

¹³⁷⁵ <https://www.greengrants.org/2020/02/13/wetsuweten/>

(j) **Sea Change Foundation**

(i) Background

1001. Sea Change Foundation is a Section 501(c)(3) exempt private foundation.¹³⁷⁶ The organization's 2018 Form 990-PF provides that the organization's address is in the U.S.¹³⁷⁷

1002. On its 2018 Form 990-PF, Sea Change Foundation reported that the fair market value of all assets at end of year was \$256,501,528 (USD).¹³⁷⁸

1003. Sea Change Foundation International is connected with Sea Change Foundation, both sharing the same co-directors and Sea Change Foundation's website providing:

"Sea Change Foundation International (formerly known as Klein Ltd.) was founded as a philanthropic organization in Bermuda in 2011 and operates as an international philanthropic counterpart to Sea Change Foundation. Sea Change Foundation and Sea Change Foundation International share a common strategy: to provide philanthropic support to nonprofit organizations focused on climate change mitigation and clean energy policy."¹³⁷⁹

(ii) Funding

1004. In considering the grants made by the Sea Change Foundation to various organizations, I have determined that the below grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense:

<u>Recipient</u>	<u>Date</u>	<u>Amount USD</u>	<u>Amount CAD</u>	<u>Grant Description</u>
Tides U.S. Foundation ¹³⁸⁰	2009	\$2,000,000	\$2,283,955	To promote awareness and opposition to tar sands

¹³⁷⁶ https://projects.propublica.org/nonprofits/display_990/204952986/01_2020_prefixes_20-20%2F204952986_201812_990PF_2020010216988010 at page 1 Box H.

¹³⁷⁷ https://projects.propublica.org/nonprofits/display_990/204952986/01_2020_prefixes_20-20%2F204952986_201812_990PF_2020010216988010 at page 1.

¹³⁷⁸ https://projects.propublica.org/nonprofits/display_990/204952986/01_2020_prefixes_20-20%2F204952986_201812_990PF_2020010216988010 at page 1 Box I.

¹³⁷⁹ <https://www.seachange.org/>

¹³⁸⁰ Sea Change Foundation Form 990-PF for the 2008 calendar year at page 23 of pdf.

1005. My reasons for finding that these grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense may be separated into the following bases:

A. I find that a grant for the purpose of "to promote awareness and opposition to tar sands", being satisfied that "tar sands oil" is generally a term used to refer to Alberta's oil sands, when made to an entity that I have found has participated in an anti-Alberta energy campaign, is sufficient for me to conclude that the grant supports the delay or frustration of the development of Alberta's oil and gas resources in a broad and general sense, and is accordingly made in furtherance of an anti-Alberta energy campaign.

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

1006. I have not found evidence establishing that Sea Change Foundation has evinced an intent harmful or injurious to Alberta's oil and gas industry.

(iv) Conclusion

1007. In conclusion, I find that Sea Change Foundation has made grants that constitute funding for a stated purpose that could directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta's oil and gas resources and/or the transportations of those resources to commercial markets.

(k) **Energy Foundation**

(i) Background

1008. The Energy Foundation is a Section 501(c)(3) exempt private foundation.¹³⁸¹ The organization's 2018 Form 990 provides that the organization's address is in the U.S.¹³⁸²

1009. On its 2018 Form 990, Energy Foundation reported that the value of its total assets at end of year was \$94,790,381 (USD).¹³⁸³

(ii) Funding

1010. In considering the grants made by Energy Foundation to various organizations, I have determined that the below grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense:

¹³⁸¹ <https://www.ef.org/wp-content/uploads/2018-990-Energy-Foundation.pdf> at page 1 Box I.

¹³⁸² <https://www.ef.org/wp-content/uploads/2018-990-Energy-Foundation.pdf> at page 1.

¹³⁸³ <https://www.ef.org/wp-content/uploads/2018-990-Energy-Foundation.pdf> at page 1 Line 20.

<u>Recipient</u>	<u>Date</u>	<u>Amount USD</u>	<u>Amount CAD</u>	<u>Grant Description</u>
Union of Concerned Scientists ¹³⁸⁴	2010	\$150,000	\$154,491	To build support for low-carbon, sustainable fuels and build the case against dirty fuels
Taxpayers for Common Sense ¹³⁸⁵	2010	\$150,000	\$154,491	To spotlight taxpayer subsidies of dirty fuels
Sierra Club Foundation ¹³⁸⁶	2009	\$200,000	\$228,395	For Sierra Club's Dirty Fuels Campaign to promote administrative policies that deter high-carbon fuels and encourage low-carbon fuels

1011. My reasons for finding that these grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense may be separated into the following bases:

- A. "Dirty fuels" is a term that has frequently been used, similar to the term "Tar Sands" to describe the oilsands. I find that a grant for the purpose of supporting a "Dirty Fuels Campaign", when made to an entity that I have found has participated in an anti-Alberta energy campaign, is sufficient for me to conclude that the grant supports the delay or frustration of the development of Alberta's oil and gas resources in a broad and general sense, and is accordingly made in furtherance of an anti-Alberta energy campaign.
- B. I find that criticizing "subsidies" for fossil fuels is often a tactic used to oppose oilsands development. I find that grants made to "spotlight taxpayers subsidies for dirty fuels" is sufficient for me to conclude that the grant supports the delay or frustration of the development of Alberta's oil and gas resources in a broad and general sense, and is accordingly made in furtherance of an anti-Alberta energy campaign.

1012. There are a number of grants made by Energy Foundation to organizations that I have found participated in anti-Alberta energy campaigns, including those listed in this section:

¹³⁸⁴ The Energy Foundation Form 990 for the 2010 calendar year Schedule I Part II at page 48.

¹³⁸⁵ The Energy Foundation Form 990 for the 2010 calendar year Schedule I Part II at page 45.

¹³⁸⁶ The Energy Foundation Form 990-PF for the 2009 calendar year Statement 13 at page 52.

<u>Participant</u>	<u>Total</u>
Sierra Club Foundation	\$228,395
Dogwood Initiative	\$8,239
Total:	\$236,635

1013. With respect to these amounts, there was insufficient information available to me to determine whether these grants were intended to be employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, I make no finding with respect to these grants, but recommend in Part VIII that increased transparency requirements should be introduced, requiring clear description of the purpose and aim of any grants made to not for profit and charitable organizations.

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

1014. I have not found evidence establishing that Energy Foundation has evinced an intent harmful or injurious to Alberta's oil and gas industry.

(iv) Conclusion

1015. In conclusion, I find that the Energy Foundation:

- A. has made grants that constitute funding for a stated purpose that could directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta's oil and gas resources and/or the transportations of those resources to commercial markets; and
- B. has made grants to entities I have found are Participants.

(l) ***Brainerd Foundation***

(i) Background

1016. The Brainerd Foundation is a Section 501(c)(3) exempt private foundation.¹³⁸⁷ The organization's 2018 Form 990-PF provides that the organization's address is in the U.S.¹³⁸⁸

1017. On its 2018 Form 990-PF, Brainerd Foundation reported that the fair market value of all assets at end of year was \$8,753,743 (USD).¹³⁸⁹

¹³⁸⁷ https://projects.propublica.org/nonprofits/display_990/911675591/01_2020_prefixes_90-93%2F911675591_201812_990PF_2020012217052851 at page 1 Box H.

¹³⁸⁸ https://projects.propublica.org/nonprofits/display_990/911675591/01_2020_prefixes_90-93%2F911675591_201812_990PF_2020012217052851 at page 1.

¹³⁸⁹ https://projects.propublica.org/nonprofits/display_990/911675591/01_2020_prefixes_90-93%2F911675591_201812_990PF_2020012217052851 at page 1 Box I.

1018. In 2021, Brainerd Foundation indicated that “[a]fter 25 years of grantmaking, we’ve closed our doors.”¹³⁹⁰

1019. Brainerd Foundation described its strategy and focus saying:

- A. With a mission to protect the environment of the Northwest and build broad citizen support for conservation, the Brainerd Foundation operated as a limited life family foundation from 1995 to 2020.

We provided funding and expertise to strengthen the ability of nonprofits, communities, and decision-makers to protect our region’s air, land, and water.

We supported conservation efforts in Alaska, British Columbia, Idaho, Montana, Oregon, and Washington (and the Yukon Territory for a few years), a large region with abundant natural resources, vast areas of undisturbed wildlands, and thriving populations of humans, wildlife, fish, and native plant species.¹³⁹¹

1020. It elaborated on its strategy and focus in its publication, “The Brainerd Foundation – Sharing What We’ve Learned and Celebrating 25 Years of Environmental Milestones”, which provided, in part:

- A. “Years later, the successful campaigns to stop the fossil fuel industry from expanding its operations in the Northwest required an unprecedented level of collaboration and credit-sharing among organizations. As alliances were built to advance equitable climate policies in Washington, environmental leaders put the people who would be most directly affected by climate policies at the center of their coalition. This approach is changing the way leaders are thinking about how they will engage partners in the future.

Our early investments in priorities coalitions in Washington and elsewhere opened our eyes to a different way of supporting policy change. Most environmental funders specialize in one or more policy issues, like forests or climate or water. Our priority was to build the will of policy-makers to protect all of these things. By investing in the infrastructure that supported the Environmental Priorities Coalition, we helped advance a strategy that made all of the coalition partners more successful. And their track record of success made more elected officials want to become champions on environmental priorities. It was a game changer for groups in our region, and one of our most powerful investments.”¹³⁹²

¹³⁹⁰ <https://www.brainerd.org/>

¹³⁹¹ <https://www.brainerd.org/about/strategy.php>

¹³⁹² <https://www.brainerd.org/downloads/Brainerd-Foundation-brochure.pdf> Page 10.

- B. The report went on to list “some of the accomplishments that made us proud”, including the following Canadian projects:¹³⁹³

#14 - The Great Bear Rainforest.

#23 – The Flathead River Watershed.

#24 – Taku River in Northwest B.C.

#38 – The Thin Green Line (rejection of last remaining undecided oil terminal (eight terminals defeated in the last decade)).

#43 – Muskwa-Kechika Special Management Area in northern B.C.

#44 – Qat’muk Indigenous Protected and Conserved Area (Purcell Mountains/Jumbo Valley).

- C. The report also listed 27 Canadian ENGOs as “Organizations We Funded” (20 from B.C., two from Yukon Territory, and five ‘national and regional’).¹³⁹⁴

(ii) Funding

1021. There are a number of grants made by Brainerd Foundation to organizations that I have found participated in anti-Alberta energy campaigns, including those listed in this section:

<u>Participant</u>	<u>Total</u>
EcoJustice Canada Society	\$132,177
Sierra Club of British Columbia Foundation	\$66,788
Tides Canada Foundation	\$4,998
Total:	\$203,963

1022. With respect to these amounts, there was insufficient information available to me to determine whether these grants were intended to be employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, I make no finding with respect to these grants, but recommend in Part VIII that increased transparency requirements should be introduced, requiring clear description of the purpose and aim of any grants made to not for profit and charitable organizations.

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

¹³⁹³ <https://www.brainerd.org/downloads/Brainerd-Foundation-brochure.pdf> Pages 20-27.

¹³⁹⁴ <https://www.brainerd.org/downloads/Brainerd-Foundation-brochure.pdf> Page 28.

1023. I have not found evidence establishing that Brainerd Foundation has evinced an intent harmful or injurious to Alberta's oil and gas industry.

(iv) Conclusion

1024. In conclusion, I find that Brainerd Foundation has made grants to entities I have found are Participants.

(m) ***The Bullitt Foundation (“Bullitt Foundation”)***

(i) Background

1025. Bullitt Foundation is a Section 501(c)(3) exempt private foundation.¹³⁹⁵ The organization's 2018 Form 990-PF provides that the organization's address is in the U.S.¹³⁹⁶

1026. On its 2018 Form 990-PF, Bullitt Foundation reported that the fair market value of all assets at end of year was \$86,149,756 (USD).¹³⁹⁷

1027. Bullitt Foundation funds projects in a program known as “Energy, Climate, and Materials”, where the foundation works to “eliminate the use of fossil fuels, reduce greenhouse gas emissions, and transition from toxic materials to inherently safe ones”. Towards this end the program will, among other things, “[r]eplace all dirty energy (including gasoline and diesel fuels) as swiftly as possible with clean, distributed, renewable sources of energy.”¹³⁹⁸

(ii) Funding

1028. In considering the grants made by Bullitt Foundation to various organizations, I have determined that the below grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense:

<u>Recipient</u>	<u>Date</u>	<u>Amount USD</u>	<u>Amount CAD</u>	<u>Grant Description</u>
West Coast Environmental Law Research Foundation ¹³⁹⁹	2008	\$30,000.00	\$31,980.43	For Climate Change and Capacity Building: Using the law to empower communities and ensure a lasting

¹³⁹⁵ https://projects.propublica.org/nonprofits/display_990/916027795/01_2020_prefixes_90-93%2F916027795_201812_990PF_2020011617041847 at page 1 Box H.

¹³⁹⁶ https://projects.propublica.org/nonprofits/display_990/916027795/01_2020_prefixes_90-93%2F916027795_201812_990PF_2020011617041847 at page 1.

¹³⁹⁷ https://projects.propublica.org/nonprofits/display_990/916027795/01_2020_prefixes_90-93%2F916027795_201812_990PF_2020011617041847 at page 1 Box I.

¹³⁹⁸ <https://www.bullitt.org/programs/energy-climate-and-materials/>

¹³⁹⁹ The Bullitt Foundation Form 990-PF for the 2008 calendar year Attachment A at page 41 of the pdf, <https://fconline.foundationcenter.org/saved-profiles/pdf/60daa2e122f3e1.04946963.pdf>

				green legacy, preventing the increase of greenhouse gas emissions in British Columbia from commercial production of coalbed methane and securing a permanent moratorium on oil and gas tanker traffic on the northern British Columbia coast
Tides Fdn for the Dogwood Initiative ¹⁴⁰⁰	2008	\$30,000.00	\$31,980.43	To strengthen and enforce Coastal Oil Tanker Program, 34-year moratorium on oil tanker traffic in the mid and north coast of British Columbia and to prevent expansion of oil and gas infrastructure in Georgia Strait and the lower Fraser Basin
Marine Conservation ¹⁴⁰¹ Biology Institute	2009	\$ 25,000.00	\$ 28,549.43	For general support for protecting British Columbia's marine environment by building strong planning tools, strengthening the moratorium on tanker traffic and regulating the shipping regulations in British Columbia

¹⁴⁰⁰ The Bullitt Foundation Form 990-PF for the 2008 calendar year Attachment A at page 41 of the pdf <https://fconline.foundationcenter.org/saved-profiles/pdf/60daa3c18a1ef7.79033895.pdf>.

¹⁴⁰¹ <https://fconline.foundationcenter.org/saved-profiles/pdf/60daa447edc512.23632298.pdf>

Tides Fdn for the Dogwood Initiativ ¹⁴⁰²	2009	\$30,000.00	\$34,259.32	To support Broadening the Coalition: Protecting the Fraser from Tar Sands Exploration, effort to expand outreach campaign to mobilize urban voters for a federal ban on coastal tankers
EcoJustice Canada Society ¹⁴⁰³	2012	\$50,000.00	\$49,979.00	For efforts to advance sustainable water governance in British Columbia, and for legal oversight of proposals to expand oil export port facilities and tanker traffic in urban Vancouver waters
Raincoast Conservation Foundation ¹⁴⁰⁴	2014	\$20,000.00	\$22,089.33	To retain expert witnesses needed to inform National Energy Board hearings on the proposed Kinder Morgan Transmountain Pipeline expansion.
Living Oceans Society ¹⁴⁰⁵	2016	\$20,000.00	\$26,496.13	To support the organization's official intervention in National Energy Board hearings reviewing the Kinder Morgan Trans

¹⁴⁰² <https://fconline.foundationcenter.org/saved-profiles/pdf/60daa5654add65.40175595.pdf>

¹⁴⁰³ The Bullitt Foundation Form 990-PF for the 2012 calendar year Attachment A at page 58 of the pdf, <https://fconline.foundationcenter.org/saved-profiles/pdf/60daa4ae32b4e0.87041650.pdf>

¹⁴⁰⁴ <https://fconline.foundationcenter.org/saved-profiles/pdf/60daa701ded539.77430882.pdf>

¹⁴⁰⁵ Living Oceans Society-2016a | The Bullitt Foundation; The Bullitt Foundation Form 990-PF for the 2016 calendar year Attachment A at page 36 of the pdf.

				Mountain Pipeline Expansion Project, and parallel efforts to assess the proposed project on the part of the federal government and the Province of British Columbia.
EcoJustice Canada Society ¹⁴⁰⁶	2017	\$50,000.00	\$64,930.00	For continued litigation and program support related to fossil fuel transport and export infrastructure.

1029. My reasons for finding that these grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta’s oil and gas resources in a broad and general sense may be separated into the following bases:

- A. As discussed in Part II campaigns supporting a “tanker ban” may be, but are not necessarily in every case, efforts opposed to the further development of Alberta’s oil and gas resources. I find that where grants are made for the purpose of supporting a “moratorium on oil tanker traffic”, “moratorium on tanker traffic”, and “a federal ban on coastal tankers” and such grants are made to an entity that I have found has participated in “tanker ban” campaigns in a manner that constitutes an anti-Alberta energy campaign, such grants support the delay or frustration of the development of Alberta’s oil and gas resources in a broad and general sense, and are accordingly made in furtherance of an anti-Alberta energy campaign.
- B. I find that a grant made to an organization that I have found to be a Participant, to retain expert witnesses in National Energy Board Hearings reviewing the Kinder Morgan Trans Mountain Pipeline is a grant that supports the delay or frustration of the development of Alberta’s oil and gas resources in a broad and general sense and is accordingly made in furtherance of an anti-Alberta energy campaign.
- C. Similarly, I have found that a grant made to another organization for a similar purpose to support the organization’s intervention in National Energy Board Hearings to review the Kinder Morgan Trans Mountain Pipeline Expansion is a grant that that supports the delay or frustration of the development of Alberta’s oil and gas resources in a broad and general sense, and is accordingly made in furtherance of an anti-Alberta energy campaign.

¹⁴⁰⁶ Ecojustice Canada Society-2017a | The Bullitt Foundation

- D. I find that a grant made to an organization that I have found to be a Participant for continued litigation and program support related to fossil fuel transport and infrastructure is a grant that supports the delay or frustration of the development of Alberta's oil and gas resources in a broad and general sense, and is accordingly made in furtherance of an anti-Alberta energy campaign.

1030. There are a number of grants made by Bullitt Foundation to organizations that I have found participated in anti-Alberta energy campaigns, including those listed in this section:

<u>Participant</u>	<u>Total</u>
EcoJustice Canada Society	\$114,909
Tides Fdn for the Dogwood Initiativ	\$66,240
West Coast Environmental Law Research Foundation	\$63,961
The Pembina Foundation for Environmental Research	\$44,179
Raincoast Conservation Foundation	\$22,089
Sierra Club of British Columbia Foundation	\$15,990
Total:	\$327,368

1031. With respect to these amounts, there was insufficient information available to me to determine whether these grants were intended to be employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, I make no finding with respect to these grants, but recommend in Part VIII that increased transparency requirements should be introduced, requiring clear description of the purpose and aim of any grants made to not for profit and charitable organizations.

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

1032. I have not found evidence establishing that Bullitt Foundation has evinced an intent harmful or injurious to Alberta's oil and gas industry.

(iv) Conclusion

1033. In conclusion, I find that the Bullitt Foundation:

- A. has made grants that constitute funding for a stated purpose that could directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta's oil and gas resources and/or the transportations of those resources to commercial markets; and
- B. has made grants to entities I have found are Participants.

F. RE-GRANTERS

(a) *Background*

1034. Funding is not always provided by a foundation directly. Often time, it goes through a “re-granting” or intermediary organization. One foundation defined the practice as follows:

“Re-granting or intermediary organizations—frequently used in philanthropy—are “mission-driven organizations that aim to more effectively link donors (individuals, foundations, and corporations) with organizations and individuals delivering charitable services.” (That’s a definition from the experts at PEAK, the association for grantmaking professionals.) Such organizations play valuable, wide-ranging roles including campaign leadership, coalition-builder, policy expert, and capacity-builder for small and community-based nonprofit groups.”¹⁴⁰⁷

1035. One study defined the participants in re-granting as follows:

- A. **Re-granter:** an intermediary that receives then re-grants philanthropic monies (e.g., from foundations such as Hewlett) to additional parties. A re-granter may also be called an intermediary or a re-granting intermediary.
- B. **Grantee:** a recipient of grant funds from a re-granter, a funder, or both. A grantee of a re-granter may also be called a re-grantee.
- C. **Funder:** a provider of philanthropic funds to re-granters and grantees. Re-granters in this report may receive monies to re-grant from multiple funders, including Hewlett.¹⁴⁰⁸

1036. The role of the Re-granter may involve much more than a consolidation of funders. Tides and New Venture Fund, for example, describe their offerings as follows:

- A. Tides and NVF are both 501(c)(3) public charities that perform what we think of as traditional fiscal sponsorship: providing hosted initiatives with a platform within an exempt nonprofit that enables them to raise funds from donors for a specific charitable goal. We provide this support (for a low flat or percentage-based fee) to hosted projects for which being an independent entity and obtaining 501(c)(3) status would be too time-consuming or inefficient. This is a basic model of efficiency long embraced by the private sector, providing shared services that keep costs low.
- B. Far beyond this, however, Tides and NVF have broad and deep benches of expertise available to donors and hosted projects: lawyers who are field leaders in nonprofit law, advising on the rules regulating advocacy, lobbying, and political activity; human

¹⁴⁰⁷ <https://hewlett.org/evaluation-the-role-of-re-granters-in-advancing-a-more-inclusive-and-collaborative-conservation-movement/>

¹⁴⁰⁸ Strengthening the US Conservation Field: A Study of Intermediary Approaches in the William and Flora Hewlett Foundation’s Western Conservation Grantmaking Strategy - https://hewlett.org/wp-content/uploads/2021/02/Final_External_Hewlett-Regantrers-Study_revised_formatted_12.20.20.pdf At page 2.

resources teams that offer comprehensive services to cultivate and keep nonprofit talent, including competitive benefits, management training, and performance management; experts in governance models and best practices who can mastermind complex, multi-stakeholder initiatives; evaluators who can help different types of initiatives identify the best ways to measure impact; consultants who can advise on strategy and organizational development to maintain a sustainable and healthy initiative, facilitate donor collaboratives, and support network building; and far more. Both Tides and NVF also work with 501(c)(4) hosted projects and provide substantive guidance on 501(c)(3) compliance and 501(c)(4) work—enabling these projects to comply with applicable regulations while pursuing transformative policy change. Donors and hosted projects can work with the organizations to identify the mix of services and expertise that will best further their philanthropic goals, amplifying the change they make in the world.¹⁴⁰⁹

1037. I turn now to a review of specific re-granters.

(b) ***New Venture Fund***

(i) Background

1038. New Venture Fund was established in 2006 as a 501(c)(3) public charity. It has grown from receiving donations of \$545,100 (USD) in 2006 to receiving donations of \$450,007,353 (USD) in 2019.¹⁴¹⁰ From 2013-2018 it received between 78% and 88% of its funding from staffed foundations.¹⁴¹¹

1039. According to its 2009 IRS tax return, New Venture Fund had zero employees and five volunteers.¹⁴¹² In New Venture Fund's 2019 IRS tax return, it reports 687 employees with salaries (including other compensation and benefits) of \$59,279,859 (USD) and 305 volunteers.¹⁴¹³

1040. At the end of 2019, New Venture Fund managed a charitable portfolio of more than \$356,000,000 (USD) and had launched more than 500 projects.¹⁴¹⁴

1041. New Venture Fund is 35% owned by Arabella Advisors, LLC ("**Arabella**"), who also provides New Venture Fund with its "financial, legal, HR, payroll, and other administrative services". For the

¹⁴⁰⁹ "Reimagining Fiscal Sponsorship – expanding the ways in which donors, nonprofits, and other social change actors can collaborate for change", at page 2. <https://newventurefund.org/wp-content/uploads/2020/07/Reimagining-Fiscal-Sponsorship.pdf>.

¹⁴¹⁰ 2019 Form 990 at line 8, page 1. See also : <https://newventurefund.org/wp-content/uploads/2020/12/NVF-2019-Form-990-Public-Disclosure.pdf>. Page 2 of 156.

¹⁴¹¹ <https://impact.newventurefund.org/assets/img/NVF-Impact-Report-F.pdf> Pages 4-6. See also : <https://impact.newventurefund.org/>

¹⁴¹² 2009 Form 990 at lines 5 and 6. Page 1. See also: https://projects.propublica.org/nonprofits/display_990/205806345/2010_10_EO%2F20-5806345_990_200912 (at page 2 of 43).

¹⁴¹³ 2019 Form 990 at line 8, page 1. See also : <https://newventurefund.org/wp-content/uploads/2020/12/NVF-2019-Form-990-Public-Disclosure.pdf>. Page 2 of 156.

¹⁴¹⁴ <https://newventurefund.org/how-we-work/reports/>

calendar year ending 2019 New Venture Fund paid Arabella the sum of \$23,261,222 (USD) for these services.¹⁴¹⁵

1042. Arabella also advances the divestment tactic described in Part II, including specifically in a 2018 report entitled “The Global Fossil Fuel Divestment and Clean Energy Investment Movement”. The report specifically references organizations involved in Alberta’s oil sands, and advocates ethical, financial, and fiduciary imperatives to divest from the fossil fuels industry.¹⁴¹⁶

(ii) Funding and Grant Description

1043. I have reviewed information regarding certain grants provided to NVF and find that the evidence demonstrates the following grants were made to NVF:

Grantmaker Name	Year Authorized	Amount (USD)	Grant Amount CAD	Description
Rockefeller Brothers Fund, Inc. ¹⁴¹⁷	2012	\$250,000	\$249,895	For its Fossil Fuels Reduction project
Rockefeller Brothers Fund, Inc. ¹⁴¹⁸	2014	\$ 300,000	\$ 331,340	For its Fossil Fuel Reduction project
The Marisla Foundation ¹⁴¹⁹	2016	\$ 150,000	\$ 198,721	Fossil Fuel Reduction Project
The Marisla Foundation ¹⁴²⁰	2017	\$ 175,000	\$ 227,255	Fossil Fuel Reduction Project
The Oak Foundation U.S.A. ¹⁴²¹	2012	\$ 270,000	\$ 269,887	Tar sands campaign
The William and Flora Hewlett Foundation ¹⁴²²	2016	\$ 500,000	\$ 662,403	The Fossil Fuel Reduction project is a multi-funder, multi-year project of the New Venture Fund. Its purpose is to reduce the impacts

¹⁴¹⁵ <https://newventurefund.org/wp-content/uploads/2020/12/NVF-2019-Form-990-Public-Disclosure.pdf>. Page 142 of 156.

¹⁴¹⁶ <https://www.arabellaadvisors.com/resource/global-fossil-fuel-divestment-clean-energy-investment-movement-copy-2/>. See also: <https://www.arabellaadvisors.com/wp-content/uploads/2018/09/Global-Divestment-Report-2018.pdf> See pages 3, 6, 13, 21, 23, and 28.

¹⁴¹⁷ Rockefeller Brothers Fund, Inc. Form 990-PF for the calendar year 2012 Schedule 13 at page 188 of pdf..

¹⁴¹⁸ Rockefeller Brothers Fund, Inc. Form 990-PF for the calendar year 2014 Schedule 13 at page 101 of pdf..

¹⁴¹⁹ The Marisla Foundation Form 990-PF for the calendar year 2016 Attachment 14 at page 43 of pdf.

¹⁴²⁰ The Marisla Foundation Form 990-PF for the calendar year 2017 Attachment 15 at page 43 of pdf.

¹⁴²¹ The Oak Foundation, U.S.A. Form 990- PF for the calendar year 2012 Part XV at page 38 of pdf.

¹⁴²² The William & Flora Hewlett Foundation Form 990-PF for the calendar year 2016 Part XV at page 142 of pdf.

				on people, wildlife, water, soil, and air from the development of unconventional types of oil. The extraction and processing of unconventional oils in North America have high carbon intensity and other environmental and human impacts. To ensure that atmospheric concentrations of carbon not exceed 450 parts per million, about two-thirds of oil reserves should be kept in the ground.
The William and Flora Hewlett Foundation ¹⁴²³	2015	\$ 850,000	\$ 1,086,904	The Fossil Fuel Reduction project is a multi-funder and multi-year project of the New Venture Fund. Its purpose is to reduce the impacts on people, wildlife, water, soil, and air from the development of unconventional types of oil. The extraction and processing of unconventional oils in North America have high carbon intensity and other environmental and human impacts. To ensure that atmospheric

¹⁴²³ The William & Flora Hewlett Foundation Form 990-PF for the calendar year 2016 Part XV at page 142 of pdf.

				concentrations of carbon not exceed 450 parts per million, about two-thirds of oil reserves should be kept in the ground.
The William and Flora Hewlett Foundation ¹⁴²⁴	2011	\$ 2,000,000	\$ 3,956,277	For the fossil fuel reduction project
The William and Flora Hewlett Foundation ¹⁴²⁵	2014	\$ 2,750,000	\$ 3,037,283	For The Fossil Fuel Reduction Project, a multi-funder and multi-year project of the New Venture Fund. Its purpose is to reduce the impacts on people, wildlife, water, soil, and air from the development of unconventional types of oil. The extraction and processing of unconventional oils in North America have higher carbon intensity and other environmental and human impacts. To ensure a level consistent with global scenarios for atmospheric concentrations of carbon not exceeding 450 parts per million, about two-thirds of oil reserves should be kept in the ground

¹⁴²⁴ The William & Flora Hewlett Foundation Form 990-PF for the calendar year 2011 Part XV at page 70 of pdf.

¹⁴²⁵ The William & Flora Hewlett Foundation Form 990-PF for the calendar year 2014 Part XV at page 54 of pdf.

Tides U.S. Foundation ¹⁴²⁶	2015	\$ 60,000	\$ 76,723	Fossil Fuel Reduction Project
Barr Foundation ¹⁴²⁷	2013	\$ 75,000	\$ 77,244	For Tar Sands Free Northeast Campaign
Oak Foundation ¹⁴²⁸	2011	\$ 540,000	\$ 534,097	For Tar Sands Campaign. To raise the visibility of tar sands as a health concern by: supporting more sustainable infrastructure developments; supporting policy reform in the US and Canada; enforcing existing regulations; and encouraging future demand for less polluting energy sources
Oak Foundation ¹⁴²⁹	2012	\$ 1,000,000	\$ 999,580	To scale up work to promote alternative solutions to tar sands expansion in affected provinces and states by expanding communications initiatives and re-granting. The NVF conducts public interest projects and provides professional insight and services to institutions and individuals seeking to foster change

¹⁴²⁶ The Tide Foundation Form 990 for the calendar year 2015 Schedule I Part II at page 130 of pdf.

¹⁴²⁷ Barr Foundation Form 990-PF for the calendar year 2013 Schedule B Part XV at page 52 of pdf.

¹⁴²⁸ The Oak Foundation U.S.A grant listing obtained from website page 48.

¹⁴²⁹ The Oak Foundation U.S.A grant listing obtained from website page 48.

Oak Foundation ¹⁴³⁰	2015	\$ 1,600,344	\$ 2,046,377	Cap the expansion of the tar sands in Alberta, Canada and eliminate the impact that tar sands extraction, development and transportation has on biodiversity and human health. The New Venture Fund provides philanthropists with an efficient, cost-effective and time-saving platform to design, launch and operate collaborative charitable projects.
The John Merck Fund ¹⁴³¹	2012	\$ 75,000	\$ 74,969	To stop the tar sands pipeline proposed from Alberta, Canada, to Portland, Maine
The Marisla Foundation ¹⁴³²	2013	\$ 150,000	\$ 154,487	For Tar Sands Campaign
The Marisla Foundation ¹⁴³³	2014	\$ 150,000	\$ 165,670	Tar Sands Campaign Fossil Fuel Reduction Project
The Oak Foundation U.S.A. ¹⁴³⁴	2012	\$ 270,000	\$ 269,887	Tar sands campaign
The Oak Foundation U.S.A. ¹⁴³⁵	2013	\$ 270,000	\$ 278,077	Tar sands campaign
The Oak Foundation U.S.A. ¹⁴³⁶	2013	\$ 750,000	\$ 772,436	Tar sands solutions

¹⁴³⁰ The Oak Foundation U.S.A grant listing obtained from website page 47.

¹⁴³¹ The John Merck Fund Form 990 – PF for the calendar year 2012 Attachment C at page 61 of pdf.

¹⁴³² The Marisla Foundation Form 990-PF for the calendar year 2013 Attachment 14 at page 51 of pdf.

¹⁴³³ The Marisla Foundation Form 990-PF for the calendar year 2014 Attachment 15 at page 47 of pdf.

¹⁴³⁴ The Oak Foundation, U.S.A. Form 990- PF for the calendar year 2012 Part XV at page 38 of pdf.

¹⁴³⁵ The Oak Foundation, U.S.A. Form 990-PF for the calendar year 2013 Part XV at page 36 of pdf.

¹⁴³⁶ The Oak Foundation, U.S.A. Form 990-PF for the calendar year 2013 Part XV at page 36 of pdf.

The Oak Foundation U.S.A. ¹⁴³⁷	2014	\$ 250,000	\$ 276,117	Tar sands campaign
The Oak Foundation U.S.A. ¹⁴³⁸	2016	\$ 508,038	\$ 673,052	Tar sands solutions network
The Oak Foundation U.S.A. ¹⁴³⁹	2017	\$ 508,049	\$ 659,752	TAR SANDS SOLUTIONS NETWORK

1044. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization received funds which were provided for the stated purpose of a “Fossil Fuel Reduction Program”, “Tar Sands Solutions Network”, a “tar sands campaign” to “stop the tar sands pipeline”, to “promote alternative solutions to tar sands expansion in affected provinces and states”, and related to capping the expansion to tar sands in Alberta is of some evidentiary value in considering whether NVF is involved in opposition to the development of Alberta’s oil and gas resources.

1045. The grants described above are in relation to grants *received by NVF*. With respect to grants *made by NVF*, similar particulars are not required under NVF’s 990 filings in respect of foreign funding. Accordingly, I was only able to determine the region of the grants intended recipient and a very general subject matter for which the grants were meant to be applied (as opposed to an express grant description).¹⁴⁴⁰ As a result, the nature and identity of the granting is not generally ascertainable by available public records.

1046. I was, however, able to determine that between 2015 and 2018 NVF provided funding to the International Institute of Sustainable Development, who I have found is a Participant, in the amount of \$1.05 million.¹⁴⁴¹

(iii) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

1047. I have reviewed evidence regarding the campaigns and statements of NVF, including the following:

A. NVF’s website describes its Environment projects as follows:

¹⁴³⁷ The Oak Foundation, U.S.A. Form 990-PF for the calendar year 2014 Part XV at page 38 of pdf.

¹⁴³⁸ The Oak Foundation, U.S.A. Form 990-PF for the calendar year 2016 Part XV at page 20 of pdf.

¹⁴³⁹ The Oak Foundation, U.S.A. Form 990-PF for the calendar year 2017 Part XV at page 21 of pdf.

¹⁴⁴⁰ See, for example, 2019 Form 990, Schedule “F” (online: <https://newventurefund.org/wp-content/uploads/2020/12/NVF-2019-Form-990-Public-Disclosure.pdf>. – Schedule “F”).

¹⁴⁴¹ See: (a) “*Supporting the Global Shift to Sustainability*”, the IISD Annual Report, 2015-2016, (\$559,000), at page 52 of 56; (b) “*Equity and a Healthy Planet*”, the IISD Annual Report, 2016-2017, (\$376,000), at page 44 of 48; and (c) “*A Force for Action*”, the IISD Annual Report, 2017-2018, (\$125,000), at page 32 of 40.

Our projects focus on a range of conservation, climate, and energy issues in the United States and abroad. These include ocean and river conservation, alternative energy sources and reduction of fossil fuels...¹⁴⁴²

- B. NVF's support of a 2015 paper entitled "TAR SANDS AT OUR DOORSTEP: The Threat to the Lake Champlain Region's Waters, Wildlife and Climate".¹⁴⁴³ The paper "...documents the tar sands oil industry's three pronged attack to infiltrate the region with dirty, dangerous tar sands oil" "from Alberta, Canada"¹⁴⁴⁴ and makes a number of recommendations "to ensure that the region's residents and policy makers are alerted to the serious risks posed by dirty tar sands oil", concluding with:

"Finally, the region needs to enact policies to keep tar sands oil out of the fuel market, such as a Carbon Pollution Tax, Clean Fuel Standard and similar measures."¹⁴⁴⁵

NVF was also thanked for supporting the authors "efforts to keep tar sands out of the Northeast".¹⁴⁴⁶

- C. NVF supported the #Exxonknew Campaign, its representative, Kenny Bruno,¹⁴⁴⁷ authoring the email setting out the January 8, 2016 email/agenda.¹⁴⁴⁸
- D. NVF was also the registered holder of the "dirtyoilsands.org" website from March of 2012 to June of 2014 and the "rethinkalberta.org" website from March of 2012 to September of 2014, which formed the website platforms for the "Dirty Oil Sands" and the "Rethink Alberta" campaigns, respectively, that are described in Part II of this Report.¹⁴⁴⁹

1048. Another project of NVF is "Beyond Oil Project", sometimes known as the "Moving Beyond Oil Project". Between 2015 and 2018 the project received \$3.05 million dollars from the William and Flora Hewlett Foundation, which described the project as follows:

The New Venture Fund's Moving Beyond Oil project aims to contribute to the reduction of oil use and to the transition to clean energy alternatives in the transportation sector in the United States. To keep climate mitigation goals on track, a reduction of about 50 percent in oil use by 2030 is necessary. The project will

¹⁴⁴² <https://newventurefund.org/sample-projects/environment/>

¹⁴⁴³ https://www.nwf.org/~/media/PDFs/Water/2015/TarSands-at-our-doorstep_HighRes.pdf

¹⁴⁴⁴ https://www.nwf.org/~/media/PDFs/Water/2015/TarSands-at-our-doorstep_HighRes.pdf. Page 1.

¹⁴⁴⁵ https://www.nwf.org/~/media/PDFs/Water/2015/TarSands-at-our-doorstep_HighRes.pdf. Page 5.

¹⁴⁴⁶ https://www.nwf.org/~/media/PDFs/Water/2015/TarSands-at-our-doorstep_HighRes.pdf. Page 2 of 28.

¹⁴⁴⁷ See: (a) <https://freebeacon.com/issues/memo-shows-secret-coordination-effort-exxonmobil-climate-activists-rockefeller-fund/>; (b) <https://corpethics.org/about/>; and (c) a copy of Mr. Bruno's LinkedIn page.

¹⁴⁴⁸ <https://freebeacon.com/wp-content/uploads/2016/04/scan0003.pdf>

¹⁴⁴⁹ Whois Record Search on "dirtyoilsands.org" and "rethinkalberta.org".

develop and implement synergistic and integrated strategies to reach this target in key regions on [sic] the country. One of its near-term priorities is to support the Pacific Northwest region to establish low-carbon fuel standards that reduces greenhouse gas emissions.¹⁴⁵⁰

1049. CorpEthics (formerly Corporate Ethics International) is also involved in the Beyond Oil Project, claiming its role "...to be strategic development, coordination, managing the grant-making process, and serving as advisers to the foundations that underwrite this campaign." CorpEthics describes the campaign as follows:

In 2015, the Beyond Oil Campaign evolved from the Tar Sands Campaign. It is the current focus of much of CorpEthics' work. The goal of this campaign is to radically reduce the production, transport, and ultimately the supply of domestic oil in North America. The campaign continues to be focused on blocking the development of new or expanded tar sands pipelines in the U.S. However, it has expanded to include efforts to block oil terminals and refinery expansions on the West Coast that are ultimately part of the industry strategy to expand oil exports to Asia. The campaign's highest priority is stopping all new oil and gas leases in the Arctic, Atlantic, and Gulf.¹⁴⁵¹

(iv) Conclusion

1050. In my review of the foregoing I specifically noted the following in respect of New Venture Fund:
- A. its direct receipt of grants in relation to opposition of the development of Alberta's oil sands;
 - B. it has made grants to an entity I have found is a Participant; and
 - C. it is a foreign organization that has evinced an intent harmful or injurious to Alberta's oil and gas industry.

¹⁴⁵⁰ See: (a) <https://hewlett.org/grants/new-venture-fund-for-the-moving-beyond-oil-project/>; (b) <https://hewlett.org/grants/new-venture-fund-for-the-moving-beyond-oil-project-2/>; and (c) <https://hewlett.org/grants/new-venture-fund-for-the-moving-beyond-oil-project-3/>.

¹⁴⁵¹ <https://corpethics.org/the-beyond-oil-campaign/>

(c) ***Tides Foundation (“Tides U.S. Foundation”)***

(i) Background

1051. According to its website, Tides U.S. Foundation’s mission “accelerates the pace of social change, working with innovative partners to solve society’s toughest problems.”¹⁴⁵² Tides website describes its structure as follows:

“Tides is comprised of five separate legal entities – Tides Network, Tides Center, Tides Foundation, Tides Two Rivers Fund and Tides Inc. Tides Network is the parent organization employing the majority of Tides staff and providing service to our various partners. Tides Two Rivers Fund and Tides Inc. operate Tides’ two Tides Converge centers in San Francisco and New York.

Tides Foundation serves as a grantmaking organization primarily through the management of close to 400 donor advised funds. Unlike other foundations, Tides Foundation does not have an endowment, and all grants are made on the recommendation of donor clients. The Foundation does not take unsolicited grant requests. Tides Center primarily offers fiscal sponsorship and nonprofit acceleration services. No preference is given to Tides Center social ventures by the Tides Foundation.”¹⁴⁵³

[Elsewhere on the webpage, the role of Tides U.S. Foundation is expanded, as follows:]

“Tides Foundation’s main activity is grantmaking. The Foundation also invests funds in social impact opportunities to support charitable campaigns in line with Tides’ mission. Tides Foundation’s charitable funding is received through grants and donations from a wide variety of sources, including individuals, foundations, and corporations.

“In 2017, the Foundation received over 2,000 contributions from 800+ donors, and made \$366 million in grants to social change organizations around the world. These contributions were managed across more than 370 Donor Advised and other philanthropic funds

¹⁴⁵² <https://www.tides.org/about/vision-mission-approach/>

¹⁴⁵³ https://www.tides.org/faqs/?faq_category=about-tides&post_id=8205# - “What is the relationship between Tides, Tides Center, and Tides Foundation?”

with over \$300 million in client funds under management for grantmaking and impact investments.”¹⁴⁵⁴

“Operationally, the Network oversees Tides Foundation; The Tides Center; Tides, Inc.; and Tides Two Rivers Fund. Tides Network supports those organizations through executive leadership, staffing resources, financial management, legal and risk compliance, communications, and administrative services.”¹⁴⁵⁵

1052. Given the relationship between these five entities, and in particular given that they pursue a common mission, share leadership, staffing, management, legal and risk compliance, communications, and administrative services staff, I will address them as though they are consolidated in terms of their campaigns. In this Report, I will refer to these five organizations collectively as “**Tides U.S. Foundation**” or “**Tides U.S.**”. This collective reference and my consideration of these entities’ campaigns in this Report on an aggregated basis should not be construed as a finding that any particular activity discussed was undertaken by one entity or another in any consideration of whether such entity is in compliance with requirements in respect of such entity by virtue of its status as a charity or otherwise.
1053. Tides Foundation – the specific Tides organization described above whose main activity is grantmaking - is a Section 501(c)(3) exempt private foundation.¹⁴⁵⁶
1054. As of 2018 the Tides Foundation’s total assets equalled \$519,309,607.¹⁴⁵⁷
1055. Tides U.S. Foundation is separate and distinct from “Tides Canada Foundation” and “Tides Canada Initiatives Society” (now “MakeWay Foundation” and “MakeWay Charitable Society”, respectively), two Canadian organizations. To distinguish between the two I will refer to the Canadian organizations as “Tides Canada Foundation”.

(ii) Exchange Fund

1056. In 2001, Tides Canada Foundation’s first operational year, it described the “Exchange Fund” program that it developed with Tides U.S. Foundation as follows:

Exchange Fund

Through ties with our sister organization in San Francisco, Tides Foundation, we make cross-border giving and strategic alliances possible. This makes it easy for Canadian and American donors to make

¹⁴⁵⁴ <https://www.tides.org/faqs/> - “What are the different Tides entities and affiliates?”

¹⁴⁵⁵ <https://www.tides.org/faqs/> - “What are the different Tides entities and affiliates?”

¹⁴⁵⁶ Tides Foundation 2018 Form 990 IRS Tax Return – section I

¹⁴⁵⁷ Tides Foundation 2018 Form 990 IRS Tax Return – Part I line 20(\$400,794,634 USD converted at 1.2957 as per BOC)

donations and recommend grants on either side of the border, allowing for maximum tax efficiency.¹⁴⁵⁸

1057. A brochure from Tides Canada Foundation in September of 2011 described the program in more detail, as follows:

- A. Through Tides Canada's unique international grant-making capability, U.S. donors can give to Canadian charities.

Tides Canada – in partnership with Tides Foundation in the United States – has worked with a wide range of Canadian charities to facilitate gifts from U.S. individuals, corporations, and foundations. Over the past 10 years, Tides Canada has enabled over \$22.6 million USD in charitable gifts to Canadian federally registered charities including: [intentionally deleted].

Making a gift to a Canadian charity is simple:

- Contact Tides Canada to obtain a U.S. donation form.
- Send the completed form and the gift (in USD) to Tides Foundation in the U.S. The gift can be made by cheque or securities and must be a minimum of \$1,000 USD.
- Within three to six weeks of receiving the donation, Tides Foundation provides the donor a U.S. 501(c)(3) official donation receipt that can be used for U.S. income tax purposes. *For gifts from U.S. foundations Tides Foundation provides a letter to acknowledging receipt of the gift, instead of a donation receipt.* [Emphasis included]
- Within four to six weeks, the Canadian charity receives a grant for the Canadian dollar equivalent of the U.S. dollar gift (less 2% retained by Tides Foundation). There are no additional costs for the Canadian charity.

Tides Canada has created an uncommon solution.

Tides Canada holds a donor-advised fund at the Tides Foundation in the U.S. "the U.S. fund." The U.S. fund accepts donations from donors with U.S.-sourced income who wish to make recommendations to support charities in Canada. In Canada, Tides Canada maintains a fund "the Canadian fund," which accepts donations from donors with Canadian-sourced income, who wish to make recommendations to support charities in the U.S. and internationally.

When a donor in the U.S. makes a gift to the U.S. fund at Tides Foundation in support a Canadian charity, their recommendation may be approved by funds from the Canadian fund. When a donor in Canada makes a gift to the Canadian fund at Tides Canada in

¹⁴⁵⁸ <https://web.archive.org/web/20030310133321/http://www.tidescanada.org/services/files/annreport2001.pdf>

support of a U.S. or international charity, their recommendation may be approved through the U.S. fund. This unique solution provides donors the flexibility to support international charities and gives charities the flexibility to receive gifts without money ever crossing the border.

Reasons to work with Tides Canada

Unlike U.S. foundations, Canadian foundations cannot make grants outside of Canada, this leaves Canadian donors who wish to support international charities with limited options. By using the international grant-making capability at Tides Canada, you double your impact with each donation. Every charitable dollar you recommend to a Canadian charity enables a donor in Canada to recommend an equivalent gift to a U.S. or international charity.

Our uncommon solution offers U.S. foundations a simplified process for making grants to Canadian charities. We eliminate the need to complete a public support test – because your foundation is supporting a U.S. 501(c)(3) charity.¹⁴⁵⁹

1058. The Exchange Fund was discontinued at the end of 2016.¹⁴⁶⁰

1059. The following are specific grants made by Tides Foundation through the Exchange Fund that I have identified, with excerpts of language in the grant descriptions included.¹⁴⁶¹

Grantmaker Name	Recipient Name	Year Authorized	Amount (USD)	Amount (CAD) ¹⁴⁶²	Description of Grant
Tides U.S. Foundation ¹⁴⁶³	Tides Canada Exchange Foundation – in favor of West Coast Environmental Law	2013	\$35,000	\$36,047	“...to provide legal strategies and communication support for First Nations to constrain tar sands development”
Tides U.S. Foundation ¹⁴⁶⁴	Tides Canada Exchange Foundation – in favor of	2013	\$15,000	\$15,449	“to co-sponsor a series of concerts aimed at engaging and educating a wider

¹⁴⁵⁹

https://web.archive.org/web/20130512081548/http://icfcanada.org/docs/About_donating_through_Tides_Foundation.pdf

¹⁴⁶⁰

https://www.canadiancharitylaw.ca/blog/tides_canada_closing_international_donation_matching_system_with_tides_us_f/

¹⁴⁶¹ See Appendix “G” of the Deloitte Report.

¹⁴⁶² converted at average 2013 exchange rate for 2013 (1.0299)

¹⁴⁶³ Tides Foundation 2013 Grant Cover Letter RE:TFR13-01700

¹⁴⁶⁴ Tides Foundation 2013 Grant Cover Letter RE:TFR13-01699

	Environmental Defence Canada				audience about the risks of tar sands expansion”
Tides U.S. Foundation ¹⁴⁶⁵	Tides Canada Exchange Foundation – in favor of Ecojustice	2013	\$20,000	\$20,598	[for] “Ecojustice’s 2013 Tar Sands Legal Strategy”
Tides U.S. Foundation ¹⁴⁶⁶	Tides Canada Exchange Foundation – in favor of Sierra Club of British Columbia Foundation	2013	\$15,000	\$15,449	“its Our Coast, Our Call: Mobilizing and Strengthening Opposition to Tanker Expansion on the BC Coast Project”.

1060. While the Exchange Fund undoubtedly broadened the giving network, it also had the effect of obscuring the source of funds such that the ultimate recipient of funds was receiving funds from a Canadian donor when, in fact, it may well have been initiated by a foreign donor. See the Deloitte Report for a further discussion on the Exchange Fund.

(iii) Grants Received

1061. I have reviewed information regarding certain grants provided to Tides U.S. Foundation and find that the evidence demonstrates the following grants were made to Tides U.S. Foundation:

Grantmaker	Recipient	Year Authorized	Grant Amount USD	Grant Amount CAD	Grant Description
Sea Change Foundation ¹⁴⁶⁷	Tides U.S. Foundation	2009	\$2,000,000	\$2,283,955	To promote awareness and opposition to tar sands
The New York Community Trust ¹⁴⁶⁸	Tides Foundation	2009	\$100,000	\$114,198	To limit growth of tar sands oil production

¹⁴⁶⁵ Tides Foundation 2013 Grant Cover Letter RE:TFR13-01707

¹⁴⁶⁶ Tides Foundation 2013 Grant Cover Letter RE:TFR13-02355

¹⁴⁶⁷ Sea Change Foundation Form 990-PF for the calendar year 2008 Grants Schedule at page 23 of pdf.

¹⁴⁶⁸ New York Community Trust Form 990-PF for the calendar year 2009 Schedule I at page 100 of pdf.

The New York Community Trust ¹⁴⁶⁹	Tides Foundation	2012	\$100,000	\$99,958	To limit the growth of tar sands oil production
The New York Community Trust ¹⁴⁷⁰	Tides Foundation	2010	\$100,000	\$102,994	To limit the growth of tar sands oil production
The Schmidt Family Foundation ¹⁴⁷¹	Tides Foundation	2010	\$100,000	\$102,994	For Corporate Ethics International for Tar Sands Campaign
The Wilburforce Foundation ¹⁴⁷²	Tides Foundation	2014	\$35,000	\$38,656	Dogwood Initiative Society – No Tankers Campaign 2014
The Wilburforce Foundation ¹⁴⁷³	Tides Canada Foundation	2015	\$45,000	\$57,542	Dogwood Initiative Society – Coastal Oil Tanker Campaign 2015
The Wilburforce Foundation ¹⁴⁷⁴	Tides Foundation	2009	\$25,000	\$28,549	For Dogwood Initiative: Expanding the Reach - Coastal Oil Tanker Campaign
The Wilburforce Foundation ¹⁴⁷⁵	Tides Foundation	2011	\$30,000	\$29,672	For Dogwood Initiative: Expanding the Reach - Coastal Oil Tanker Campaign

¹⁴⁶⁹ New York Community Trust Form 990-PF for the calendar year 2012 Schedule I at page 160 of pdf.

¹⁴⁷⁰ New York Community Trust Form 990-PF for the calendar year 2010 Schedule I at page 158 of pdf.

¹⁴⁷¹ The Schmidt Family Foundation Form 990-PF for the calendar year 2010 Part XV at page 58 of pdf see also <https://fconline.foundationcenter.org>.

¹⁴⁷² Wilburforce Foundation Form 990-PF for the calendar year 2014 Attachment A at page 55 of pdf.

¹⁴⁷³ Wilburforce Foundation Form 990-PF for the calendar year 2015 Attachment A at page 46 of pdf.

¹⁴⁷⁴ Wilburforce Foundation Form 990-PF for the calendar year 2009 Attachment A at page 53 of pdf.

¹⁴⁷⁵ Wilburforce Foundation Form 990-PF for the calendar year 2011 Attachment A at page 58 of pdf.

1062. The grant descriptions express the intended use of funds from the perspective of the organization who granted the funds, and do not necessarily reflect the intention of the organization receiving the funds, nor necessarily indicate the use to which the funds were actually put. Notwithstanding these limitations, I do find that the fact the organization received funds which were provided for the stated purpose to “promote awareness and opposition to tar sands”, to “limit the growth of tar sands oil production”, for a “Tar Sands Campaign”, and for a “Coastal Oil Tanker Campaign” is of some evidentiary value in considering whether Tides U.S. Foundation is involved in opposition to the development of Alberta’s oil and gas resources.

(iv) Grants Made

1063. In considering the grants made by Tides U.S. Foundations to various organizations, I have determined that the below grants constitute funding provided for a stated purpose seeking to delay or hinder the development of Alberta’s oil and gas resources (in some cases, I have included only a portion of the grant description, and full descriptions can be accessed in the underlying source documents):

Recipient	Year Authorized	Grant Amount USD	Grant Amount CAD	Grant Description
850450 Alberta ¹⁴⁷⁶	2012	\$45,000	\$44,981	For Athabasca Chipewyan First Nations’ research, education and outreach on climate/tar sands related issues
Alberta Environment Network Society ¹⁴⁷⁷	2017	\$12,786	\$16,604	CAD 20,000.00 research, education, and organizing on dirty fuels and pipelines. Grant made through Tomorrow Foundation for a Sustainable Future.
Beaver Lake Cree Nation ¹⁴⁷⁸	2015	\$30,626	\$39,162	CAD\$40,000.00 Research, education, and organizing on dirty fuels and pipelines.

¹⁴⁷⁶ Tides Foundation Form 990 for the calendar year 2012 at page 119 of pdf.

¹⁴⁷⁷ Tides Foundation Form 990 for the calendar year 2017 Schedule F Part II at page 34 of pdf.

¹⁴⁷⁸ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 54 of pdf

Bold Nebraska ¹⁴⁷⁹	2015	\$50,000	\$63,936	Research, education and organizing on dirty fuels and pipelines.
Boreal Songbird Initiative ¹⁴⁸⁰	2011	\$280,000	\$276,939	For research and education on climate/oil sands related issues
Canadian Youth Climate Coalition ¹⁴⁸¹	2015	\$19,431	\$24,847	CAD\$ 25,000.00 For Canadian Youth Climate Coalition's research, education and organizing on dirty fuels and pipelines.
Ceres, Inc. ¹⁴⁸²	2009	\$100,000	\$114,198	For Tar Sands Campaign
Climate Action Network Canada - Réseau Action Climat Canada ¹⁴⁸³	2011	\$50,000	\$49,453	For Climate Action Network Canada's research, education, and outreach on climate/tar sands related issues. Grant made through Sierra Club of Canada Foundation
Confederacy of Treaty Six First Nations ¹⁴⁸⁴	2017	\$18,533	\$24,067	CAD \$30,000.00 research, education, and organizing on dirty fuels and pipelines
Conservation Council of New Brunswick ¹⁴⁸⁵	2015	\$ 22,969	\$ 29,371	CAD \$30,000.00 For research, education and organizing on dirty fuels and pipelines.
Corporate Ethics International ¹⁴⁸⁶	2011	\$ 380,000	\$ 375,846	For expenses associated with coordination, meetings, advertising, contracts with vendors and with small groups

¹⁴⁷⁹ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 127 of pdf

¹⁴⁸⁰ Tides Foundation Form 990 for the calendar year 2011 Schedule I Part II at page 6.

¹⁴⁸¹ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 69 of pdf

¹⁴⁸² Tides Foundation Form 990 for the calendar year 2009 Schedule I Part II at page 14.

¹⁴⁸³ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 13.

¹⁴⁸⁴ Tides Foundation Form 990 for the calendar year 2017 Schedule F Part II at page 38 of pdf.

¹⁴⁸⁵ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 56 of pdf

¹⁴⁸⁶ Tides Foundation Form 990 for the calendar year 2011 Schedule I Part II at page 13.

				involved in Tar Sands campaign
Corporate Ethics International ¹⁴⁸⁷	2009	\$ 500,000	\$ 570,989	For Tar Sands Campaign
Dogwood Initiative ¹⁴⁸⁸	2011	\$ 150,000	\$ 148,360	For research, education, and outreach on the issue of tankers and oil spills
Earthworks ¹⁴⁸⁹	2009	\$ 85,000	\$ 97,068	For Tar Sands Campaign
EcoJustice Canada Society ¹⁴⁹⁰	2015	\$ 66,071	\$ 84,486	CAD \$85,000 for research, education and organizing on dirty fuels and pipelines
EcoJustice Canada Society ¹⁴⁹¹	2011	\$ 150,000	\$ 148,360	For research and legal work related to tar sands issues
Ecology Ottawa ¹⁴⁹²	2015	\$ 29,016	\$ 37,103	CAD \$37,500.00 For research, education, and organizing on dirty fuels and pipelines.
Energy Action Coalition ¹⁴⁹³	2012	\$ 50,000	\$ 49,979	For Energy Action Coalition's efforts to educate on dirty fuels. Grant made through Earth Island Institute
Environmental Defence Canada ¹⁴⁹⁴	2011	\$ 250,000	\$ 247,267	For research, education, and outreach on climate/tar sands related issues
Equiterre ¹⁴⁹⁵	2009	\$ 60,000	\$ 68,519	For Tar Sands Campaign

¹⁴⁸⁷ Tides Foundation Form 990 for the calendar year 2009 Schedule I Part II at page 20.

¹⁴⁸⁸ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 5.

¹⁴⁸⁹ Tides Foundation Form 990 for the calendar year 2009 Schedule I Part II at page 24.

¹⁴⁹⁰ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 58 of pdf

¹⁴⁹¹ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 5.

¹⁴⁹² Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 58 of pdf

¹⁴⁹³ Tides Foundation Form 990 for the calendar year 2012 Schedule I Attachment Schedule I Part II at page 67 of pdf.

¹⁴⁹⁴ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 6.

¹⁴⁹⁵ Tides Foundation Form 990 for the calendar year 2009 Schedule F Part II at page 10.

European Federation for Transport and Environment ¹⁴⁹⁶	2011	\$ 75,000	\$ 74,180	For public education on Canadian tar sands in Europe
Fresh Energy ¹⁴⁹⁷	2009	\$ 110,000	\$ 125,618	For Tar Sands Campaign
Georgia Strait Alliance ¹⁴⁹⁸	2015	\$ 11,606	\$ 14,841	CAD \$15,000.00 For research, education, and organizing on dirty fuels and pipelines.
Gitga'at First Nation ¹⁴⁹⁹	2015	\$ 15,000	\$ 19,181	Legal challenge to protect the Great Bear Rainforest from the risks and impacts of oil tankers.
Global Community Monitor ¹⁵⁰⁰	2009	\$ 37,500	\$ 42,824	For Global Community Monitor's Tar Sands Campaign. Grant made through Tides Center
Global Forest Watch Canada ¹⁵⁰¹	2012	\$ 48,000	\$ 47,980	For research, education, and outreach on climate/tar sands related issues
Great Bear Initiative Society ¹⁵⁰²	2013	\$25,000	\$25,748	To enforce the oil tanker ban for the Great Bear Rainforest through communications outreach, to maintain opposition to oil tankers, and to increase public support against the Northern Gateway Pipeline
Greenpeace Canada ¹⁵⁰³	2015	\$92,850	\$118,728	CAD \$120,000.00 For research, education, and

¹⁴⁹⁶ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 6.

¹⁴⁹⁷ Tides Foundation Form 990 for the calendar year 2009 Schedule I Part II at page 29.

¹⁴⁹⁸ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 61 of pdf

¹⁴⁹⁹ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 61 of pdf

¹⁵⁰⁰ Tides Foundation Form 990 for the calendar year 2009 Schedule I Part II at page 68.

¹⁵⁰¹ Tides Foundation Form 990 for the calendar year 2012 Schedule F Attachment Schedule F Part II at page 119 of pdf.

¹⁵⁰² Tides Foundation Form 990 for the calendar year 2013 Schedule F Part II at page 65 of pdf.

¹⁵⁰³ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 61 of pdf

				organizing on dirty fuels and pipelines.
Greenpeace Canada ¹⁵⁰⁴	2013	\$ 100,000	\$ 102,991	For research, education and outreach on climate/tar sands related issues
Honor the Earth ¹⁵⁰⁵	2017	\$ 75,000	\$ 97,395	for research, education, and organizing on dirty fuels and pipelines
Indigenous Environmental Network ¹⁵⁰⁶	2012	\$ 95,000	\$ 94,960	For Indigenous Environmental Network's research, education and organizing on dirty fuels and pipelines. Grant made through Polaris Institute USA
Indigenous Tar Sands Campaign ¹⁵⁰⁷	2013	\$ 40,000	\$ 41,197	For Indigenous Tar Sands Campaign's support of various First Nations-led events across the country and for building opposition to Line in in Ontario
Keepers of the Athabasca Watershed Society ¹⁵⁰⁸	2013	\$ 50,000	\$ 51,496	For research, education and outreach on climate/tar sands related issues
Leadnow ¹⁵⁰⁹	2014	\$ 78,546	\$ 86,751	For research, education and organizing on dirty fuels and pipelines
Living Oceans Society ¹⁵¹⁰	2011	\$ 70,000	\$ 69,235	For research, education, and outreach on climate/tar sands related issues

¹⁵⁰⁴ Tides Foundation Form 990 for the calendar year 2013 Schedule F Part II at page 48 of the pdf.

¹⁵⁰⁵ Tides Foundation Form 990 for the calendar year 2017 Schedule I at page 73 of pdf.

¹⁵⁰⁶ Tides Foundation Form 990 for the calendar year 2012 Schedule I Attachment Schedule I Part II at page 96 of pdf.

¹⁵⁰⁷ Tides Foundation Form 990 for the calendar year 2013 Schedule F Part II at page 58 of pdf.

¹⁵⁰⁸ Tides Foundation Form 990 for the calendar year 2013 Schedule F Part II at page 55 of pdf.

¹⁵⁰⁹ <https://fconline.foundationcenter.org/>

¹⁵¹⁰ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 10.

Manitoba Energy Justice Coalition ¹⁵¹¹	2015	\$ 19,344	\$ 24,735	CAD \$25,000.00 For research, education, and organizing on dirty fuels and pipelines
Minnesota Center for Environmental Advocacy ¹⁵¹²	2009	\$ 20,000	\$ 22,840	For Tar Sands Campaign
National Wildlife Federation ¹⁵¹³	2012	\$ 75,000	\$ 74,969	For research and education on dirty fuels
Natural Resources Defense Council ¹⁵¹⁴	2009	\$ 200,000	\$ 228,395	For Tar Sands Campaign
Nebraska Easement Action Team ¹⁵¹⁵	2012	\$ 10,000	\$ 9,996	For research, education and organizing on dirty fuels and pipelines
Nebraska Farmers Union ¹⁵¹⁶	2012	\$ 10,000	\$ 9,996	For research, education and organizing on dirty fuels and pipelines
Northwest Institute for Bioregional Research ¹⁵¹⁷	2011	\$ 75,000	\$ 74,180	For research, education, and outreach on tanker and oil spill related issues
Oil Change International ¹⁵¹⁸	2011	\$ 19,670	\$ 19,455	For Advancing U.S. Global Leadership by Supporting the Removal of Domestic Fossil Fuel Subsidies project
Pembina Institute ¹⁵¹⁹	2013	\$ 225,000	\$ 231,731	For research, education and organizing on dirty fuels and pipelines

¹⁵¹¹ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 66 of pdf

¹⁵¹² Tides Foundation Form 990 for the calendar year 2009 Schedule I Part I at page 45.

¹⁵¹³ Tides Foundation Form 990 for the calendar year 2012 Schedule I Attachment Schedule I Part II at page 88 of pdf.

¹⁵¹⁴ Tides Foundation Form 990 for the calendar year 2009 Schedule I Part II at page 48.

¹⁵¹⁵ Tides Foundation Form 990 for the calendar year 2012 Schedule I Attachment Schedule I Part II at page 89 of pdf.

¹⁵¹⁶ Tides Foundation Form 990 for the calendar year 2012 Schedule I Attachment Schedule I Part II at page 89 of pdf.

¹⁵¹⁷ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 12.

¹⁵¹⁸ Tides Foundation Form 990 for the calendar year 2011 Schedule I Part II at page 36.

¹⁵¹⁹ Tides Foundation Form 990 for the calendar year 2013 Schedule F Part II at page 45 of pdf.

Pembina Institute ¹⁵²⁰	2012	\$ 145,000	\$ 144,939	For research, education, and outreach on climate/tar sands related issues
PIPE UP Association ¹⁵²¹	2015	\$ 11,586	\$ 14,815	CAD\$15,000.00 For research, education, and organizing on dirty fuels and pipelines as outlined in your proposal.
Plains Justice ¹⁵²²	2009	\$ 37,500	\$ 42,824	For Tar Sands Campaign
PLATFORM ¹⁵²³	2011	\$ 25,000	\$ 24,727	For funding for the UK Tar Sands Network
Polaris Institute USA ¹⁵²⁴	2009	\$ 50,000	\$ 57,099	For Tar Sands Campaign
Power Shift Network ¹⁵²⁵	2017	\$ 50,000	\$ 64,930	research, education, and organizing on dirty fuels and pipelines
Progress Alberta ¹⁵²⁶	2017	\$ 19,178	\$ 24,905	CAD 30,000.00 research, education, and organizing on dirty fuels and pipelines
Public Citizen Texas ¹⁵²⁷	2012	\$ 12,000	\$ 11,995	For research, education and organizing on dirty fuels and pipelines
Quebec Environmental Law Center ¹⁵²⁸	2015	\$ 38,282	\$ 48,952	CAD\$50,000 research, education, and organizing on dirty fuels and pipelines as outlined in your proposal

¹⁵²⁰ Tides Foundation Form 990 for the calendar year 2012 Schedule F Attachment Schedule F Part II at page 116 of pdf.

¹⁵²¹ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 69 of pdf

¹⁵²² Tides Foundation Form 990 for the calendar year 2009 Schedule I Part II at page 53.

¹⁵²³ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 12.

¹⁵²⁴ Tides Foundation Form 990 for the calendar year 2009 Schedule I Part II at page 54.

¹⁵²⁵ Tides Foundation Form 990 for the calendar year 2017 Schedule I at page 85 of pdf.

¹⁵²⁶ Tides Foundation Form 990 for the calendar year 2017 Schedule F Part II at page 47 of pdf.

¹⁵²⁷ Tides Foundation Form 990 for the calendar year 2012 Schedule I Attachment Schedule I Part II at page 98 of pdf.

¹⁵²⁸ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 70 of pdf

Rainforest Action Net ¹⁵²⁹	2009	\$ 225,000	\$ 256,945	For Tar Sands Campaign
RIVERKEEPER INC ¹⁵³⁰	2015	\$ 15,000	\$ 19,181	Research, education, and organizing on dirty fuels and pipelines
Saik'Uz First Nation ¹⁵³¹	2015	\$ 30,626	\$ 39,162	CAD40,000 for Yinka Dine Alliance's research, education, and organizing on dirty fuels and pipelines.
Sierra Club Foundation ¹⁵³²	2011	\$ 300,000	\$ 296,721	For legal research and services, public education and advocacy on dirty fuels
Sierra Club Foundation ¹⁵³³	2009	\$ 200,000	\$ 228,395	For Tar Sands Campaign
Sierra Club of British Columbia Foundation ¹⁵³⁴	2013	\$ 30,000	\$ 30,897	For research, education and organizing on dirty fuels and pipelines
Sierra Club of Canada- Prairie Chapter ¹⁵³⁵	2011	\$ 120,000	\$ 118,688	For Sierra Club of Canada - Prairie Chapter's research, education, and outreach on climate/tar sands related issues, in collaboration with the Keepers of Athabasca. Grant made through Sierra Club of Canada Foundation
Skeena Watershed Conservation Coalition ¹⁵³⁶	2017	\$ 9,749	\$ 12,660	CAD \$13,000 for House of Luutkudziiwusâ€™™ research, education, and

¹⁵²⁹ Tides Foundation Form 990 for the calendar year 2009 Schedule I Part II at page 57.

¹⁵³⁰ Tides Foundation Form 990 for the calendar year 2015 Schedule I Part II at page 108 of pdf

¹⁵³¹ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 48 of pdf

¹⁵³² Tides Foundation Form 990 for the calendar year 2011 Schedule I Part II at page 44.

¹⁵³³ Tides Foundation Form 990 for the calendar year 2009 Schedule I Part II at page 61.

¹⁵³⁴ Tides Foundation Form 990 for the calendar year 2013 Schedule F Part II at page 62 of pdf.

¹⁵³⁵ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 13.

¹⁵³⁶ Tides Foundation Form 990 for the calendar year 2107 Schedule F Part II at page 49 of pdf.

				organizing on dirty fuels and pipelines
Stand.earth ¹⁵³⁷	2012	\$ 185,000	\$ 184,922	For research and education on dirty fuels
Stand.earth ¹⁵³⁸	2009	\$ 250,000	\$ 285,494	For Tar Sands Campaign
T. Buck Suzuki Environmental Foundation ¹⁵³⁹	2011	\$ 35,000	\$ 34,617	For research, education, and outreach on tanker and oil spill related issues
Tanker Free BC Society ¹⁵⁴⁰	2015	\$ 27,034	\$ 34,569	CAD\$35,000.00 Research, education, and organizing on dirty fuels and pipelines
Texas Fund for Energy and Environmental Education ¹⁵⁴¹	2012	\$ 10,000	\$ 9,996	For legal services to Texas landowners resisting eminent domain taking of their land for the TransCanada Keystone XL pipeline
The Pembina Foundation for Environmental Research ¹⁵⁴²	2011	\$ 159,949	\$ 158,201	For research, education, and outreach on climate/oil sands related issues
Transition Initiative Kemora ¹⁵⁴³	2015	\$ 19,310	\$ 24,692	CAD\$25,000 research, education, and organizing on dirty fuels and pipelines
Tsleil-Waututh Nation ¹⁵⁴⁴	2014	\$ 33,418	\$ 36,909	For CAD\$37,500.00 for the Sacred Trust Initiative's research, education and organizing on dirty fuels and pipelines

¹⁵³⁷ Tides Foundation Form 990 for the calendar year 2012 Schedule I Part II at page 71 of pdf.

¹⁵³⁸ Tides Foundation Form 990 for the calendar year 2009 Schedule I Part II at page 83 of pdf.

¹⁵³⁹ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 14.

¹⁵⁴⁰ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 73 of pdf

¹⁵⁴¹ Tides Foundation Form 990 for the calendar year 2012 Schedule I Attachment Schedule I Part II at page 106 of pdf.

¹⁵⁴² Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 12.

¹⁵⁴³ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 74 of pdf.

¹⁵⁴⁴ <https://fconline.foundationcenter.org/>

UK Tar Sands Network ¹⁵⁴⁵	2013	\$ 30,000	\$ 30,897	For UK Tar Sands Network's research and education on dirty fuels
Water Matters Society of Alberta ¹⁵⁴⁶	2011	\$ 70,000	\$ 69,235	For research, education, and outreach on water issues related to tar sands
West Coast Environmental Law Research Foundation ¹⁵⁴⁷	2011	\$ 75,000	\$ 74,180	For research, education, and legal work on tanker and oil spill related issues
Western Canada Wilderness Committee ¹⁵⁴⁸	2012	\$ 30,000	\$ 29,987	For research, education and outreach on climate/tar sands related issues
Western Organization of Resource Councils Education Project ¹⁵⁴⁹	2009	\$ 100,000	\$ 114,198	For Tar Sands Campaign
World Wildlife Fund Canada ¹⁵⁵⁰	2009	\$ 160,000	\$ 182,716	For Tar Sands Campaign
Greenpeace Canada ¹⁵⁵¹	2013	\$90,000	\$92,692	<i>"for your organization's events that show opposition to pipelines and tar sands expansion... and for continued work to expose the nefarious work of industry and government in order to expand the tar sands"</i>
Equiterre ¹⁵⁵²	2013	\$75,000	\$77,244	<i>"for your organization to educate the public on Line 9 and Energy East,</i>

¹⁵⁴⁵ Tides Foundation Form 990 for the calendar year 2013 Schedule F Part II at page 62 of pdf.

¹⁵⁴⁶ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 15.

¹⁵⁴⁷ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 15.

¹⁵⁴⁸ Tides Foundation Form 990 for the calendar year 2012 Schedule F Attachment Schedule F Part II at page 121 of pdf.

¹⁵⁴⁹ Tides Foundation Form 990 for the calendar year 2009 Schedule I Part II at page 75.

¹⁵⁵⁰ Tides Foundation Form 990 for the calendar year 2009 Schedule F Part II at page 24.

¹⁵⁵¹ Tides Foundation Form 990 for the calendar year 2013 at page 49 of pdf.

¹⁵⁵² Tides Foundation Form 990 for the calendar year 2013 at page 51 of pdf.

				<i>participate in the regulatory process for Line 9, and assist with promoting the Tar Sands Reality Check in Quebec....”</i>
Environmental Defence Canada Inc. ¹⁵⁵³	2013	\$212,500	\$218,857	<i>“for your organization’s efforts towards outreach and education on Line 9 and Energy East pipelines; ongoing promotion of Tar Sands Reality Check; leading government relations in Ottawa....and supporting the work of allies, as outlined in your proposal”</i>
Greenpeace Canada ¹⁵⁵⁴	2013	\$100,000	\$102,991	<i>“for your organization’s continued outreach and education on pipelines, tar sands mines, and pipeline safety regulations, as outlined in your proposal”</i>
Dogwood Initiative ¹⁵⁵⁵	2013	\$25,000	\$25,748	<i>“for your organization to cultivate widespread public opposition to tar sands oil tankers and pipeline proposals in British Columbia”</i>
850450 Alberta Ltd. ¹⁵⁵⁶	2013	\$55,000	\$56,645	<i>“for your organization’s efforts to build the case for rejecting Shell and Teck Frontier mines...use legal tools to increase regulations; work with groups in Europe to support the Fuel Quality Directive (FQD); and build public opposition to the</i>

¹⁵⁵³ Tides Foundation Form 990 for the calendar year 2013 at page 45.

¹⁵⁵⁴ Tides Foundation Form 990 for the calendar year 2013 at page 48.

¹⁵⁵⁵ Tides Foundation Form 990 for the calendar year 2013 at page 65.

¹⁵⁵⁶ Tides Foundation Form 990 for the calendar year 2013 at page 53.

				<i>tar sands and pipelines, as outlined in your proposal</i>
Polaris Institute ¹⁵⁵⁷	2013	\$40,000	\$41,197	<i>“for Indigenous Tar Sands Campaign’s support of various First Nations-led events across the country and for building opposition to Line 9 in Ontario, as outlined in your proposal”</i>
Indigenous Environmental Network ¹⁵⁵⁸	2016	\$1,000	\$1,324.81	Canadian Indigenous Tar Sands Campaign and/or campaigns to stop fossil fuel pipelines.
Oil Change International ¹⁵⁵⁹	2009	\$30,000	\$34,259.32	For Tar Sands Campaign
Indigenous Environmental Network ¹⁵⁶⁰	2015	\$30,000	\$38,361.32	Indigenous Environmental Network’s work on environmental, climate change and tar sands issues.
350org ¹⁵⁶¹	2015	\$ 25,000	\$ 31,968	Research, education, and organizing on dirty fuels and pipelines
Canadian Parks and Wilderness Society-Northern Alberta Chapter ¹⁵⁶²	2009	\$ 12,000	\$ 13,704	For Tar Sands Campaign
Polaris Institute / Canadian Youth Climate Coalition ¹⁵⁶³	2015	\$ 19,431	\$ 24,847	CAD\$ 25,000.00 For Canadian Youth Climate Coalition’s research, education and organizing on dirty fuels and pipelines.

¹⁵⁵⁷ Tides Foundation Form 990 for the calendar year 2013 at page 58.

¹⁵⁵⁸ <https://fconline.foundationcenter.org/>

¹⁵⁵⁹ Tides Foundation Form 990 for the calendar year 2009 Schedule I Part II at page 106 of pdf.

¹⁵⁶⁰ <https://fconline.foundationcenter.org/>

¹⁵⁶¹ Tides Foundation Form 990 for the calendar year 2015 Schedule I Part II at page 117 of pdf.

¹⁵⁶² Tides Foundation Form 990 for the calendar year 2009 Schedule F Part II at page 33 of pdf.

¹⁵⁶³ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 69 of pdf.

Climate Action Network Canada - Réseau Action Climat Canada ¹⁵⁶⁴	2017	\$ 59,257		CAD 75,000.00 research, education, and organizing on dirty fuels and pipelines
Coastal First Nations - Great Bear Initiative ¹⁵⁶⁵	2009	\$ 27,000	\$ 30,833	To hire a coordinator to engage with government, industry, environmental groups, media and the public regarding the proposed Enbridge Gateway tar sands pipeline
Dogwood Initiative ¹⁵⁶⁶	2014	\$ 71,517	\$ 78,988	For CAD\$77,450.00 for research, education and organizing on dirty fuels and pipelines
Dogwood Initiative ¹⁵⁶⁷	2013	\$ 25,000	\$ 25,748	To cultivate widespread public opposition to tar sands oil tankers and pipeline proposals in British Columbia
EcoJustice Canada Society ¹⁵⁶⁸	2012	\$ 120,000	\$ 119,950	For research, education and outreach on climate/tar sands related issues
Environmental Defence Canada ¹⁵⁶⁹	2015	\$ 116,063	\$ 148,411	CAD \$150,000.00 For research, education, and organizing on dirty fuels and pipelines.
Environmental Defence Canada ¹⁵⁷⁰	2014	\$ 15,000	\$ 16,567	For non-lobbying advocacy work in building opposition to the Energy East pipeline

¹⁵⁶⁴ <https://fconline.foundationcenter.org/>

¹⁵⁶⁵ <https://fconline.foundationcenter.org/>

¹⁵⁶⁶ <https://fconline.foundationcenter.org/>

¹⁵⁶⁷ <https://fconline.foundationcenter.org/>

¹⁵⁶⁸ Tides Foundation Form 990 for the calendar year 2012 Schedule F Part II at page 116 of pdf.

¹⁵⁶⁹ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 58 of pdf.

¹⁵⁷⁰ <https://fconline.foundationcenter.org/>

Equiterre (Aseed) ¹⁵⁷¹	2015	\$ 76,565	\$ 97,904	CAD \$100,000.00 For research, education, and organizing on dirty fuels and pipelines.
Georgia Strait Alliance ¹⁵⁷²	2014	\$ 13,861	\$ 15,309	For CAD\$15,000.00 For research, education and organizing on dirty fuels and pipelines
Great Bear Initiative Society ¹⁵⁷³	2016	\$ 16,358	\$ 21,671	CAD \$30,000.00 for Coastal First Nations' research, education, and organizing on dirty fuels and pipelines.
Greenpeace Canada ¹⁵⁷⁴	2014	\$ 73,926	\$ 81,649	For CAD\$80,000.00 For research, education and organizing on dirty fuels and pipelines
Honor the Earth ¹⁵⁷⁵	2018	\$ 40,000	\$ 51,828	2018-2019 Enbridge Line 3 Campaign
Indigenous Climate Action ¹⁵⁷⁶	2017	\$ 19,666		CAD 25,000.00 research, education, and organizing on dirty fuels and pipelines. Grant made through Polaris Institute.
Keepers of the Athabasca Watershed Society ¹⁵⁷⁷	2013	\$ 20,000	\$ 20,598	To build indigenous solidarity and resistance/opposition to the Alberta tar sands and pipelines downriver in the Mackenzie Valley via Arctic Basin Keepers of the Water VII Gathering
Living Oceans Society ¹⁵⁷⁸	2014	\$ 23,102	\$ 25,515	For CAD\$25,000.00 Research, education and

¹⁵⁷¹ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 58 of pdf.

¹⁵⁷² <https://fconline.foundationcenter.org/>

¹⁵⁷³ <https://fconline.foundationcenter.org/>

¹⁵⁷⁴ <https://fconline.foundationcenter.org/>

¹⁵⁷⁵ <https://fconline.foundationcenter.org/>

¹⁵⁷⁶ <https://fconline.foundationcenter.org/>

¹⁵⁷⁷ Tides Foundation Form 990 for the calendar year 2013 Schedule F Part II at page 69.

¹⁵⁷⁸ <https://fconline.foundationcenter.org/>

				organizing on dirty fuels and pipelines
Living Oceans Society ¹⁵⁷⁹	2013	\$ 6,000	\$ 6,179	For Exposing the Threats to Human Health Posed by a Kinder Morgan Spill
Mother Earth Action Co-operative Ltd. ¹⁵⁸⁰	2014	\$ 22,516	\$ 24,868	For CAD\$25,000.00 For research, education and organizing on dirty fuels and pipelines
Natural Resources Defense Council, Inc. ¹⁵⁸¹	2011	\$ 250,000	\$ 247,267	For research and advocacy on dirty fuels
Northwest Institute for Bioregional Research ¹⁵⁸²	2011	\$ 75,000	\$ 74,180	For research, education, and outreach on tanker and oil spill related issues
Saik'Uz First Nation ¹⁵⁸³	2016	\$ 21,810	\$ 28,894	CAD\$40,000.00 for Yinka Dene Alliance's research, education and organizing on dirty fuels and pipelines.
Sierra Club Canada Foundation ¹⁵⁸⁴	2014	\$ 23,102	\$ 25,515	For CAD\$25,000.00 For research, education and organizing on dirty fuels and pipelines
Sierra Club Foundation ¹⁵⁸⁵	2011	\$ 300,000	\$ 296,721	For research, organizing, advocacy and legal work on dirty fuels
Sierra Club Foundation ¹⁵⁸⁶	2009	\$ 200,000	\$ 228,395	For Tar Sands Campaign
Sierra Club of British Columbia Foundation ¹⁵⁸⁷	2015	\$ 20,000	\$ 25,574	Pull Together against Enbridge: Mobilizing Grassroots Support for

¹⁵⁷⁹ Tides Foundation Form 990 for the calendar year 2013 Schedule I Part II at page 165 of pdf.

¹⁵⁸⁰ <https://fconline.foundationcenter.org/>

¹⁵⁸¹ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 103 of pdf.

¹⁵⁸² Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 66 of pdf.

¹⁵⁸³ <https://fconline.foundationcenter.org/>

¹⁵⁸⁴ <https://fconline.foundationcenter.org/>

¹⁵⁸⁵ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 113 of pdf.

¹⁵⁸⁶ Tides Foundation Form 990 for the calendar year 2009 Schedule F Part II at page 116 of pdf.

¹⁵⁸⁷ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 72 of pdf.

				First Nations Legal Challenges.
Sierra Club of British Columbia Foundation ¹⁵⁸⁸	2014	\$ 15,000	\$ 16,567	To strengthen and diversify opposition to the Kinder Morgan pipeline
Sierra Club of Canada- Prairie Chapter ¹⁵⁸⁹	2011	\$ 120,000	\$ 118,688	For Sierra Club of Canada - Prairie Chapter's research, education, and outreach on climate/tar sands related issues, in collaboration with the Keepers of Athabasca. Grant made through Sierra Club of Canada Foundation
Sisu Institute Society ¹⁵⁹⁰	2014	\$ 143,858	\$ 158,886	For CAD\$160,000.00 For research, education and organizing on dirty fuels and pipelines
Stand.earth ¹⁵⁹¹	2015	\$ 76,565	\$ 97,904	CAD \$100,000.00 For research, education, and organizing on dirty fuels and pipelines.
T. Buck Suzuki Environmental Foundation ¹⁵⁹²	2012	\$ 17,500	\$ 17,493	For research, education, and outreach on climate/tar sands related issues
Tanker Free BC Society ¹⁵⁹³	2017	\$ 15,375	\$ 19,966	CAD \$20,000.00 for research, education, and organizing on dirty fuels and pipelines
Texas Fund for Energy and	2012	\$ 10,000	\$ 9,996	For legal services to Texas landowners resisting eminent domain taking of their land for the

¹⁵⁸⁸ <https://fconline.foundationcenter.org/>

¹⁵⁸⁹ Tides Foundation Form 990 for the calendar year 2011 Schedule F Part II at page 67 of pdf.

¹⁵⁹⁰ <https://fconline.foundationcenter.org/>

¹⁵⁹¹ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 59 of pdf.

¹⁵⁹² Tides Foundation Form 990 for the calendar year 2012 Schedule F Part II at page 122 of pdf.

¹⁵⁹³ Tides Foundation Form 990 for the calendar year 2017 Schedule F Part II at page 49 of pdf.

Environmental Education ¹⁵⁹⁴				TransCanada Keystone XL pipeline
Toronto350 ¹⁵⁹⁵	2015	\$ 7,710	\$ 9,859	CAD\$10,000 research, education, and organizing on dirty fuels and pipelines
Transition Initiative Kenora ¹⁵⁹⁶	2015	\$ 19,310	\$ 24,692	CAD\$25,000 research, education, and organizing on dirty fuels and pipelines
Tseil-Waututh Four Directions ¹⁵⁹⁷	2016	\$ 12,231	\$ 16,204	CAD \$20,000.00 research, education, and organizing on dirty fuels and pipelines.
West Coast Environmental Law Association ¹⁵⁹⁸	2016	\$ 26,182	\$ 34,686	CAD\$46,500.00 for your organization's research, education, and organizing on dirty fuels and pipelines.
West Coast Environmental Law Association ¹⁵⁹⁹	2015	\$ 41,727	\$ 53,357	CAD54,500.00 Research, education, and organizing on dirty fuels and pipelines
Western Organization of Resource Councils Education Project ¹⁶⁰⁰	2009	\$ 100,000	\$ 114,198	For Tar Sands Campaign
White Earth Land Recovery Project ¹⁶⁰¹	2016	\$ 20,000	\$ 26,496	To educate and organize tribal members in opposition to the permitting of Enbridge Line 3 tar sands pipeline.

¹⁵⁹⁴ Tides Foundation Form 990 for the calendar year 2012 Schedule F Part II at page 106 of pdf.

¹⁵⁹⁵ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 74 of pdf.

¹⁵⁹⁶ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 74 of pdf.

¹⁵⁹⁷ <https://fconline.foundationcenter.org/>

¹⁵⁹⁸ <https://fconline.foundationcenter.org/>

¹⁵⁹⁹ Tides Foundation Form 990 for the calendar year 2015 Schedule F Part II at page 76 of pdf.

¹⁶⁰⁰ Tides Foundation Form 990 for the calendar year 2009 Schedule F Part II at page 130 of pdf.

¹⁶⁰¹ <https://fconline.foundationcenter.org/>

World Wildlife Fund Canada ¹⁶⁰²	2009	\$ 160,000	\$ 182,716	For Tar Sands Campaign
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1064. The foregoing chart indicates a broad range of recipients of grants from Tides U.S. Foundation. Based on my view of the grant descriptions, the grants speak to funding provided for a stated purpose seeking to delay or hinder the development of Alberta's oil and gas resources in a broad and general sense. Among the various descriptions, I note several instances of grants provided for purposes such as a "Tar Sands Campaign" and "Research, education, and organizing on dirty fuels and pipelines", as well as grants for the purpose of opposing infrastructure projects associated with Alberta's oil and gas resources such as a grant to "strengthen and diversify opposition to the Kinder Morgan pipeline".

1065. There are a significant number of grants made by the Tides U.S. Foundation to organizations that I have found participated in anti-Alberta energy campaigns, including those listed in this section:

<u>Participant</u>	<u>Total</u>
Corporate Ethics International	\$1,974,131
Dogwood Initiative	\$1,325,631
Environmental Defence Canada	\$1,238,915
Greenpeace Canada	\$1,002,170
Stand.earth	\$872,459
Pembina Institute	\$747,101
EcoJustice Canada Society	\$565,909
Equiterre	\$280,820
Sierra Club of British Columbia Foundation	\$251,074
West Coast Environmental Law Research Foundation	\$221,724
Tides Canada Initiatives Society	\$204,502
World Wildlife Fund Canada	\$182,716
The Pembina Foundation for Environmental Research	\$171,187
Sierra Club Canada Foundation	\$1,385,793
Tides Canada Foundation	\$109,543
350org	\$87,035
Leadnow	\$86,751
Oil Change International	\$61,711

¹⁶⁰² Tides Foundation Form 990 for the calendar year 2009 Schedule F Part II at page 52 of pdf.

Western Canada Wilderness Committee	\$60,213
David Suzuki Foundation	\$29,672
Raincoast Conservation Foundation	\$26,866
Total:	\$10,885,923

1066. With respect to these amounts, there was insufficient information available to me to determine whether these grants were intended to be employed in an anti-Alberta energy campaign or for some wholly unrelated purpose. Accordingly, I make no finding with respect to these grants, but recommend in Part VIII that increased transparency requirements should be introduced, requiring clear description of the purpose and aim of any grants made to not for profit and charitable organizations.

1067. I have further found Tides U.S. Foundation made grants to an entity I found to be a “Re-Granter” as follows:

<u>Organization</u>	<u>Total</u>
New Venture Fund	\$421,901

(v) Evincing an Intent Harmful or Injurious to the Alberta Oil and Gas Industry

1068. I find that the Tides U.S. Foundation has evinced an intent harmful or injurious to Alberta’s oil and gas industry. This finding is based on the following:

- A. Tides U.S. Foundation’s “Tides Tar Sands Fund” is specifically referenced in the RBF Document.¹⁶⁰³
- B. Tides U.S. Foundation is listed as a funder of the UK Tar Sands Network.¹⁶⁰⁴
- C. A post on Tides U.S. Foundation’s website on September 29, 2010, entitled “Everybody’s Movement; Environmental Justice And Climate Change” which provided, in part:

“At this year’s Bioneers (2010), Tides is once again co-hosting a panel that seeks to bring more depth and rigor to the values and practices of environmental advocacy work.

...

[A] Senior Philanthropic Advisor, who facilitates Tides’ funding efforts on such areas as the Gulf Coast Oil Spill

¹⁶⁰³ The RBF Document. Page 23.

¹⁶⁰⁴ <https://www.no-tar-sands.org/about-us/>

and Tar Sands of Canada, will join me and three others in a spirited panel discussion.”¹⁶⁰⁵

- D. A post on Tides U.S. Foundation’s website on November 10, 2011, which provided in part:

“XL Victory as Keystone XL Pipeline is Delayed

...

Many Tides clients, donors, and partners were at the forefront of the nationwide effort to combat the Keystone pipeline and they deserve thanks from all of us for their contributions to this victory. Just days ago environmental groups, faith based organizations, and thousands of others joined hands in front of the White House to protest the pipeline project. The images and stories from that day were an authentic representation of sector wide community action. Their impact was felt powerfully here in Washington, DC and reverberated throughout our nation.

As 2012 approaches and Americans begin to pay more attention to political issues, it is heartening to see so many people come together in action around an issue that they care so deeply about. Tides, hand in hand with all of our partners, will look to this example as we seek to energize action and galvanize communities around our issues of common concern.”¹⁶⁰⁶

- E. Tides sponsored an art show where Tides’ portion of proceeds would be distributed among its “fiscally sponsored projects”, including a project known as “Rivers Without Borders”. “Rivers Without Borders”, in turn, is a project that:

“raises awareness of the extraordinary ecological and cultural values of the spectacular trans-boundary watersheds of northwest British Columbia and southeast Alaska and promotes stewardship safeguarding those values. In a time of accelerating climate change, dwindling salmon runs, and biodiversity loss, the remote and still virtually pristine trans-boundary watersheds collectively embody one of North America’s premier biological *refugias*. Mining and energy development on a massive scale is now targeting the Canadian

¹⁶⁰⁵ <https://www.tides.org/accelerating-social-change/philanthropy/tides-at-bioneers/>

¹⁶⁰⁶ <https://www.tides.org/priority-issues/sustainable-environment/xl-victory-as-keystone-xl-pipeline-is-delayed/>

headwaters. Working with First Nations, Alaska tribes, commercial fishermen, scientists, businesses, and other NGOs, Rivers Without Borders is calling for international, ecosystem-based planning and decision-making regarding the future of the wild trans-boundary watersheds.”¹⁶⁰⁷

1069. Taken collectively, I accept these statements published or made by the Tides Foundation and the grants set out above to be sufficient to establish the Tides Foundation’s intention harmful or injurious to Alberta’s oil and gas industry.

(vi) Conclusion

1070. In conclusion, I find that the Tides U.S. Foundation:

- A. has made grants that constitute funding for a stated purpose that could directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and/or the transportations of those resources to commercial markets; and
- B. has made grants to entities I have found are Participants;
- C. has made grants to an entity I found is a “Re-Granter”; and
- D. is a foreign organization that has evinced an intent harmful or injurious to Alberta’s oil and gas industry.

¹⁶⁰⁷ <https://www.tides.org/tides-news/conferences-events/timeless-kappy-wells-on-warming/>

Part IV – Foreign Funding and Government Funding

PART IV
FOREIGN FUNDING AND GOVERNMENT FUNDING

A. INTRODUCTION

(a) ***Background***

1071. At the outset of this Inquiry Deloitte Forensic Inc. (“**Deloitte**”) was retained to assist me in reviewing the nature and extent of foreign funding, if any, of anti-Alberta energy campaigns, and whether grants or funding from any level of Canadian government was made available to Canadian organizations found to be involved in anti-Alberta energy campaigns. The results of Deloitte’s review are set forth in a report they provided to me on May 27, 2021, attached as Schedule “F” to this Report (the “**Deloitte Report**”).
1072. I have reviewed the Deloitte Report in substantial detail, including the scope and methodology employed by Deloitte in compiling the information reported therein. I am satisfied that the information I have reviewed is authentic and thorough and accept it as evidence of foreign and government funding of the ENGOS, Envirolegals and First Nations Communities/Groups identified by Deloitte in their report and subsequently by me in my report.
1073. As noted elsewhere in my report, I make no finding that participation in any anti-Alberta energy campaign constitutes misconduct on the part of any party, including those involved in foreign funding and government funding, and I do not impugn such participation. That said, I have recognized the utility of making further efforts to verify the information contained in the Deloitte Report directly with Funders and Participants.
1074. The Inquiry “Rules for Procedure and Practice” adopted to apply to the Inquiry dated September 14, 2020 (“**Rules**”) affords me the opportunity under “IV Standing – Participants for Response” to provide confidential written notice to “Persons”, including those subject to a potentially material adverse factual finding (or findings) in my final report.
1075. I have utilized this Notice procedure, offering the opportunity for standing to Participants and Funders, to view and comment upon the information in the Deloitte Report in which their funding activity is identified, as a further means of verification of the authenticity and thoroughness of that which is reported. Where input has been received in response by such Persons, as defined in the Rules, it has been considered.
1076. I note that most of the analysis below and throughout my report is focused on a relatively small number of Funders and Participants. However, it is important to note that Deloitte advises in their report that in their review of over 200,000 documents, they identified more than 200 Foundations, Canadian ENGOS, Envirolegals, and U.S. ENGOS that either provided funding, received funding, or participated in some fashion in what Deloitte described as Alberta Resource opposition. In order to manage this Inquiry to the best of my ability with the time and resources available to me, I make no findings related to any organization, other than where specifically identified in my report.

(b) ***Redactions to the Deloitte Report***

1077. Due to my focus on a relatively small number of entities, as noted above, I have redacted certain names and portions of the Deloitte Report as noted below:
- A. I have redacted names of certain organizations for which I am not making a finding, that were included in a table, text or schedule with organizations about which I am making a finding.
 - B. I asked Deloitte to review foreign and government funding to what are described in their report as Conservative/Market Oriented organizations. I have determined that the details of this funding are outside my terms of reference. However, I have retained the text of the Deloitte Report and information as to total funding of these organizations but have redacted the names of the organizations that received the funding.
 - C. I asked Deloitte to review foreign funding of First Nations communities, groups and initiatives, and the results of their review are included in their report. As noted in the First Nations section in Part III of my report, I accept Deloitte's finding that some \$102 million was paid to First Nations initiatives, organizations, communities or programs but I am unable to determine at a granular level, exactly who received these funds and the purposes to which they were applied. I am concerned with the sensitivities surrounding this funding and make no findings of any kind in regard to the recipients. My recommendation with respect to First Nations is intended to address these sensitivities in an appropriate manner. Accordingly, I have redacted the names of the First Nations recipients of foreign funding from the Deloitte Report.
1078. I have made myself familiar with the Deloitte Report, the approach to their review, their methodology and their findings. In addition to these elements of the Deloitte Report I reviewed other open-sourced materials (all of which are noted herein) in reaching the conclusions described below.
1079. Before I begin my review of funding it is helpful to review two introductory topics to better understand the issues I have reviewed; namely (a) the general structure of the charitable sector in Canada and the U.S.; and (b) the methodology undertaken by Deloitte in compiling the Deloitte Report.
1080. In Canada, a charity is not restricted from receiving foreign funding, provided the charity uses such funding for its own charitable purposes and campaigns and the charity is not used by a foreign person as a conduit through which funds are then funneled to a non-qualified donee. However, as is evident from the Deloitte Report, the current tax reporting system for charities requires improvement. A more transparent information system is required that will allow the CRA and other stakeholders in Canada to better monitor the campaigns of charities (including foreign funding campaigns) to ensure compliance with the rules and to flag problem areas and opportunities to make the system better so that the best interests of Canada can be met.

B. THE STRUCTURE OF THE CHARITABLE SECTOR IN CANADA AND THE U.S.

1081. I encourage readers to review the detailed report on this topic attached as Schedule “G” to this Report, but I will summarize the salient points of the report as follows:

- A. “Non-governmental organizations” or “**NGOs**”, including those who focus on environmental issues “**ENGos**”, can take on any form but most exist in the charitable sector.
- B. In Canada, a registered charity must be either a charitable organization, a public foundation, or a private foundation.
- C. There are five requirements of a charitable organization. It must:
 - (1) be created/established in Canada;
 - (2) be resident in Canada;
 - (3) be registered with the Charities Directorate of CRA;
 - (4) be constituted and operated exclusively for charitable purposes; and
 - (5) not provide any income/benefit to any shareholder.
- D. Understandably, what constitutes a “charitable purpose” is not free of doubt. It is generally understood to include:
 - (1) relief from poverty;
 - (2) advancement of religion;
 - (3) advancement of education; and
 - (4) other purposes beneficial to the community in a way the law regards as charitable.
- E. “Charitable purposes” also includes the disbursement of funds to a “qualified donee”, which includes:
 - (1) other registered charities;
 - (2) a person registered by the Minister (and has certain other entitling characteristics); or
 - (3) a registered journalism organization.¹⁶⁰⁸

¹⁶⁰⁸ As proposed in the 2019 Federal Budget.

- F. Historically, only ten percent of a registered charity's resources could be spent on "political campaigns". Through a combination of legislative changes and court rulings, this restriction no longer exists and a registered charity can engage in public policy dialogue provided "it does not directly or indirectly support or oppose a political party or candidate for public office".
- G. If an organization maintains its charitable status, its two primary benefits are: (1) it is exempt from tax; and (2) it can issue donation tax receipts that bestow donors with favourable tax treatment.
- H. Registered charities are required to disclose certain information, including total assets, total revenues, foreign funding, government funding, funding from other charities, and non-receipted gifts and fundraising. Generally speaking, in recent years there has been a reduction in disclosure requirements.
- I. "Not-for-profits", or ("**NPOs**"), are similarly required to operate in areas of social welfare, pleasure, recreation, or other purposes except for profit. While NPOs are not subject to paying tax, they cannot provide donation tax receipts. NPOs are: (1) not subject to the same reporting obligations as registered charities; and (2) not restricted on their political campaigns.
- J. In the U.S., charitable organizations fall under 2 subsections of the *U.S. Tax Act* - 501(c)(3) and 501(c)(4) - and are generally referenced as such in common parlance.
- K. 501(c)(3) organizations can either be a public charity or a private foundation. While private foundations have to publicly disclose their donors, public charities do not. Both:
- (1) offer donor receipts, up to 50% and 30%, respectively;
 - (2) are exempt from federal income tax; and
 - (3) can donate to other (c)(3)s and (c)(4)s, but only for (c)(3) campaigns,
 - (4) must disclose to the IRS donations over \$5,000, and
 - (5) are prohibited from engaging, directly or indirectly, in political campaigns and can spend no more than 10% of their resources on lobbying.
- L. 501(c)(4)s are effectively lobbying vehicles. They have no limits on lobbying efforts and can conduct partisan political activity so long as it's not the foundation's primary purpose. 501(c)(4)s do not have to disclose their donors, to the IRS or publicly. As well, 501(c)(4)s:
- (1) cannot provide donor receipts;
 - (2) are exempt from federal income tax; and
 - (3) can donate to other (c)(3)s and (c)(4)s.

C. METHODOLOGY

(a) *Introduction*

1082. Deloitte reviewed in excess of 200,000 documents available to it through various publicly available open sources. All of the material it reviewed is itemized in the Documents Inventory included in Appendix A to the Deloitte Report. Moreover, the scope of Deloitte's review, along with the precise methodology Deloitte's employed to compile the Deloitte Report, is described in the various appendices attached to the Deloitte Report. While I encourage readers to review that material, I want to highlight a few points here.

(b) *Sources of Information*

1083. Deloitte's review of foreign funding from foreign organizations ("**Foreign Funding**") started with the materials furnished by Vivian Krause to the Inquiry (the "**Krause Materials**"). The Krause Materials were traced to open source publicly available information including Internal Revenue Service ("**IRS**") filed tax returns, available grant lists published by foundations on their respective web sites, annual reports published by the foundations, Foundation Directory Online, a website published by Candid which is a charitable organization monitoring site based in the United States ("**FDO**") and other open source available information.

1084. Deloitte's review of the Canadian recipient organizations included tracing the Krause Materials to open source publicly available information including Canada Revenue Agency ("**CRA**") filed tax returns, available published grant lists, published annual reports, charitydata.ca ("**Blumbergs**") and other information available on the various recipient websites.

1085. Other reviews of funding from foreign organizations to recipient organizations were also undertaken independent of Deloitte's review. Such reviews were based on open source, publicly available information that are expressly referenced when mentioned in this Report.

(c) *Disclosure Considerations*

1086. While charitable organizations in both the U.S. and Canada are required to disclose certain information in their tax returns, the returns are filed with the IRS (in the U.S.) and CRA (in Canada). The IRS and CRA then, in turn, make certain information available on their websites for certain periods of time. Private database providers then download such information and maintain it on a more permanent basis.

1087. While these databases are extensive, there are limitations to what is practical and what is possible for the public to retrieve. For example, in Canada, these limitations include the following:

A. Registered Charities

- (1) **Lack of Particulars Available to Public** –registered charities are required to report to the CRA in their annual tax return certain information about its receipts (eg. Foreign Funding, Government Funding, Receipts from Registered Charities, Non-receipted Gifts and Fundraising, etc.) and its expenditures.

The tax rules require and allow the CRA to publicly disclose some but not all information about registered charities including certain information contained on their tax returns, which would not otherwise be available to the public. The overall objective of this exception to the general confidentiality rules is to provide confidence to the public that donated funds are not misused and to allow people to research a charity before making a donation. However, there are still insufficient particulars available to the public to fulfill this objective. For example, registered charities must report the total amount received each year from all sources outside of Canada and provide a separate schedule setting out the name, type of donor and the amount for each gift or donation from a foreign person having a value of \$10,000 or more. However, this schedule is confidential and is not publicly available. The result is that a person only knows whether a registered charity has received any foreign funding, but it has no particulars with respect to such funding so as to make this information useful. Further, data is only available on CRA's website for a limited period and for information beyond this period, a person must request the publicly available data from the CRA which is a very cumbersome and lengthy process.

- (2) **Re-granting and lack of tracing for foreign funding** – Where a registered charity makes gifts or transfers funds to another registered charity or other qualified donee, it must include in its tax return a schedule setting out the name of each such donee and the amount of the gift/transfer. Such schedule is publicly available. However, from the recipient donee's perspective, there is no requirement to trace or look through and report the ultimate/original source of funds. For example, registered charity A receives a foreign donation of \$10,000 (which it reports as foreign funding on its tax return) and in turn gifts this \$10,000 to registered charity B. For its purposes, registered charity B only directly receives funds from Canadian sources and therefore, does not have any foreign funding on its tax return. The end result is that it may appear that a registered charity has been funded entirely through Canadian sources when in fact the ultimate source of funds may be all or partially from outside of Canada.

- B. **Non-profit organizations** – Non-profit organizations are not registered charities. As such, they do not have to register with the CRA, have minimal tax reporting requirements compared to registered charities and are not subject to any public disclosure requirements.
- C. **Donor directed funding** – (the practise where a foundation advances funds on behalf of an undisclosed donor) will not disclose the original donor of the funds involved (unless the donor was foreign, in which case it would be subject to the same considerations as outlined above, in point A(1)). In the U.S., 501(c)(3) and like organizations are required to file "Form 990s" that are preserved in privately maintained databases. While the entirety of these forms are available for review (and do provide more detailed information than what is publicly available in Canada), three significant difficulties arise; namely:
- (1) The 990 forms are completed in varying degrees of precision/generalization, depending on the practice of the grantor;

- (2) Information is not aggregated in any way, so cumulative information must be gathered manually, using word search mechanisms that can be both laborious and imprecise; and
- (3) In the case of funds that are “re-granted” by a funder the identity of the original donor may not be disclosed.

1088. In summary, it is evident that there is a need in Canada and the US for an improved information system that will allow CRA, the IRS and other stakeholders to make better use of the information that is entered into the CRA’s and IRS’s database from the annual tax returns filed by charitable organizations. It should be possible to retrieve or request desired information from the database quickly and in a useful manner so that the charitable sector can be effectively and efficiently monitored not only by the CRA and IRS but also by other stakeholders. This would help ensure that problem or abusive areas and opportunities for improvement can be quickly flagged for further review. In this regard, it may be necessary to require additional information to be provided in the tax returns to help facilitate this process.

D. FLOW OF FUNDS

(a) *Background*

1089. Before assessing foreign funding related to specific issues, I deemed it appropriate to first consider the size of the charitable sector and the magnitude of foreign funding flowing into Canada to not-for-profit/charitable organizations, as I believe this funding and the accounting and disclosure surrounding it, has public policy implications of which Canadians should be aware.

1090. The United States philanthropic community is very large. There are in excess of 230,000 foundations, corporate giving programs and public charities in the United States.¹⁶⁰⁹ As at December 31, 2018 (the latest year for which complete information is available) the 1,000 largest foundations (including United States Federal Funders) held assets exceeding \$680 billion and in 2018 those same 1,000 foundations provided grants of approximately \$26 billion.¹⁶¹⁰

1091. The Canadian charity sector is much smaller than that of the United States, but still significant. By comparison, Deloitte cites a report by Blumbergs “Canadian Charity Sector Snapshot” to the effect that there are approximately 84,000 charities that filed T3010 tax returns in 2018 and, as at December 31, 2018, these charities held assets of \$465.2 billion. Moreover, Blumbergs reports that the Canadian charity sector receives significant funding from Canadian federal, provincial and municipal governments (being approximately \$1.5 trillion from all three levels of government between 2010-2018¹⁶¹¹). Blumbergs also reports that significant foreign funding is received by

¹⁶⁰⁹ <https://fconline.foundationcenter.org/welcome/faq/>; Deloitte Report, Paragraph 36

¹⁶¹⁰ Deloitte Report, Paragraph 36; information was sourced from Foundation Directory Online (“FDO”) website published by Candid (formerly known as Foundation Center and Guidestar). The data in FDO is compiled from IRS information returns (Forms 990 and 990-PF), grantmaker web sites, annual reports, printed application guidelines, the philanthropic press, and various other sources. (Source: <https://fconline.foundationcenter.org/welcome/faq/>)

¹⁶¹¹ The Deloitte Report. Paragraph 32.

Canadian charities each year. Their reports do not include foreign funding provided to not-for-profit organizations, as figures are only available for registered charitable organizations.

1092. Prior to 2009, Canadian charities were not required to separately report the quantum of foreign funding on their filed tax returns but they are now required to do so,¹⁶¹² making the identification of foreign funding flowing into Canada prior to 2009 more difficult. The Deloitte Report summarizes Blumbergs reporting of foreign funding to Canadian charities since 2009 in the following table:¹⁶¹³

Fiscal Tax Year	# of Registered Charities	Foreign Funding (\$)
2010	84,137	\$812,178,523
2011	82,848	\$1,172,692,796
2012	84,897	\$1,230,659,796
2013	83,466	\$1,359,365,332
2014	84,521	\$1,669,895,929
2015	84,442	\$1,841,787,364
2016	84,457	\$2,090,414,484
2017	84,181	\$2,319,367,314
2018	84,323	\$2,439,935,132
Total		\$14,936,296,670

1093. As indicated on the above table, Canadian charities received approximately \$2.4 billion in Foreign Funding in 2018.¹⁶¹⁴ The amount of foreign funding flowing into Canada appears to have increased substantially since 2010 (the first year such information is available), from approximately \$812 million in 2010 to approximately \$2.4 billion in 2018 (the most recent period for which data is publicly available),¹⁶¹⁵ an increase of more than \$1.6 billion or more than 200% over a nine year period.

(b) ***Foreign funds supporting Canadian-based environmental initiatives***

1094. In Part III of this report, I make findings with respect to numerous Participants in anti-Alberta energy campaigns. I will now turn my attention to the foreign funding issues related to these anti-Alberta energy campaigns, in accordance with my terms of reference.
1095. In attempting to gain an understanding of foreign funding related to anti-Alberta energy campaigns, I considered it appropriate to first consider foreign funding of Canadian-based environmental initiatives generally. There are two approaches to this; a) to consider funding by

¹⁶¹² Deloitte report, paragraph 27; <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4033/t4033-completing-registered-charity-information-return.html> and <https://www.canadiancharitylaw.ca/>

¹⁶¹³ The Deloitte Report. Paragraph 34.

¹⁶¹⁴ <https://www.canadiancharitylaw.ca/blog/blumbergs-canadian-charity-sector-snapshot-2018/>

¹⁶¹⁵ <https://www.canadiancharitylaw.ca/blog/blumbergs-canadian-charity-sector-snapshot-2018/>

U.S. entities of Canadian-based environmental initiatives by accessing available data in the U.S.; and b) to consider the receipt of foreign funding by Canadian environmental organizations.

(i) Funding by U.S. entities of Canadian-based environmental Initiatives

1096. Deloitte examined funding provided by Foreign funders to environmental initiatives, using U.S. open source publicly available information, including : i) Internal Revenue Service filed 990 tax returns; ii) available grant lists published by foundations on their websites; iii) annual reports published by the Foundations; iv) Foundation Directory Online website; and v) various other publicly available information described in their report.

1097. The Foreign funding provided by the 16 Foundations identified as participating in Canadian-based environmental initiatives by Krause or the Inquiry, which Deloitte included in its report, totals \$788.1 million, as detailed in the table below, (Table 3 of the Deloitte report):

	Organizations	Total Assets	Total Grants
1	Gordon and Betty Moore Foundation	\$9,516,145,035	\$294,658,803
2	Pew Charitable Trusts	\$8,959,791,489	\$157,871,014
3	William and Flora Hewlett Foundation	\$12,648,559,911	\$105,138,063
4	The David and Lucile Packard Foundation	\$10,574,663,205	\$61,139,879
5	The Oak Foundation	\$82,818,119	\$55,572,037
6	The Wilburforce Foundation	\$145,182,791	\$52,517,830
7	Tides Foundation	\$519,309,607	\$23,719,316
8	Rockefeller Brothers Fund	\$1,485,900,054	\$16,898,987
9	The Bullitt Foundation Inc.	\$92,212,841	\$7,246,128
10	The Marisla Foundation	\$46,871,752	\$5,383,510
11	Global Greengrants Fund Inc.	\$12,721,615	\$3,373,164
12	Sea Change Foundation	\$332,349,030	\$2,283,955
13	The Energy Foundation	\$122,819,897	\$1,394,350
14	The Brainerd Foundation	\$7,523,523	\$537,487
15		\$260,980,373	\$331,202
16		\$5,732,514	\$20,414
	Total	\$44,813,581,756	\$788,086,139

1098. The Deloitte Report categorized the largest environmental initiatives supported by the 16 Foundations as follows:

- A. Land-based –\$191.0 million
- B. Marine-based – \$297.2 million.
- C. Wildlife preservation – \$173.0million.
- D. Earmarked for opposition to Alberta resource development – \$54.1 million.
- E. Other initiatives – \$72.9million.

The above categorization was based on certain key word searches performed by Deloitte of the grant descriptions and other available information. As Deloitte notes in their report, they encountered limitations including difficulty in determining the ultimate destination of the funds and the specific purpose for which the funds were intended. They note that there were often vague or no descriptions disclosed in the open source materials. Deloitte also noted significant donations,

the purpose for which was not disclosed, nor were they able to trace the funds. (Please see further comments on this issue in the Conclusions below.)

1099. The Deloitte analysis indicated that not all of these grants entered Canada. Some amounts were distributed in the U.S. in respect of Canadian based environmental initiatives occurring in the U.S. However, of the approximately \$427.2 million in grants that did enter Canada over the period of review, it is important to note that 82% of this amount was in connection with initiatives in British Columbia.¹⁶¹⁶
1100. During the Participant for Response phase, the Inquiry was provided with a submission in the form of an affidavit from an individual who attested to their experience with numerous environmental campaigns and environmental policy work, including serving as Executive Director of a “Tarsands Fund”. The affiant attested to knowledge of approximately \$37 million of grants from foreign private foundations being provided to Canadian environmental and Indigenous organizations for opposition to oilsands and pipeline expansion projects from the period of 2012 to 2020. The affiant also referred to the work of Ms. Sandy Garossino, which was considered by Deloitte and referred to during the Participant for Commentary phase of this Inquiry.
1101. I requested that Deloitte review the information contained in this affidavit, and upon review Deloitte indicated that in its view the information, if accurate, would likely have resulted in it increasing the quantum of funds “earmarked for opposition to Alberta resource development” in the Deloitte Report by \$23 Million. I view this affidavit and Deloitte’s comments in respect to it are of significance in: (1) highlighting the lack of transparency in funding and granting generally; (2) highlighting the difficulty in establishing a range of foreign funding directed towards opposition to Alberta resource development; and (3) tending to support a finding I make later in this section that the amount of foreign funding identified in the Deloitte Report is likely understated.
1102. Part III of this report provides details on the individual Funders as well as the amount of funding provided by each Funder to the various ENGOs I have found to be Participants in anti-Alberta energy campaigns.
1103. I do not wish to create any suggestion that these grants, either individually or in total, were intended to evince an intent harmful or injurious to the Alberta oil and gas industry. Parts II and III of my Report provide details of the tactics employed in anti- Alberta energy campaigns, as well as my findings related to the anti-Alberta energy campaigns. Those parties that I have identified as evincing an intent harmful or injurious to the Alberta oil and gas industry are discussed there.

(ii) Foreign funding received by Canadian ENGOs

1104. As indicated above, Deloitte also reviewed Canadian tax filings that are publicly available through Blumbergs in respect of the 31 largest Canadian based ENGOs based on revenues.

¹⁶¹⁶ The Deloitte Report. Sub-paragraph 39 (iv).

1105. I have listed below the organizations that were identified in Table 4 of the Deloitte Report as having received Foreign Funding for the period of the review but have redacted the names of those organizations that I have not identified as Participants in anti-Alberta energy campaigns.¹⁶¹⁷

	Organization	Total Assets	Total Revenue	Foreign Funding
1		\$447,775,118	\$1,854,681,685	\$429,190,488
2		\$534,712,008	\$1,473,588,076	-
3		\$894,418,544	\$1,452,308,192	\$55,760,236
4	Makeway, formerly Tides Canada Foundation and Tides Canada Initiatives Society	\$72,320,601	\$506,105,130	\$147,513,713
5	World Wildlife Fund Canada and World Wildlife Fund Canada Foundation	\$26,625,270	\$454,489,739	\$42,057,029
6	International Institute for Sustainable Development	\$51,299,476	\$311,052,931	\$116,683,780
7		\$17,557,033	\$277,693,370	\$6,000
8		\$116,853,089	\$202,052,582	\$39,140,322
9	The David Suzuki Foundation	\$21,900,448	\$181,854,927	\$13,428,585
10	Greenpeace Canada	\$2,164,663	\$178,359,033	\$1,439,248
11		\$2,862,073	\$138,741,742	\$76,979
12		\$38,792,616	\$134,797,876	\$6,829,920
13		\$140,761,276	\$120,421,144	-
14		\$26,753,629	\$107,002,315	-
15	Pembina Foundation for Environmental Research and Education and the Pembina Institute	\$4,412,380	\$90,651,221	\$7,561,435
16		\$39,742,811	\$88,848,342	-
17		\$8,206,268	\$75,615,032	\$9,901,019
18		\$49,201	\$68,756,446	-
19		\$21,829,966	\$65,877,805	-
20		\$1,882,414	\$61,718,020	\$9,089,972
21	Equiterre	\$9,457,964	\$54,876,048	\$2,435,040
22		\$582,788	\$39,300,160	-
23	Western Canada Wilderness Committee	\$721,404	\$34,073,968	\$295,761
24	Sierra Club of British Columbia Foundation	\$792,167	\$26,028,322	\$4,377,157
25	Raincoast Conservation Foundation	\$4,717,715	\$22,192,278	\$4,100,773
26		\$24,753,262	\$18,141,194	-
27	Sierra Club Canada Foundation	\$217,580	\$18,029,447	\$725,929
28		\$1,688,105	\$16,076,609	-
29		\$751,044	\$16,723,653	\$3,509,731
30		\$310,737	\$15,054,331	-
31	Dogwood Initiative	\$578,933	\$3,914,153	\$3,395,655
	Total	\$2,515,490,583	\$8,119,025,771	\$897,518,768

1106. Deloitte identified significant foreign funding directed to several conservation organizations.

1107. The names of these organizations have been redacted from the above table but in summary the total assets, revenue, foreign funding and government funding are as follows:

Organization	Total Assets	Total Revenue	Foreign Funding	Government Funding
Conservation organizations	\$1,350,399,930	\$3,382,604,909	\$494,851,743	\$677,601,245

1108. Part II of the report discusses details of a Land Conservation tactic employed by the Tar Sands Campaign. I do not find that any of these conservation organizations have evinced an intent

¹⁶¹⁷ The Deloitte Report. Paragraph 47.

harmful or injurious to the Alberta oil and gas industry. Part II of my report does note potential risks in oversight of the Alberta conservation policy that have raised concerns with industry.

1109. I cite this issue only to identify that there are significant foreign funds involved and that government, industry and the organizations themselves must remain vigilant with respect to public policy issues, to ensure that there is an appropriate balance between economic development and conservation initiatives. My recommendations will endeavour to emphasize the principles of sound governance, transparency and accountability which are critical to balancing the interests of Albertans, particularly where such large amounts of foreign funding are involved.

(c) ***Foreign funding received by “envirolegal firms”***

1110. The Deloitte Report also reviews environmental law organizations that are registered charities or not for profit organizations. Deloitte identifies the six largest envirolegal firms (based on their total revenues from 2000-2018) and summarizes the information reported in their T3010 tax filings (as compiled on Blumbergs) as follows:

	Organization	Total Assets	Total Revenue	Foreign Funding
1	EcoJustice Canada Society	\$5,964,690	\$88,505,791	\$6,957,639
2	Environmental Defence Canada Inc.	\$1,537,628	\$48,697,691	\$5,418,974
3	West Coast Environmental Law Research Foundation and West Coast Environmental Law Association	\$2,366,889	\$31,657,603	\$9,078,124
4		\$835,665	\$17,741,010	\$4,830
5		\$232,246	\$12,315,654	-
6		\$16,686	\$4,216,147	\$78,482
	Total	\$10,953,804	\$203,133,896	\$21,538,048

1111. I have identified all three of these organizations as Participants in Part III of my report. I don't consider Environmental Defence Canada Inc. to be an envirolegal firm but that distinction has no impact on my findings or conclusions.

(d) ***Foreign funding provided to First Nations***

1112. The Deloitte Report identifies funding of Canadian First Nations Communities/Groups and initiatives from foreign organizations in the total amount of \$102.3 million. Details of funding of this nature are not generally publicly available in Canada, so Deloitte's review is primarily based on a review of U.S. tax filings maintained by FDO.¹⁶¹⁸ As indicated in Part II of this Report regarding First Nations, I have reviewed the Deloitte analysis and find the total funding figure to be accurate. While Deloitte broke their analysis down by recipient, I have chosen not to present that information. I am unable to determine at a granular level, exactly who received these funds and the purpose to which they were applied and accordingly, I make no finding in that regard.

¹⁶¹⁸ The Deloitte Report. Paragraph 62.

(e) **Summary of Foreign Funding Received by Canadian Entities for Canadian Environmental Initiatives**

1113. As noted above, the Deloitte Report indicates that 31 ENGOs and six (6) Envirolegals received foreign funding of some \$897 million and \$21 million respectively over the 2003-2019 period. Moreover, a significant portion of the foreign funding of Canadian environmental initiatives remains in the U.S. (\$352,492,945). The \$6,073,734 noted below for anti-Alberta Resource grants is funding received by organizations that were not included in the 31 ENGOs and 6 Envirolegals highlighted by Deloitte.

	2003 – 2008 ¹⁶¹⁹	2009 – 2019	Total Foreign Funding
ENGO's	\$119,265,669	\$778,253,099	\$897,518,768 ¹⁶²⁰
Envirolegals	\$3,254,442	\$18,283,606	\$21,538,048 ¹⁶²¹
Foreign Funding for Alberta Resource Development Opposition received by other Canadian organizations	-	\$6,073,734	\$6,073,734 ¹⁶²²
Subtotal	\$122,520,111	\$802,610,440	\$925,130,551
Foreign Funding for Canadian based environmental initiatives received by other foreign organizations	\$87,874,7187	\$264,618,227	\$352,492,945 ¹⁶²³
Total	\$210,394,828	\$1,067,228,667	\$1,277,623,495

E. CONCLUSIONS

1114. Having considered the foregoing, I conclude that foreign funding disclosed by U.S. Funders for Canadian-based environmental initiatives is \$788.1 million. Of this, some \$427.2 million flowed into Canada, and \$352,492,945 remained in the U.S. all focused on Canadian-based environmental initiatives.¹⁶²⁴

1115. I find that foreign funding reported by Canadian entities for environmental initiatives of \$925,130,551 is an accurate reflection of funds received, as it is based on Canadian tax filings.

1116. Foreign funding remaining in the U.S., according to U.S. sources (\$352,492,945), would not be picked up in Canadian reporting services. Accordingly, when added to the funding reported by

¹⁶¹⁹ Pursuant to FDO for the period 2003 to 2008.

¹⁶²⁰ See Table 4 of the Deloitte Report.

¹⁶²¹ See Table 5 of the Deloitte Report.

¹⁶²² Other Canadian organizations that received foreign funding for Alberta Resource Development opposition not included in Table 4 and Table 5 of the Deloitte Report

¹⁶²³ Pursuant to FDO for the period 2003 to 2019.

¹⁶²⁴ Although it would appear from a mathematical calculation, that some \$360.9 million would have remained in the U.S., Deloitte was unable to independently verify the relevant figures for the period 2000-2002, however, relied on data available on FDO for the period 2003 on, to confirm the figure of funding remaining in the U.S of \$352,492,945.

Canadian ENGOs, the total funding for Canadian-based environmental initiatives, as determined by Deloitte, is \$1.28 billion, as described at paragraph 22 and Table 12 of the Deloitte Report.

1117. This foreign funding is likely understated for the following reasons:

- A. There are Foundations or other funders, in addition to the 16 larger environmental funders identified by Deloitte, such that whatever funds these smaller entities provided to Canadian-based environmental initiatives in the U.S., would not be captured in these figures.
- B. Only the 31 largest ENGOs (by total revenue) and 6 Envirolegals were considered by Deloitte. However, there are many other charitable organizations and not-for-profits that receive foreign funding for environmental initiatives.
- C. It is possible for Canadian ENGOs to:
 - (1) either re-grant funds they receive from foreign sources, or
 - (2) maintain them as donor advised funds for distribution in subsequent years.

When these funds are re-granted, they are not accounted for by the recipient entity as foreign funds received. These funds have essentially lost their character as foreign funds, which means that total foreign funding to Canadian ENGOs is likely more widespread than is reflected in either US or Canadian open sourced materials.

- D. As noted in Part III of this report, several entities identified as Participants in anti-Alberta energy campaigns are domiciled in the U.S. and in many cases I am unable to identify all their sources of funding. Certainly, some of their funding would be included in the \$352,492,945 noted above as remaining in the U.S., as funding of Canadian-based environmental initiatives. However, this figure is likely understated as it includes funding from only the 16 largest environmental funders.
 - E. Deloitte identified funding specifically for anti-Alberta Resource Development of \$54.1 million based on word search criteria, however, as noted this is significantly understated due to challenges categorizing the grants based on available grant descriptions, plus the fact that many grants are designated for general purposes.
 - F. By the same token, it cannot be suggested that all funding designated for Canadian environmental initiatives was intended to support anti-Alberta energy campaigns, although most certainly some of it was.
1118. To gain greater certainty on the purpose for which funds were granted by an organization, and whether those funds were utilized by the recipient for the purpose stated by the grantor, the Inquiry would have had to examine grantors and recipients under oath as part of a detailed process of tracing funds from grantors to recipients. As has been noted elsewhere, the Inquiry did not have the time or the financial resources to undertake such an exhaustive process. Moreover, determining with precision, the total quantum of foreign funding, is not the mandate of

the Inquiry. Rather, it is to determine the “role of foreign funding, if any, in anti-Alberta energy campaigns”.

1119. It is therefore, not possible to determine precisely how much foreign funding was provided to anti-Alberta energy initiatives. As noted in Part III of this report, and as explained in the preceding paragraph, it is difficult to determine the exact purpose for which funds are intended on the part of the Funders, and I cannot determine whether the funds were utilized by the Participants for the purpose stated by the funder. Moreover, a lot of grants are provided for general purposes. As I note in Part III, money is fungible – once funds are deployed to an organization in some manner, they are deployed to advance the mission and campaigns of the organization, which are often varied and complex. As well, as noted in Part III, several of the entities that actively advanced and participated in anti-Alberta energy campaigns are U.S. domiciled organizations, and I am unable to determine the extent to which their funding was dedicated to anti-Alberta energy campaigns.
1120. Of primary importance, and consistent with my mandate to determine the role of foreign funding in anti-Alberta energy campaigns, I find that those entities I identified as Participants in the anti-Alberta energy campaigns described in detail in Part III of this report, are funded in significant amounts by foreign entities.
1121. In this regard, the following table summarizes the funding provided by each of the Foundations identified in Part III and the total amount of funding they provided to entities that I found to be Participants in anti-Alberta Energy campaigns:

	Organizations	Total Grants
1	Gordon and Betty Moore Foundation	\$32,967,925
2	Pew Charitable Trusts	\$1,865,985
3	William and Flora Hewlett Foundation	\$35,328,120
4	The David and Lucile Packard Foundation	\$28,852,638
5	The Oak Foundation	\$12,582,446
6	The Wilburforce Foundation	\$17,805,977
7	Tides U.S. Foundation	\$8,327,407
8	Rockefeller Brothers Fund	\$6,039,996
9	The Marisla Foundation	\$670,478
10	Global Greengrants Fund Inc.	\$1,311,982
11	Sea Change Foundation	\$2,283,955
12	The Energy Foundation	\$236,635
13	The Brainerd Foundation	\$203,963
14	The Bullitt Foundation	\$3,128,007
	Total	\$151,605,514

1122. As noted, I cannot find that all of these funds were used to fund anti-Alberta energy campaigns nor determine what exact portion, if any, may have been used to block, hinder or delay the development and/or transportation of Alberta oil and gas.
1123. What is of greatest significance is that the quantum of foreign funding flowing into Canada, for whatever purpose, has important public policy implications requiring greater regulatory and governance oversight, transparency, and accountability, as detailed in my recommendations.

F. GOVERNMENT FUNDING

1124. The Terms of Reference also direct me to inquire into whether grants or other discretionary funding was received from federal, provincial, and municipal governments.
1125. In Canada, registered charities are required to disclose funds received from all three levels of government. As noted in the Deloitte Report, information with respect to government funding received by each entity was obtained from the Charitydata website, which in turn is compiled from annual T3010 Registered Charity Information Returns¹⁶²⁵. The figures noted for government funding will not necessarily tie into Table 3 of the Deloitte report as government funding for the years 2000-2002 has been removed.
1126. I have provided a summary of government funding from the three levels of government identified as being received by each Participant in Part III of this Report. I did not have access to information for the same time period for each Participant, and I have provided the timeframe over which the funding was received for each Participant in my discussion in respect of each Participant in Part III. A summary of the conclusions found in Part III is set out in the table below, and I have indicated "Nil" where my review did not find any evidence of government funding to the Participant."
1127. I have provided a summary of government funding from the three levels of government identified as being received by each Participant in Part III of this Report. I did not have access to information for the same time period for each Participant, and I have provided the timeframe over which the funding was received for each Participant in my discussion in respect of each Participant in Part III. A summary of the conclusions found in Part III is set out in the table below, and I have indicated "Nil" where my review did not find any evidence of government funding to the Participant.

Organization	Federal	Provincial/Territorial	Municipal/Regional	Total
Pembina Foundation	Nil	\$289,666	Nil	\$289,666
Pembina Institute	Nil	Nil	Nil	Nil
David Suzuki Foundation	Nil	\$74,300	Nil	\$74,300
Greenpeace Canada	Nil	Nil	Nil	Nil
Equiterre	\$2,936,672	\$9,228,190	\$420,702	\$12,585,564
Western Canada Wilderness Committee	Nil	Nil	Nil	Nil
Sierra Club Canada	\$158,049	\$102,493	\$20,427	\$280,969
Sierra Club BC	\$449,726	\$1,157,622	\$22,021	\$1,629,369

¹⁶²⁵ Deloitte Report Paragraphs 66 through 70.

Raincoast Conservation Foundation	\$897,220	Nil	Nil	\$897,220
IISD	\$60,886,815	\$24,039,454	Nil	\$84,926,269
World Wildlife Fund Canada	\$8,955,964	\$1,640,318	Nil	\$10,596,282
World Wildlife Fund Canada Foundation	Nil	Nil	Nil	Nil
MakeWay Foundation	\$364,253	\$3,260,972	\$38,300	\$3,663,525
MakeWay Charitable Society	Breakdown between levels of government not available			\$26,341,652
West Coast Environmental Law	\$430,393	\$53,400	\$10,153	\$493,946
Environmental Defence Canada	\$599,279	\$2,095,702	\$672,666	\$3,367,647
Ecojustice	Nil	Nil	Nil	Nil
Dogwood Initiative	Nil	Nil	Nil	Nil
Leadnow	Nil	Nil	Nil	Nil
Total				\$145,146,409

1128. I also requested Deloitte to review whether the level of federal government funding of the entities considered in this report has changed during the period of review.

1129. I have reproduced Table 10 from the Deloitte report below, but have redacted the names of organizations not found to be Participants in Part III:

Organizations	2004 - 2014	2015 - 2019	Total Federal Funding
ENGOS			
	\$7,950,602	\$40,334,156	\$48,284,758
	\$2,518,944	\$8,581,661	\$11,100,605
	\$3,280,796	\$205,765,534	\$209,046,330
Tides Canada Initiatives Society	\$367,605	\$4,767,303	\$5,134,908
World Wildlife Fund Canada	\$453,650	\$14,091,969	\$14,545,619
International Institute for Sustainable Development	\$2,137,000	\$8,951,156	\$11,088,156
	\$1,667,218	\$12,757,962	\$14,425,180
David Suzuki Foundation	-	\$379,021	\$379,021
	\$1,026,550	\$18,479,832	\$19,506,382
Greenpeace	\$100,000	-	\$100,000
	\$8,659,562	\$18,044,552	\$26,704,114

Organizations	2004 - 2014	2015 - 2019	Total Federal Funding
	-	\$5,000,000	\$5,000,000
	\$1,266,007	\$3,160,478	\$4,426,485
	-	\$3,451	\$3,451
The Pembina Institute	-	\$5,774,010	\$5,774,010
	\$217,038	\$12,465,758	\$12,682,796
	\$3,052,300	\$7,214,629	\$10,266,929
	\$474,500	\$127,232	\$601,732
Equiterre	-	-	-
	\$7,898,259	\$340,157	\$8,238,416
Sierra Club of British Columbia	-	\$13,450	\$13,450
Raincoast Conservation Foundation	\$83,790	\$6,086,861	\$6,170,651
Sierra Club Canada Foundation	\$290,662	\$107,421	\$398,083
	-	\$56,907	\$56,907
	-	\$3,766	\$3,766
Dogwood	-	\$51,155	\$51,155
Total ENGOS	\$41,444,483	\$372,558,420	\$414,002,903
Envirolegals			
EcoJustice Canada	-	\$3,095	\$3,095
West Coast Environmental Law Association	-	\$30,281	\$30,281
Total Envirolegals	-	\$33,376	\$33,376
Conservative/Market Oriented Orgs			
	-	\$4,040	\$4,040
	\$69,000	\$50,000	\$119,000
Total Conservative/Market Oriented Orgs	\$69,000	\$54,040	\$123,040
Grand Total	\$41,513,483	\$372,645,386	\$414,159,319

1130. Note that the information included in the table above was obtained by Deloitte from the Open Government Funding Portal (see Appendix C to the Deloitte report for details). I understand that the Open Government Funding Portal identifies grant amounts that were approved, and does not necessarily reflect the actual advance of funds. As Deloitte notes, they are unable to reconcile the federal funding noted above with the government funding reported by the various entities on their CRA T3010 Returns.

**Part V – Economic Consequences
of the Loss of Oil and Natural
Gas Resources**

PART V
ECONOMIC CONSEQUENCES OF THE LOSS OF OIL AND NATURAL GAS RESOURCES

A. INTRODUCTION

1131. This report has highlighted the magnitude of foreign funding made available to ENGOs, many of whom have made use of the same in attempts to obstruct the development of Canada's oil and natural gas resources through the Tar Sands Campaign and related efforts.
1132. The Inquiry Terms of Reference has enlisted me to take notice of the challenges faced by Alberta's oil and gas industry and its reasonable opportunity to compete in international markets, to the extent that it may be hindered by anti-Alberta energy campaigns. In addition, beyond investigative fact finding, I am enlisted to make policy recommendations, in an advisory capacity, with respect to foreign funding and/or anti-Alberta energy campaigns engaged with respect to Alberta's oil and gas resources, and transportation to market. In that regard, I find it appropriate for me to consider the economic challenges faced by the oil and gas industry, to put the role of foreign funding and anti-Alberta energy campaigns into context for the information of Albertans.
1133. None of this is to suggest that concerns over the responsible development of Alberta's oil and gas resources are not valid or important. To the contrary, I take it as uncontentious that the responsible development of Alberta's resources is key to Alberta's economic future and in the public interest of Albertans. The Inquiry Terms of Reference specifically refer to the "timely, economic, efficient, and responsible development" of Alberta oil and gas resources. While I do not interpret my mandate to duplicate the work of the regulatory frameworks in Alberta and Canada in determining whether a given project meets this criteria¹⁶²⁶, the objective of the "timely, economic, efficient, and responsible development" of Alberta oil and gas resources informs my comments in this Part in considering the role of foreign funding, anti-Alberta energy campaigns and my recommendations going forward.
1134. I have observed that many proponents of anti-Alberta energy campaigns tend to advance an extreme "all-or-nothing" position, insisting that all development of oil and gas resources must cease in order to have a sustainable energy future. Many have initiated and joined campaigns, then taken credit for the cancellation of oil and gas developments and pipeline projects – campaigns that advance their objectives.
1135. This is articulated, for example, in the Corporate Ethics Document: "Stopping the flow of tar sands oil now, as well as other non-conventional fossil fuels, is critical if we are to force government and industry to pursue a clean and sustainable energy future."¹⁶²⁷
1136. While anti-Alberta energy campaigns may have played a role in the cancellation of some oil and gas developments and pipeline projects, I am not in a position to find that these campaigns alone caused project delays and cancellations. Natural market forces of price, supply, demand, global geopolitics, weather and technology, plus countless other factors, impact the outcome of all capital project proposals. There is no doubt that these anti-Alberta energy campaigns have

¹⁶²⁶ Ruling on Interpretation of the Terms of Reference, September 14, 2020, at para 7.

¹⁶²⁷ Corporate Ethics Document Page 2.

occurred in an environment of reduced investment in oil and gas projects, at least since 2014 when global oil prices fell by almost half. Much of the reduced investment is due to natural market forces, however, anti-Alberta energy campaigns have played a role. I also note that oil and gas developers and marketers have suffered from a growing negative image due, in no small part, to anti-Alberta energy campaigns. Proponents of anti-Alberta energy campaigns are particularly vocal in their efforts and engagement on economic and energy policy issues and debates that are important, on at least some level, to all Albertans and Canadians.

1137. Given that a core task of ENGOs is public influence, they capitalize on opportunities, such as project delays and cancellations, to express their views, through social media, media interviews and by their own releases through their websites and other channels of communication. In many cases, some of which are highlighted below, ENGOs claimed credit for project cancellations, by thanking and praising their supporters and celebrating the end of specific projects. While these anti-Alberta energy campaign campaigns may not have been directly responsible for the cancellation of various projects, a link is noted. Importantly, as I discuss further below, project cancellations have widespread societal impacts and economic consequences to towns and cities across Alberta and indeed to all of Canada. Without the prosperity that comes with the economic development of oil and gas, investment in our energy future will be compromised, including innovation for cleaner processes and the development of alternative energy sources.
1138. In December 2018, the US Chamber of Commerce's Global Energy Institute, published *INFRASTRUCTURE LOST Why America Cannot Afford to "Keep it in the Ground"* – a report listing 15 energy infrastructure and investment opportunities, representing US\$58 billion of capital investment and more than 700,000 jobs, that were blocked, cancelled or delayed.¹⁶²⁸
1139. I was not able to find a comparable report focused on Canada. Moreover, I did not have the resources to commission a study of the total impact of lost investment on local or national economies. However, this US report highlights the significant impact of lost infrastructure projects on an economy. Energy infrastructure projects require major investments, and generate significant economic spin-off, so it is not surprising that reported impacts of lost or delayed projects are large.
1140. I was able to identify several sources that have reported on revenue and investment losses in Canada over the past several years. I am not able to find that these losses were a direct result of anti-Alberta energy campaigns. I merely observe that these campaigns were among the energy market disruptions contributing to the economic environment over the past number of years.

B. HIGHER OIL PRICE DIFFERENTIALS

1141. Following are a number of estimates of lost industry revenue and related royalty revenue due to inadequate pipeline capacity, according to a variety of analysts. There is a broad range in the estimates but the loss estimates, a minimum of US\$14 billion for the five-year period 2015-2019, are substantial.¹⁶²⁹

¹⁶²⁸ *INFRASTRUCTURE LOST Why American Cannot Afford To 'Keep It In The Ground'*, Global Energy Institute, U.S. Chamber of Commerce, December 2018

¹⁶²⁹ What is different about differentials? December 2020, IHS Markit.

- A. In the five years 2015-2019, an IHS Markit study pegged a conservative estimate of the economic loss at US\$14 billion due to restraints on market access.¹⁶³⁰
- B. IHS Vice President Kevin Birn notes:
- Canada has been among the fastest-growing producers of crude oil for more than a decade, rising to fourth largest in the world. Pipeline projects proposed to keep pace with that growth have faced opposition and delay. The cost of the bottlenecks that emerged has been borne by Canadian heavy crude oil, fetching lower prices, at least \$3 per barrel less than would have been expected. The impact of this lost value over millions of barrels produced each day during the last past half decade is significant – about \$14 billion (US dollars).¹⁶³¹
- C. In a 2018 report, Scotiabank estimated that takeaway capacity bottlenecks could potentially mean depriving the upstream industry of \$15 billion to \$39 billion in royalty applicable earnings (absent a supply restraint policy option by the government) in 2019, when compared to adequate pipeline capacity. This would translate to between \$1.5 billion and \$4.1 billion in government revenues.¹⁶³²
- D. The Scotiabank estimate was in line with an April 2019, Fraser Institute report that estimated the foregone revenue due to restricted market access in 2018 at \$20.6 billion, equivalent to about 1 percent of Canada’s GDP.¹⁶³³
- E. In 2018, then Alberta Premier Rachel Notley pegged the revenue cost of pipeline delays at \$80 million per day.¹⁶³⁴
- F. The Canadian Energy Research Institute determined that lower oil prices have a negative net effect on Canada’s economy. As a rule of thumb, for every Canadian dollar gain in the benchmark WTI oil price, Canadian GDP would gain almost \$1.7 billion, on average.¹⁶³⁵
- G. In 2019, Alberta produced about 1.4 billion barrels of oil and the oil price differential was US\$14.82 per barrel, or about C\$19.76. It was assumed that about half of that differential, \$10 per barrel, was attributed to market access constraints, the revenue loss would be about C\$14 billion, based on Alberta Energy market information.¹⁶³⁶

¹⁶³⁰ What is different about differentials? December 2020, IHS Markit.

¹⁶³¹ What is different about differentials? December 2020, IHS Markit.

¹⁶³² Shut In? Assessing the Merits of Government Supply Intervention in the Alberta Oil Industry, November 21, 2018, Scotiabank.

¹⁶³³ The Cost of Pipeline Constraints in Canada, April 2019, Fraser Institute.

¹⁶³⁴ Premier acts to protect value of Alberta’s resources, Government of Alberta news release, December 2, 2018, <https://www.alberta.ca/release.cfm?xID=621526E3935AA-08A2-6F45-72145AEBDF115BDF>.

¹⁶³⁵ Low Crude Oil Prices and Their Impact on the Canadian Economy, Canadian Energy Research Institute, February 2016, Study No. 156.

¹⁶³⁶ Alberta government website, alberta.ca, Oil prices, production, <https://economicdashboard.alberta.ca/OilPrice>, <https://economicdashboard.alberta.ca/OilProduction>.

- H. The 2016 Alberta Royalty Review reported that “Alberta Energy has estimated that discounts on Alberta’s oil prices due to constrained market access have led to the forfeiture of more than \$6 billion in royalties since 2010.” That is just royalties, which are a fraction of export revenue.¹⁶³⁷

C. CURTAILED PRODUCTION

1142. Estimated economic loss \$2.8 billion in 2019 alone¹⁶³⁸

- A. In late 2018, Alberta heavy oil was discounted by about \$60 a barrel, fetching about \$14 a barrel, far below the production cost. This resulted due to ballooning Canadian supply and insufficient pipeline capacity to get to export markets. At such a low price, provincial royalties evaporated because the Alberta royalty rate per barrel is designed to fall when prices fall well below long-term average market prices. To avoid seeing oil sold that generates no royalties, then Alberta Premier Rachel Notley curtailed provincial production by about 325,000 barrels per day. Within a couple of months, the differential shrank, and the Alberta oil price rose to about \$60 a barrel, but for lower production and sales volumes. Based on the monthly curtailments alone, Alberta production was about 64 million barrels lower in 2019, resulting in curtailed sales of about \$2.8 billion.¹⁶³⁹ Restrictions incrementally fell and the curtailment program ended in December 2020.

D. CANCELLED PROJECTS

1143. The CD Howe Institute produced a report in 2019, noting that “[a]nnouncements of new energy and mining projects slowed in 2015, and, between 2017 and 2018, the planned investment value of major resource projects plunged by \$100 billion – an amount equivalent to 4.5 percent of Canada’s gross domestic product.” It notes that many projects face environmental assessments that take much longer than in other jurisdictions such as Australia or the US. The report expressed concerns that Bill C-69 would further discourage capital investment in Canada.¹⁶⁴⁰
1144. In late 2016, the Financial Post undertook a comprehensive investigation called Arrested Development to tally how much Canadian infrastructure investment was shelved due to overpowering obstructions.¹⁶⁴¹

Resistance to infrastructure projects — whether they be pipelines, hydro dams, mines or wind turbines — has become commonplace in Canada. But it’s costing us. As part of a four-month investigation, the Financial

¹⁶³⁷ Alberta At A Crossroads, Royalty Review Advisory Panel Report, January 29, 2016, <https://open.alberta.ca/publications/9781460126882>.

¹⁶³⁸ What is different about differentials? December 2020, IHS Markit.

¹⁶³⁹ Premier acts to protect value of Alberta’s resources, Government of Alberta news release, December 2, 2018, <https://www.alberta.ca/release.cfm?xID=621526E3935AA-08A2-6F45-72145AEBDF115BDF>.

Alberta government website, alberta.ca, Oil prices, production, <https://economicdashboard.alberta.ca/OilPrice>, <https://economicdashboard.alberta.ca/OilProduction>.

¹⁶⁴⁰ A Crisis of Our Own Making: Prospects for Major Natural Resource Projects in Canada, Grant Bishop and Grant Sprague, February 2019.

¹⁶⁴¹ Arrested Development, Financial Post, December, 2016, <https://financialpost.com/tag/arrested-development/>.

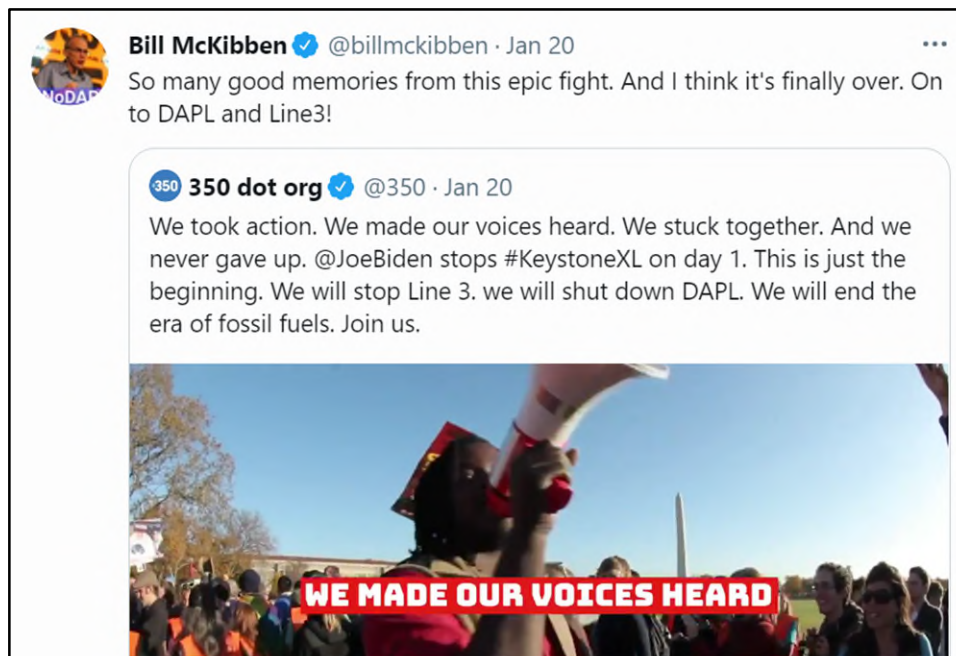
Post identified as many as 35 projects, worth \$129 billion, that have been stalled or cancelled due to opposition from environmental, aboriginal and/or community groups...” wrote the Financial Post.¹⁶⁴²

1145. As indicated at the outset of this section, I cannot say that foreign funding and anti-Alberta energy campaigns are directly responsible for the cancelled projects noted as examples below. ENGOs do, however, take credit for the success of their efforts in the cancellation of these projects.

(a) **Keystone XL – TC Energy**

Construction of Keystone XL was underway when cancelled by Executive Order of U.S. President Joe Biden on January 20, 2021. According to a Government of Alberta website, the project “saw roughly 2,500 construction workers hired in Alberta and the U.S., spurring thousands of additional jobs and increased economic activity in associated trades, retail and hospitality services along the construction route.” If completed, the project would have contributed approximately \$2.4 billion to Canada’s GDP and generate more than \$7 million in property taxes in the first year in service. It is estimated the project would have generated \$30 billion in tax and royalty revenues for current and future generations of Albertans. In the first half of 2021, the Alberta government and many US State governments continued their efforts to revive the project, whereas the cancellation of the pipeline is celebrated by others.¹⁶⁴³

On January 20, 2021, Bill McKibben, founder of 350.org, tweeted:



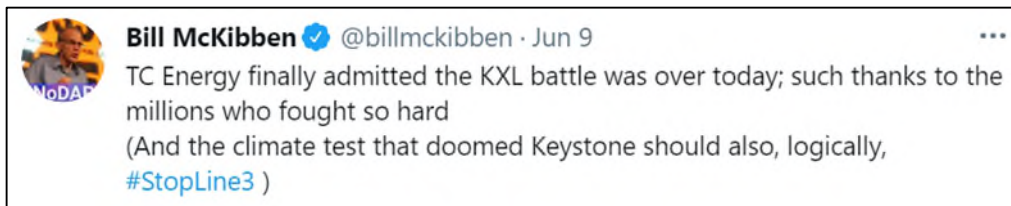
350.org We made our voices heard video
<https://www.youtube.com/watch?v=O9WjO4YnuBQ>

¹⁶⁴² Arrested Development, Financial Post, December, 2016, <https://financialpost.com/tag/arrested-development/>.

¹⁶⁴³ <https://www.alberta.ca/investing-in-keystone-xl-pipeline.aspx>

On June 9, 2021, TC Energy terminated the Keystone XL pipeline project, prompting ENGO leaders to thank their supporters and set their sights on other pipelines under construction.

1146. On June 9, 2021, Bill McKibben, head of 350.org, tweeted:



1147. McKibben wrote an article in the New Yorker on January 21, 2021 detailing the decade long fight carried by environmentalists against Keystone. He also comments on the work of environmentalist opposition to other fossil fuel projects:

Environmentalists have won many of these infrastructure battles, and they've added delay and costs to projects. (Who knows how many bad things were never even proposed in the wake of Keystone XL?).

1148. He goes on to describe the upcoming battle on Dakota Access Pipeline (DAPL) and Line 3.¹⁶⁴⁴

1149. In Ecojustice's "Victory Report" of 2016, activists celebrate Obama's rejection of Keystone:

Tar sands pipelines are not the way of the future... On this side of the border, the support of donors like you meant we had the resources to work around the clock to ensure Enbridge's Northern Gateway pipeline and Kinder Morgan's Trans Mountain expansion meet the same fate.¹⁶⁴⁵

(b) **Frontier Oilsands Mine – Teck Resources**

On February 23, 2020, Teck Resources Limited withdrew its application for the approval of Teck Frontier – its \$20.6 billion, 260,000 barrel-per-day oilsands project, days before the federal government was going to rule on it, in late February 2020. In pulling its application, Teck cited the debate over climate policy in Canada and the need for Canada, the Provinces and Indigenous governments to work through the societal implications for energy development, climate change and Indigenous rights.¹⁶⁴⁶

1150. Numerous ENGOs celebrated the event, including the David Suzuki Foundation.

¹⁶⁴⁴ <https://www.newyorker.com/news/daily-comment/joe-bidens-cancellation-of-the-keystone-pipeline-is-a-landmark-in-the-climate-fight> Bill McKibben, January 21, 2021.

¹⁶⁴⁵ https://ecojustice.ca/wp-content/uploads/2016/04/Ecojustice_Victories_Report_2016_V5_ONLINE.pdf

¹⁶⁴⁶ <https://www.teck.com/news/news-releases/2020/teck-withdraws-regulatory-application-for-frontier-project>



Again, Bill McKibben celebrated with a tweet.



1151. Emma Jackson of 350.org stated:

Make no mistake, Teck abandoned the Frontier project because people are standing up to demand real climate action. This is a chance for Canada to come together and start building a Green New Deal.



1152. Greenpeace Canada also applauded the decision of Teck to withdraw. Greenpeace's website notes:¹⁶⁴⁷

This. Is. BIG. We WON the #RejectTeckcampaign!

...

This would not have been possible without the leadership of the Indigenous communities and the tens of thousands of Greenpeace supporters across the country, who took action.

Three months ago, very few people had heard of Teck's Frontier mine. Its approval was considered a no-brainer because no tar sands project has ever been rejected. But by working with a movement led by Indigenous Climate Action, we were able to push it to the top of the public and media agenda. Ultimately, we were able to turn it into a litmus test of Justin Trudeau's government's commitment to acting on a climate crisis.

...

¹⁶⁴⁷ <https://www.greenpeace.org/canada/en/story/29438/this-is-big-we-won-the-rejectteck-campaign/>

Teck's decision to pull the plug on the project reflects the global work that Indigenous leaders, Greenpeace supporters and activists everywhere have been doing to make investors and politicians understand the risks of deepening fossil fuel investments ...

Every petition, signature, every protest, every dollar, every phone call matters. When I met a Liberal staffer for Deputy Minister Freeland last Friday, they said that Greenpeace had been "very effective" in getting our message across.

...

- More than 55,000 Greenpeace supporters emailed Justin Trudeau's cabinet to reject Teck.
- More than 100,000 petition signatures were collected by Greenpeace and other groups across Canada.
- Many of you participated in our Twitterstorm that trended across Canada. send [*sic*] a message to Cabinet in Ottawa last week.
- In collaboration with Leadnow and Équiterre, several hundred people visited their Ministers and Members of Parliament in their constituency to voice their opposition to the project.
- Around 100 people, in collaboration with climate strikers and Extinction Rebellion, occupied the Montreal office of Heritage Minister Steven Guilbeault to ask him to reject Teck.

1153. Stand.earth stated:

The decision comes after months of controversy and public protest against what would have been the largest tar sands mine ever built, and amid growing concerns about climate change and Indigenous rights. This includes a wave of protest in support of the Wet'suwet'en opposition to the Coastal Gaslink Pipeline in Northern BC, and a federal election campaign dominated by hundreds of thousands of students marching in the streets to demand action on climate change.

It further notes:

Since November 2019, more than 29,000 supporters have signed Stand.earth's petition to reject Teck's Frontier Mine. Thousands more supporters have visited their Members of Parliament, made phone calls, and written letters to Cabinet members and written letters to their local newspapers.¹⁶⁴⁸

(c) ***Northern Gateway Pipeline – Enbridge***

¹⁶⁴⁸ <https://www.stand.earth/latest/Canada-climate-energy/canadas-tar-sands/teck-announcement-signals-fossil-fuel-industry>

1154. Northern Gateway was a \$7.9 billion proposal advanced by Enbridge in 2008. The project was cancelled by the federal government in 2016.

1155. On November 29, 2016 West Coast Environmental Law's Gavin Smith stated:

"Many people have worked tirelessly for over a decade to defend their lands and waters from Enbridge's pipeline and tankers. This success shows just how powerful communities can be when they are willing to stand up and fight for their environment ..."¹⁶⁴⁹ "It's been a long and difficult road to protect the coast from Enbridge. Now that the project has been formally rejected, we will be watching closely to ensure that the federal government tables strong legislation that will permanently protect the Pacific north coast from oil tankers".¹⁶⁵⁰

1156. At the same time that Prime Minister Trudeau announced the rejection of Northern Gateway, he confirmed that the government would be tabling legislation (ultimately Bill C48) to formalize a tanker ban on the north and central coast of BC:

...an initiative that West Coast has advocated for many years.¹⁶⁵¹

1157. Ecojustice also celebrated a ruling by the Court overturning the government's approval of Northern Gateway:

Ecojustice lawyers represented ForestEthics Advocacy, Living Oceans Society and Raincoast Conservation Foundation, in legal challenges of the federal Cabinet's approval of Enbridge's Northern Gateway pipeline...The decision is a cause for celebration, and effectively shuts the door on Enbridge's pipeline.¹⁶⁵²

(d) ***Energy East Pipeline – TC Energy***

1158. The Energy East pipeline was proposed in 2013 by TC Energy to deliver oil from Alberta and Saskatchewan to Eastern Canada, converting about 3,000 kilometers of existing natural gas pipeline from Alberta to the Ontario-Quebec border and building a new 1,400-kilometre pipeline extending the line to New Brunswick. Irving Oil would have constructed a \$300 million terminal in St. John NB to export the delivered oil. The estimated project cost was \$12 billion. The project was cancelled in October 2017 by TC, which said it made the decision after a careful review of changed circumstances.

1159. On October 6, 2017, Stand.earth announced:

¹⁶⁴⁹ <https://nationtalk.ca/story/northern-gateway-rejection-proves-communities-can-stop-pipelines-including-trans-mountain>.

¹⁶⁵⁰ <https://nationtalk.ca/story/northern-gateway-rejection-proves-communities-can-stop-pipelines-including-trans-mountain>.

¹⁶⁵¹ <https://nationtalk.ca/story/northern-gateway-rejection-proves-communities-can-stop-pipelines-including-trans-mountain>.

¹⁶⁵² <https://ecojustice.ca/case/challenging-the-northern-gateway-pipeline/>.

We want to extend our congratulations and deep appreciation to the Indigenous communities on the front lines who have fought tirelessly to stop pipelines from being built on their territory. We thank all of the local communities, organizers, and organizations who've stood united in opposition to Energy East for the past five years.¹⁶⁵³ ... [It] was the collective work of the people who "changed the circumstances" [referred to in Trans Canada's announcement] and stopped this pipeline.

People power stopped the Northern Gateway Pipeline. It's now stopped Energy East.¹⁶⁵⁴

1160. Greenpeace campaigner Patrick Bonin reacted to the Energy East cancellation announcement:

"...This is an incredible victory for all the people, environmentalists, municipalities, landowners, unions, First Nations, and everyone who opposed the project, causing enough delays and ensuring assessment of the projects climate impact... The movement for a sustainable, just and prosperous economy will ensure these pipelines never get built."¹⁶⁵⁵

(e) **Corner Oil Sands Project – Statoil**

1161. Statoil bought the Kai Osh Dehseh oilsands project when it acquired North American Oil Sands Corp in 2007 for \$2.2 billion. The company announced in September 2014 that it was putting the project on hold for a minimum of three years citing increasing labour and material costs as well as limited pipeline access. The estimated cost of the project was \$10 billion. In 2016, Statoil sold its interest in the area to Athabasca Oil Corp.¹⁶⁵⁶

1162. In an article in the Financial Post in December 2016, Claudia Cattaneo indicated the company "put its reputation on the line to defend the deposits in its home country against a smear campaign led by Greenpeace, and even contemplated a massive upgrader near Edmonton."

1163. Cattaneo described it as the "starkest sign yet that the oilsands have lost their lustre... Sure, the oil price crash had a lot to do with it. But a decade of climate change policy uncertainty and anti-oilsands campaigns didn't help."¹⁶⁵⁷

1164. When the announcement was made in 2014 that the project was being out on hold, Greenpeace's Mike Hudema said that "Statoil's move shows that high-profile campaigns against pipeline proposals like Keystone XL.....are working." Hudema went on, "It's time our government acknowledges what the science has already shown, if we are serious about addressing climate change then the vast majority of bitumen needs to stay in the ground... Now

¹⁶⁵³ <https://www.stand.earth/blog/stopping-extreme-oil-infrastructure/trans-mountain-pipeline/energy-east-pipeline-has-been>

¹⁶⁵⁴ <https://www.stand.earth/blog/stopping-extreme-oil-infrastructure/trans-mountain-pipeline/energy-east-pipeline-has-been>

¹⁶⁵⁵ <https://www.greenpeace.org/canada/en/press-release/330/greenpeace-reacts-to-cancellation-of-energy-east-pipeline/>

¹⁶⁵⁶ <https://calgaryherald.com/business/energy/statoil-puts-oilsands-expansion-on-hold>

¹⁶⁵⁷ <https://financialpost.com/news/economy/statoils-exit-starkest-sign-canadas-oilsands-resource-has-lost-its-lustre>

we need to ensure the billions not spent on Statoil's Corner project are redirected to renewable energy solutions that solve the climate problem not accelerate it."¹⁶⁵⁸

(f) ***Shell Canada Carmon Creek Oil Sands Project***

1165. In October 2013, Shell Canada sanctioned the construction of an 80,000 barrel-per-day project in northwest Alberta. Then in October 2018 Shell said it was scrapping its Carmon Creek oilsands project citing a lack of pipelines to coastal waters, and advised that it would take a \$2 billion write down as a result of the decision.

1166. The Mayor of Peace River expressed "great concern" about the cancellation as the company had helped to fund several community projects. He said his first thought was for those working on the project.¹⁶⁵⁹

1167. Keith Stewart of Greenpeace responded, "Public opposition to new tar sands pipelines is keeping carbon in the ground, giving us time to develop the alternatives. We hope our new federal government will put its weight behind building the green energy economy we need to stop climate change, rather than backing pipelines like the Harper government did."¹⁶⁶⁰

1168. Shell's announcement came just hours after a report from Oil Change International, which concluded that pipelines are almost full; rail is too expensive to justify new projects; and oilsands expansion is about to stall.

1169. Greg Muttitt of Oil Change International stated, "That was a very significant confirmation of our analysis. And fortunate timing from our standpoint".¹⁶⁶¹

(g) ***Trans Mountain Pipeline – Government of Canada (not cancelled)***

1170. Although TMX has been approved, acquired by the federal government and survived several legal challenges, which have been rejected by the Supreme Court, there are active campaigns to ensure it is never built. Stand earth states on its website:

Justin Trudeau may have bought the Trans Mountain Pipeline from Kinder Morgan, but together, we'll make sure this pipeline expansion will never be built.¹⁶⁶²

1171. Stand.earth has also been running an active letter writing campaign to encourage insurers to stop insuring the project. They claim the initiative was successful in forcing Zurich insurance to drop the project. 151,000 people signed petitions to Liberty Mutual and Chubb to encourage them to drop TMX. And 11,000 people sent letters to insurance company CEOs. Throughout the

¹⁶⁵⁸ <https://financialpost.com/commodities/energy/statoil-puts-corner-oil-sands-project-on-hold-for-at-least-three-years-cuts-70-jobs>

¹⁶⁵⁹ <https://www.ctvnews.ca/business/alberta-town-disappointed-with-cancellation-of-shell-s-carmon-creek-project-1.2632187>

¹⁶⁶⁰ <https://www.cbc.ca/news/canada/calgary/shell-carmon-creek-oilsands-pipeline-uncertainty-1.3292093>. [Footnote citation added subsequent to Participant for Response phase]

¹⁶⁶¹ <https://www.linkedin.com/pulse/shells-carmon-creek-cancellation-victory-campaigns-rafael-lopez/>

¹⁶⁶² <https://www.stand.earth/people-vs-big-oil/trans-mountain-pipeline>

campaign, Stand.earth claims that 12 insurance companies have decided to “stop insuring [the] tar sands”.¹⁶⁶³

1172. The website, “Stop Trans Mountain Pipeline” states:

Canada is building a pipeline and tanker project that threatens the whales, the land, the water, and the climate. We’re organizing to stop it. If you’re ready to join the resistance to the Trans Mountain pipeline and tanker project, we’ve got a way to plug you in.

The website invites one to choose to a number of options to get involved.¹⁶⁶⁴

E. OIL AND GAS AND THE CANADIAN ECONOMY

1173. Anti-Alberta energy campaigns as detailed in this report, and the specific examples noted above, wherein the cancellation of significant infrastructure projects is celebrated, take aim at Canada’s number one export industry. Mineral fuels, including oil, are Canada’s largest export; in 2020 those exports amounted to \$86.3 billion (17.7% of all exports; Vehicles were 2nd at \$58.25 billion or 11.9% of the total).¹⁶⁶⁵

1174. These exports, over many decades, have contributed to a healthy and prosperous economy for Canadians. And if the industry is threatened and Canada cannot rely on foreign income, investment in clean oil-extraction campaigns and other research and innovation on alternative fuels, is also threatened, as noted below.

1175. As Canada looks to recover from the economic ravages of Covid-19, exports are key.

1176. In a December 2020 speech on trade to a Vancouver audience, Canada’s new Bank of Canada governor Tiff Macklem outlined contrasting pessimistic and optimistic economic scenarios for Canada’s post-Covid recovery. Oil exports and their role in generating foreign income to help with climate change figured prominently in both. In his pessimistic scenario, Macklem described a potential Canadian failure to diversify trade, boost investment and grow productivity, adding:

... new market access for our energy products doesn’t come on stream, holding back Canada’s ability to ship our number one export—oil. And without that market access, investment in cleaner oil-extraction technologies dries up.¹⁶⁶⁶

1177. In the optimistic scenario, the governor described the benefits of trade diversity, climate cooperation with the Biden Administration and investment to deploy technology and boost competitiveness.

¹⁶⁶³ <https://www.stand.earth/page/un-insuring-trans-mountain>

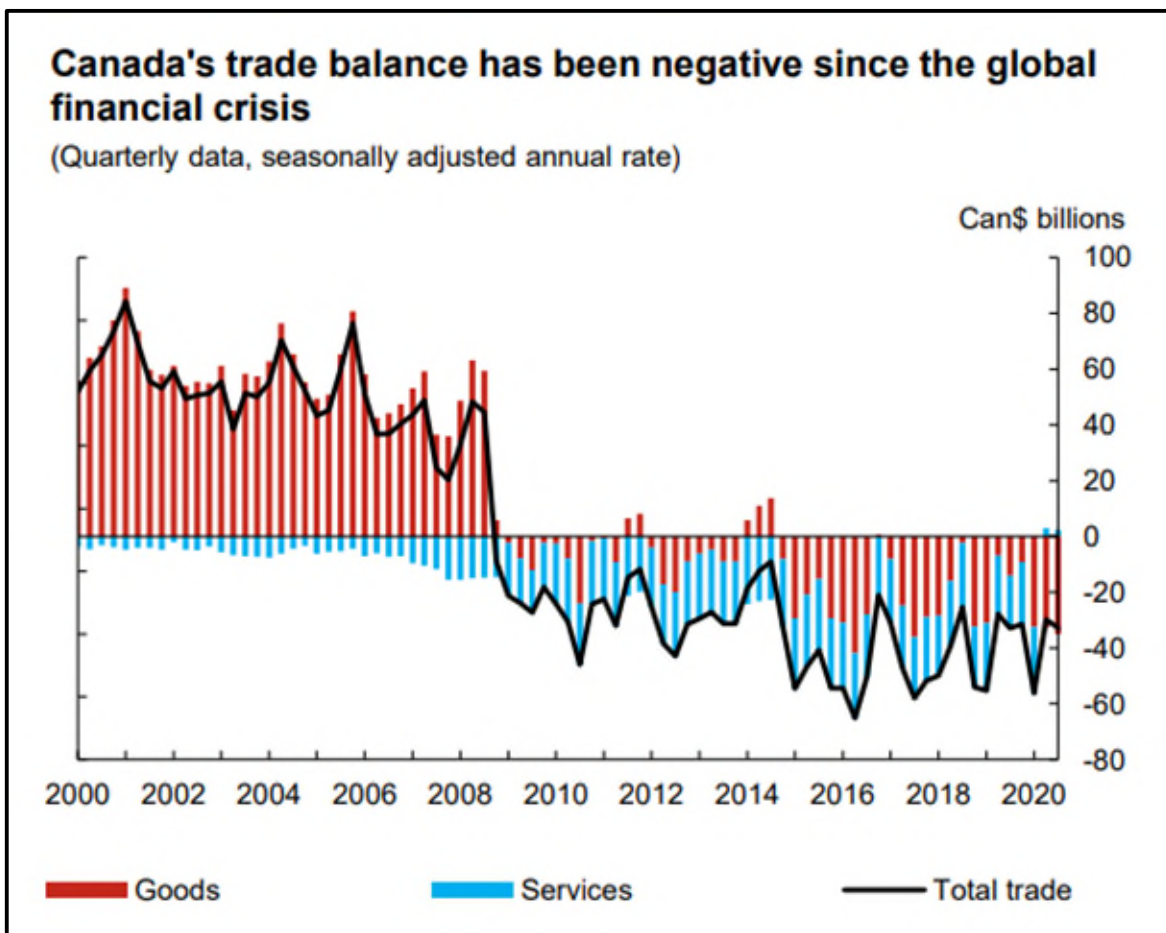
¹⁶⁶⁴ <https://www.stoptransmountainpipeline.org>.

¹⁶⁶⁵ www.worldstopexports.com/canadas-top-exports.

¹⁶⁶⁶ Strengthening our exports, Tiff Macklem, Governor, Bank of Canada, Speech to Greater Vancouver Board of Trade, December 15, 2020, <https://www.bankofcanada.ca/2020/12/strengthening-our-exports/>.

Canada's oil and gas sector benefits from access to markets. And we start to see an integrated continental approach to business opportunities from low-carbon growth.

1178. In both forecasts, improved energy exports and market access are vital. This appears evident in the chart Macklem published of Canada trade balance during the 2000s.



Source: Statistics Canada/Bank of Canada¹⁶⁶⁷

1179. Before 2008, Canada ran a healthy trade surplus, driven in no small part by revenue from the largest export group, oil and natural gas. Oil prices remained strong in the years following the 2007-2008 financial crisis. However, Canada's oil and gas exports could not grow substantially to continue keeping the national trade balance in surplus. When oil prices fell in 2015, the trade deficit worsened, and Canada still could not ship more oil to make up the difference.

¹⁶⁶⁷ <https://www.bankofcanada.ca/2020/12/strengthening-our-exports>

1180. With Canada facing a post-Covid federal net debt of at least \$1.204 trillion dollars, up 48 percent and rising, Macklem states that diversified markets and rising trade will help Canada's economy recover following Covid.¹⁶⁶⁸

F. NOT JUST ALBERTA

1181. Much has been written in the past several years about Alberta and its financial contribution to federalism. I do not intend to dwell on that issue here but it is worth noting a January 2021 report by the Fraser Institute entitled, "*Fiscal Federalism and the Dependency of Atlantic Canada*". The report notes that:

Fiscal federalism, the massive and unbalanced flow of federal money to and from the provinces, will create a huge fiscal challenge going forward for three reasons: economic difficulties emerging after the COVID-19 pandemic, the overhang of provincial and federal deficits prior to COVID-19, and most importantly, the decline of the energy industry, which arguably funded fiscal federalism in past years. For more than a decade, Alberta's taxpayers have funded the lion's share of federal fiscal transfers flowing predominantly to Atlantic Canada and Quebec. The decline of the energy industry will dramatically reduce this source of funding.¹⁶⁶⁹

1182. The oil and gas industry is struggling, and is not helped by the negative image promoted by anti-Alberta energy campaigns. Notwithstanding the often good intentions of these campaigns in looking to a clean energy future, discussed in the next section, the impact of higher oil price differentials, curtailed production, and cancelled projects jeopardizes that future and certainly Alberta's continued role as an energy and economic leader in Canada and the world. What is needed moving forward is a more engaged approach, with input from all stakeholders in Alberta's energy future, as I propose in my recommendations.

1183. The oil and gas industry is facing many challenges, including the rise of anti-Alberta energy campaigns that, in part, receive foreign funding. To address these challenges and for Alberta to continue to be leader, proactive initiatives, with input from all stakeholders in Alberta's energy future, are required.

¹⁶⁶⁸ Strengthening our exports, Tiff Macklem, Governor, Bank of Canada, Speech to Greater Vancouver Board of Trade, December 15, 2020, <https://www.bankofcanada.ca/2020/12/strengthening-our-exports/>

¹⁶⁶⁹ <https://fraserinstitute.org/studies/fiscal-federalism-and-the-dependency-of-atlantic-canada>.

Part VI – The Broader Campaign

PART VI

THE BROADER CAMPAIGN

A. INTRODUCTION

1184. The Corporate Ethics Document asks “Why a campaign on the tar sands oil?”¹⁶⁷⁰. Because, it answers:¹⁶⁷¹

Under the guise of “energy independence,” tar sands oil development threatens to lock us into a high carbon future, and threatens to derail all hope of staving off a catastrophic global warming cycle. ...Tar sands, along with coal-fired power plants, is the poster child for dirty fuels and provides the activist community with one of the most effective hooks for mounting an integrated North American campaign to educate the public on the destructive impact of our oil addiction. It also provides a vehicle for growing the clean energy movement in North America ...”

1185. And later provides: ¹⁶⁷²

The ultimate targets for this strategic track are the decision makers who make climate policy in Canada and the U.S. Intermediary targets, however, are largely policy, direct action, research, consulting, citizen engagement, and educational NGOs. Just as coal is the major threat to meeting carbon reductions by power generating utilities, tar sands oil is the major threat to meeting carbon reduction for transportation fuel. This needs to be recognized and incorporated into their work. Foundations are also targets of this effort as they need to make sure that efforts they fund integrate related issues. The highest priority targets are large climate change coalitions in North America to make sure they are promoting legislation that doesn’t leave loopholes for tar sands oil.

1186. An additional excerpt is useful:¹⁶⁷³

We have developed a hybrid campaign structure that allows for both NGO and funder preferences. Within this structure, NGOs involved in the campaign work together to determine their strategic plan and funding priorities. They are encouraged to seek funding for their individual campaign work, and the Campaign Coordinator and Deputy Coordinators will assist them in this regard when appropriate. For foundations that prefer to channel their funding through the Coordination Centre (see below), it will be allocated according to the funding priorities determined by the Campaign Groups and the Steering Committee.

1187. This statement, detailing the strategy of an integrated North American campaign structure, is consistent with the earlier parts of this Report, discussed in more detail below.

¹⁶⁷⁰ The Corporate Ethics Document. Page 2.

¹⁶⁷¹ The Corporate Ethics Document. Page 3.

¹⁶⁷² The Corporate Ethics Document. Page 11.

¹⁶⁷³ The Corporate Ethics Document. Page 13.

1188. I have found that there have been campaigns designed to frustrate the development of oil and gas in Alberta and its delivery to commercial markets, that such campaigns have been funded, at least in part, from foreign sources, and that such campaigns are part of a larger, global movement that continues to this day with the objective of, among other things, stopping the extraction of fossil fuels.
1189. Part IV of this report examines the flow of foreign funds to support the campaigns and Part II and Part III provide extensive detail on the formulation, implementation and the execution of the Tar Sands Campaign.
1190. In the course of the Inquiry, I developed the impression that there was a coordinated movement at two levels: the first, at the high level, among the well-endowed foundations that were funding a variety of campaigns and programs, and the second, among the environmental organizations, the ENGOs, that were the recipients of the funding and were executing the programs and campaigns. In this regard I agree with a quote attributed to Tzaporah Berman when she said:
- A. “The mistake Vivian Krause and Premier Kenney make is thinking that it’s one campaign. It’s not,” Berman added last month. “It’s dozens of campaigns. If it’s anything, it’s a movement or movements.”¹⁶⁷⁴
1191. I observe that the Tar Sands Strategy provided the framework for this movement among the Foundations and the ENGOs, as is described in detail throughout this report and as represented in the Strategy and tactics noted in Part II of this Report. The Strategy, its implementation and its sustained execution from 2008 to the present, is impressive. It has been effective in promoting the objectives, gaining publicity for the cause, and raising the profile of its participants. As noted below and elsewhere in this CBC news report, its participants have often celebrated their success:

How the American environmental movement dealt a blow to Alberta’s oilpatch

Activists identified perfect target Keystone XL Pipeline, and they think it worked

Alexander Panetta · CBC News · Posted: Nov 18, 2019 4:00 AM ET

The strategy to stifle Alberta’s oilsands came together in a hotel near a mall in Minneapolis over a decade ago.

It was the fall of 2008, and a group of environmental activists spent part of a conference there brainstorming tactics for slowing down the growth of the oilsands — and they identified pipelines as the most vulnerable target.

...

¹⁶⁷⁴ <https://www.ctvnews.ca/business/alberta-to-hold-2-5-million-public-inquiry-into-funding-for-oil-and-gas-foes-1.4495264?cache=ztdsfbqaznqc%3Fautoplay%3Dtrue%3Fclipid%3D1930113>

Now, those activists are claiming victory.

A decade later, Alberta crude is increasingly choked off from international markets; growth forecasts have been cut in half; iconic Canadian energy companies are rebranding themselves or moving head offices; and parts of Western Canada are simmering with talk of separatism.

Several American activists interviewed in recent days cited the tactical decisions made in 2008 as setting the stage for the industry's current woes.

"Keystone was a turning point," said Kenny Bruno, an organizer and author in the environmental movement who helped shape the anti-pipeline strategy.

"It really did impact the industry — as we intended."

Anthony Swift, director of the Canada Project at the Washington-based Natural Resources Defence Council (NRDC), agrees that the effort helped at least curb growth even if, overall, oilsands output continues to rise.

"We really did stop expansion," Swift said.

While delays in large oil projects are now fairly common, in 2008, it was near inconceivable that the United States would reject a pipeline — especially one from Canada, Swift said.

In November of that year, activists reviewed the protest methods employed up to that point and concluded they needed new tactics.

Bruno said they talked about protesting at refineries or lobbying industrial users such as shipping companies that might be using fuel sourced in Alberta.

The problem with targeting refineries and companies, however, was there were so many of them that altering the behaviour of one would have a limited impact. Isolating Alberta oil within a company's fuel supply was also impractical, Bruno said.

But when it came to pipelines, at the time, there were only a few major cross-border projects in the works.

Bruno, a New Yorker who has worked for a number of climate NGOs, including Oil Change, Greenpeace and Corporate Ethics, was among those advocating the view that stalling just one pipeline could do disproportionate damage to the industry.

He and others at the meeting identified the one pipeline project furthest from completion — Keystone XL, for which a permit application had been submitted just weeks earlier, and they zeroed in on it as their target.

...

What changed at the 2008 meeting, however, was the decision to coordinate efforts and throw all of their energy at stopping one project, said Susan Casey-Lefkowitz, a chief program officer with NRDC who attended the meeting.

And it worked, she said.

“At that time, [Alberta oil] was seen as the next Gold Rush. Every major oil company in the world was there,” she said. “That’s changed. and [sic] it’s changed for several reasons.”

Eleven years later — after numerous court battles, protests along the planned route and outside the White House and several delays, including one rejected presidential permit from then-president Barack Obama — Keystone XL remains in limbo.

...

Drag out and delay

An organizer of the first big Washington protest against Keystone XL, Bill McKibben, said the conflict over that pipeline created a template for future challenges.

He described the broader strategic goal this way: drag out and delay fossil-fuel projects and make them more expensive while alternative energy gets cheaper.

“Nothing gets built for free anymore, without a lot of resistance,” said McKibben, founder of the group 350.org, who has more recently turned his focus to contesting banks that fund oil projects.

...

So, can international climate activists really claim to have put a dent in Canada’s oilsands?

“I don’t think they’re wrong at all,” said Andrew Leach, an energy economist at the University of Alberta. “It’s massive.... It’s made a huge difference.”

The tactics might arguably be ineffective as a policy to slow down climate change — but, he said, it's impossible to deny the protests against Keystone XL helped restrain Canada's pipeline capacity, and the shortage of capacity is one of several factors bedeviling the oilsands.

...

Activists' newest strategy on Keystone XL is to delay the project beyond Trump's first term and hope a Democratic president might cancel the permit in 2021.

...

Swift, McKibben, Bruno and Casey-Lefkowitz all said they first heard concerns about oilsands expansion in the 2000s from Indigenous and environmental activists in Canada.¹⁶⁷⁵

1192. On June 9, 2021, TC Energy announced that it officially scrapped the Keystone Pipeline project. On news of this announcement, Bill McKibben was quoted, "When this fight began, people thought Big Oil couldn't be beat. But when enough people rise up we're stronger even than the richest fossil fuel companies."¹⁶⁷⁶

1193. The Washington Post article announcing cancellation of the project also stated, "Environmentalists on Wednesday hoped the long-awaited death of the Keystone XL would provide momentum for their ongoing efforts to kill Line 3, in part ramping up pressure on the Biden Administration to suspend the pipeline permit before the project is completed."

"David Turnbull, strategic communications director for Oil Change International, said the Keystone announcement 'only increases the urgency for President Biden to act immediately to stop' Line 3."¹⁶⁷⁷

1194. I observe that the Strategy has been successful in large part due to the focus on the common objectives of the Strategy as well as on a high degree of collaboration among the network of participants. I was struck by the contrast to my own experience in the not-for-profit sector in Calgary, where there is a more competitive environment as opposed to collaborative. In fact, as an aside, the success of the collaborative approach is something that we can learn from in achieving greater success in advancing community initiatives.

¹⁶⁷⁵ <https://www.cbc.ca/news/world/paralyze-oilsands-plan-keystone-pipeline-1.5356980>

¹⁶⁷⁶ <https://www.washingtonpost.com/climate-environment/2021/06/09/keystone-pipeline-dead/>

¹⁶⁷⁷ <https://www.washingtonpost.com/climate-environment/2021/06/09/keystone-pipeline-dead/>. [Footnote citation added subsequent to Participant for Response phase.]

B. ENGOS

1195. I am of the view that, generally speaking, networks of ENGOs work in concert with each other in a collaborative manner to advance what effectively is a movement. As the excerpt from Marlo Raynolds' work stated:

In short, the movement will be stronger and more effective when you understand your role in the movement, you communicate it, strengthen it, and synergize with it... We each need to know and focus on our niche.¹⁶⁷⁸

1196. Jason Mogus expands on this in his analysis of the four principles he reviews in his *Networked Change* work; namely:

- opening to grassroots power;
- building network hubs;
- framing a compelling cause; and
- running with focus and discipline.¹⁶⁷⁹

1197. As Tzeporah Berman observed in her book, *This Crazy Time*:

"Fourteen environmental organizations and five First Nations groups on both sides of the border are collaborating in the most incredibly effective coalition I've ever seen in my life, to bring the story of the tar sands to the world and rebrand it as 'dirty oil.' The result is that we're now seeing companies in the tar sands scrambling to figure out how they can continue their operations in a "clean" way."¹⁶⁸⁰

1198. I am further of the view that the movement appears to function as sometimes described to me, as an "industry" unto itself, that is, a distinct group engaged in a revenue generating exercise, employing a large personnel and capital. Coordinators such as Corporate Ethics, strategists like Mr. Mogus, legal support from envirolegal firms, and a variety of on-the-ground ENGOs advance various initiatives as referenced in Mr. Raynolds' observation.

1199. While some may ask about the intentions and motivations of organizations that participate in the movement, a dynamic that is rarely addressed is that these are entities that must also focus on their own relevance and survival. They must vie for public attention in an already information-saturated world. The risk and the limitation of these organizations is that they are generally single-purpose entities, for example environmental activism focused on blocking pipelines and opposing oil and gas, or other social or environmental causes. Like an industry unto themselves – these organizations can work like small armies continually looking to mobilize themselves against a cause and they are prepared to adapt. These organizations typically focus on large,

¹⁶⁷⁸ "Prepare Your Non-Profit Organization to Help Create a Wave of Positive Change", M. Raynolds, PhD, The Muttart Foundation, 2013 at p 28.

¹⁶⁷⁹ "Network Change: How progressive campaigns are won in the 21st Century", J. Mogus & T. Liacas, A NetChange Consulting Report, 2016. See also <http://netchange.co/networked-change> (formerly at <https://sustainabilitynetwork.ca/wp-content/uploads/2016/10/NetChange-NetworkedChange-2016-1.pdf>).

¹⁶⁸⁰ *This Crazy Time*, T. Berman (2012), Vintage Canada, p. 223.

high-profile causes where they have a chance of proving that they can have an impact. This in turn provides justification for donor support, and indeed, justifies their ongoing existence.

1200. This is not a specific criticism of these entities. Rather, it is, in my opinion and in my experience, a fact that most organizations (including not-for-profit and charitable organizations), most of the time, are striving to sustain themselves. In fact, financial sustainability is existential to all business entities. As these environmental agencies adapt to the reality of external global circumstances, they are willing to shape their stories to serve their own need to survive. As was related to me by an individual who was close to one of the organizations, “We were being entrepreneurial; we went to foreign donors because they were prepared to fund us.”
1201. This is not to say that ideology and values are not critical to the organizations; but it is to say that organizational and professional self-interest is understandably always present and colours the positions and actions of these entities. This self-interest bias is always present in any organization – within businesses, government, and non-government entities pursuing a cause. This is one broad reason why good governance is so important to ensure the healthy and effective functioning of society and is fundamental to the recommendations that flow from the Inquiry.
1202. One indication of the industry-like nature of this collaborative movement can be seen in the development of “Business Ethics Network” (“**BEN**”), a project of Corporate Ethics International – author of the Corporate Ethics Document. BEN described its background on its 2010 website as follows:

About the Business Ethics Network

In June 2003, many of the top environmental and environmental health markets campaigners from the U.S., Europe, and Canada came together for the first time They agreed to create the Business Ethics Network (BEN), with the mission of improving the effectiveness of corporate campaigns worldwide in order to make business practices more ethical in terms of the environment, health, social justice, and labor.

...

BEN is now aggressively bringing new Members, both individuals and organizations, into BEN, and creating additional resources for BEN Members and other corporate campaigners. New projects include “Corporate Campaign U” to provide workshops and intensive instruction for corporate campaigners, and a Corporate Campaign Primer to help educate the foundation community about the importance of this particular strategy for achieving significant social and environmental change.

[The mission of the organization is described elsewhere on the webpage, as follows:]

Our mission is to help transform the role of corporations in society by building the capacity of our members in their corporate campaign work,

by providing education, facilitating collaboration, and increasing recognition of their campaign successes with the funding community and the public.¹⁶⁸¹

1203. Another webpage on the Business Ethics Network website features member updates, conferences and awards, and features various campaigns, including the “Rethink Alberta” campaign discussed earlier in this report.¹⁶⁸²
1204. Another indication of the industry-like nature of this collaborative movement can be seen on a recent post by Stand.earth in a request for applications for a number of positions that indicate a broad range of campaigns and a focus on fundraising. The positions include:

A. Grant Writer/Researcher

Stand.earth is hiring a full-time Grant Writer/Researcher to develop compelling content and conduct prospect research for an active portfolio of 100+ international foundations, which include some of the largest and most influential environmental funders in the world. The ideal candidate will be a seasoned grant writer who will thrive in a fast-paced, high-volume work environment and who will demonstrate an interest in and a talent for communicating about innovative, results-driven environmental campaigning. In addition to grant writing, we are looking for a candidate who will lead and steward the growth of prospect research to provide a steady stream of prospective funders for established and emerging campaigns.

...

The candidate:

...will join a growing, industry-leading institutional giving team that is charged with raising more than \$7M USD in foundation revenue annually, aiming to grow to \$10M+ USD within the next two years.¹⁶⁸³

B. Senior Climate Campaigner – Fashion

...to play a key role in catalyzing action by the fashion industry to address its massive climate footprint, leading to a transformation shift among the fashion industry’s

¹⁶⁸¹ <https://web.archive.org/web/20100714073359/http://www.corpethics.org/article.php?list=type&type=16>

¹⁶⁸² <https://web.archive.org/web/20100714053648/http://www.corpethics.org/section.php?id=176>

¹⁶⁸³ <https://web.archive.org/web/20210211005509/https://www.stand.earth/about/work-with-us#GrantWriter/Researcher>

biggest brands to transition their global supply chains away from dirty coal to renewables, and ultimately to become fossil fuel free.¹⁶⁸⁴

C. Senior Forests Campaigner- Canada

...to be a key member of the forests team as we expand our work to leverage financial and market power to protect primary forests and address the climate, biodiversity and human rights implications of the growing forests-to-electricity wood pellet export sector in Canada and internationally. If you love developing creative campaign strategies, have a knack for organizing and corporate engagement, enjoy a well-timed headquarters protest, and thrive in front of a camera or behind an email action alert, this might be the perfect role for you!¹⁶⁸⁵

D. Cities Campaign Lead

If you care deeply about environmental campaigns that protect our climate by passing local policies to phase out fossil fuel infrastructure, and you love working in different political contexts, - then read on! This might be the perfect role for you.¹⁶⁸⁶

E. Global Partnerships Lead

... will lead partnership management across the initiative for our NGO/CSO partners. You will connect closely with others in the team to manage those relationships and processes to ensure our partners are engaged and empowered to campaign and organise for the objectives of the treaty initiative.

The duties include:

¹⁶⁸⁴ <https://web.archive.org/web/20210211005509/https://www.stand.earth/about/work-with-us#Senior%20Climate%20Campaigner%20-%20Fashion>

¹⁶⁸⁵ <https://web.archive.org/web/20210211005509/https://www.stand.earth/about/work-with-us#SeniorForestCampaigner>

¹⁶⁸⁶ <https://web.archive.org/web/20210211005509/https://www.stand.earth/about/work-with-us#CitiesCampaignLead>

“...connect and mobilise a diverse global coalition of organisations and individuals calling for a Fossil Fuels Non-Proliferation Treaty.”¹⁶⁸⁷¹⁶⁸⁸

1205. Here’s a recruitment posting from April of 2020 focused on hiring a “Senior Oil and Gas Campaigner” to stop Trans Mountain pipeline:¹⁶⁸⁹ ¹⁶⁹⁰

To this end, Stand’s Canadian climate and energy campaigns have focused on raising the ambition of climate policy and stopping new tar sands projects like the Trans Mountain pipeline and the Teck Frontier Mine. In the coming months, we will expand the scope of our work to include working to stop the growth of fracking and LNG in British Columbia. **This position is open until filled.**

Reporting to the Canadian Oil and Gas Programs Manager, **this position is responsible for aiding in developing and implementing our Canadian oil and gas campaign strategy, supporting issue research, conducting government relations, communicating through traditional and digital channels with key audiences, coordinating with allies, and executing public actions.** Successful candidates will demonstrate a background in climate and energy policy, public and government relations and a history of working in allyship with Indigenous Peoples. This position is based in British Columbia with a preference for candidates in our Vancouver hub office. **This is a full-time position with excellent benefits. Salary is commensurate with experience and adjusted based on location, but will likely be within the range of \$70,000.00 to 85,000.00 CAD.** This position will work closely with the development and digital teams and must have a strong interest and/or commitment to Stand.earth’s values.

Key Responsibilities

- With the direction of our Canadian Oil and Gas Programs Manager the successful candidate will help our Canadian Oil and Gas team to develop and implement a strategy to stop the growth of the tar sands, and fracking and LNG in British Columbia
- Build and manage relationships with elected and government officials
- Develop and execute online and offline tactics that support and achieve campaign goals and objectives, including the recruitment of supporters online and offline
- Support industry and issue-focused research
- Serve as one of Stand.earth’s spokespeople on this campaign and help to develop campaign communications strategies and supporting materials
- Manage relationships with partner organizations allies and coordinate relevant activities and events
- Develop communications that engage our online community, build our base and get noticed in the media

1206. Other organizations, like The Action Network, provide various services to assist clients in advancing their movements:¹⁶⁹¹

¹⁶⁸⁷ <https://web.archive.org/web/20210211005509/https://www.stand.earth/about/work-with-us#GlobalPartnershipsLead>

¹⁶⁸⁸ [intentionally blank]

¹⁶⁸⁹ <https://web.archive.org/web/20200406220835/https://www.stand.earth/about/work-with-us>

¹⁶⁹⁰ [intentionally blank]

¹⁶⁹¹ <https://www.actionnetwork.org/partnerships>.

THE ACTION NETWORK PARTNERSHIPS DEMO TOOLSET SUPPORT LOGIN OR SIGNUP

We're a mission-driven organization dedicated to building power for the progressive movement, so we don't have clients. We have *partners*.

EMAIL PARTNERSHIPS MOBILE MESSAGING **NEW!**

GRASSROOTS	MOVEMENT	NETWORK	ENTERPRISE
ALWAYS	\$1/THOUSAND emails sent/month STARTING AT	\$2/THOUSAND emails sent/month STARTING AT	
FREE	\$10 /month	\$100 /month	CUSTOM
GET STARTED	SIGN UP	SIGN UP	EMAIL US
<i>Grassroots activists who are just getting started with no email list</i>	<i>Small to midsize organizations who need unique branding</i>	<i>The best solution for complex, federated organizations</i>	<i>Custom solutions for our movement's largest organizations</i>
EMAIL	EMAIL	EMAIL	EMAIL
✓ Less than 10,000 emails/month	✓ 10,000 - 1,000,000 emails/month	✓ 50,000 - 1,000,000 emails/month	✓ More than 1,000,000 emails/month
✓ Mass emailer with A/B testing	✓ Mass emailer with A/B testing	✓ Mass emailer with A/B testing	✓ Mass emailer with A/B testing
✗ Upload lists	✓ Upload lists	✓ Upload lists	✓ Upload lists
✗ Custom wrappers	✓ Custom wrappers	✓ Custom wrappers	✓ Custom wrappers
✗ Automated ladders	✓ Automated ladders	✓ Automated ladders	✓ Automated ladders
ACTIONS	ACTIONS	ACTIONS	ACTIONS
✓ Petitions, Events, Letter Campaigns, Forms, Fundraisers, and Ticketed Events	✓ Petitions, Events, Letter Campaigns, Forms, Fundraisers, and Ticketed Events	✓ Petitions, Events, Letter Campaigns, Forms, Fundraisers, and Ticketed Events	✓ Petitions, Events, Letter Campaigns, Forms, Fundraisers, and Ticketed Events
✗ Fundraising pages without a tip jar	✓ Fundraising pages without a tip jar	✓ Fundraising pages without a tip jar	✓ Fundraising pages without a tip jar
✗ Shapefiles for custom Letter Campaign district matching	✓ Shapefiles for custom Letter Campaign district matching	✓ Shapefiles for custom Letter Campaign district matching	✓ Shapefiles for custom Letter Campaign district matching
✗ Event campaign maps	✓ Event campaign maps	✓ Event campaign maps	✓ Event campaign maps
✗ List swap tool, allowing for multiple action sponsors	✓ List swap tool, allowing for multiple action sponsors	✓ List swap tool, allowing for multiple action sponsors	✓ List swap tool, allowing for multiple action sponsors
✗ Custom page wrappers	✓ Custom page wrappers	✓ Custom page wrappers	✓ Custom page wrappers

1207. Based on my reading, research and observations since the start of the Inquiry, the industry like work does not appear to be limited to oil and gas – it may have involved and may continue to involve other sectors that impact Albertans, including forestry, agriculture and mining.

C. FOUNDATIONS

1208. Most observers trace the emergence of philanthropy as an industry to the Ford Foundation. The Ford Foundation was created in 1936 by Edsel Ford, son of Henry Ford. Initially, it was engaged in philanthropic campaigns directed by the Ford Family, mainly in the State of Michigan.¹⁶⁹² By 1951, however, its direction began to change. The two senior Fords had passed and an independent president, Paul Hoffman, took over leadership of the foundation. Symbolically, by 1953 the foundation also moved from the Ford home near Dearborn Michigan to New York City.¹⁶⁹³

1209. The nature and direction of the Ford Foundation took a more dramatic turn in 1966 when McGeorge Bundy became president. A former national security adviser to Presidents Kennedy and Johnson, used to policy advice and strategic development, Bundy brought that type of outlook to the foundation and began a legacy of active involvement advocating causes.¹⁶⁹⁴

1210. Henry Ford II was the last member of the Ford family to serve on the Ford Foundation's board. He resigned in 1976, disillusioned at the direction the foundation had taken, stating in his letter of resignation:

A significant portion of the abundance created by U.S. business enables the foundation and like institutions to carry on their work. In effect, the foundation is a creature of capitalism – a statement that, I'm sure, would be shocking to many people in the field of philanthropy. It is hard to discern recognition of this fact in anything the foundation does. It is even more difficult to find an understanding of this in many of the institutions, particularly the universities, that are the recipients of the foundation's grant programs.¹⁶⁹⁵

1211. Other foundations have evolved as well. Through subsequent generations, divorce, or simply the "institutionalization" of organizations, foundations have grown in mandate, breadth, and sophistication.¹⁶⁹⁶

1212. Foundations have become more strategic as well. A collection of foundations met in 2007 to determine "How can philanthropists turn the tide against global warming?" In a report entitled "Design to Win" they observed:¹⁶⁹⁷

Philanthropists, by contrast, have longer time horizons and can tolerate more risk. Besides being more patient investors, philanthropists have a strong tradition of filling gaps, spurring step-changes in technology and pursuing programming that transcends

¹⁶⁹² <http://www.fundinguniverse.com/company-histories/the-ford-foundation-history/>

¹⁶⁹³ <https://www.fordfoundation.org/our-work-around-the-world/china/history/>

¹⁶⁹⁴ David Horowitz and Jacob Laskin, *The New Leviathan* (Crown Forum, 2012), page 51.

¹⁶⁹⁵ Robert Grimm, *Notable American Philanthropists: Biographies of Giving and Volunteering* (Greenwood Publishing Group, 2002), page 97

¹⁶⁹⁶ David Horowitz and Jacob Laskin, *The New Leviathan* (Crown Forum, 2012), page 41 ff.

¹⁶⁹⁷ "Design to Win – Philanthropy's Role in the Fight Against Global Warming," California Environmental Associates, August, 2007 (at page 5). Sponsored by the David and Lucile Packard Foundation, the Doris Duke Charitable Foundation, Energy Foundation, Joyce Foundation, Oak Foundation, and the William and Flora Hewlett Foundation. <https://www.climateworks.org/wp-content/uploads/2007/08/Design-to-Win.pdf>

both national boundaries and economic sectors. Such capacities are exactly what are needed to tackle global warming.

1213. And concluded:

... additional funding of about \$600 million is needed annually to implement Design to Win's strategies.

We recommend, in the broadest of terms, a three-part menu of investments:

1. Support existing NGOs with deep knowledge of local conditions and needed strategies; cultivate new organizations where necessary.
2. Create nation-specific expertise to facilitate grant making. Organizations that have the local capacity and expertise are needed to oversee highly leveraged, strategic interventions.
3. Build International Best Practice Centers for critical "don't lose" sectors to accelerate the diffusion of knowledge and innovation, either by establishing new institutions or linking existing organizations in loose networks.¹⁶⁹⁸

1214. Regranting programs have further refined this practise as they serve to consolidate funding and provide infrastructure support.¹⁶⁹⁹

1215. Many of the foundations identified as Funders in this report, were created, as was the case with the Ford Foundation, Pew Charitable Trusts, and the Rockefeller Brothers Fund, as a result of great wealth generated through capitalism, and interestingly enough, some of them were born from wealth created from oil and gas.

1216. A review of their websites reveals a myriad of social causes, many with an international focus. Many of them state clearly that they have an objective of dealing with climate change or creating a greener environment. Notably, there are very few comments emanating from the organizations, or their officers, to the effect that they have a goal of landlocking Alberta oil and gas, as might explicitly evince an intent harmful or injurious to the Alberta oil and gas industry, as per my Inquiry Terms of Reference.

D. **OBSERVATIONS ON THE BROADER CAMPAIGN**

1217. Throughout the course of the Inquiry, I heard many theories advanced as to what is driving the anti-Alberta energy movement, including those detailed in the Inquiry commissioned reports that are posted on the Inquiry website and circulated for comment during the Participants for Comment phase of the Engagement Process. It is a question that this Inquiry did not have the

¹⁶⁹⁸ "Design to Win – Philanthropy's Role in the Fight Against Global Warming," California Environmental Associates, August, 2007 (at page 7). Sponsored by the David and Lucile Packard Foundation, the Doris Duke Charitable Foundation, Energy Foundation, Joyce Foundation, Oak Foundation, and the William and Flora Hewlett Foundation. <https://www.climateworks.org/wp-content/uploads/2007/08/Design-to-Win.pdf>

¹⁶⁹⁹ "Reimagining Fiscal Sponsorship – expanding the ways in which donors, nonprofits, and other social change actors can collaborate for change", at page 2. <https://newventurefund.org/wp-content/uploads/2020/07/Reimagining-Fiscal-Sponsorship.pdf>.

resources to ultimately determine, other than to observe the movement involves great amounts of funding and outstanding collaboration among many like-minded organizations.

1218. I am prepared to accept that the Tar Sands Campaign Strategy and the funding thereof, was driven at the outset by US foundations, primarily concerned with the challenges of climate change. Undoubtedly, there have been some supporters of the Strategy who have gained economically by supporting the Strategy, but the Inquiry has not conducted any research to support that, and I make no findings in that regard.
1219. I am also prepared to accept that many of the ENGOs are driven by an honest concern about the threats of climate change. However, I also believe the ENGO community is, as noted above, an industry unto itself. Like any business financial sustainability is essential. Trends emerge, markets change and financial sustainability is ensured by adapting to make your product attractive on an ongoing basis. Many of them have had a history of moving from cause to cause, from salmon farming, to forestry, to water, to oil and gas, to agriculture. There is no doubt these are all important issues to humanity, but these organizations sustain themselves and their management with brilliant marketing campaigns. They are highly effective fundraisers and marketers.
1220. Perhaps in large part because of the need to sustain themselves, I noted that much of the communication from ENGOs reinforces what Hans Rosling in the book "*Factfulness*", calls the "Urgency Instinct".

We do not seem to have a similar instinct to act when faced with risks that are far off in the future. In fact, in the face of future risks, we can be pretty slothful.

The attitude toward future risk is a big problem for activists who are working on long timescales. How can they wake us up? How can they galvanize us into action? Very often, it is by convincing us that uncertain future risk is actually a sure immediate risk, that we have a historic opportunity to solve an important problem and it must be tackled now or never: that is by triggering the urgency instinct.

This method sure can make us act but it can also create unnecessary stress and poor decisions. It can also drain credibility from their cause. The constant alarms make us numb to real urgency....

1221. Rosling goes on to describe an instance at a TED Conference in 2009 when Al Gore sought Rosling's assistance to develop a graph showing a worst-case future impact of an increase in CO2 emissions. Rosling attests to tremendous respect for Gore and his efforts in raising awareness of climate change issues, and he agrees that climate change is an issue that requires being addressed. He refused Gore's request however, as he rejected creating a sense of fear to draw attention to the issue.
1222. Rosling states:

Fear plus urgency make for stupid, drastic decisions with unpredictable side effects. Climate change is too important for that. It needs systematic analysis, thought-through decisions, incremental actions and careful evaluation.

Rosling goes on:

To be absolutely clear, I am deeply concerned about climate change as I am convinced it is real.... I understand the temptation to raise support by picking the worst projections and denying the huge uncertainties in the numbers. But those who care about climate change should stop scaring people with unlikely scenarios. Most people already know about and acknowledge the problem. ... Let's ... take action: action driven not by fear and urgency but by data and coolheaded analysis.

Climate change is way too important a global risk to be ignored or denied, and the vast majority of the world knows that. But it is also way too important to be left to sketchy worst-case scenarios and doomsday prophets.

When you are called to action, sometimes the most useful action is to improve the data.¹⁷⁰⁰

1223. The concerns identified by Rosling are concerns that I share. In submissions to the Inquiry, many of my interviews, and much of my research, I have been directed to observations with which I agree, to the effect that activism that leads to extremism has the potential to seriously undermine the ability to achieve positive outcomes. Extremism shuts down open-mindedness, a trusting, free and respectful exchange of ideals, and can limit and even prevent, open inquiry into the conditions and impacts of desired change. Extremism thrives on narrow mindedness, divisiveness, the fracturing of interests, and often leads to polarization which can easily turn into aggressiveness, hostility and dehumanizing behaviours of others who may have different views. I agree with the observations of others that this is a huge risk for governance integrity within a civil society, and regrettably, it appears to me that Canada is increasingly moving in this direction.
1224. The environmental movement, in my opinion, can and should be given credit for raising the issue of climate change, and other conservation matters, on the national agenda. But I am concerned that the discussion has become polarized and paralyzed – polarized and paralyzed to the extent that it is nearly impossible to raise questions or make suggestions that don't align with the agenda of the ENGOs, which is often supported by media.
1225. I am of the view that there is room for rational dialogue on the issues of climate change. I am also of the view that Canada is well positioned to make an enormous contribution to global solutions to climate change, and that industry, governments and citizens should be focused on those opportunities.

¹⁷⁰⁰ Factfulness Ten Reasons We're Wrong About the World – and Why Things are Better Than You Think, Hans Rosling, 2018, Flatiron Books

**Part VII –
Submissions from Participants for
Response**

PART VII

SUBMISSIONS FROM PARTICIPANTS FOR RESPONSE

A. INTRODUCTION

1226. As noted above, the Inquiry's Rules afforded me the opportunity under "IV Standing – Participants for Response" to provide confidential written notice to "Persons", including those subject to a potentially material adverse factual finding (or findings) in my report. More generally, the Terms of Reference set out a "Policy respecting standing" which contemplates granting standing to participate in the Inquiry if:
- (a) the applicant is or may be directly or substantially affected by the subject-matter of the inquiry, or
 - (b) the applicant has a clearly ascertainable interest or perspective that ought to be separately represented at the inquiry in order to assist the inquiry to fulfill its mandate.¹⁷⁰¹
1227. Starting June 18, 2021, notices were sent to about 40 organizations that had been identified as being potentially involved in an anti-Alberta energy campaign or campaigns and that standing as a Participant for Response had been granted to the recipient. Recipients were invited to access a secure dataroom platform (the "Dataroom") to view materials and upload any submissions. Recipients who chose to access the Dataroom were provided with excerpts of a draft version of Part III relevant to the potential findings with respect to the recipient as well as draft versions of Parts I, II, IV, V, and VI. Supporting documentation and the Deloitte Report were also provided for review. Recipients were invited to make submissions in accordance with the Rule 22 of the Rules and to provide these by July 16, 2021
1228. The material provided to each party for review included material necessary to understand the context surrounding potential findings and contained potential findings related to them, which was generally obtained from information published by them, or statements they made – information that generally would be familiar to them. The objective of the Participants for Response process was to provide an opportunity to respond to this information and advise as to any inaccuracies.
1229. In the notices, I also stated that if I made any finding with respect to the recipient, I would clearly declare that any such finding does not in any way suggest the campaigns have been unlawful or dishonest, or that conduct on which a finding may be based should in any way be impugned. As I have made clear throughout this report, I do not find that participation in any anti-Alberta energy campaign or evincing an intent harmful or injurious to Alberta's oil and gas industry constitutes misconduct on the part of any party, including those involved in foreign funding and government funding, and I do not impugn such participation.
1230. A number of responses were provided to the Inquiry in time for consideration in the preparation of the final report. Those responses considered are listed in the attached Schedule "J". Some responses provided further information and clarifications that have been incorporated into the body of this Report. Many of the responses had common themes discussed and commented on

¹⁷⁰¹ Terms of Reference, s. 5.

further below. All responses were appreciated and this report has benefited from the efforts undertaken by those who chose to participate.

B. COMMON THEMES IN THE SUBMISSIONS

1231. In addition to making contributions that have been incorporated into the body of the Report, the submissions received raised several issues and common themes which warrant separate consideration and treatment in the report. Some of the issues raised are not within my mandate and beyond the resources of this Inquiry to address. I have sought to provide clarifications where they seemed most necessary. These submissions and the views communicated therein are an important part of the engagement process of this Inquiry, and what I hope is only the beginning of a more constructive dialogue on issues of critical importance to all of us.

(a) *Connotations of “Anti-Alberta” in “Anti-Alberta energy campaigns”*

1232. Most of the submissions received objected strongly to the suggestion that their campaigns were “anti-Alberta” or “anti-Albertan”, with some interpreting it as an implicit condemnation of their organizations. This label, it was submitted, would only fuel polarization and could cause reputational harm to those identified in the report as involved in anti-Alberta energy campaigns.

1233. Many pointed to their track record of involvement in a number of causes and initiatives. Some of this work had little or nothing to do with Alberta or with oil and gas. Some of this work was done in conjunction and consultation with industry. Some work was endorsed by governmental entities. As one submission put it in describing their work, “working to contribute fact-based information and advance environmental improvements should never be considered ‘Anti-Albertan’”. In short, the label “anti-Alberta” was neither accurate nor warranted.

1234. I agree that, on its own, the label “anti-Alberta” or “anti-Albertan”, is not helpful or constructive; it does not reflect the objectives or work of this Inquiry.

1235. With my Ruling on Interpretation, I specifically clarified my interpretation of “anti-Alberta” in the context of “anti-Alberta energy campaigns” was as a geographical modifier, not something with connotations of being “pro” or “anti” Alberta:

the term “anti-Alberta”, in my view, uses Alberta as a geographical modifier, and clarifies that the Commission’s mandate pertains to oil and gas resources located in Alberta, mindful that a party’s opposition might be targeted at Alberta’s oil and gas resources specifically, or concern a broader collection of oil and gas resources, of which Alberta’s particular resources are a subset. I do not interpret the term “anti-Alberta” as indicating that the Commission is to inquire in to whether opposition to oil and gas development in Alberta is “against Alberta” or its interests in some sense. As I interpret the Terms of Reference, the Commission’s mandate is not to determine whether support or opposition to oil and gas development in Alberta is pro- or anti-“Albertan”; rather, it involves an examination of issues affecting development of oil and gas resources located in Alberta.¹⁷⁰²

1236. The definition of “anti-Alberta energy campaigns” in the Terms of Reference afforded me additional room for interpretation of my mandate, largely based on what realistically could be

¹⁷⁰² Ruling on Interpretation, s. 8.

done given the resources of the Inquiry. Thus, I found in the Ruling on Interpretation that it was not my mandate to determine whether any given opposition to the development of Alberta's oil and gas resources is "misleading or false"¹⁷⁰³, nor whether that development is "economic, efficient and responsible". Instead, my mandate was focused on opposition to the development of Alberta's oil and gas resources "in a broad and general sense".¹⁷⁰⁴

1237. I appreciate that, as some of the submissions pointed out, this interpretation of an "anti-Alberta energy campaign" casts a wide net. For example, some pointed to climate change initiatives by the Government of Alberta that could arguably fall in the definition of an "anti-Alberta energy campaign". Others objected to the characterization of their organizations have anything to do with Alberta oil and gas development.
1238. Given these concerns, it is important here to clarify that just because an organization is identified in this report as having participated in an anti-Alberta energy campaign or having evinced an intent harmful or injurious to the Alberta oil and gas industry, this is not intended and should not be construed to be a representation of that organization's primary focus of its work. To the extent that the submissions are made available to the public, I hope that the valuable and important work of these organizations and their contributions to a number of important causes and initiatives can speak for itself.
1239. Further, given the confusion and potential for misinterpretation surrounding "anti-Alberta" in "anti-Alberta energy campaigns", it is necessary to state again that I do not find that participation in any anti-Alberta energy campaign constitutes misconduct on the part of any party that should be viewed as impugnable in any way. I agree with the sentiment expressed through many of the submissions that informed public debate on important issues is in the public interest and, further, that free speech and free association is protected in our country. Indeed, the Inquiry seeks to promote informed public debate on issues important to Albertans.
1240. Finally, some submissions raised a very concerning issue that the report could jeopardize safety in suggesting any campaigns were "anti-Albertan" or otherwise impugnable. As I have set out above, this is not what this report is about and I abhor threats of violence and harassment in any way related to the matters before the Inquiry.

(b) ***Spending on anti-Alberta Energy Campaigns Relative to Overall Spending***

1241. Some of the submissions were critical of the report for failing to make comment regarding the proportion of funds identified as being related to an anti-Alberta energy campaign in comparison to the overall funds spent by an organization.
1242. I do not consider that the Terms of Reference required me to inquire into what portion of the overall spending of an organization went towards efforts associated with anti-Alberta energy campaigns, nor do I view this information as being helpful in understanding the role of foreign funding, if any, in anti-Alberta energy campaigns.

¹⁷⁰³ Ruling on Interpretation, ss. 9-10.

¹⁷⁰⁴ Ruling on Interpretation, s. 7.

1243. Accordingly, this report makes no findings in respect of the amount of funds an organization may spend in relation to anti-Alberta energy campaigns relative to the amounts that organization may spend on other efforts, and no conclusion should be drawn that spending on anti-Alberta energy campaigns is the predominate, or even a substantial, part of an organization's overall spending.

(c) ***Consideration of Foreign Funding of Efforts Encouraging Development***

1244. Some of the submissions were critical of the report for failing to inquire into foreign funding of investing in or efforts encouraging development of Alberta's oil and gas resources, or into campaigns aimed at encouraging such development generally. I do not consider that an inquiry into these topics is within my mandate as set out the Terms of Reference, which specifically directs an inquiry into attempts to delay or frustrate, as opposed to invest in or encourage, development of Alberta's oil and gas resources. Accordingly, this report does not address the investment in or encouragement of development of Alberta's oil and gas resources.

(d) ***Climate change***

1245. Many of the submissions emphasized the pressing and important fact of climate change, with some pointing me to the science and data on climate change. It was generally suggested that by not engaging in the merits or science of climate change that the Inquiry and this report was deficient, biased, and not in the public interest. As one submission conveyed, a report that suggests action on climate change is "anti-Alberta" is irresponsible, polarizing and harmful to Alberta's long-term interests.

1246. As I hope has been clarified in the preceding section, this is not that report. Further, this is not an Inquiry into the science of climate change. As I have stated in the past, I do not consider the science of climate change to be part of my mandate under the Terms of Reference and I do not intend to make any findings of fact respecting climate science in this report. An investigation into foreign funding of anti-Alberta energy campaigns does not require an investigation into climate science, nor would such an investigation likely be warranted.

1247. Further, I do not view my mandate as incompatible with accepting climate change as a real and serious issue. The challenges Alberta faces with the development of oil and gas and the consequences of the loss of that development overlap with the challenges of climate change. Those challenges will coexist for some time. Solutions will require open engagement of diverse interests and stakeholders. The investigation into the potential flow of foreign funds to campaigns that oppose the development of oil and gas resources in Alberta and the issues this raises for public policy is an important part of navigating Alberta's energy future. In many ways, this type of criticism reflects the "all or nothing" tendency that is polarizing the public policy debate and preventing constructive dialogue.

1248. Other submissions spoke about the potential for Alberta to be a leader in renewable energy and of the importance of working with industry to develop solutions to economic and environmental challenges Alberta faces. The importance of responsible development and a diverse economy was also emphasized. I share these views and they have informed some of my recommendations.

1249. The scope of this Inquiry is too narrow to address these pressing issues of our time or to try to reconcile opposing viewpoints on what should be done with Alberta's oil and gas resources. However, I hope this report, and in particular, my recommendations, will help to promote a further and improved dialogue.

(e) **Evidence**

1250. Several submissions questioned the reliability of the evidence collected and considered in the course of the Inquiry and in this report. Some of these concerns overlap with concerns that the Inquiry was not sufficiently engaging with the science of climate change, or that the evidence relied on did not provide a full representation of the work an organization does, both criticisms which have been addressed above.
1251. The key findings of this Inquiry have relied upon the public record. From there, the Deloitte Report attempted to trace funding specifically to anti-Alberta campaigns, also based on the public record. As explained above and in the Deloitte Report, the nature of grant descriptions and the fungibility of money posed challenges to this tracing exercise. This itself has informed at least one of my recommendations. Where some submissions disputed amounts attributed to their organizations I have considered their submissions and made note of their comments in this report.
1252. These findings are based in the public record and, indeed, are in many cases from the organizations' own websites, publications and tax forms. For the most part, this type of evidence should not be controversial. Such information would be generally familiar to the Participants for Response. In a number of submissions, the recipient said that they stood by the statements that were attributed to them in the draft report.
1253. Other submissions questioned the amounts attributed for government funding received by their organizations as it was not related to anti-Alberta energy campaigns. It is important to clarify here that the Terms of Reference sought inquiry into total government funding received by certain organizations; they did not require, and I make no findings regarding, government funding traced to anti-Alberta energy campaigns.¹⁷⁰⁵
1254. For those who have called for public hearings and a standard of evidence resembling that in a court of law, this Inquiry is not that type of inquiry. The scope of the investigation, as described above, was relatively discrete. Contrary to how some of characterized this Inquiry, climate change is not on trial. The organizations who have been involved in anti-Alberta energy campaigns are also not on trial; their campaigns are lawful and protected in our democracy.
1255. Further, the Inquiry has used an engagement process with respect to these investigative findings. The Deloitte Report and the relevant portions of a draft version of this report were provided to Participants for Response. Some provided further clarification and correction which has been taken into account above. This report has benefited from the corrections, additional information,

¹⁷⁰⁵ Terms of Reference, s 2(1)(b).

and insights provided in these submissions – I hope this is evident in the final report and I thank all who responded for their submissions.

(f) ***Freedom of Expression, Assembly, and Association***

1256. Some of the submissions received expressed concern that the report and the Inquiry itself might have a chilling effect on the exercise of freedom of expression, assembly, and association by organizations identified in the report or on the subject matter of the report more generally.
1257. Freedom of expression, assembly, and association are fundamental freedoms enjoyed in Canada. They are constitutionally enshrined and necessary for the effective functioning of our society. Nothing in this report should be taken as in any way seeking to limit these important rights and freedoms, including as such rights and freedoms may be exercised with respect to matters pertaining to the development of Alberta's oil and gas resources.
1258. While this Report calls for greater transparency, it does so for the purpose of encouraging more open and transparent dialogue on matters of importance, and not for the purposes of stifling the ability of parties to express their views on such matters.
1259. While the Inquiry has come to an end, I hope this is only the beginning of a more constructive engagement and dialogue on Alberta's energy future.
1260. I hope this Inquiry has shed a light on anti-Alberta energy campaigns, so that Albertans and Canadians have a greater awareness of the movement, its objectives and its success.
1261. The recommendations in the ensuing sections of this Report are focused on the future and are intended to help address the issues we face. We do, in my opinion, have an enormous opportunity in Alberta and Canada to make a contribution to the world, while creating opportunities for economic growth and prosperity for our citizens, and for others in the world.

PART VIII – Recommendations

PART VIII **RECOMMENDATIONS**

A. INTRODUCTION

1262. The preceding report provides details of well-defined, well-funded and well-implemented strategies, including “The Tar Sands Campaign” (collectively referred to as “**the Strategy**”). The Report provides details to the effect that a significant portion of the design, direction and funding for the Strategy emanated from foreign sources, including some U.S. ENGOs and, a relatively few, well-endowed US Foundations.
1263. The Strategy has evolved from a focused plan to land-lock the Canadian oil sands, to an international movement to wean the world off fossil fuels. Whether that evolution was a deliberate effort is open for debate. I make no findings to that effect but the fact that there is an international effort to wean the world off fossil fuels is clear.
1264. Although, as noted in the report, there does not appear to have been one independent, controlling entity, there has been an effective network of participants at every level of the Strategy that have demonstrated a commitment to collaboration and alignment, resulting in the success of achieving the original objectives of the Strategy.
1265. Another significant factor that facilitated the success of the Strategy has been the political, business and social environment of the past 20 years. Industry and governments provided an open door that allowed the Strategy to grow and develop. Unlike the network of participants in the Strategy, individual corporations, industry associations, think tanks, and governments, although they may have had similar goals and objectives, were not aligned; did not collaborate, and instead worked in silos. They were understandably focused on advancing the goals and objectives of their own organizations, but from a governance perspective, they failed to recognize an existential threat to the industry in which they operated.
1266. As noted, during the course of the Inquiry, I conducted informal interviews of industry leaders and observers, researchers, academics, First Nations leaders, environmentalists, government bureaucrats, and politicians. One of the most common questions I was asked, was, “In the event you are able to confirm the foreign funding of anti-Alberta energy campaigns then what? What can be done about it?”
1267. To be very clear, I have not found any suggestions of wrongdoing on the part of any individual or organization. No individual or organization, in my view, has done anything illegal. Indeed, they have exercised their rights of free speech.
1268. Through all the reading, research, informal interviews, and input from the Inquiry’s Engagement processes, I have developed six key recommendations. These recommendations are not focused on seeking retribution, attaching blame or seeking damages from anyone; rather they are focused on the future. How can Albertans move forward constructively and continue to make a positive contribution to Canada building on our valuable natural resources and our ingenuity. There is an underlying theme of these recommendations that demands strong governance plus greater collaboration and alignment among all stakeholders.

1269. I have been troubled, I am sure like the majority of Albertans and Canadians, with the polarization in our society today on many issues, including energy and the environment. I am also troubled by the almost unfettered ability of any organization, or group, to advance their self-interest without full transparency and accountability. And when the funding of this self-interest emanates from foreign organizations, that, in my view, becomes a serious issue for all Canadians.
1270. The Strategy began in 2008 and has been successful due to the leadership and financial commitment of its proponents and continues to be active to this day. It should therefore be clear, if industry and governments wish to “level the playing field”, then the success of the recommendations that follow will not be measured in the short term, but will require the strong leadership and financial commitment of industry and government on a sustained basis in the years to come.
1271. Details in support of each recommendation are contained in the ensuing sections of the Report. The recommendations are as follows, together with the rationale for the recommendation based on my findings from the work of the Inquiry:
1. **Transparency and Accountability**
Recommendation: Develop standards for not-for-profit/charitable organizations that provide a level of consistency and a more level playing field with the corporate sector, in terms of transparency, accountability and governance.
Rationale: The charitable/not-for profit-sector is significant within the Canadian economy and society. It attracts large donations (domestic and foreign) from public and private foundations, governments, organizations and individuals that can influence public policy. Regulatory and governance oversight of the sector must be enhanced to ensure full and open disclosure for the protection of Canadians.
 2. **First Nations**
Recommendation: Create an opportunity for meaningful dialogue among First Nations communities, and between First Nations communities and other Albertans and Canadians to advance understanding and Reconciliation with a focus on economic development and opportunities to achieve greater prosperity for Indigenous peoples.
Rationale: Many First Nations communities are located on or adjacent to lands that present economic development opportunities. First Nations communities also have unique legal rights that often place them in the centre of debates and disputes between opponents and proponents of development projects. There is a need for meaningful and open dialogue to allow First Nations communities to explore economic development opportunities for their people, while balancing their strong commitments to protecting the land and the environment.
 3. **Science, Technology and Innovation**
Recommendation: Undertake a highly focused initiative, similar to Alberta’s historically successful Alberta Oil Sands Technology and Research Authority (AOSTRA), that maximizes collaboration, alignment and investment by all stakeholders in advancing Alberta as a leader in energy science, technology and

innovation to produce low-cost, low-carbon energy supplies and technologies for the world.

Rationale: The public discourse surrounding oil and gas and the development of Canada's energy resources has been one-sided and mostly focused on the negative elements of a fossil fuel economy. Fossil fuels will be part of the international energy mix for decades to come, and Alberta has been a world leader in innovation, not only of fossil fuels, but of all forms of energy. Alberta can and should contribute to climate change solutions around the world, capitalizing on our strong history of science, technology, ingenuity and entrepreneurship.

4. Reliable Information

Recommendation: Invest in and support the collaborative development of a methodology, including governance oversight, to establish world-class best practices, standards, and processes for the measurement, accumulation and reporting of GHG emissions data.

Rationale: Different countries, and even different resource developers within each country, have varying standards and processes for measuring and reporting on GHG emissions, yet accurate and meaningful GHG reporting is critical to tackling climate change. Alberta has the opportunity to be a world leader in developing GHG measurement standards and processes.

5. Natural Resource Development Strategy

Recommendation: Provide a mandate to the Business Council of Alberta to engage with the Business Council of Canada and together lead a national effort to develop a Natural Resource Development Strategy for Canada.

Rationale: Canada's economic history is based on the responsible development of our abundant natural resources and exporting them to international markets. Currently, there is a divergence of focus among key stakeholders that is preventing Canada from fully seizing on its opportunities.

6. Create a new brand for Canadian energy.

Recommendation: Develop, in collaboration with industry and with the direction and advice of marketing and communications experts, a long-term strategy built on a vision of being a global leader in lower carbon energy and climate solutions, while emphasizing the importance of energy in creating a high quality of life and a prosperous future for people everywhere. In so doing, recognize Alberta's reputation for innovation and ingenuity, and underscore Alberta's strong record of protecting its lands and nature.

Rationale: As noted, the public discourse on energy and the environment in Canada has been one-sided. Complete information, while it may be available, has not been well or fully communicated. Canadians want to ensure a clean environment, as well as prosperity, for generations to come, but they need complete and reliable information to allow them to become energy literate. The five recommendations preceding this will form a foundation for better, more complete information for Canadians, which needs to be communicated effectively and professionally.

Recommendation 1- Transparency and Accountability

Develop standards for not-for-profit/charitable organizations and public institutions that provide a level of consistency and a more level playing field with the corporate sector, in terms of transparency, accountability and governance.

Rationale: The charitable/not-for-profit sector is significant within the Canadian economy and society. It attracts large donations, domestic and foreign, from public and private foundations, governments, and individuals that can influence public policy. Regulatory and governance oversight of the sector must be enhanced to ensure full and open disclosure that informs and protects Canadians.

A. OVERVIEW OF THE SECTOR

1272. In Part IV of the report – Foreign Funding and Government Funding, I have found, based on the Deloitte Report, that funds provided to Canadian environmental initiatives for the period of review, 2000 – 2019, by the 16 largest US grant makers amounted to \$1.28 billion.
1273. As also noted in Part IV, Deloitte further reported that foreign funding of the Canadian charitable sector in 2018 alone totalled approximately \$2.4 billion. For the period 2010 – 2018 inclusive, foreign funding of Canadian charities totalled \$14.9 billion. The Deloitte report indicates that foreign funding of Canadian charitable organizations continues to grow each year.
1274. The report also noted the significance of the charity sector in Canada, with assets held by Canadian charities of \$465 billion in 2018; government funding of approximately \$1.5 trillion from 2010 – 2018; and employee compensation over the same period of \$1.2 trillion.
1275. The charitable sector also raises significant funding from the Canadian public, which totalled \$141.3 billion over the period 2010 – 2018.

B. FOREIGN INFLUENCE ON PUBLIC POLICY – a regulatory and governance challenge.

1276. One of the issues identified from the early stages of the Inquiry is that there appears to be an uneven playing field between not-for-profits/charitable organizations and regulated public companies.
1277. This is an issue that can perhaps be addressed through a combination of legislative/regulatory changes federally and/or provincially, but as well, and perhaps more importantly, through improved management and business practices in the sector, with an underlying theme of enhanced transparency, accountability and governance practices.
1278. A submission to the Inquiry from a Participant for Commentary that I felt was compelling on this issue came from Mac Van Wielingen, who has been involved in a significant way in governance research, practice and policy issues, throughout his career. To underscore his commitment to this important topic, he is a co-founder of and chaired (2012-2020) the Canadian Centre for Advanced Leadership at the Haskayne School of Business. Given his understanding that there are a small number of extremely well-endowed foundations providing funding to Canadian environmental initiatives, Mr. Van Wielingen notes that these significant donations have the potential for

enormous influence on public policy issues in Canada, and that non-governmental organizations are less accountable than politicians or the corporate sector. He “views this as an overarching governance problem that is so large that we almost cannot see it. The fact that the funding is foreign based heightens the concern.”

1279. Mr. Van Wielingen further points out that major donors to the various entities may have interests that are misaligned with the public interest. He suggests that governance related processes could help to reduce or manage the misalignment of interests between these entities and the interests of other stakeholders and the public.
1280. As noted, Mr. Van Wielingen is very well acquainted with governance issues. He notes that “the corporate sector has a form of independent governance oversight of the accuracy and reliability of disclosure materials upon which stakeholders may make decisions.”

C. A NEED FOR OPENNESS AND TRANSPARENCY

1281. Through the extensive informal interviews I conducted in the course of the Inquiry, I heard many people frequently express the sentiment that there is a greater need for openness and transparency. The charitable/not-for-profit sector is significant; not only does it seek and attract material donations from the public, but it is the recipient of enormous contributions from governments at every level. This issue was highlighted last year in the We Charity matter at the federal level. Although I did not conduct a review of this matter, the highly public reporting of the events suggests that there was a lack of good governance and independent oversight of what were very sizeable entities. National charity support organization Imagine Canada noted the following, “Nationally, six-in-ten of those following this issue say it is serious and significant and 57% say that the WE scandal has raised questions about governance, transparency and management that are relevant for the whole charity sector.”¹⁷⁰⁶
1282. In a recent case in Saskatchewan, a judge ruled that the University of Regina must provide information as to who is funding research into the oil and gas industry. The judge wrote, “Ultimately, requiring that funding identity information be disclosed is in keeping with promoting transparency, openness and accountability in public institutions, such as the university.
1283. “If this information is publicly available it provides community members with information that may be relevant to the context of the academic research, thereby providing the public with the ability to consider, analyze and debate the funding choices made by the public institution.”¹⁷⁰⁷

D. EDELMAN TRUST BAROMETER – Information Bankruptcy¹⁷⁰⁸

1284. The Edelman organization has studied the issue of trust globally in our four key institutions – business, government, media and NGOs – for more than 20 years. The 2021 Canadian Edelman Trust Barometer, published in January 2021, was startling in its findings, declaring that Canadians are suffering from “Information Bankruptcy”. Trust in all four institutions in Canada is

¹⁷⁰⁶ <https://www.imaginecanada.ca/en/360/covid-we-scandal-federal-action-charitable-sector-needed-now-more-ever>

¹⁷⁰⁷ <https://www.thestar.com/news/canada/2021/02/09/saskatchewan-judge-rules-university-must-give-professor-oil-and-gas-research-info.html>

¹⁷⁰⁸ 2021 Canadian Edelman Trust Barometer

at an all time low, and all four have approximately the same trust levels, which are surprisingly low. Trust in all forms of media – traditional media, search engines, owned media, social media – declined in every case and only traditional media has a positive trust level – slightly above 50%.

1285. Forty-nine percent agree with the statement that “journalists and reporters are purposely trying to mislead people by saying things they know are false or gross exaggerations”. Fifty-two percent believe “news agencies are more concerned with supporting an ideology or political position than with informing the public.”
1286. Similar statements, and similar levels of trust, are attributed to business and government leaders.
1287. The survey suggests that only 1 in 5 Canadians has “good information hygiene”, which is described as:
1. News engagement
 2. Avoid information echo chambers
 3. Verify information
 4. Do not amplify unvetted information
1288. Notably, the survey suggests that business is expected to fill the void left by government. Sixty-five percent suggest CEOs should step in when government does not fix a societal problem and 69% believe CEOs should hold themselves accountable to the public, not just boards of directors and shareholders. While the survey seems silent on this issue, I suggest that this applies to the CEOs/Executive Directors of NGOs as well.
1289. To lead us from Information Bankruptcy, Edelman lays out four steps:
1. Lead with facts, act with empathy
Societal leaders must have the courage to communicate transparently, but also empathize and address people’s fears.
 2. Provide truthful, unbiased, reliable information
All institutions, including media, must provide truthful and trustworthy information.
 3. Embrace the imperative to lead or fall behind
Business must lead and communicate through their own channels on issues from pandemic impact and systemic racism to climate change.
 4. Partner across all Institutions
All institutions must find a common purpose and take collective action to solve societal problems.
1290. There has been much discussion and debate about one of the mandates of the Inquiry relating to “the dissemination of misleading and false information.” In September 2019, I ruled in my Interpretation of the Terms of Reference that determining the existence of misleading and false information could carry significant reputational consequences and is an enormous task that is impractical for the Commission to undertake given the resources available to it. However, the Edelman survey is instructive in providing a stark response to that question – Information Bankruptcy, which applies across all four institutions – business, government, media and NGOs.

1291. Elsewhere in this report, I speak to the polarization and paralysis in the discussion of energy and the environment. I have made recommendations to hopefully help address that issue. The six key recommendations of this report are all linked. We are at a crisis point in our country and if we want to move forward, take advantage of our opportunities as a nation and help to solve the world's problems, all four institutions must as Edelman recommends, "find a common purpose and take collective action to solve societal problems."
1292. As noted by Mr. Van Wielingen, business has a form of independent oversight for the accuracy and reliability of information upon which stakeholders must make decisions. Supporters of NGOs, and those impacted by their work, deserve nothing less. The Edelman survey suggests that business needs to double down on the oversight process. Transparent and credible disclosure increases trust. I also suggest there needs to be more effort made at partnering with other institutions. Media and government need to get serious about these issues and should be held to account. The section that follows deals with NGOs, based on the work of the Inquiry over the past 18 months.

E. THE NEED FOR IMPROVED GOVERNANCE, REPORTING AND ACCOUNTABILITY

1293. I am of the very strong view that it is critical that steps be taken to ensure improved governance, reporting and accountability standards for not-for-profits, charitable organizations and public institutions. It is recognized that a good part of this is under federal jurisdiction. However, the province, along with other like-minded provinces, professional organizations, and public policy think tanks should advocate for legislative changes to better monitor and control this large sector of our society. In addition to legislative changes, the sector itself, and individual organizations within the sector, must strive for greater transparency and improved management and governance practices.
1294. Deloitte, as noted in its report, conducted its review based on open-source, publicly available information. It advised of limitations in its findings, which as I have noted in Part IV, likely resulted in an under-reporting of foreign funding and an inability to identify the precise purpose of funding in many instances. These limitations in themselves suggest the need for enhanced transparency and disclosure and raise a number of questions.
1295. As noted by Deloitte, billions of dollars are contributed annually to Registered Charities (RCs) as well as to Not-For-Profits (NPOs). Donors to RCs, as well as RC and NPO organizations themselves, receive special tax treatment in recognition of the important role the organizations play in Canadian society. This, of course, is offset by the loss of tax revenues to federal and provincial governments. Accordingly, in balancing the importance of RCs and NPOs against the significant loss of tax revenues, it is reasonable to expect there should be a high degree of scrutiny of these organizations to ensure they comply with the Tax Act and contribute to Canadian society as intended. Moreover, as noted, significant contributions to various RC/NPOs may have the ability, or at least the appearance, of influencing public policy issues, and is a particular concern when the funding emanates from foreign sources.

F. SOME CONSIDERATIONS

1296. In contemplating the observations and recommendations below, it is worth posing a few questions to perhaps put the issues in context.

1. Deloitte was retained to report on the revenues and disbursements of not-for-profit organizations, with a particular focus on foreign funding. While its review covered approximately 20 years and examined more than 200,000 documents, its fees (at heavily discounted rates) exceeded \$1.0 million. Moreover, there were limitations in terms of what Deloitte was able to discern from publicly available information.
Is it appropriate that anyone, researchers, governments or individuals interested in the activities of not-for-profit organizations, those who may be the beneficiaries of foreign funding and those who impact public policy in Canada, should have to go to the extreme time and expense of retaining professional accountants to investigate, understand and report on NGO financial and operational matters?
2. With billions of dollars of foreign funding directed to Canadian institutions and not-for-profit organizations, this funding could influence many areas of public policy, not just energy. Is it not appropriate that there should be full, open and transparent disclosure of this funding?
3. Should foreign funding of any amount be permitted for political advocacy, even if non-partisan?
4. There are substantial amounts of government funding directed to not-for-profit organizations, many of which also receive foreign funding. Should there not be open, transparent disclosure of the sources, purpose, intent and expenditure of this funding?
5. Not-for-profit organizations are soliciting funds from the public. Corporations that solicit funds from the public to invest in securities are subject to strict and extensive disclosure requirements. Without unduly constraining not-for-profits, is it not reasonable to suggest there should be requirements for full, complete and transparent disclosure?
6. Once funds are donated or granted to an organization, those funds fall under the control and direction of the organization, and beyond the control of the donor, (other than in the case of donor advised funds, wherein the donor can specify the ultimate destination of the gift). Is that fact recognized and acknowledged by both donors and the recipient organization? How do donors and grant providers know that organizations are spending such funds as promised?

G. DETAILED OBSERVATIONS AND RECOMMENDATIONS:

1297. Through the course of the Inquiry, I made a number of observations and have developed recommendations for constructive and substantive improvements. I have endeavored to identify legislative recommendations within federal jurisdiction what steps the province could take; and what I would suggest could occur from the sector/entity's governance perspective:

1. Alignment of Stated Purpose and Activity

Observation:

1298. A RC must at all times (i) be established and operated exclusively for charitable purposes (as set out in the organization's governing documents); and (ii) the organization's activities must further

its purpose. The CRA process to obtain registered status is quite stringent to ensure these requirements are met. Further, there is an annual requirement to report all ongoing and new charitable programs/activities that the RC carried on in pursuit of its purpose during the fiscal period.

1299. Although I make no specific findings in this regard, concerns were raised regarding instances where there are apparent inconsistencies between the stated purpose of an organization and what it actually does. From a governance perspective, this can be described as scope creep. It is a risk in any organization. It is incumbent on boards of directors to monitor and control operations and the organization's strategy to ensure the organization "stays within its lane" such that its activities remain aligned with its purpose.

Recommendation:

1300. Federal – The CRA should be diligent in scrutinizing and/or auditing RCs to ensure strict alignment between stated purpose and activities.
1301. Provincial – Consideration should be given to requiring RCs operating in Alberta to file an annual report including, among other things, a statement as to the alignment of their activities in the province with their stated purpose.
1302. Sector/Governance – Advocates for the sector and boards of directors of RCs should develop best practices for reporting and oversight of organizations to ensure activities and purpose are well aligned. A statement attesting to this alignment should be incorporated in annual reports to stakeholders and approved by the board of directors and executive directors (the most senior officer).

2. Foreign Funding and Receipts and Disbursements, Generally

Observation:

- a) Funds may be contributed to a U.S. or other foreign charitable organization by an individual or entity, which can then pass the funds through to a Canadian RC or NPO without disclosing the identity of the original donor, or the purpose of the grant/donation.
- b) Donations may be made from general funds of a U.S. or other charitable organization to a Canadian RC or NPO and then re-granted by the Canadian RC/NPO, which will be reflected as a donation from a Canadian entity, rather than foreign funding.
1303. The Tax Act does not restrict a RC from receiving foreign funding, provided that the RC use such funds for its own charitable purposes and activities and the RC is not used by a foreign person as a conduit through which funds are then funnelled to a non-qualified donee or other person.
1304. The mandate of the Inquiry raises a concern as to whether a foreign person or organization that has an objective that may not be in the best interests of Canada or its provinces (in terms of particular industries, economies or social issues) may contribute funds with the ultimate destination being to an RC in order to influence an issue, while keeping their foreign identity concealed.

1305. RCs file annual T3010 tax returns with the CRA that are, in part, made publicly available on the CRA website. Generally, RCs group their revenues on their tax returns into categories for disclosure purposes, such as Foreign Funding, Government Funding, Receipts from other RCs, Non-receipted Gifts and Fundraising, Receipted Gifts and Fundraising, Interest and Investment Income, Revenue from Sales of Good and Services, and Other Revenue. Accordingly, details as to the specific sources of funds received and the intended purpose of the funding is not readily available
1306. Consequently, foreign funds, once they arrive in Canada, may be directed to purposes designated by the foreign donee that are not necessarily to the public benefit of Canada, or its provinces (in terms of particular industries, economies or social issues), without the original source of the funds being disclosed.
1307. Moreover, the descriptions by the RCs of grants/donations received are often vague, noting that it was for “general support”, or there are often several purposes noted, such that it is not possible to identify the quantum of funds destined for each purpose.

Recommendations:

1308. Federal

(a) RCs should disclose in their T3010 tax filings and post on their websites:

- (i) The donor's name, amount and specific purpose of each donation received from every donor (foreign and domestic) for amounts equal to or greater than \$5,000 including those received where no donation receipt is issued.
- (ii) The specific amount, specific purpose and interest earned for all donor advised funds both domestic and foreign.
- (iii) The specific purpose for all grants/donations. Descriptions such as “general support” should not be allowed.
- (iv) The name, specific amount, and specific purpose for each grant/donation equal to or greater than \$5,000 received from:
 - other RCs
 - foreign governments
 - federal, provincial or municipal governments, including the specific department providing the funding
- (v) Copies of all grant application correspondence submitted and grant acknowledgement letters received from all donors (foreign, domestic and all governments) for amounts equal to or exceeding \$10,000.
- (vi) Specific details of all other revenues received or earned including interest and revenues from sales and other services.

(b) With respect to disbursements, RCs should be required to disclose additional information with respect to all grants/donations made to qualified donees, including amount, purpose and the originating donor for all foreign amounts received and re-granted equal to or greater than \$5,000 and include copies of all grant application correspondence related thereto.

1309. Provincial

(a) Consideration should be given to requiring all RCs operating within the province of Alberta to file an annual report containing full disclosure as noted above. Alternatively, if full disclosure is made on federal T3010 tax returns, as recommended above, the province would have access to the federally filed returns to conduct appropriate oversight and diligence.

1310. Sector/Governance

(a) Regardless of whether legislative changes are made as recommended above, the NGO sector should advocate for full compliance with the principles outlined, and boards of directors should review and approve reports to ensure disclosure is complete, accurate and transparent, as well as to ensure receipts and disbursements are in accord with the RCs policies and mandate. Boards of directors and executive directors (the most senior officer) should attest to the accuracy and completeness of this information in their annual report to stakeholders, as well as alignment of the information to the organization's stated policies and mandate.

3. Asset Accumulation

Observation:

1311. Many RCs have accumulated significant assets, often totalling millions of dollars. There appears to be no requirement to disclose information with respect to these assets, the purpose of holding the assets, the intended disposition of the assets, or the timing thereof.

Recommendation:

1312. Federal – Require enhanced disclosure of assets held by the RC in the T3010.

1313. Provincial – Consideration should be given to requiring all RCs operating within the Province of Alberta to file an annual report providing full disclosure of the organization's assets.

1314. Sector/Governance – Boards of directors should provide full disclosure of assets held to help stakeholders understand the value of the asset, the purpose of the asset, the intended disposition and the timing thereof. A statement to this effect should be attested to by the board of directors and the Executive Director (the most senior officer) in the organization's annual report.

4. Timing of tax filings

Observation:

1315. It appears that reporting deadlines for RCs are not strongly enforced and/or there are few repercussions if deadlines are not met. During one stage in the Inquiry, the period of the review extended to October 31, 2020, however, the most recent financial information available on the CRA website and other open sources for many RCs was 2017/2018, a reporting gap of about two years. RC tax filings used to be available on the CRA website for a period of ten years, however, that has been reduced to five years, which limits opportunities for research and analysis of the work of RCs.

Recommendation:

1316. Federal – Enforce filing deadlines in accordance with the Tax Act. In addition, retain T3010 tax returns on the CRA website for a period of 10 years, or as a minimum, require returns to be posted to RC websites for a period of not less than 10 years.
 1317. Provincial – Ensure that requirements for the filing of any reports to the province are adhered to and enforced.
 1318. Sector/Governance – Boards of directors must ensure that all government reports are filed on a timely basis and posted to the organization’s website for a period of not less than 10 years.
5. Not for Profit Organizations (NPOs)

Observation

1319. Compared to RCs there is a significant lack of regulation around NPOs, which are therefore more open to abuse by foreign and domestic entities alike. Unlike for RCs, there is no registration process for NPOs and while a NPO must file an income tax return and potentially an information return, there is not the same level of reporting requirements as for a RC, even with respect to foreign donations. There are no restrictions on political activities or on the receipt of foreign funding and there is no requirement to disclose same on annual tax returns.
1320. Further, unlike for RCs, the Tax Act does not require the CRA to publicly disclose information about NPOs. For these reasons, a foreign entity may prefer to donate to a NPO, which requires less transparency and is under less scrutiny than an RC, especially when the foreign entity generally does not obtain any Canadian tax benefit with respect to its donation, regardless of whether it donates to a RC or NPO.
1321. Several RCs have established related NPOs to facilitate funding and disbursements for various programs and initiatives, possibly to avoid more rigorous disclosure requirements. Instances were observed where funds were received by a NPO and provided to the related RC with no requirement to disclose that the funding received by the RC was actually from foreign sources.

Recommendation:

1322. Federal and Provincial – All of the above recommendations related to RCs should apply to NPOs.
1323. Sector/Governance – The sector itself must advocate for higher standards of accountability and disclosure and must discourage such practices as creating a NPO to avoid more rigorous reporting requirements of RCs.
1324. Boards of directors should monitor these practices and ensure that full, accurate and adequate disclosure is made for all the entity’s activities, no matter the form of incorporation, consistent with the recommendations related to RCs noted above.

6. Public Policy Issues

(a) Political Activities of RCs – Has the Pendulum Swung Too Far?

Observation

1325. In 2018, the Ontario Supreme Court ruled that the CRA limit that no more than 10% of an RC's resources can be used on political activities is unconstitutional. With the elimination of the 10% limit on political activities, a RC can now, without limits, engage in non-partisan political activities, such as advocating for any change to a law, policy or decision of government and seeking to influence the laws, policies, or decisions of government, (whether in Canada or a foreign country), provided these activities are carried out in furtherance of the RCs charitable purpose.
1326. Those in favour of the elimination of the 10% limit argued that public advocacy for policy change is fundamental to the charitable purpose of an organization.
1327. On the other hand, some observers still argue that the 10% limit on political activities has gone too far and is counter to a long-standing view under English and Canadian common law that political activities of an organization aimed at promoting or advocating a change in law or in its administration is not regarded as a charitable activity.
1328. This involves complex legal issues, that relate to the freedom of speech and the Canadian Charter of Rights and Freedoms and there is doubt as to whether re-imposing limits on non-partisan activities would survive a constitutional challenge. It is likely the Supreme Court of Canada would be required to resolve the conflict.
1329. Again, the question of aligning an organization's purpose with its activities is an issue here, as is the greater flexibility of NPOs compared to RCs. Another major question is the appropriateness of receiving foreign funding where the RC/NPO is involved in political advocacy. The vast quantity of funding that is potentially available to RCs/NPOs for political advocacy purposes is also noted, and when this is combined with what may not be full, accurate and balanced disclosure of the particular position that is being advocated for, there are societal concerns that must be addressed.

Recommendation:

1330. Federal
- (a) Reconsider imposing the 10% limit on political activities.
 - (b) Implement the other recommendations noted above so that there is full, complete and accurate disclosure of monies received and disbursed.
 - (c) Prohibit without exception, foreign funding of RCs/NPOs involved in political advocacy activities.
1331. Provincial
- (a) Consider requiring RCs/NPOs operating in the province to file an annual provincial return, detailing, in addition to the matters noted above, the political activities in which the organization was involved.

1332. Sector/Governance

- (a) Advocate for compliance to the spirit as well as to the letter of the Tax Act with respect to political advocacy as well as advocating for sound board governance.
- (b) Boards of directors must ensure the purpose and activities of the RC/NPO are aligned and must ensure all disclosure and advocacy materials are complete, balanced, and accurate. Boards of directors and Executive Directors (the most senior officer) should sign annual declarations to that effect.

- 7. Transparency and trust in “Scientific Reports” and other information presented to the public by RCs and NPOs. What measures are required to disclose limitations of information published by RCs and NPOs?

Observation:

1333. NGOs, especially RCs, have typically enjoyed a high degree of public trust, although the Edelman survey suggests that has recently declined. At the same time they enjoy a level of political freedom, such that this combination may result in undue reliance/trust being placed by the public on information provided by RCs/NPOs. The subject of false and misleading information was part of the mandate of this Inquiry. As noted in Part VI of the report, RCs/NPOs often express an extreme or urgent view to make their point, which often does not present a full and complete picture in a balanced manner. As also noted above, Edelman has declared that Information Bankruptcy has occurred in Canada, which should be a serious concern for all institutions and all Canadians.

Recommendation:

1334. Federal – Protective measures should be added to the Tax Act that require RCs/NPOs (especially those engaged in political or advocacy activities involving social issues or issues such as climate change) to provide full, complete and accurate disclosure when making statements, or releasing information to the public (such as scientific studies or reports), such that the public is made aware of any limitations of the information.
1335. Provincial – Monitor all information provided by RCs/NPOs operating in the province to ensure they are providing balanced, full, complete and accurate disclosure.
1336. Sector/Governance – The sector should advocate for full, complete, reliable and accurate information in order to maintain the reputation of the sector.
1337. It is incumbent on boards of directors to satisfy themselves that the RC/NPO is providing full complete and accurate information, and management must be challenged on all communications to ensure the spirit and intent of these principles are adhered to. Boards of directors and executive directors (the most senior officer) should sign a declaration on all reports released by the organization to the effect that they are full, complete, accurate and reliable and that all limitations with respect to the information has been disclosed.

8. Registered Journalism Organizations

Observation

1338. The recent extension of “qualified donee” status to “registered journalism organizations” raises a concern that RCs/NPOs or other persons with a political agenda can receive a tax-deductible receipt for a donation and in so doing may be able to influence such organizations in their messaging, compounding concerns raised for political activities as noted above.
1339. This is a dynamic issue at this time, given the power and influence of the large tech media companies, their syphoning of advertising revenue away from traditional media companies and the declining trust in publicly available information generally.

Recommendation

1340. The province must monitor best practices with respect to legislation surrounding media, censorship by big tech organizations, threats to traditional media organizations and respond accordingly. As noted in the Edelman survey, journalists and media organizations must pay attention to the declining level of trust. My observations over the two years of this Inquiry lead me to believe this is a serious issue in Canada and globally. There has been a decline in journalism standards across the board, whether by liberal or conservative media, that has contributed to the Information Bankruptcy reported by Edelman.

H. THE NEED FOR CRITICAL THINKING

1341. One of the concepts discussed by the Inquiry team at the outset of our work was the essential need for critical thinking by Canadians. In fact, we observed that if we could achieve nothing else through this Inquiry but to make Canadians aware of the need to assess and challenge the information they receive, that would be a win. The Inquiry teams believes this is a fundamental and essential component of a free and open democracy that is more indispensable than ever given the advances in mass communication and influence amplified by a proliferation of sharp and directed advocacy via the various tools employed in a multi-channel world. We of course did not know at the time that Edelman would focus on this issue and find that only one in five Canadians practised good information hygiene as noted above. Ironically, in a world with an abundance and profusion of content, Edelman describes Information Bankruptcy. The suggestions Edelman noted in that regard are sound. My recommendations with respect to bringing accountability for financial and operational reports and statements of public policy advocacy to the officials responsible for those organizations are aimed at enhancing public trust and reducing information insolvency.

I. THE SOCIETIES ACT

1342. While legislative changes could be advocated for by the province, as noted above, and the province could monitor federal filings for RCs and NPOs operating in Alberta and hold them to account, higher standards of governance, transparency, accountability and reporting may well be the most effective means of addressing the challenges. The province could, however, do more. The province has the additional ability to address some of the challenges through the Alberta Societies Act. The Societies Act is outdated, and the administration of the legislation results in very little oversight or control over not-for-profits operating in Alberta. I heard from individuals operating in the charitable sector that the Societies Act requires no real accountability and there

is essentially no regulatory oversight. They cite the following as examples of deficiencies in the legislation:

- there is nothing in the Act to ensure representation from independent board members, and to prevent conflicts, including conflicts that arise from interconnected board positions
- there is no requirement for full financial reporting being made available to the public (many not-for-profits present only pie charts to break down revenues and expenses, as opposed to detailed audited financial statements)
- the intended use of the funds is not highlighted
- there is no requirement to separately disclose compensation for key management personnel
- there is no requirement to account for the full cost of fundraising (the costs of third-party fundraisers are not required to be reported)
- there is nothing akin to the Management, Discussion and Analysis in corporate reporting, where management reports on the alignment of the organization's activities with stated objects and purpose
- there are no meaningful repercussions for not filing annual reports and financial statements with the provincial registry

1343. These initiatives would not be a substitute for improved governance and accountability by the sector but might provide legislative guidance for best practices.

1344. There are 25,000 charities operating in Alberta, employing 176,000 Albertans and 1.4 million volunteers. It is not hard to create a charity (subject to obtaining federal registration) or a not-for-profit organization. As noted, these organizations are raising money from the public, in many cases without full, open and transparent disclosure.

1345. Although it is a somewhat unrelated matter, I am aware from my involvement in the not-for-profit/charitable sector that there are frankly, too many charitable organizations competing for donations, and providing a myriad of services, such that those who really need the services are confused and frustrated with the challenges of attempting to access services. When one considers the overall costs of administration for executive directors, staff, office space, accountants and other administrative services, the sector is inefficient and communities would be better served if more funding could be directed to serving stakeholders.

1346. Stricter requirements for good governance and accountability for the entire sector would help ensure that the public is better served. Although some legislative changes at the federal and provincial levels may help, what is really required is for the sector to address these challenges directly to improve governance, transparency, disclosure and accountability. This requires greater focus and commitment by management and boards of directors, and is warranted by the income tax benefits the sector enjoys as well as the level of public trust placed on the sector.

Appendix to Recommendation 1

1347. In considering this Recommendation, I referred to a few websites to identify the level of disclosure adopted by the organizations. What follows are merely observations and I make no findings with respect to the level of governance or reporting standards of the organizations, other than what is clear from the website disclosures I was able to see. This is also limited to only these

organizations and may not apply across the board; however, it is indicative of the need for considering the recommendations noted.

Stand.earth¹⁷⁰⁹

1348. A search of Stand.earth's website contains the following statement under the heading "Financials":

"Stand.earth is a 5019(c) (3) not for profit, tax exempt organization incorporated under the laws of the State of California in 1999 as ForestEthics.

"In Canada, Stand.earth is a registered Society under the Societies Act. Please note in Canada we are not a registered charity, which allows us to do direct advocacy as needed."

1349. The last set of audited financial statements found on the website for the United States organization is for 2019. For the Canadian Society, the last financials are unaudited statements for the year ended December 31, 2017.

1350. A search of the website for "Donors" reveals a heading of "Exactly Who's Funding Stand.Earth?"

1351. "Spoiler alert: its thousands of Canadians from coast to coast –

1352. What follows on the website are photos and testimonials of 20 individuals who support Stand.earth. I was unable to find any information as to major grants, or other major donors or supporters.¹⁷¹⁰ (10)

Ecojustice Canada¹⁷¹¹

1353. The Ecojustice website under the heading "Financial Information" acknowledges it has an ethical responsibility to its supporters. It notes that it is in compliance with the Standards of Imagine Canada and is accredited by them in the areas of board governance, financial accountability and transparency, fundraising, staff management, and volunteer involvement. It does not indicate the details of the Standards imposed by Imagine Canada; however, one can visit the Imagine Canada website to obtain those details.

1354. Ecojustice notes that it is funded by 19,000 individuals and organizations – 71% of its funding comes from individuals, 23% from grants and 6% from bequests.

1355. One can access current audited financial statements on the website from 2012-2020 and the T3010 can also be accessed on-line.

1356. I was unable to find details of major donors or grants, but the website does profile some of Ecojustice's supporters.

¹⁷⁰⁹ <https://www.stand.earth>

¹⁷¹⁰ <https://www.stand.earth/page/people-vs-big-oil/trans-mountain-pipeline/exactly-whos-funding-standearth>

¹⁷¹¹ <https://www.ecojustice.ca>

Imagine Canada¹⁷¹²

1357. Imagine Canada indicates its “mission is to strengthen Canadian charities and nonprofits so they can better serve individuals and communities both here and around the world.” Imagine Canada lists several prominent not-for-profits and Canadian corporations as partners and supporters.
1358. Imagine Canada states that it has over 200 charities and nonprofits who have invested in accreditation pursuant to their Strong Charities program. The list does include Ecojustice.
1359. I was able to download the Imagine Canada handbook for the Standards Program.¹⁷¹³ The program is good but it is very basic and does not contemplate the sort of recommendations contained in this section above.

The Calgary Foundation¹⁷¹⁴

1360. I compared the sort of disclosure found on Stand.earth and Ecojustice, and the principles of disclosure and governance with other not-for-profits with which I am familiar.
1361. In my view, the Calgary Foundation sets a high standard for openness, transparency, governance and accountability. In addition to its independently audited financial statements, The Calgary Foundation 2020 Annual Report contains a detailed Management, Discussion and Analysis section that is very comprehensive and provides stakeholders with a clear picture of what the organization is all about, including a section on Public Confidence and Reputation, and Organizational Effectiveness. The report provides details of donations received and grants made. In my view this degree of detailed reporting does much to provide transparency regarding the organization.¹⁷¹⁵

Ducks Unlimited Canada¹⁷¹⁶

1362. Ducks Unlimited says it is part of Imagine Canada’s “Ethical Code Program”, although Imagine Canada’s website advises that program came to an end in 2016, to be merged with its Standards Program (although Ducks Unlimited is not listed). Ducks Unlimited clarified in submissions made to the Inquiry that it remains an active member of Imagine Canada, and continues to follow similar principles and practices.
1363. The DU Annual Report itself contains a detailed review of its programs but only contains an overview of the finances of the organization. The DU website, however, has a link to its audited financial statements on the same page as the link to its annual report. There is also a link under a heading for financial statements and reports for the last four years to “Conservation Supporters”, which discloses every donor who commits \$5,000 or more. In my opinion this is excellent disclosure for a not-for-profit. The only thing missing, that is contained in the Calgary

¹⁷¹² <https://imaginecanada.ca>

¹⁷¹³ <https://www.imaginecanada.ca/en/standards-program/standards-handbook>

¹⁷¹⁴ <https://calgaryfoundation.org/>

¹⁷¹⁵ https://calgaryfoundation.org/wp-content/uploads/CalgaryFoundation_2020AnnualReport_Web_Final.pdf

¹⁷¹⁶ <https://www.ducks.ca/>

Foundation disclosures, is a Management, Discussion and Analysis section. In their submissions to the Inquiry, Ducks Unlimited indicated their view that the Management, Discussion and Analysis section of such reports is a public company requirement, and as such was not something they would typically produce as part of their annual reporting process.

1364. The standard of disclosure for the Calgary Foundation and Ducks Unlimited is a standard to which all charitable and not for profit organizations should aspire. I do have concerns about the board structure for Ducks Unlimited. It has a very large board – 49 individuals. There are currently five from Alberta and 16 from the United States. In addition, there are a number of Honorary Directors and Directors Emeriti.
1365. I know from experience how challenging governance can be with a large board. A large board, which turns over frequently, as is the nature with volunteer boards, can also make it challenging to keep management accountable. I make this comment simply to highlight what could be a potential difficulty with governance, noting that in the limited review I have done, it would not appear these difficulties have precluded Ducks Unlimited from attaining a good standard of governance. Indeed, in its submission to the Inquiry Ducks Unlimited affirmed that it has a large volunteer board and emphasized the importance of its core group of officer directors, which forms its executive.

Recommendation 2 – First Nations

Create an opportunity for meaningful dialogue among First Nations communities and between First Nations communities and other Albertans and Canadians to advance understanding and Reconciliation with a focus on economic development and opportunities to achieve greater prosperity for Indigenous peoples and Canada as a whole.

Rationale: Many First Nations communities are located on or adjacent to lands that present economic development opportunities. First Nations communities also have unique legal rights that often place them in the centre of debates and disputes between opponents and proponents of development projects. There is a need for meaningful and open dialogue to allow First Nations communities to explore economic development opportunities for their people, while balancing their strong commitments and history of protecting the land and the environment.

1366. As noted in Part II of the Report, First Nations face many challenges with implementing self governance in their communities. As found in the Royal Commission on Aboriginal Peoples and other studies, Indigenous communities are dealing with challenging social issues, such as poverty, drug and alcohol addiction, suicides, murdered and missing Indigenous women, high unemployment, water and sanitation issues etc. At the same time, due to their geographical locations, many First Nations are presented with economic development opportunities that require careful investigation to ensure the proposals are indeed economically viable and will allow the First Nations to maintain their strong commitments to the land and to the environment.
1367. They must deal with both proponents for and opponents to the projects and endeavour to balance competing positions and intensely complicated issues. Their systems of governance are often complex, and they are generally very democratic, such that important decisions entail extensive consultation and approval processes among all of their people to reach a consensus. In addition, their decisions are often the subject of scrutiny and comment in the public forum.
1368. As also noted in the text of Part II, First Nations people want what every Canadian wants. They seek prosperity – a safe and secure home for their families, food on their tables, a good education, and opportunities for employment and self sufficiency.
1369. First Nations people also want to be equal partners in our society; they do not want hand outs; they do not just want a seat at the table; they want to be active participants and partners at the table.
1370. They also believe it is important that Canadians have an opportunity to hear and understand the position of First Nations people – the opportunities that resource development provides them, and their keen interest in balancing the environment and economic development.
1371. To help me to better understand Indigenous issues, opportunities and challenges, one of the Indigenous leaders I met with was Chief Wilton Littlechild, CM, AOE, MSC, QC. Chief Littlechild has a distinguished record of service on Indigenous issues nationally, through the Truth and Reconciliation Commission and internationally, with the United Nations, in advancing the interests of Indigenous Peoples around the world.

1372. Through his work locally and internationally, Chief Littlechild has examined the ability to effectively balance economic development with environmental stewardship.
1373. Through my discussions with Chief Littlechild, I learned of a process of establishing Indigenous Wisdom Panels, which included respected elders in Alberta, focusing on environmental stewardship. These panels met with scientific experts and industry leaders, whereby they found success as they were able to focus on issues they had in common and not on differences.
1374. Since first learning of this process in September 2019, I have had the opportunity to review the concept with several other Indigenous leaders, including many of those referenced in the First Nations section of Part II of the Report, as well as numerous other individuals I have spoken to in the course of the past two years. The concept of establishing Elders Wisdom Panels was embraced by all with whom I spoke. The universal reaction is that this concept could help to breach the divide, not only within and between First Nations communities, but also to advance greater understanding among all Canadians of First Nations issues, as well as the responsible stewardship of Canada's natural resources. The process has been described by Chief Littlechild and Dr. Reg Crowshoe, a respected Blackfoot Elder, whom I know well, as creating "ethical space" for meaningful dialogue and action.
1375. Elders Wisdom Panels would work through the various treaty regions in Alberta. Although this Inquiry is constituted under the laws of Alberta, other jurisdictions, including BC and Saskatchewan, may find the panels to be a constructive mechanism for advancing improved understanding and Reconciliation.
1376. In fact, there is a natural connection to other recently announced initiatives. A recent Globe and Mail opinion column advised of the First Nations Climate Initiative and the First Nations Major Projects Coalition, representing an agreement among 70 First Nations from six provinces and territories to advance an Indigenous-led, net-zero carbon emissions policy framework, including nature-based solutions for carbon capture.¹⁷¹⁷
1377. The concept also aligns with a call from former national chief of the Assembly of First Nations, Phil Fontaine, and Dan Bubar, CEO of Avalon Advanced Materials Inc. in a recent Globe and Mail Opinion piece, "It is time to move beyond the "duty to consult" obligations of governments and the United Nations Declaration on the Rights of Indigenous Peoples – while still respecting Indigenous people's right. We now need to promote more business-to-business conversations between mineral development companies and Indigenous communities toward establishing partnerships to develop critical mineral supply chains."¹⁷¹⁸
1378. The make-up of the Elders Panels could change depending on the region or territory, and would include First Nations leaders and elders, as well as representatives of science, technology, and industry.

¹⁷¹⁷ <https://www.theglobeandmail.com/opinion/article-net-zero-indigenous-led-resource-development-is-possible/>, Eva Clayton, Sharleen Gayle, Harold Leighton, Crystal Smith, Joey Wesley

¹⁷¹⁸ <https://www.theglobeandmail.com/business/commentary/article-the-opportunity-for-indigenous-business-to-become-leaders-in/>, Don Bubar, Phil Fontaine

1379. The goal would be to seek greater understanding and common ground among key stakeholders. As well, it would entail a media/communications plan, such that all Canadians could in some way participate in the dialogue. This could be incorporated in advancing Recommendation 6 – Rebranding Canadian Energy.
1380. The panels would explore relationships with business and government, environmental stewardship, education and training opportunities, economic development, First Nations governance, and communication.
1381. This initiative would be timely, given the recent approval by the House of Commons and the Senate of Bill C-15, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Act. The National Coalition of Chiefs has expressed concern about the Bill.¹⁷¹⁹ To illustrate the concern, the National Congress of American Indians has asked insurance companies to adopt policies on “Free, Prior and Informed Consent” and interpret UNDRIP as providing veto rights to First Nations that are impacted by proposed projects. They have successfully lobbied several insurance companies to back away from insuring energy projects.¹⁷²⁰
1382. Others, however, do see UNDRIP as a significant milestone that will help transition from the oppressive Indian Act.¹⁷²¹ In fact, I am aware of a voluntary assessment by corporations regarding their compliance with UNDRIP, especially with respect to Free, Prior and Informed Consent, whereby over 12,000 corporations, many of them multi-national, have agreed with or comply with the principles of UNDRIP through the United Nations Global Compact.¹⁷²²
1383. In addition, the province of Alberta recently signed Protocol Agreements, with the Confederacy of Treaty 6 First Nations, Stony Nakoda-Tsuut’ina Tribal Council and the Blackfoot Confederacy, committing to, among other things, support the principles of UNDRIP.¹⁷²³
1384. First Nations leaders, like Chief Littlechild, describe these developments as a “call for us to work together”.
1385. Chief Littlechild is well acquainted with the principles of UNDRIP and especially the advancement of economic development opportunities within the UNDRIP framework, so this issue and his involvement in helping to establish the Elders Wisdom Panel process with other elders experienced in this sort of dialogue could be particularly constructive.
1386. The next step is to develop an action plan for the implementation of UNDRIP over the next two years. Justice Minister David Lametti commented on the need to develop a process to determine Free, Prior and Informed Consent (FPIC), “What we’re trying to do is treat FPIC as a process, which I think is the true wording in the declaration itself, and really put the onus on non-

¹⁷¹⁹ National Coalition of Chiefs, December 2020 Newsletter

¹⁷²⁰ <https://theintercept.com/2020/12/13/indigenous-pipeline-oil-gas-insurers/>

¹⁷²¹ www.nationalmagazine.ca/en-ca/articles/law/in-depth/2020/a-critical-milestone-on-the-road-to-reconciliation

¹⁷²² <https://www.unglobalcompact.org>

¹⁷²³ <https://www.alberta.ca/first-nations-protocol-agreements.aspx>

Indigenous governments, non-Indigenous resource developers, private industry, whoever – to meaningfully consult with Indigenous Peoples in whatever context is appropriate.”¹⁷²⁴

1387. Elders Wisdom Panels would be an excellent vehicle through which to create positive dialogue to contribute to this process.
1388. Those with whom I discussed this concept, believe Elders Wisdom Panels are a way to create open dialogue, perhaps about what has happened in the past, but more so to find a path forward; to have communities focus on the long-term opportunities; to be skeptical of proposals from both industry and ENGOs; and to seek counsel and advice on emerging issues to ensure that the path to be taken will lead to long term prosperity. The comment was often made, that this could perhaps be Alberta’s most significant contribution to Reconciliation.
1389. Elders Wisdom Panels would be integrated with and an essential element of Recommendation 5 – Natural Resource Development Strategy for Canada. It would also of course be important to integrate the Elders Wisdom Panel concept into Recommendation 6 – Rebranding Canadian Energy to ensure that a comprehensive marketing/communications strategy engages Canadians in the important Reconciliation conversation with First Nations to foster a greater understanding between the parties.
1390. The proposed structure and detailed terms of reference for Elders Wisdom Panels are not included herein as they would require consultation and input from leading Indigenous Elders.

¹⁷²⁴ <https://www.cbc.ca/news/politics/undrip-declaration-passes-senate-1.6068524>

Recommendation 3 - Science, Technology and Innovation

Undertake a highly focused initiative, similar to Alberta’s historically successful Alberta Oil Sands Technology and Research Authority (AOSTRA), that maximizes collaboration, alignment and investment by all stakeholders in advancing Alberta as an international leader in energy science, technology and innovation to produce low-cost, low carbon energy supplies and technologies for the world.

Rationale: The public discourse surrounding oil and gas and the development of Canada’s energy resources has been one-sided and mostly focused on the negative elements of a fossil fuel economy. Fossil fuels will be part of the international energy mix for decades to come and Alberta has been a world leader in innovation, not only of fossil fuels but of all forms of energy. Alberta can and should contribute to climate change solutions around the world, capitalizing on our strong history of science, technology, ingenuity and entrepreneurship.

Science, technology and innovation

1391. The long and complex road to success in Alberta resource development has been paved by an intense devotion to science, technology, innovation and financial competitiveness. In a world aspiring to a net-zero economy, sustaining and growing the value of those accomplishments will require energy inventors to achieve an innovation step change – pull the carbon out of hydrocarbons.
1392. Alberta’s massive resource endowment spans the entire fossil energy spectrum, solid coal to gaseous methane. Stuck in the middle is the third largest oil reserve on Earth – sand-infused bitumen that sat largely ignored for generations, except by the energy science pioneers and governments that saw the long-term benefits of developing the resource. Innovation changed all that.
1393. When the world’s easy-to-tap light oil reservoirs grew thin and prices rose starting in the late 1990s, Alberta’s petroleum innovators optimized extraction and made bitumen from sand competitive on price, sparking billions of investment dollars, ambitious growth and a golden age for Athabasca. Decades of public and private investment in experimentation and technology started to pay off just before the dawn of the new millennium, when Alberta’s unconventional hydrocarbon resources became just as affordable as Middle East oil. Big iron machines like bucketwheels and conveyor belts were replaced with shovels, trucks and hydro transport to pull and move bitumen from the surface mine to the extraction plant. Technical advances in separating the sand from the bitumen and upgrading to produce refinery ready barrels of crude oil attracted accelerated development.
1394. With 80 percent of Canada’s oil sands too deep to mine, drilling and enhanced oil recovery also needed technical breakthroughs. In the 1970s, publicly funded Alberta Oil Sands Technology Research Authority (AOSTRA) and the Underground Test Facility conceptualized, tested and

- commercialized underground extraction methods, such as steam-assisted gravity drainage (SAGD) and other thermal techniques, unlocking ways to harvest four-fifths of the resource.¹⁷²⁵
1395. In the mid 2000s conventional natural gas supplies in North America waned and prices shot up, just about the time that new tech arrived. Horizontal drilling and hydraulic fracturing opened an ocean of reliable, affordable natural gas, condensate and light oil from tight rock reservoirs. These massive new supplies drove prices low, provided an affordable fuel for thermal oil sands extraction and paved a path to lowering emissions as coal-fired power plants converted to natural gas.
1396. In the past 20 years, Canada's oil exports to the U.S. grew more than 170 percent driven by heavy oil export growth of more than 400 percent.¹⁷²⁶ While financial sustainability has always been built on delivering low-cost production, the world is now clamouring for a new feature in its energy – low or no carbon.
1397. Just as technology and innovation dismantled competitive barriers to profitable growth in Canadian oil and natural gas over the past 30 years, the same forces hold the key to an energy transition aimed at decarbonising the entire energy system at the lowest possible cost.
1398. While innovation has advanced Alberta's opportunities in oil and gas over the past 20 years, during this same period, renewable energy innovators pushed the science and engineering to shed the experimental and high-cost character of wind and solar power, which are now competitive and highly desired for many applications where production intermittency is acceptable. In fact, according to the Canadian Energy Regulator, Alberta is leading the way in renewable energy growth in Canada.¹⁷²⁷
1399. In 2017, Canadian energy economist and author Peter Tertzakian talked of the emerging battle royal about to unfold between the established fossil oils and emerging renewable celebrities.
1400. "Business leaders championing new energy systems need to remove their own dark blinders of denial; trillions of dollars of petroleum infrastructure and the peripheral interests of combustion-based mobility are not going to relinquish their markets without fighting back with their own innovation. In fact, they have just begun," Tertzakian wrote.¹⁷²⁸
1401. History shows that the road to a widespread energy transition is long and complex. There are no easy solutions, only competitive innovation to make a better energy unit for the work that needs doing.
1402. While achieving an energy transition to net zero, carbon is often cast as a matter of choice that can be achieved through public policies that restrict traditional carbon fuels and encourage

¹⁷²⁵ Oil Sands Technology, Past, Present, and Future, IHS CERA, 2011

¹⁷²⁶ Crude Oil – Exports, Government of Canada, Canada.ca, <https://open.canada.ca/data/en/dataset/0b7bf4b3-423a-45d0-a92b-e69be0b81ce4>

¹⁷²⁷ <https://financialpost.com/commodities/energy/alberta-to-lead-growth-in-renewables-canada-energy-regulator-forecasts>

¹⁷²⁸ Global Energy is on the brink of 'one of the most exciting business duels in history', Financial Post, Peter Tertzakian, January 19, 2017, <https://financialpost.com/news/energy/global-energy-is-on-the-brink-of-one-of-the-most-exciting-business-duels-in-history-peter-tertzakian>

renewables; the equation is so much more complex, the solutions so much more difficult, the transition road so much longer, and the technical solutions unknown.

“History shows that neither the dominant sources of primary energy, nor the common energy converters can be displaced rapidly and completely in short periods of time. The high degree of the global dependence on fossil carbon and the enormous scale of the fuel-dominated global energy system mean that the unfolding energy transition towards decarbonization will inevitably follow the progress of all previous large-scale primary energy shifts. In other words, it will be a gradual, prolonged affair,” writes Vaclav Smil, regarded as an international authority on the history of energy transitions, Distinguished Professor Emeritus, Faculty of Environment, University of Manitoba.¹⁷²⁹

“Designing hypothetical roadmaps outlining complete elimination of fossil carbon from the global energy supply by 2050 is nothing but an exercise in wishful thinking that ignores fundamental physical realities. The complete decarbonization of the global energy supply will be an extremely challenging undertaking of an unprecedented scale and complexity that will not be accomplished – even in the case of sustained, dedicated and extraordinarily costly commitment – in a matter of a few decades,” Smil says.¹⁷²⁹

1403. Governments and companies are making widespread promises to evolve all their energy systems to generate net zero greenhouse gas emissions by 2050. The target is energy with no GHG emissions or low-carbon energy that is paired with organic and mechanical facilities that pull GHGs out of the air, such as planting billions of trees or the direct air capture and storage of carbon dioxide from the air. Given the nascent stage of these mechanical solutions, there is a world of work to do.

“There is no doubt that the energy sector will only reach net-zero emissions if there is a significant and concerted global push to accelerate innovation,” writes Fatih Birol, Executive Director, International Energy Agency.

“It is also clear that there is a disconnect between the climate goals that governments and companies have set for themselves and the efforts underway to develop better and cheaper technologies to realize those goals. While we have witnessed tremendous progress in technologies like solar PV, wind turbines and lithium-ion batteries, the technological advances that will be needed demand a step change in both the speed at which innovation occurs and the scale at which new technologies are deployed. And this progress must be achieved in a way that makes our energy systems more secure and resilient,” IEA says.¹⁷³⁰

1404. Alberta is in the midst of making its most significant gains in GHG reductions, applying proven technology to substantially lower emissions in power generation by replacing coal with natural gas. These conversions follow historical evolutions that incrementally move along the carbon continuum from high-carbon coal to low carbon natural gas.
1405. Alberta’s two large power generators, TransAlta and Capital Power, are on track to complete all coal-to-gas conversions at Alberta power plants by 2023, seven years ahead of the province’s off-coal-power schedule. Power generation GHG emissions between 2005 and 2023 are expected to

¹⁷²⁹ What we need to know about the pace of decarbonization, Policy Brien, Johnson Shoyama Graduate School of Public Policy, University of Regina, Vaclav Smil, Distinguished Professor Emeritus, Faculty of Environment, University of Manitoba, April 2020

¹⁷³⁰ Energy Technology Perspectives 2020, Special Report on Clean Energy Information, International Energy Agency, July 2020, <https://www.iea.org/reports/energy-technology-perspectives-2020>

fall more than 25 million tonnes of greenhouse gas per year, a meaningful level that's equivalent to more than 10 percent of Canada's reduction pledge of 219 megatonnes in the Paris Agreement.¹⁷³¹ Compared to all other techniques, these conversions are the largest and lowest-hanging emissions, the biggest easy steps. Everything else is technically and economically harder, and incremental in size.

1406. GHG reductions across Alberta's power grid have been advancing for close to 30 years, from the first commercial wind farm in 1993 near Pincher Creek to the current 38 wind projects with an installed capacity of 1,685 megawatts, which supplies about 5 percent of Alberta demand.¹⁷³² Alberta's renewable sources – hydro, wind, biomass and solar – provided close to 10 percent of demand in 2019.¹⁷³³ Additional wind and solar projects are in development, such as 3,300 acres of solar panels near Lomond, Alberta with generating capacity of 465 megawatts.¹⁷³⁴
1407. Replacing fossil fuels with renewables is often described as an easy switch. Each source has its application merits, but they are not similar.
1408. Electricity investment in numerous wind and solar projects will marginally offset Alberta's GHG emissions, which are up about 18 percent since 2005, due largely to oil and gas production growth and population growth.¹⁷³⁵ To make substantial reductions in oil and gas GHG emissions, significant investments and gains in technical innovations are required.
1409. Numerous contributors to the Inquiry voiced strong support for driving down Alberta GHG emissions from energy, for the province, Canada and the world. But they also strongly believe that quitting oil and gas development will only strangle Canada's capacity to capitalize on leveraging the nation's long and well-developed energy expertise, which is essential to developing more reliable, affordable and pragmatic low-carbon energy sources. There is no guarantee that humans will find no-carbon energy that fits every need now served by fossil fuels. Conversions, like Alberta's end of coal power, are essential, and will happen, as they have, with relative ease. Other sensible conversions will happen automatically. The Inquiry heard that Alberta and Canada must concentrate on applying science, innovation and technology to the difficult and demanding work of driving down carbon emissions across the entire energy spectrum. Incremental gains will come with product optimization. Just like the conversion of power generation from coal to natural gas, the most fertile reduction opportunities reside in the higher carbon sources. While the cost and application of wind and solar power have made great leaps, innovation will scratch out smaller gains because there is not enough room left in cost and energy efficiency to spark a revolution.¹⁷³⁶

"An energy revolution will come only from the pursuit of basic sciences. Or, as Bill Gates has phrased it, the challenge calls for scientific "miracles." These will emerge from basic research, not from subsidies for yesterday's technologies. The Internet didn't emerge from subsidizing the dial-up

¹⁷³¹ <https://www.transalta.com/investor-centre/events-and-presentations/>

¹⁷³² Wind energy in Alberta, Canadian Wind Energy Association, <https://canwea.ca/wind-energy/alberta/>

¹⁷³³ Alberta electricity data, Alberta Utilities Commission, <https://www.auc.ab.ca/Pages/annual-electricity-data.aspx>

¹⁷³⁴ Greengate Power, Travers Solar Project, <https://greengatepower.com/travers-solar-465-mw>

¹⁷³⁵ National Inventory Report 1990 – 2018: Greenhouse Gas Sources and Sinks in Canada, Part 1, Environment and Climate Change Canada, https://publications.gc.ca/collections/collection_2020/eccc/En81-4-1-2018-eng.pdf

¹⁷³⁶ Notes on Technology for the 2020s, Eli Dourado, December 31, 2020, <https://elidourado.com/blog/notes-on-technology-2020s/>

phone, or the transistor from subsidizing vacuum tubes, or the automobile from subsidizing railroads,” Mills says.

“However, 95% of private-sector R&D spending and the majority of government R&D is directed at “development” and not basic research. If policymakers want a revolution in energy tech, the single most important action would be to radically refocus and expand support for *basic* scientific research,” Mills says.¹⁷³⁷

1410. Like all other monumental breakthroughs in history, science, technology and innovation unlocked the solution. Look no further than the Covid-19 pandemic. The two-leading vaccines that are delivering the global promise of pandemic reduction came from a medical technology called messenger Ribonucleic acid (mRNA), an innovation dating from the 1950s that was being developed to fight cancer when scientists pivoted to prevent Covid.
1411. Reducing carbon emissions requires a similar effort, one that I believe Alberta and Canada should pursue deeply. The province has a long history of innovation and has the skills and the entrepreneurial mindset to provide global leadership in this next phase of the energy transition. What Thomas Babington Macaulay said in the first half of the 19th century is still apt today - “On what principle is it that with nothing but improvement behind us, we are to expect nothing but deterioration before us?”
1412. I heard from numerous individuals and entities pursuing innovations aimed at breakthroughs similar to what AOSTRA achieved in unlocking the value of bitumen. I believe it is time to reconstitute a mission as bold as AOSTRA was in its day; this time applying science, innovation, technology and our “can do” spirit to decarbonize the entire energy system. We can become world leaders in industrial and digital technologies that will make products low carbon and low cost. With the help of good policy tools, regulations, talent, and private/public capital, our existing energy system, with among the best environment, social and governance (ESG) standards in the world, makes Alberta a great laboratory for leading-edge innovation.
1413. Leveraging Alberta’s natural and human resource endowment to provide lower impact energy solutions to the world is an obvious advantage. Alberta’s leading science, technology and innovation “laboratory” includes:
1414. **Canada’s Oil Sands Innovation Alliance** (COSIA) is an alliance of oil sands producers focused on accelerating the pace of improvement in environmental performance in Canada’s oil sands through collaborative action and innovation. Focused on GHGs, land, tailings and water, COSIA has more than 200 active projects and has invested more than \$1.6 billion since 2012. Canada’s oil and gas industry are the nation’s largest investor in clean technology.¹⁷³⁸
1415. **Clean Resource Innovation Network’s** (CRIN) ambition is to make Canada a global leader in the energy transformation. Building on the tradition of AOSTRA, this network of innovators,

¹⁷³⁷ The “New Energy Economy”: An Exercise in Magical Thinking, March 2019, Mark P. Mills, <https://www.manhattan-institute.org/green-energy-revolution-near-impossible>

¹⁷³⁸ Canada’s Oil Sands Innovation Alliance, <https://www.cosia.ca/>

composed of companies, governments, research and education institutions, collaborates to advance solutions to energy development in air, land, water, remediation and extraction.¹⁷³⁹

1416. **Alberta Innovates** is the child of AOSTRA, the Government of Alberta's applied research and development firm focused on solving big industry challenges and growing the business and start-up community to build new technology and drive new ideas.¹⁷⁴⁰
1417. **Emissions Reduction Alberta** – Government of Alberta corporate mechanism, formed in 2009, investing revenues from the carbon price paid by large final emitters directly into clean technology solutions. It has provided \$611 million towards 185 projects investing \$4.4 billion targeting 34 million tonnes of GHG reductions.¹⁷⁴¹
1418. **C-FER Technologies** – a self-sustaining subsidiary of Alberta Innovates with engineering expertise, analysis and facilities to conduct large-scale, independent testing that solves critical engineering challenges.¹⁷⁴²
1419. **Energy Futures Lab** – a collaboration of individuals representing diverse interests aimed at answering: How can Alberta's leadership position in today's energy system serve as a platform for transitioning to the energy system the future requires of us?¹⁷⁴³
1420. **The Transition Accelerator** – a team of researchers working with partners and supporters to harness and direct disruptions in ways that address social and business challenges while building emissions reduction into solutions that secure a sustainable future. Work is focused on Canada's hydrogen economy, personal mobility, agri-food and electrification and grid integration.¹⁷⁴⁴
1421. Alberta's universities each operate comprehensive research and innovation programs and initiatives across a broad spectrum of disciplines.
1422. Key technologies that are in early or visionary stages of development:
- **Carbon Capture Use and Storage (CCUS)** – Foundational investment in Shell Canada's Quest project that has sequestered 5 million tonnes of carbon dioxide since start up in 2015 from Shell's Scotford Upgrader at Fort Saskatchewan.¹⁷⁴⁵
 - **Alberta Carbon Trunk Line** – a backbone pipeline moving liquefied carbon dioxide from the North West Redwater Partnership's Sturgeon Refinery and the Nutrien fertilizer plant near Fort Saskatchewan about 200 kilometres south for injection and enhanced oil recovery from Enhance Energy's 70-year-old Clive oil field.¹⁷⁴⁶

¹⁷³⁹ Clean Resource Innovation Network, <https://cleanresourceinnovation.com/>

¹⁷⁴⁰ Alberta Innovates, <https://albertainnovates.ca/>

¹⁷⁴¹ Emissions Reduction Alberta, <https://eralberta.ca/>

¹⁷⁴² C-FER Technologies, <https://www.cfertech.com/>

¹⁷⁴³ Energy Futures Lab, <https://energyfutureslab.com/>

¹⁷⁴⁴ The Transition Accelerator, <https://transitionaccelerator.ca/>

¹⁷⁴⁵ Quest Carbon Capture and Storage, https://www.shell.ca/en_ca/about-us/projects-and-sites/quest-carbon-capture-and-storage-project.html

¹⁷⁴⁶ Alberta Carbon Trunk Line, <https://actl.ca/>

- **Carbon Conversion** – Capital Power holds a significant interest in C2CNT an early-stage developer pursuing technologies that will turn carbon into materials, such as nano tubes.¹⁷⁴⁷
- **Methane emissions reductions** – Employing advanced tools of optical gas imaging for leak detection and repair (LDAR), deployed in fixed locations, by hand, on trucks, drones and satellites, gas leaks in plants and pipes are detected then stopped. Alberta has mandated a 45 percent reduction of 2014 methane emissions by 2025.¹⁷⁴⁸
- **Geothermal** – harvesting geological heat by employing new or repurposed wellbores acting as veins tapping subsurface heat by injecting fluid that returns hot fluids to surface to drive electrical generation. The next generation of geotherm is being identified as “a bunch of scrappy startups manned by folks leaving the oil and gas industry. The startups...think that with today’s technology they can crack 3.5 cents per kilowatt hour (kWh) without being confined to volcanic regions. With relatively minor advancements in drilling technology compared to what we’ve seen in the last decade, advanced geothermal could reach 2 cents/kWh and become scale to become viable just about anywhere on the planet. Collectively, the startups are talking about figures like hundreds of gigawatts of generation by 2030.”¹⁷³⁶

Geothermal has enormous potential for Alberta, given our technological capabilities and our entrepreneurial bent. Eavor Technologies Inc. is developing a full-scale prototype near Rocky Mountain House that creates a closed loop that circulates fluid to harvest heat from the Earth.¹⁷⁴⁹

- **Hydrogen** – A well-established industrial gas, hydrogen is seen as a promising carbon-less energy source as a compressed fuel in combustion engines and by generating electricity with hydrogen fuel cells, but the complexities of adoption are numerous and require innovative solutions to become widespread.
 - The Transition Accelerator has written a strategic plan that sees hydrogen replace gasoline, diesel, jet fuel and natural gas fuels for hard to transition sectors such as heavy transportation and industry. Building upon the established industrial hydrogen production at the refining, upgrading and fertilizer installations in Alberta’s Industrial Heartland near Edmonton, plus the abundant and affordable Alberta natural gas resources, the plan outlines steps for Canada’s first hydrogen fuel node as a building block for a national net zero emission hydrogen energy system.¹⁷⁵⁰
 - Natural gas distribution companies, such as ATCO and Enbridge, are evaluating how to blend hydrogen into home and industrial natural gas supplies at pilot locations in Alberta and Ontario.¹⁷⁵¹
 - In conjunction with the Canadian and Alberta governments, Air Products Canada announced plans in June 2021 to build a \$1.3 billion net-zero hydrogen production and liquefaction facility in Edmonton, expected onstream in 2024.

¹⁷⁴⁷ Carbon Conversion, Capital Power, <https://www.capitalpower.com/sustainability/innovation/carbon-conversion/>

¹⁷⁴⁸ Methane Emissions Reduction, Alberta Energy Regulator, <https://www.aer.ca/protecting-what-matters/protecting-the-environment/methane-reduction>

¹⁷⁴⁹ Eavor Technologies Inc. Eavor-Lite Demonstration Project, <https://eavor.com/>

¹⁷⁵⁰ The Transition Accelerator, Hydrogen research, <https://transitionaccelerator.ca/our-work/hydrogen/>

¹⁷⁵¹ ATCO Hydrogen Blending project, <https://www.atco.com/en-ca/for-home/natural-gas/hydrogen.html#blend>, Enbridge Hydrogen Blending project, <https://www.enbridge.com/Stories/2020/November/Enbridge-Gas-and-Hydrogenics-groundbreaking-hydrogen-blending-project-Ontario.aspx>

- **Nuclear, Small Modular Reactors** – Alberta is looking to join Ontario, New Brunswick and Saskatchewan to explore the potential for nuclear power generation on a small modular scale.¹⁷⁵²
1423. Initiatives that support technology development and investment:
1424. **Alberta Enterprise Corporation** – a provincial corporation that acts as a facilitator and invests in venture capital funds to leverage success in Alberta knowledge-based companies with a focus in information technology, industrial technology and life sciences.¹⁷⁵³
1425. **Invest Alberta** – a new Crown corporation, started in September 2020, dedicated to attracting and recruiting international investment in key and emerging Alberta business sectors: energy, agriculture and tourism, technology, aviation and aerospace and financial services.¹⁷⁵⁴
1426. The list of initiatives and organizations described above is not exhaustive, and would not fully reflect the volume and scope of energy transition science, technology and innovations work underway. These initiatives are doing important, but fragmented work, which limits the capacity for maximum success. Given the enormous scale of the challenge to reduce carbon emissions, the need for multi-stakeholder collaboration is necessary, and is starting to materialize.

Oilsands Pathways to Net Zero

1427. This promising initiative to produce oil sands with net zero emissions was announced in June 2020. Focused on breaking down that fragmentation by creating significant collaboration, Pathways is exactly what is needed if Alberta and Canada are to become global leaders in creating energy and climate solutions. Five major companies that operate 90% of oil sands production have agreed to work collectively with the federal and Alberta governments to achieve net zero emissions from oil sands operations by 2050. The initiative has a major focus on carbon capture, use and storage (CCUS) and will require significant investment on the part of industry and government to advance research and development (R&D) of new and emerging technologies. Importantly, the initiative also proposes to engage with Indigenous communities in working towards the net zero emissions goal.¹⁷⁵⁵
1428. I am aware of another promising initiative, a public-private fund much like AOSTRA was in its day, but still in the development stage. This initiative is focused on leveraging the existing ecosystem to commercialize and scale up technology-driven companies to compete and dominate in the global energy transition marketplace, while at the same time playing a critical role in supporting Canada's existing industries to successfully transition to a low carbon economy. The initiative would seek to combine Canada's talent, technologies and sustainable finance together with the regulatory and policy framework required to accelerate leadership and play to Canada's natural advantages. This initiative would seem to mesh ideally with the Oil Sands Pathways to Net Zero initiative.

¹⁷⁵² Exploring safe, small-scale nuclear technology, Alberta government news release, August 7, 2020, <https://www.alberta.ca/release.cfm?xID=72998DCF71AB1-B09A-B25B-F0EB62BA02A0EFC8>

¹⁷⁵³ Alberta Enterprise Corporation, <https://www.alberta-enterprise.ca/>

¹⁷⁵⁴ Invest Alberta, <https://investalberta.ca/>

¹⁷⁵⁵ <https://www.oilsandspathways.ca/#home>

1429. These initiatives would bring clarity and a national level coordination to the existing fragmented innovation ecosystem to ensure that Canada not only achieves our national climate goals but builds generational prosperity and global leadership. Similar models have proven successful in Israel and Singapore, which rank among the most innovative countries in the world and have generated billions of dollars of value for their countries. The energy transition competition has already begun with the US, UK, South Korea and EU members all aggressively investing billions of dollars. The proposed initiatives would unify, streamline and bring structure and purpose to the process of supporting, growing and delivering Canada's energy transition champions to the world. Canada is a small country, and to compete, we need to collaborate, focus and act with purpose.

Energy transition's long march will be led by Science, Technology and Innovation

1430. As with all monumental challenges, particularly ones that revolutionize centuries of established energy systems across the globe, history has shown that none of this task is simple, every step is incremental and the quick wins, such as eliminating coal-fired power generation in Alberta, are the low-hanging fruit. Such transitions have never happened fast, and the residual, lower-quality energy sources, linger for years. When coal replaced wood, wood consumption plummeted, but it remains a valued energy source in niche applications. Fossil energy occupies about 85% of the globe's primary energy and that share is largely unchanged in decades. Global populations continue to grow, and energy poor societies aspire to improved lives, which require more reliable and affordable energy. History has also shown that technological advances are the only real game changers to improving the machinery for humans. Public policy changes are important but unlocking a net zero economy will take ingenuity to overcome the hurdles and amplify the capacity of Earth's matter. The natural laws of physics and chemistry dictate that mass is neither created nor destroyed, only transformed into a form that delivers energy more efficiently than the current sources. Science, technology and the human pursuit of innovation are absolutely essential and far outweigh all other ways to transition the energy systems of Alberta, Canada and the world.
1431. Alberta has an opportunity to capitalize on our natural resources, our human capital, and our history of innovation and entrepreneurship. However, we do need mechanisms to marshal the efforts and initiatives described above if we are to capitalize on the opportunities we have, and to compete with the world. In that regard, the Oil Sands Pathways project and the public/private fund initiative would naturally link to the proposal to provide a to mandate the Business Council of Alberta described in Recommendation 5, to engage with the Business Council of Canada and together lead a national effort to craft and execute a natural resource development strategy for Canada, in concert with other provinces and key stakeholders. Every effort of industry and government should be focused on "doubling down" on the effort to advance our opportunity to be global energy leaders and to seek climate solutions for the world.

Recommendation 4 – Reliable Information

Invest in and support the collaborative development of a methodology, including governance oversight, to establish world-class best practices, standards, and processes for the measurement, accumulation and reporting of GHG emissions data.

Rationale: Different countries, and even different resource developers within each country, have varying standards and processes for measuring and reporting on GHG emissions, yet accurate and meaningful GHG reporting is critical to tackling climate change. Alberta has the opportunity to be a world leader in developing GHG measurement standards and processes.

OILSANDS GHG EMISSIONS

1432. At the outset of the Inquiry, I was aware of allegations that GHG emissions from the Alberta oil sands were significantly higher than any other resource in the world. I thought that the veracity of this claim would be easy to determine, as there must be a reliable source that would identify the GHG intensity of various resources. I quickly became aware, from interviews I conducted, as well as my own reading and research, that no such single source existed and in addition, I learned of many of the complexities surrounding this issue.
1433. Having said that, the Inquiry did not conduct a detailed technical review of this matter, so my comments on this issue are at a very high level. Despite the lack of detail, however, I expect that my observations will not be controversial, as this is an issue that is likely to be of concern to all stakeholders.
1434. There is enormous attention being paid internationally to environment, social and governance (ESG) performance rankings by all stakeholders, including governments, environmental organizations, industry associations, investors, lenders, individual companies and others. Many observers believe that Canada has among the highest ESG standards internationally that should provide our hydrocarbons with a sustainability and competitive advantage.¹⁷⁵⁶
1435. Compared to other major international oil and gas producers, including Russia, Saudi Arabia, and Venezuela, I have little doubt but that Canada scores at the high end of Social and Governance factors, so my focus as Commissioner on this topic was on GHG emissions, a major element of the environment measures.^{1757,1758}
1436. I heard concerns from several industry representatives that the compilation and reporting of data was extremely cumbersome. Reporting to official sources through provincial and federal government processes is apparently inefficient; it is suggested that the process is not transparent, or timely and the results that are ultimately reported by Environment and Climate Change Canada to the United Nations are therefore of questionable integrity. In fact, I was told that some GHG data are several years old by the time they become “official”.

¹⁷⁵⁶ What is the Future of Canada’s Energy Sector? Viewpoint Research, Mac Van Wielingen, June 2021.

¹⁷⁵⁷ 400 Billion Barrel Opportunity for Friendly Oil: Canada’s Evolving Role. BMO Capital Markets, March 4, 2020

¹⁷⁵⁸ Imperial Oil Investor Day Report, November 12, 2019

1437. The oilsands are often attacked as “dirty oil”. At the same time, oilsands producers take pride in the reduction of GHG emissions and are setting aggressive goals for the future, including the recent announcement of the Oil Sands Pathways project, through which five major oilsands producers are committed to net zero emissions by 2050.^{1759, 1760, 1761, 1762, 1763}

NATURAL GAS AND METHANE EMISSIONS

1438. Even lower carbon-emitting natural gas is under scrutiny with respect to flaring and methane emissions. This was a topic at a November conference, the Methane Emissions Reduction Forum, hosted by Petroleum Technology Alliance Canada and the Clean Resource Innovation Network. The Forum heard that there was likely going to be more transparency to emissions worldwide and the suggestion was that this could become a competitive advantage for Canada.

“Increasing transparency will create a more level playing field,” said Drew Leybourne, assistant deputy minister, Energy Technology Sector, Natural Resources Canada. “Having the data, measuring what we want to improve is a crucial part of that.”

“We want accurate geospatial source modelling at the facility, regional and national level. Accurate data can help us understand the true magnitude of these emissions and identify cost effective solutions.”¹⁷⁶⁴

1439. Stephane Germain, CEO of GHGSat told the conference, “To the question of how to deal with people who are not as aggressive or not taking climate change as seriously as us, I know for years we’ve heard that you’ll never be able to track molecules in the same way that you track diamonds, for example, in terms of differentiating yourself from your competitors, but I actually think that’s shifting.” There are new monitoring, measuring and data gathering technologies, like blockchain that “are allowing some of the disaggregation that we couldn’t have imagined possible a few years ago.” Individual companies have their own processes; all resources differ, and change over time; the federal and provincial governments have their own approaches. At the same time, investors, financial institutions, environmental organizations and the Canadian public are demanding reduced emissions. To be clear, this issue is not unique to Canada. It is common to every petroleum producing company and country.
1440. To further illustrate this issue, Professor Martin Olszynski, a University of Calgary law professor, made a submission to the Inquiry as a Participant for Commentary. In his submission he stated that, “Alberta’s oil sands reserves have been – and continue to be – amongst the most GHG intensive in the world.” To prove his point, he included a graph with his submission prepared by

¹⁷⁵⁹ See for example, <https://www.suncor.com/en-ca/about-us/strategy>,
https://www.cnrl.com/upload/media_element/1313/02/2019-stewardship-report-to-stakeholders.pdf,
<https://www.cbc.ca/news/canada/calgary/cenovus-oilsands-sustainability-strategy-1.5420652>

¹⁷⁶⁰ Lowest Carbon-Emitting Natural Gas Being Squeezed to be Even Greener www.
Dailyoilbulletin.com/headlines/2020-11-23/

¹⁷⁶¹ <https://financialpost.com/commodities/energy/oilsands-emissions-intensity-35-lower-drop-another-19>

¹⁷⁶² <https://www.theglobeandmail.com/business/article-oil-sands-emissions-study-shows-pollution-decreases-but-researchers/>
Decreasing Oil Sands Emissions, the Globe and Mail, January 4, 2021

¹⁷⁶³ <https://oilsandspathways.ca>

¹⁷⁶⁴ Lowest Carbon-Emitting Natural Gas Being Squeezed To Be Even Greener, Maurice Smith, Daily Oil Bulletin, November 23, 2020

M.Masnadi et al., “Global carbon intensity of crude oil production” Science (31 Aug 2018), Vol. 361, Issue 6405, pp. 851-853.

1441. Blair King, who writes a blog called A Chemist in Langley, wrote an article clarifying the submission of Professor Olszynski. I am making this point, not to challenge the Professor’s assertions but to underscore the unreliability of GHG data generally. Dr. King, who holds a PhD in chemistry and environmental studies, suggests that, “The researchers simply don’t have the data to make sufficiently reliable estimates for most major (international) producers and according to this (Masnadi) research Canadian crude GHG intensities could be right in the middle of the pack.”¹⁷⁶⁵
1442. In addressing the issue of “reliable information”, I am not questioning the diligence that is applied to the process by individual Canadian reporting entities; nor am I questioning the success of reporting entities in reducing emissions. However, given current processes and practices, including as illustrated by Dr. King in his descriptions of the unverified data and unknown variables for international producers, GHG emissions reporting, comparisons to other resources, and progress reports of emissions reductions are open to question and attack.
1443. Ideally, we would have standardized processes and methodologies for measuring, accumulating and reporting data that are open, transparent and subject to third party verification. As an accountant, the obvious parallel, is international accounting standards. The ultimate goal would be to develop a system whereby companies and countries could be ranked for comparative purposes.
1444. There is an opportunity for Alberta to take the lead on an initiative to develop such a process, through collaboration with major Canadian producers, the federal government and other stakeholders.
1445. As indicated in the footnotes supporting this recommendation, I have relied heavily on IHS Markit and the considerable research and reporting¹⁷⁶⁶ it has done and continues to do on this issue. IHS is currently conducting “The Right Measure Multi-Client Study”, which is a collaboration with oil and gas producers and financial institutions to develop a trusted methodology for measuring and reporting GHG emissions estimates over the life cycle of crude oil.¹⁷⁶⁷

¹⁷⁶⁵ <https://achemistinlangley.net/2021/01/15/the-ghg-intensity-of-the-canadian-oil-industry-what-the-scientific-research-actually-says/>

¹⁷⁶⁶ For more detailed background on this issue, see the following IHS Markit publications-

- (a) Finding the right measure: Estimating the GHG emissions of crude oil, Cathy Crawford, Kevin Birn, July 11, 2019
- (b) Comparison of GHG emissions across oil and gas companies infeasible due to differing methodologies, Steven Knell, PhD, November 27, 2019
- (c) Understanding the GHG intensity of crude oil: The challenge of averages, Cathy Crawford, Kevin Birn, December 18, 2019
- (d) Understanding the GHG intensity of crude oil: Composition adds complexity, Cathy Crawford, Kevin Birn, January 20, 2020

¹⁷⁶⁷ <https://ihsmarkit.com/Info/1020/the-right-measure-understanding-greenhouse-gas-emissions-of-crude-oil.html>

1446. It is recommended by this Inquiry that the Alberta government support this study, and that a process be developed to encourage participation and support by others in the industry, other levels of government, academics and environmental organizations.
1447. The ultimate goal should be to create a digital data center such that information regarding GHG emissions and other environmental factors can be updated in real time, openly and transparently, and subject to third-party verification. To ensure that data is secure and trusted, the data centre could be established at the University of Calgary or the University of Alberta and could be a collaborative effort of the two institutions, and perhaps include other partner institutions from other provinces.
1448. The process of developing the methodology and maintaining, updating and reporting the data must be subject to governance oversight of the highest standards. Absolute integrity of the data and reporting thereon, must be independent and beyond reproach.
1449. I understand from my interviews and research that the energy industry and governments have been grappling with this issue for more than 15 years, without any resolution. That is unacceptable. Would such uncertainty prevail in the measurement and reporting of the volume and quality of any other commodity, such as a barrel of oil or a thousand cubic feet of natural gas? With the growing global installation of carbon taxes, a tonne of CO₂ has a defined value that demands the establishment of accurate measurement that is no less essential than the measurement and reporting of any valued commodity.
1450. It is critical to the future of the energy industry, and indeed to Alberta and to Canada, that action be taken on this matter such that reporting on emissions is trusted and progress on reducing emissions can be clearly demonstrated. Alberta can and should provide the leadership, internationally, to advance this matter.

HYDROGEN – A need for accurate, reliable information.

1451. A recent article in the Daily Oil Bulletin suggests that Canada's opportunity to shift to blue hydrogen is also focused on the need for an integrated data platform to build trust, improve ESG performance and attract "green" investment. Proponents suggest that this is an opportunity for blockchain applications as it is a technology of trust – a shared secure digital network that allows all authorized parties access to cryptographically verified data.
1452. Maggie Hanna, a Fellow at the Energy Futures Lab, views blockchain as a way to measure and track carbon intensity variables from producing hydrogen to help consumers make better choices. "Any hydrogen traded internationally will likely require a blockchain carbon token on every kilogram/tonne. In addition to recording the hydrogen price, blockchain tokens are a powerful way of certifying the carbon footprint of hydrogen throughout the entire fuel value chain, including carbon footprint of feedstocks, production facility operations, carbon utilization and sequestration, any conversion to other forms of transportation and the transport itself."¹⁷⁶⁸

¹⁷⁶⁸ Analysis: How Blockchain Can Power Canada's Hydrogen Transition, Daily Oil Bulletin, March 25, 2021, by Alexis Pappas

1453. The article describes a future vision for blockchain technology that could power all levels of the clean energy value chain, which is described as is compelling and achievable. It will, however, require infrastructure and investment, which will have to come from a diversity of supporters across the public and private sector. It is another opportunity that should be explored through the proposal described in the conclusion to Recommendation 3 – Science, Technology and Innovation.
1454. Again, it is not only critical to develop processes for the accumulation and timely reporting of accurate data, but it could also be an economic opportunity for Alberta as well.

Recommendation 5 – Natural Resource Development Strategy

Provide a mandate to the Business Council of Alberta to engage with the Business Council of Canada and together lead a national effort to develop a Natural Resource Development Strategy for Canada.

Rationale: Canada’s economic history is based on the responsible development of our abundant natural resources and exporting them to international markets. Currently, there is a divergence of focus among key stakeholders that is preventing Canada from fully seizing on its opportunities.

1455. This recommendation to develop a Natural Resource Development Strategy for Canada is an opportunity for Alberta to provide leadership within Canada to create a strategy to develop our natural resources – including energy, agriculture, forestry, mining and fishing – in a responsible and sustainable manner, with appropriate balance between environmental and economic factors.
1456. Currently, there are significant policy differences between many Canadian provinces and the federal government, so to be successful, this project must include the Business Council Of Canada in a leadership role, as well as key organizations in other provinces with aligned interests, including First Nations, labour unions, industry associations and environmental organizations. In advancing this process, a means of engaging and informing Canadians from coast to coast to coast is critical in order that they are aware of both the challenges and the tremendous opportunity Canada has to make a positive contribution to global climate issues and to realize economic benefits from our resources, our technology and our ingenuity. Essentially, to advance this initiative, the Business Council of Alberta should champion the effective implementation of Recommendations 1, 2, 3 and 4 and utilize Recommendation 6 for the purpose of engaging and communicating with Canadians.
1457. It is worth noting, that while energy appears to be under greater scrutiny from a climate change perspective, this Inquiry attracted a lot of interest from agricultural industry leaders concerned about an increasing focus on their industry. In fact, all of Alberta’s key industries face challenges with respect to climate change. However, Alberta is also on the leading edge of science, technology and innovation in all of our key industries, and as noted in Recommendation 3, has the opportunity to be a leader in advancing solutions to these challenges.
1458. The observations below are not new or unique. In fact, these issues are frequently raised and commented on in public policy initiatives, the media, opinion pieces and think-tank research articles that came to my attention during the course of the Inquiry. The challenge, as I perceive it, based on my observations throughout the Inquiry, is that our constructive dialogue and efforts are paralyzed by entrenched positions within a myriad of interest groups, corporations, industry associations, political organizations, think tanks and others, many with the same goals and objectives but often working in silos without collaboration and alignment. People seem to be talking among themselves and reinforcing already strongly held views of whichever group with which they are associated. As a province and as a country, it seems we are more polarized and a path forward seems increasingly less clear.
1459. This Inquiry was focused on identifying the flow of foreign funding into anti-Alberta energy campaigns. The preceding Report details the flow of funds and identifies many anti-Alberta

energy activities. While not a focus of the Report, energy industry supporters have also been vocal about what they argue are the positive attributes of the industry. Anger has fomented on both sides of the debate; positions have become entrenched; and little positive progress has resulted in terms of a clear strategy for maximizing the development opportunities of our natural resources, while ensuring appropriate environmental stewardship.

1460. To underscore this point, a recent essay by atmospheric scientist and environmental advocate Judith Curry, discussed how the “blame game” gets in the way of solving complex societal problems. She argues, as I propose elsewhere in this Report in Recommendation 3, that the path forward requires “problem solving and new technologies, not blame”.¹⁷⁶⁹
1461. In practically every one of the informal interviews I conducted during the Inquiry, interviewees often accepted the merits of having Deloitte confirm the existence of foreign funding contributing to anti-Alberta energy campaigns. However, in almost every discussion, I was asked, “Then what? If the existence of foreign funding and anti-Alberta energy campaigns can be shown, where do we go from here; what can ‘we’ do about it?”
1462. Providing leadership in creating a Natural Resource Development Strategy for Canada is “something we can do about it”. I believe we need to stop looking in the rear-view mirror and look forward to developing solutions in a collaborative manner.^{1770,1771}
1463. A good foundation for this initiative was established by resource news firm JWN and several other partners, which held a virtual summit in September 2020. They published a report on the summit in November 2020, “Growing Forward Together: The Next-Gen Alberta Advantage”. The report provides more insight on many of the observations listed below.¹⁷⁷²
1464. The following observations provide some of the thinking that has led me to make this recommendation, which should be considered in advancing this process. These observations should not be considered an all-inclusive list but they are foundational to my rationale for recommending the creation of a Natural Resource Development Strategy led by the Business Council of Alberta through a collaborative effort with the Business Council of Canada and other Provinces and stakeholders.

¹⁷⁶⁹ <https://judithcurry.com/2020/12/07/the-blame-game-2/#more-26804>

¹⁷⁷⁰ A recent public opinion survey by the Pembina Institute underscores that “Albertans would prefer more collaboration and dialogue between government, industry and diverse stakeholders to advance economic diversification and technological innovation that can also accelerate necessary improvements in environmental performance.” <https://www.pembina.org/media-release/two-thirds-albertans-support-reaching-net-zero-emissions-2050>

¹⁷⁷¹ Positive Energy, a program of the University of Ottawa overseen by Monica Gattinger, regularly surveys Canadians in concert with Nanos research on energy and environmental issues. Views on these issues are becoming increasingly more polarized according to their research. ...” decision makers charting Canada’s energy and climate future have their work cut out for them. They will need to carefully navigate differences in opinion, build bridges across partisan, ideological and regional divides and cultivate areas of agreement.” But Gattinger notes a positive path forward on energy and climate is possible. “Canadians agree on multiple areas of energy and environment, particularly where economic, environmental and social objectives can be aligned. Developing integrated balanced approaches that pay careful attention to where and how Canadians’ views align and diverge on the issues will be crucial.” Canadians’ Views On Energy And Environment During Covid-19, Part II- Bridging the Divide, Monica Gattinger, Daily Oil Bulletin, February 9, 2021

¹⁷⁷² Growing Forward Together: The Next-Gen Alberta Advantage JWN Report, November 2020.

1. Canada is blessed with natural resource assets, the development and marketing of which have provided us with our excellent standard of living.
 - The Covid-19 pandemic has caused Canada's federal government debt to rise substantially to an estimated \$1,234 billion in 2020-21, up about 71 percent from \$721 billion in the past two years.¹⁷⁷³
 - One of our most important natural assets is our people; our province is known for our young, smart, well educated, innovative people.¹⁷⁷⁴
 - My professional career as an insolvency and restructuring professional has taught me that entities (and there is no reason that can't include countries) must leverage their assets in order to manage their challenges. To work its way out of challenges, including massive debt, an entity must build on its strengths, rather than creating new programs or new lines of business, potentially adding to its debt.
2. The oilsands have always been an asset of the province and they have been tapped and made commercially feasible due to the commitment of previous Alberta governments (including and importantly, through AOSTRA – see Recommendation 3) and the technological ingenuity of our people over decades of development.^{1775, 1776}
 - The oilsands represent the world's 3rd largest crude oil reserve.¹⁷⁷⁷
 - Oilsands development has presented environmental challenges, such as increasing GHG emissions, significant water use, tailings pond management, encroachment on forest and wildlife habitat, etc., but all of the challenges are being addressed. There is every expectation that the same spirit of innovation and ingenuity that facilitated the development of the resource will solve these issues too. (see Recommendation 3)¹⁷⁷⁸
3. Canada's economic history and success has in a very large part been based on the development of our natural resources, which have created employment opportunities for Canadians from coast to coast.¹⁷⁷⁹
 - Mineral fuels, including oil, are Canada's largest export; in 2019 those exports amounted to \$98.4 billion (22% of all exports; Vehicles were 2nd at \$61.4 billion or 13.8% of the total).¹⁷⁸⁰
 - In a recent seminar, David Dodge, former Bank of Canada Governor, spoke about the importance of the oil sands to Canada's post-Covid recovery. While it is critical to continue to reduce GHG content and production costs, the export capacity of the oil

¹⁷⁷³ Government of Canada 2021 budget, April 19, 2021, <https://www.budget.gc.ca/2021/home-accueil-en.html>

¹⁷⁷⁴ www.albertaprosperty.ca

¹⁷⁷⁵ https://en.wikipedia.org/wiki/Athabasca_oil_sands

¹⁷⁷⁶ <http://www.history.alberta.ca/energyheritage/sands/underground-developments/energy-wars/alberta-oil-sands-technology-and-research-authority.aspx>

¹⁷⁷⁷ <https://www.worldatlas.com/articles/the-world-s-largest-oil-reserves-by-country.html#>

¹⁷⁷⁸ 400 Billion Barrel Opportunity for Friendly Oil: Canada's Evolving Role. BMO Capital Markets, March 4, 2020

¹⁷⁷⁹ <https://www.nrcan.gc.ca/science-and-data/data-and-analysis/energy-data-and-analysis/energy-facts/energy-and-economy/20062>

¹⁷⁸⁰ www.worldstopexports.com/canadas-top-exports

sands is essential to support Canada's fiscal recovery from Covid and preserve the nation's economic health.¹⁷⁸¹

- In the same seminar, Dodge commented that if we had not had the energy export capacity in past years, the Canadian dollar would have been lower (perhaps mid to upper 60 cents), such that the price of consumer goods generally would have been 10-15% higher, so all Canadians have benefited from energy exports¹⁷⁸²
 - Canada's new Bank of Canada Governor, Tiff Macklem is aligned with the views of David Dodge on the importance of oil and gas exports. In a December, 2020 speech, Macklem described a potential Canadian failure to diversify trade, boost investment and grow productivity "if new market access for our energy products doesn't come on stream, holding back Canada's ability to ship our number one export – oil. And without that market access, investment in cleaner oil-extraction dries up."¹⁷⁸³
 - Alberta's energy industry helped to bring prosperity to Atlantic Canada at a time when their other industries were in decline^{1784, 1785}; and
 - Canada's natural resources are the largest employers of Indigenous Canadians, providing opportunities for training and education and prosperity for First Nations communities.^{1786 1787} (see also Part III - First Nations section)¹⁷⁸⁸
4. Canada is ranked highly in measures of environment, social and governance performance (ESG). Of the top 10 global oil reserve holders, Canada is number 1 in each of the ESG rankings and demonstrates a notably wide gap in governance between Canada and the others.¹⁷⁸⁹
 5. Global demand for hydrocarbons is predicted to grow through 2040 and will be a significant part of the energy mix for decades to come.^{1790, 1791}
 - This demand will be met by others, if not met by Canada. BMO Capital Markets, estimates that 400 billion barrels of new energy supply will be developed to replace

¹⁷⁸¹ Resource Innovation Forum, December 9, 2020, hosted by Resource Works
<https://vimeo.com/showcase/ResourceInnovationForum>

¹⁷⁸² Resource Innovation Forum, December 9, 2020, hosted by Resource Works
<https://vimeo.com/showcase/ResourceInnovationForum>

¹⁷⁸³ Strengthening our exports, Tiff Macklem, Speech to Greater Vancouver Board of Trade, December 15, 2020,
<https://www.bankofcanada.ca/2020/12/strengthening-our-exports/>

¹⁷⁸⁴ The 4000 Kilometre Commute https://www.huffingtonpost.ca/2014/12/16/miramichi-oilsands-alberta-working-poor_n_6335842.html

¹⁷⁸⁵ Rex Murphy: In Newfoundland the Blows Just Keep on Coming <https://nationalpost.com/opinion/rex-murphy-in-newfoundland-the-blows-just-keep-on-coming>

¹⁷⁸⁶ <https://www.canadaaction.ca/indigenous>

¹⁷⁸⁷ The Future of Indigenous Economic Prosperity, November 26, 2020 <https://www.macdonaldlaurier.ca/future-indigenous-economic-prosperity-new-mli-paper-ken-coates/>

¹⁷⁸⁸ The opportunity for Indigenous Business to become leaders in developing Canada's critical minerals supply chains. Don Bubar, Phil Fontaine, Globe and Mail <https://www.theglobeandmail.com/business/commentary/article-the-opportunity-for-indigenous-business-to-become-leaders-in/>

¹⁷⁸⁹ 400 Billion Barrel Opportunity for Friendly Oil: Canada's Evolving Role. BMO Capital Markets, March 4, 2020

¹⁷⁹⁰ World Energy Outlook 2020, International Energy Agency <https://www.ies.org/reports/world-energy-outlook-2020/outlook-for-fuel-supply>

¹⁷⁹¹ 400 Billion Barrel Opportunity for Friendly Oil: Canada's Evolving Role. BMO Capital Markets, March 4, 2020

global declines by 2040. “The important question is, (developed) by whom?”^{1792, 1793, 1794}

- Canada’s emissions intensity (and emissions from the oilsands) has fallen significantly since 2000, ranking it lower than several energy-producing and consuming nations, and is set to decline further.^{1795, 1796, 1797, 1798}
- Our responsibly produced petroleum products can contribute to global climate change initiatives by displacing higher CO₂ content fuels in Asia and other countries. Bryan Cox, CEO of Canadian LNG Alliance, says Liquefied Natural Gas from BC will have the least CO₂ content of any LNG produced in the world. Not only will BC projects have the potential to reduce global emissions by replacing coal, they will also reduce global emissions if they replace LNG produced in other jurisdictions.^{1799 1800 1801 1802}

¹⁷⁹² 400 Billion Barrel Opportunity for Friendly Oil: Canada’s Evolving Role. BMO Capital Markets, March 4, 2020

¹⁷⁹³ A recent report by the Natural Resources Governance Institute expresses concern that National Oil Companies, which produce two-thirds of the world’s oil and gas, and which own 90% of reserves, are rarely scrutinized and can operate secretly without publishing much detail on their finances or operations, could easily outweigh the emissions-cutting efforts of other major players. They are generally accountable to top officials within their own governments who are responsible for generating revenues but carry little or no responsibility for climate change targets. State-owned fossil fuel firms’ plan to invest \$1.9tn could destroy climate hopes, The Guardian, February 9, 2021, <https://www.theguardian.com/environment/2021/feb/09/state-owned-fossil-fuel-firms-planning-19tn-investments>

¹⁷⁹⁴ Net zero regulation: Russia will replace all U.S. oil Biden wants to ban, World Oil, February 9, 2021, “Russia is the world’s fourth-biggest carbon emitter, but unlike other major polluters, the government doesn’t have a plan to transition away from fossil fuels. Instead, its state-owned energy companies benefit from some of the world’s lowest production costs and tax breaks, making them well placed to gain in the short term.” <https://www.worldoil.com/news/2021/2/9/net-zero-regulation-russia-will-replace-all-the-us-oil-biden-wants-to-ban/>

¹⁷⁹⁵ Evaluating the Canadian oil and gas sector’s GHG emissions intensity record- Canadian Energy Centre, August 11, 2020. <https://www.canadianenergycentre.ca/evaluating-the-canadian-oil-and-gas-sectors-ghg-emissions-intensity-record>

¹⁷⁹⁶ What is the Future of Canada’s Energy Sector? Mac Van Wielingen, Viewpoint Research, September , 2020

¹⁷⁹⁷ Oilsands emissions intensity 35% lower than reported and could drop another 19%, new study says <https://financialpost.com/energy/oilsands-emissions-intensity-35-lower-drop-another-19>

¹⁷⁹⁸ <https://www.theglobeandmail.com/business/article-oil-sands-emissions-study-shows-pollution-decreases-but-researchers/> Decreasing Oil Sands Emissions, The Globe and Mail, January 4, 2021

¹⁷⁹⁹ <https://vancouversun.com/opinion/karen-ogen-toews-lng-from-canada-a-win-for-all>

¹⁸⁰⁰ Gwyn Morgan: the made-in-Canada carbon solution we refuse to promote <https://financialpost.com/opinion/gwyn-morgan-the-made-in-canada-carbon-solution-we-refuse-to-promote>

¹⁸⁰¹ Canada can punch above its weight by helping other nations lower emissions, Dan Zilnik, Marcius Extavor, Corporate Knights, November 23, 2020, <https://www.corporateknights.com/channels/climate-and-carbon/canada-can-punch-above-its-weight-by-helping-other-nations-lower-emissions>

¹⁸⁰² While most environmental groups are not convinced that natural gas should be a prominent player in a low carbon future, the International Energy Agency expects global natural gas demand to increase by 1.5% annually over the next five years with China, India and Asia accounting for more than half the increase. Over the next 30 years, gas demand could rise by 30%. Other international players, such as Qatar are recognizing this opportunity. Qatar is the world’s biggest natural gas exporter and recently announced a \$28.75 billion LNG project. Canada meanwhile, has a number of projects on the books but producers are hesitant to bring them to execution. According to this Financial Post article, the Qatari project will take years before it comes on production and in the meantime Canadian producers could move quickly to ramp up production. “The window won’t remain open for long.” Qatar’s massive \$28.75 billion gamble on natural gas has lessons for Canada, Financial Post, Yadulla Hussain, February 10, 2021, <https://financialpost.com/legal-post/posthaste-qatars-massive-29-billion-bet-and-warning-on-natural-gas-has-lessons-for-canada>

- Technology and expertise developed by Canadians, such as Carbon Capture Use and Sequestration can also be exported to help other countries reduce GHG emissions from higher carbon fuels.¹⁸⁰³¹⁸⁰⁴
6. Alberta's natural resources include solar and wind. Our major energy companies and many entrepreneurs have invested significantly in solar and wind technology and continue to do so, such that Alberta could lead Canada in wind and solar power by 2025.^{1805, 1806}
- This innovation and expertise can also be exported.
 - Due to a focus on all forms of energy, Alberta research and innovation can also focus on the challenges of renewables, including intermittency, storage, abandonment and recycling, the origin of materials and the sustainability of supply.¹⁸⁰⁷
7. The Paris Climate Agreement has established the metrics for the international community and is driving behaviour in Canada and other countries that many are questioning.
- In his recent book, *False Alarm*, Bjorn Lomborg states that of 157 countries that signed on to Paris, only 17 have enacted legislation to meet their commitments (including Canada); every major country is failing to live up to its commitments and the only ones that are, are too small to make a difference.¹⁸⁰⁸
 - Lomborg cites New Zealand as an example. New Zealand estimates that achieving half of its target by 2050 would cost \$19 billion annually; to achieve its target fully, would cost an estimated \$61 billion annually. And, the impact on the world's climate if New Zealand were to be successful is negligible.¹⁸⁰⁹
 - Canada's situation is not dissimilar to that of New Zealand – if Alberta's oil sands were phased out and replaced with supplies from other countries, the estimated reduction in global GHG emissions would be negligible at .03%.¹⁸¹⁰ Canada's share of global GHG emissions is 1.5 percent.¹⁸¹¹

¹⁸⁰³ Canada can punch above its weight by helping other nations lower emissions, Dan Zilnik, Marcius Extavor, Corporate Knights, November 23, 2020, <https://www.corporateknights.com/channels/climate-and-carbon-/canada-can-punch-above-its-weight-by-helping-other-nations-lower-emissions>

¹⁸⁰⁴ Opinion: It's time to fast-track carbon capture projects in Canada. Ed Whittingham, Erin Romanchuk, Kate Chisholm, Edmonton Journal, November 18, 2020 <https://edmontonjournal.com/opinion/columnists/opinion-its-time-to-fast-track-carbon-capture-projects-in-canada>

¹⁸⁰⁵ Alberta could lead Canada in wind and solar power by 2025, expert says, Tony Seskus, CBC News, September 21, 2020 <https://www.cbc.ca/news/business/alberta-wind-and-solar-future-1.5728757>

¹⁸⁰⁶ Alberta Innovates Clean Tech, Supporting Albertans through Research and Innovation, September 2020 <https://albertainnovates.ca/programs/renewable-and-alternative-energy/>

¹⁸⁰⁷ Mines, Minerals, and "Green Energy": A Reality Check, Mark Mills, July 9, 2020 <https://www.manhattan-institute.org/mines-minerals-and-green-energy-reality-check>

¹⁸⁰⁸ *False Alarm: How Climate Change Panic Costs Us Trillions, Hurts the Poor, and Fails to Fix the Climate*, Bjorn Lomborg, 2020 Hachette Book Group Inc

¹⁸⁰⁹ *False Alarm: How Climate Change Panic Costs Us Trillions, Hurts the Poor, and Fails to Fix the Climate*, Bjorn Lomborg, 2020 Hachette Book Group Inc

¹⁸¹⁰ IHS Markit, "The greenhouse gas intensity of oilsands production." Analysis: ARC Financial Research; Viewpoint Research Partners.

¹⁸¹¹ <https://www.canada.ca/en/environment-climate-change/services/environmental-indicators/global-greenhouse-gas-emissions>

- Clearly climate change is a global problem – to provide context, the estimated one-year increase in GHG emissions from China and India in 2018, over 2019, is equivalent to adding nearly ten Canadian oil sands per year.¹⁸¹²
 - The Paris Agreement places emphasis on the commitments of individual countries and not enough on international collaboration and cooperation. Canada can contribute significantly to the global climate challenge by exporting our petroleum products, our technology and our expertise to other countries with higher emission levels. A Natural Resource Development Strategy must advocate for adjustments to international agreements that seek global solutions to climate issues, rather than a singular focus on meeting significantly less impactful national commitments. In this connection, Article 6 of the Paris Agreement allows for the transfer of emission reductions between countries, such that Canada could get credit for emission reductions in a country to which its lower GHG content product was delivered. There are complexities to developing and implementing an international agreement to deal with this but such an agreement would be beneficial to Canada’s energy industry and would assist in advancing Canada’s Paris commitments in a productive manner.
8. As an accountant, I have always been puzzled that the Paris Agreement seems to focus only on the liability side of the balance sheet by referencing GHG emissions. Canada is often criticized for high GHG emissions per capita, which seems illogical to me, given we are a small population with a huge land base and a cold climate.
- Seldom do we see reference to Canada’s forests, which cover 347 million hectares, or 35 percent of Canada’s land, a huge carbon sink. Canada’s forest lands are the third largest of any nation, after Russia and Brazil.¹⁸¹³
 - Part II of the report also identified very substantial contributions by several not-for-profit, conservation organizations, often with added government contributions, to establish conservation and protected areas. Rather than recognizing and celebrating these conservation and protected areas, which are also carbon sinks, these environmental initiatives seldom enter into the national dialogue and are not included in the GHG accounting conversation.
 - Part II of the report also described the creation of the Great Bear Rainforest, which attracted enormous contributions and is a carbon sink.
 - A Natural Resource Development Strategy should seek changes in GHG accounting to reflect the “asset” side of the balance sheet, but if nothing else, Canadians should be made aware that we have these very significant carbon sinks to offset GHG emissions. Although GHG accounting is very complex, arguably Canada’s GHG balance sheet may be net positive in terms of our assets exceeding our liabilities. “Canada is blessed with roughly one quarter of the world’s wetlands and boreal forests. Large tracts of prairie grasslands and the longest coastline on Earth, with a significant share in Alberta (besides coastline of course).”¹⁸¹⁴
 - Opportunities for carbon trading and carbon credits should also be explored. “The province’s agricultural sector, along with Indigenous-operated farms and other lands,

¹⁸¹² Global Carbon Project, Carbon budget and trends, 2018 essd.copernicus.org/articles/10/2141/2018/

¹⁸¹³ Natural Resources Canada, The State of Canada’s Forests, Annual Report, 2019, <https://cfs.nrcan.gc.ca/series/read/90>

¹⁸¹⁴ Growing Forward Together: The Next-Gen Alberta Advantage JWN Report, November 2020.

- have the potential for providing substantial carbon offsets for oil and gas producers in exchange for a significant revenue stream.”¹⁸¹⁵
- Recently the federal government announced a plan to plant 2 billion trees. This will strengthen the carbon sink concept, but must be done in consultation with the forestry industry for maximum benefit and effect.¹⁸¹⁶ Moreover, some see tremendous opportunity in this program but do not believe it is sufficiently aggressive, given what the forestry industry is already doing, and the potential for greater impact.¹⁸¹⁷ Others see innovative opportunities in genetically modified trees to help fight climate change.¹⁸¹⁸
 - The federal government also recently announced an intention to increase the protected and conservation areas of Canada to equate to 30% of the national mass. Alberta owns 60% of its land mass with nearly 15% formally protected by national, provincial parks and other protected areas. These additional protected areas must be established in consultation with our provincial governments, Indigenous communities and natural resource industries to ensure they are adding effectively to our carbon sinks, and not impeding natural resource development opportunities.
9. Recently, Alberta announced a petrochemical policy, targeting \$30 billion in investments. The proposal was also positioned as a catalyst for the hydrogen industry, as well as for developing a circular economy for plastics.¹⁸¹⁹
- Again, Alberta has an opportunity to use its resources, innovation and technology for the benefit of Albertans and Canadians:
 - Recently, there have been suggestions of the federal government investing in and providing incentives to produce electric vehicles and create the infrastructure for the wide-spread use of electric vehicles. Potentially, vehicles powered by hydrogen may be more environmentally friendly than electric vehicles, with a greater opportunity for creating markets for our resources and our expertise.
 - In developing and employing new technologies related to a circular economy for plastics, Alberta/Canada’s most significant contribution might be in in seeking and facilitating solutions in those countries that are most challenged, where recycling plastics would significantly avoid plastic disposal in rivers, which ultimately pollutes the oceans.
10. In their books, both Lomberg and Michael Shellenberger emphasize the importance of creating access to energy for developing countries with a focus of lifting people from poverty. With access to energy, people can transition from wood to coal or even better, from coal to gas. They can become more self sufficient, improve their agricultural practices, become more resistant to disease and in doing so become better stewards of their own environment. Again,

¹⁸¹⁵ Growing Forward Together: The Next-Gen Alberta Advantage JWN Report, November 2020.

¹⁸¹⁶ <https://www.pulpandpapercanada.com/fpac-supports-feds-plan-to-plant-two-billion-trees-in-next-decade/>

¹⁸¹⁷ <https://www.corporateknights.com/channels/climate-and-carbon/time-start-planting-forests-not-just-trees-grow-canadas-climate-solutions-15862638/#>

¹⁸¹⁸ <https://www.cbc.ca/news/science/genetic-modification-trees-climate-change-1.5837766>

¹⁸¹⁹ Alberta government seeks investment in petrochemicals and hydrogen- Energy News for the Canadian Oil & Gas Industry, November 2020 <https://energynow.ca/2020/11/alberta-government-seeks-investment-in-petrochemicals-and-hydrogen>

Canada has a role to play in providing our resources and our knowledge, expertise and technology to helping people around the world achieve prosperity. ¹⁸²⁰

11. The University of Ottawa's Positive Energy centre has shown through its research that Canadians value the Canadian oil and gas sector and support environmentally responsible development of the sector; they want access to reliable energy; they do not want to pay a lot more and they do not want to compromise their lifestyle. This backdrop creates an excellent opportunity to have a dialogue with Canadians about our unique place in the world, and how we can make a greater contribution by developing and exporting our resources and our expertise, than we can by leaving them in the ground.¹⁸²¹

1465. The above is not a comprehensive outline of issues and opportunities for Alberta and Canada, but it is indicative of the advantages with which we are blessed and on which we should capitalize. However, as indicated in the opening comments in this section, we are paralyzed by entrenched positions within a myriad of interest groups, for the most part working in silos that are preventing us from achieving our promise.

1466. A catalyst is required to marshal and focus our considerable intellectual resources to break down these silos, overcome the polarization that exists and to seize the opportunities we have to solve some of the critical problems facing the world.

1467. The Business Council of Alberta is well positioned to provide the leadership required to focus efforts within Alberta and across the country, through collaboration with the Business Council of Canada and key organizations in other provinces of like mind, industry, labour unions, Indigenous groups (Elders Wisdom Panels, see recommendation 2), environmental organizations and Canadians generally. The public-private partnership initiative to drive collaboration in technology and innovation, described in Recommendation 3, would be a critical player in this process. A similar movement has begun in the agriculture sector, with key industry leaders in Alberta initiating a model to foster collaboration and alignment to seize the opportunities in the agricultural industry.

1468. The goal would be to create a strategy for developing our natural resources in a responsible, sustainable manner that will contribute more to alleviating climate change on a global level, than current policies that constrain the development and exportation of our resources, and which will achieve greater prosperity for Canadians.

¹⁸²⁰ Apocalypse Never, Why Environmental Alarmism Hurts Us All, Michael Shellenberger – Harper Collins, 2020

¹⁸²¹ Positive Energy, a program of the University of Ottawa overseen by Monica Gattinger, regularly surveys Canadians in concert with Nanos research on energy and environmental issues. Views on these issues are becoming increasingly more polarized according to their research. ...” decision makers charting Canada's energy and climate future have their work cut out for them. They will need to carefully navigate differences in opinion, build bridges across partisan, ideological and regional divides and cultivate areas of agreement.” But Gattinger notes a positive path forward on energy and climate is possible. “Canadians agree on multiple areas of energy and environment, particularly where economic, environmental and social objectives can be aligned. Developing integrated balanced approaches that pay careful attention to where and how Canadians' views align and diverge on the issues will be crucial.” University of Ottawa program Positive Energy finds Canadians agree on multiple areas of energy and environment, particularly where economic, environmental and social objectives can be aligned, Canadians' Views On Energy And Environment During Covid-19, Part II- Bridging the Divide, Monica Gattinger, Daily Oil Bulletin, February 9, 2021

Recommendation 6 – Rebrand Canadian Energy

Create a new brand for Canadian Energy. Develop in collaboration with industry, and with the direction and advice of marketing and communications experts, a long-term strategy built on a vision of being a global leader in lower carbon energy and climate solutions, while emphasizing the importance of energy in creating a high quality of life and a prosperous future for people everywhere. In so doing, recognize Alberta’s reputation for innovation and ingenuity, and underscore Alberta’s strong record of protecting its lands and nature.

Rationale: As noted, the public discourse on energy and the environment in Canada has been one-sided. Complete information, while it may be available, has not been well or fully communicated. Canadians want to ensure a clean environment, as well as prosperity, for generations to come, but they need complete and reliable information to allow them to become energy literate. The five recommendations preceding this will form a foundation for better, more complete information for Canadians, which needs to be communicated effectively and professionally.

Energy Industry Rebranding

Defining the Problem

1469. The preceding Report describes the mounting societal forces against the oil and gas industry in Canada and elsewhere. As noted in the Report, the momentum has been fueled by the spread of information provided by environmental non-government organizations (ENGOS), the media, academics, youth movements and the like. In fact, much of this momentum has been fueled by the Tar Sands Campaign, which in all regards has been an extraordinarily successful information, marketing and communications strategy. Industry associations, governments, and the industry itself have failed to counter these efforts, such that the public has not had ready access to complete, reliable and balanced information.
1470. Policy makers and politicians have succumbed to these societal pressures with what many observers view as misguided and crippling directives that are leaving Alberta’s and Canada’s valuable assets encumbered and land locked. Moreover, as highlighted in support of other recommendations, these assets and our leading-edge technology and innovation are essential in order for society to transition to a low-cost, low-carbon energy future. Many believe that politicians and policy makers have focused on the wrong thing – reducing domestic GHG emissions rather than trying to solve a global climate crisis.
1471. As noted in the Report, one of the economic consequences of the depressed energy sector has been cancelled infrastructure projects and colossal reductions of investment. A tragic result of this is that many young and well-educated Albertans are out of work, and many are leaving Alberta to seek opportunities elsewhere, thus compromising the future of our province.

Background

1472. The preceding Report has detailed, that over the last two decades, well-orchestrated campaigns, supported by significant amounts of foreign funding, have been targeted at crippling the energy

industry throughout North America by influencing leaders and citizens to protest against building energy infrastructure, calling for large institutions to divest from energy companies and advancing litigation against energy companies and governments for neglect in mitigating climate change and violating human rights and freedom.

1473. These efforts have included highly effective marketing and public relations campaigns targeted at consumers and citizens that have succeeded in influencing decision making by politicians, policy makers and business leaders. Alberta politicians and industry leaders complain that many of these decisions have purposefully beleaguered the Alberta energy industry, which they believe is the most highly regulated and heavily scrutinized industry in the world with among the highest global environmental, social and governance (ESG) standards.
1474. Despite all of their efforts over the past two decades, the Alberta energy industry and the Alberta government remain on their back feet attempting to defend the fossil fuel industry, while witnessing massive amounts of capital flee the Canadian market and experiencing relentlessly high unemployment among one of Canada's most educated, worldly and young workforces. This is a crisis not only for Alberta but for Canada. Many of those displaced from the industry came to Alberta, from other parts of Canada or internationally, with a promise of opportunity only to find themselves joining longtime residents in the ranks of the unemployed or underemployed. Alberta's prosperity has been dealt a blow, not only economically but also through growing social issues such as expanding mental health struggles, rising suicides and increasing incidents of domestic problems. The social and economic impact of the depressed energy sector is staggering and has shaken Alberta to its core.

Challenge

1475. Many believe the opportunity to advance the case for fossil fuels has passed. Trust is at an all-time low. The situation today is more complex. Success will take longer, must influence a broader audience and requires significantly more investment. However, I believe that the task is not impossible.
1476. It is important to acknowledge that, regardless of the undeniable economic and social benefits of Canada's fossil fuel industry, the structural change in the industry from 2014 to 2020, combined with the impact of COVID19 and the Saudi/Russia induced oil price war of 2020, has left our province in an even more vulnerable position. Calgary specifically, has more office space on a per capita basis than any other city in North America; space that will not be filled by white collar, knowledge base workers even if there is a future energy boom, according to commercial real estate company CBRE. Energy companies have figured out how to do and produce more with less. This means the need for diversification is magnified. Unfortunately, diversification is not an easy task. Not only do we need a business-friendly environment; we also have to change negative perceptions of Alberta for talent and business leaders across the country and around the world. Recent municipal level research revealed that both talent and business leaders do not view Calgary as having a diversified economy, making it harder to grow other industries and attract new investment, according to Calgary Economic Development.
1477. That said, the good news is that Alberta has always been home to some of the world's greatest "problem solvers" in many industrial sectors – industries that serve the growing global demand for

food, energy, transportation and health. In fact, before discovering fossil fuels, Alberta was part of Canada's breadbasket with our strength in traditional agriculture. It is doubling down on the opportunities for innovation and technological advances in these key industries that will create the foundation for economic diversification in Alberta.

1478. Indeed, Albertans are focused on delivering cleaner energy, safer and more secure food, efficiently moving goods and people and increasingly, creating better health solutions. All the things that the world needs and needs faster. Yet, society is demanding a more environmentally and effective way of distributing energy, food, transportation and health solutions. The Alberta story on innovation and entrepreneurship has its roots in the energy industry (see Recommendation 3), but the story is much broader than that today. Despite all of the good news stories Alberta has to tell, the attack on the energy industry has created a vast perception problem for Alberta that is dragging us down and making our efforts at diversification even more challenging.

1479. Many attempts have been made to change the perception of our province and the Canadian energy industry. Frankly, the Inquiry has heard that many of these attempts were flawed in their approach. They have lacked investment, commitment and coordination, and therefore had little impact. There are many lessons to be learned by past efforts that should be considered before embarking on a strategy to rebrand the energy industry and or the province.

(a) ***Freedom to Create. Spirit to Achieve.***

1480. In 2009, at the dawn of the Tar Sands campaign, the Government of Alberta embarked on a rebranding exercise that took three years and cost \$25 million.¹⁸²² The purpose of this campaign was to counter preconceptions about the province and international campaigns that were painting Alberta's oil sands as an environmental blight.

1481. Although the treatment of the "Alberta" logo withstood the test of time, the slogan "Freedom to Create. Spirit to Achieve" died a quick death. The industry was under attack nationally as well as globally, but the campaign was tested primarily in the province and spoke only to the local market. The tag line was less than memorable, cumbersome and not something Albertans could own, as many jurisdictions can make the same claim. The campaign was poorly researched, tested and executed, and therefore failed in its objectives.

(b) ***Canadian Petroleum Producers Association (CAPP)***

1482. During the last decade, CAPP has taken a couple of different approaches targeted at citizens or consumers. Although originally out of the purview of CAPP, when the industry was under growing attack, it decided to attempt to educate the consumer. The first attempt was in direct response to the growing intensity of the anti-oil sands campaigns in 2010 and included traditional advertising along with an informative website. On the day of the launch of the campaign, a half-page ad was taken out in a major national paper with a tag line: "*Energy the world needs. The approach Canadians expect.*" Regrettably, the same publication ran a story about a spill in

¹⁸²² Alberta rebranding process: too casual, too serious, just right too www.cbc.ca/news/canada/calgary/alberta-rebranding-process-too-casual-too-serious-just-right-1.803894

Alberta's lake district, thus the impact of the campaign was on rocky ground and the campaign was not sustained.¹⁸²³

1483. A few years later, another well-orchestrated, political-like campaign attempt was made to encourage silent supporters to become advocates of the Canadian oil and gas business. Both the "Raise your Hand" and "The Energy Citizen" campaigns had the ability to grow into a larger movement, but with only 100,000 members, it never succeeded as a mass approach and is another example of industry proponents talking to themselves. The campaign did make a commendable attempt to create awareness about the economic impact and jobs created from the oil industry.¹⁸²⁴ Regrettably, the campaign was underway during another time when there was a structural shift in the energy industry and oil and gas companies were shedding jobs. The effort was viewed by many marketing experts as small in scope, deaf, somewhat defensive and a bit elitist as the people profiled in the campaign were primarily executives or communications people that still held jobs while thousands were being or had been displaced.¹⁸²⁵

1484. Conversely, the American Petroleum Institute (API) took a much more coordinated, middle ground, mass approach that had much greater success in speaking to the people outside the industry – the consumer. In 2017, although costly, API captured a wide audience by launching a pro-oil campaign entitled "Power Past Impossible" that showed the extensive use of oil by average citizens – every single day. With a message "This isn't your daddy's oil"¹⁸²⁶ showing that petroleum is in everything from lipsticks to robotics arms. API hit an extensive demographic with the message and demonstrated strategic placement and more agility to respond to news cycles.

1485. The key lessons in both these examples is that a campaign must speak to the right people at the right time with the right message, but also must be nimble, and able to respond to a rapidly changing environment.

(c) ***Cenovus, Suncor and Enbridge***

1486. Over the 2010-2015 period, Cenovus¹⁸²⁷, Suncor (Petro Canada)¹⁸²⁸ and Enbridge¹⁸²⁹ delved into consumer marketing and each created marketing campaigns more aligned with API's approach. At the time, market research showed that the public trusted non-governmental organizations more than energy companies.

¹⁸²³ Marketing Magazine: The Oilsands PR War, <http://marketingmag.ca/advertising/the-oil-sands-pr-war-58235/>

¹⁸²⁴ Canadian Journal of Communication Energy's Citizens: The Making of a Canadian Petro-Public, <https://www.cjc-online.ca/index.php/journal/article/view/3312/3472>

¹⁸²⁵ UOttawa Myths of Canadian Identity in Oil Sands Industry Advertisements, <https://ruor.uottawa.ca/handle/10393/36730>

¹⁸²⁶ <https://marcellusdrilling.com/2017/02/api-commercial-this-aint-your-daddys-oil-debuts-in-superbowl/>

¹⁸²⁷ Marketing Magazine Cenovus Shows Oil's Innovative Side, <http://marketingmag.ca/brands/cenovus-shows-oils-innovative-side-6172/>

¹⁸²⁸ The Canadian Insider: <https://www.canadianinsider.com/petro-canada-invites-canadians-to-live-by-the-leaf-in-new-marketing-campaign>

¹⁸²⁹ The Globe and Mail Report on Business, Enbridge rolls-out-feel-good-ads to recast energy debate, <https://www.theglobeandmail.com/report-on-business/rob-commentary/executive-insight/enbridge-rolls-out-feel-good-ads-to-recast-energy-debate/article20732392>

1487. These Canadian-based organizations independently embarked on feel-good ads that the average Canadian could see themselves in – using energy in many forms. In the case of Suncor, the message also conveyed its commitment to doing things better. They all intended, and with some success, to position the positive role of energy in life and society.
1488. Unfortunately, the structural change of 2014, resulted in massive layoffs and budget cuts and as is so often the case in challenging economic times, marketing campaigns were greatly reduced or eliminated. In some cases, it was cited that the executives did not see a return on investment (ROI), which is impossible to demonstrate in a single campaign, particularly when you are rebuilding brand equity or goodwill due to the tarnished reputation of the industry. It was an unfortunate turn of events, as marketing experts believed these campaigns were heading in the right direction.
1489. As the above examples indicate and as I have personally learned from my involvement with a number of marketing and rebranding initiatives, in order to make the required impact with consumer marketing campaigns and slowly build citizen trust, a long-term commitment to a well-researched, well-structured and well-executed campaign is essential. Furthermore, these campaigns ought to have been done with better collaboration and coordination across all of the industry, including with associations such as CAPP and the energy service sector. A start-stop approach, a search for immediate ROI and a failure to coordinate and collaborate with industry, associations and government is not a formula for success.
1490. In contrast, Exxon Mobil, which had to rebuild its brand after the Exxon Valdez spill, remain committed to marketing the “real-life” impacts of oil and gas and, more recently, the important role of all forms of energy. In recent years it has run what many believe to be exceptional campaigns that humanize the energy industry, demonstrate its impact on society and show progress to an overall cleaner energy for the planet. The two campaigns are “Powering Life” and “Energy Powers Opportunity”. As a result of the company’s long-term investment in building brand equity and good will, Exxon is often cited in the top 25 of the most powerful brands in North America and in the top 50 of trusted or admired brands.¹⁸³⁰ Not an easy accomplishment, considering where they started in 1989 after the spill, and in the face of anti-fossil fuel campaigns.

(d) ***Ad hoc you-tube videos (2019)***

1491. In 2019, ad hoc you-tube videos started to emerge from industry and other government organizations. Calgary Economic Development created a video called “Canada We Need to Talk”¹⁸³¹, which was a spoof on the Molson Canadian rant and was narrated by comedian Andrew Phung. The primary message was around the need for all things energy and that Canada has an opportunity to be a world leader in delivering all forms of energy to the world, not just Canada. The video was a two and half minute production distributed through regular social media channels, the industry and politicians. Although the video was the right message, at the right time – the distribution strategy was not well thought out. Several hundreds of thousands of people viewed it but it was intended to go more viral, reaching millions of Canadians, which it did not.

¹⁸³⁰ <https://www.rankingthebrands.com/Brand-detail.aspx?brandID=467>

¹⁸³¹ <https://www.youtube.com/watch?v=biTkRI4RIIs>

1492. As both the provincial and federal election approached in 2019, the industry was under even more intense criticism with the Climate Action Movement and Greta Thunberg as the youth spokesperson. The industry in Calgary pooled resources to create several independent videos that spoke to the product, process, pipeline and the economics – investment and jobs. Most of these videos used lots of industry nomenclature, were perceived as self-serving and political and frankly, didn't resonate with the average Canadian citizen that didn't work in the industry. Although there were some attempts to show a more diverse population in the videos, they still did not put forward a persona that most people in Canada could relate to or that represents Alberta's population. At this time, the youth were giving a clear message through the Climate Action Movement – "you've ruined my future and I have no hope." The industry video's main message was "yes, but the oil and gas business is good for the economy, pays for hospital and schools in other provinces and creates jobs." This message was not well received as a response by a broad cross section of Canadians who were generally concerned about the youth's message. Once again, the industry was talking to itself and not to the audience that it needed to reach.

(e) **Grassroots Efforts**

1493. There have been several grassroots efforts involving significant volunteer efforts and funded by individual and corporate donations. Canada Action is one such group focused on building fact-based awareness through a comprehensive website, events, rallies, public relations, government relations and marketing campaigns.¹⁸³²

1494. Canadian Energy News Network¹⁸³³ curates and disseminates information on a broad range of topics including Indigenous relations, climate change and environment, tankers, diluted bitumen, benefits of hydrocarbons, carbon leakage, pricing, pipelines, fracking, oil sands and green energy.

1495. Alberta Proud¹⁸³⁴ and Suits and Boots¹⁸³⁵ are other grassroots organizations with similar mandates and initiatives.

1496. While these initiatives are considered by many to do admirable work, they do not have the resources or the strategic focus required to change perceptions and build a new brand for Alberta energy or the province. They may however be important partners in such an initiative.

(f) **Canada War Room or Canadian Energy Centre**

1497. Out of the gate, the name "War Room" solicited mixed reviews. Strong oil and gas advocates were in support of this defensive strategy, while people on the fence hungry for more knowledge, or the skeptics, were highly critical. The name change to the Canadian Energy Centre¹⁸³⁶ may have been a strong strategic move but unfortunately it was too late to undo the damage and it is still widely referred to as the "War Room" by the media and the public. In addition, there were

¹⁸³² Canada Action, <https://www.canadaaction.ca/>

¹⁸³³ Canadian Energy News Network, <https://www.canadianenergynewsnetwork.com/>

¹⁸³⁴ Alberta Proud, <https://www.albertaproud.org>

¹⁸³⁵ Suits and Boots, <https://www.suitsandboots.ca>

¹⁸³⁶ Canadian Energy Centre, <https://www.canadianenergycentre.ca/>

- several missteps from the outset that damaged its reputation from which it has not been able to recover.
1498. It was created as a Crown corporation, which may be appropriate, but its governance, and accordingly its credibility, is seriously compromised by having three provincial cabinet ministers comprising its board of directors. I have highlighted criticisms of the governance of the not for profit/charitable sector elsewhere in this Report; these same criticisms of the need for independence, openness, transparency and accountability apply to the Canadian Energy Centre as well.
1499. In the course of my interviews over the past 18 months, the Canadian Energy Centre has come under almost universal criticism. There may be a need for a vehicle such as this, assuming proper governance and accountability is established, to develop a communications/marketing strategy for the industry and/or the province, but it may well be that the reputation of this entity has been damaged beyond repair. In any event, it is critical that a comprehensive marketing strategy be developed, using the best marketing/communications advice that can be obtained, to develop a long-term rebranding campaign for the industry, that will also serve to change the image of our province.
1500. The Alberta energy industry has been materially impacted by what was an excellent strategy that was well implemented and continues to this day to be brilliantly executed. The industry and government have failed to rise to the challenge. If the energy industry, and frankly Alberta, is to restore its image and reputation, it must first recognize that it needs to change its focus. All the past playbooks must be thrown away and there must be a quantum leap into the consumer marketing game. The industry and government have to stop “talking to themselves” and rebrand, taking a page from Exxon Mobil, or even McDonalds and Apple, of focusing on citizens/consumers and what energy means to their everyday lives. And there must be recognition that this is a long game – it is not a “one and done” campaign or rally or video or event or website, but a full commitment to a long term, multi-faceted and integrated campaign.
1501. The industry has a great story to tell. As indicated throughout the various Recommendations sections, it is a story of technological innovation and ingenuity, entrepreneurship, responsible stewardship, economic development, building relationships and creating opportunities for Indigenous peoples, and contributing economically to all of Canada. Moreover, and perhaps more important to the story, the energy industry contributes to the prosperous lifestyle of every Canadian and can and should be given the opportunity to make a positive contribution to fighting climate change globally.
1502. Every marketing strategy should be built on principles and values. The above speaks to Albertans’ values of entrepreneurship, innovation, hard work and caring for our neighbors. I believe one of our other values as Albertans is a “love of the land.” We care enormously for our environment and have a great story to tell of advances in protecting our air, water and land.
1503. One thing that has always troubled me personally is that too often we see an article on Alberta accompanied with a photo of an open pit “tar sands” mine. I would venture to say that with our National and Provincial Parks, plus significant contributions from conservation organizations like Ducks Unlimited, the Nature Conservancy and governments – often in partnership with energy

companies, we have a greater portion of protected land in Alberta than most geographic jurisdictions.^{1837,1838} We seldom talk about this, yet this is something to be celebrated and ought to be included and often repeated in any rebranding of the industry and telling our province's story.

1504. This rebranding strategy must encompass all of the other Recommendations contained in this Report. In fact, proceeding with the implementation of these Recommendations would serve as a foundation for the development of a broad strategy. In addition, it is important to engage Canadians in the conversation about energy. Albertans understand energy and its importance to not only our economy but to people's lifestyle and prosperity around the world. We understand the concerns and challenges of fossil fuels and are optimistic that through our ingenuity and innovation we can solve those problems. We understand the importance of clean energy and renewables and understand that we have the opportunity to be one of the leading energy centres on the planet. Albertans are energy literate because it is so central to our lives. We need to share our story so that all Canadians understand energy in all its forms as well as our opportunities as a country to contribute to the planet while creating economic opportunities for our people.

¹⁸³⁷ Recently the province announced a 143,800-hectare expansion of protected area in the boreal forest in the northeastern corner of Alberta. The Kitaskino Nuwenene Wildland will become a provincial park if a 30-day consultation period goes well.

¹⁸³⁸ Dave Critchley, Chair of Biological Sciences – Conservation Biology at NAIT, was quoted in a recent article in *techlifetoday* that with the addition of the Kitaskino Nuwenene protected area, "Alberta will likely be the first geographic and political area within North America that will reach its protection targets of 17%," which is set by the UN for biological diversity. <https://www.techlifetoday.ca/articles/2021/alberta-boreal-forest-protection>

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