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Competition Bureau Canada
50 Victoria Street
Gatineau, Quebec
K1A 0C9

To whom it may concern:

Re: Complaint against Enbridge for false or misleading advertising and deceptive marketing practices contrary to the *Competition Act*

I am an individual and a long-time resident of Vancouver Island in British Columbia. I have a Masters of Science in Biomedical Communications and I run my own business through which I create medical and scientific educational materials for a living. I am very much concerned about images used in public advertising by Enbridge Northern Gateway Pipelines to promote their proposed tanker route as safe, because these images are misleading.

Please accept my complaint in regards to advertisements currently being used by Enbridge Northern Gateway Pipelines and/or its parent Enbridge Inc. (together, "Enbridge") that I submit are in contravention of the *Competition Act*, RSC 1985, c C-34 ("*Competition Act*"). It is my request that the Competition Bureau investigate Enbridge for false or misleading advertising and deceptive marketing practices.

The company

Enbridge proposes to build and operate two 1172-kilometre pipelines from Bruderheim, Alberta to Kitimat, British Columbia. One would transport approximately 525,000 barrels per day of diluted bitumen from the Alberta Oil Sands to a new marine oil port in Kitimat, while the other would transport condensate from Kitimat to Bruderheim. The diluted bitumen would be transported by up to 225 oil tankers per year from Kitimat through the waters of Douglas Channel and Hecate Strait. The marine approach to Kitimat is strewn with numerous large islands and other marine hazards, and there is a very active public debate as to the environmental, health, social, cultural and economic risks of oil tankers travelling these waters, on account of the potential oil spills that may result. One of the ways that Enbridge participates in this debate is through public advertising, including online content and paid advertisements in a variety of media. I infer that they also supply, or at the very least allow the use of, Enbridge corporate video material as "B-roll" for media news outlets.

The advertisements

The advertisements in question are videos posted on the Enbridge Northern Gateway Pipelines internet website. The advertisements were viewed on August 14, 2012, but have been available

since at least 2011.¹ The videos advertise the route, and the “Route Safety” of Enbridge’s proposed Northern Gateway Pipelines project. These videos can currently be viewed online at:

Advertisement A – Route Flyover: <http://www.northerngateway.ca/project-details/route-video> (“Route Flyover Ad”)

Advertisement B - Route Safety: <http://www.youtube.com/watch?v=eTP7ua72vns> (“Route Safety Ad”)²

Both of the advertisements are used for the specific purpose of depicting the proposed project route and promoting the safety of the proposed project route. The general impression conveyed by the advertisements is that the proposed route of the project is safe with no navigational hazards posed to oil tanker traffic by islands in the Douglas Channel.

These advertisements are in contravention of the “false or misleading representations” provisions under the *Competition Act*. The advertisements violate subsection 52(1) and/or paragraph 74.01(1)(a) which provide:

52(1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

[...]

74.01(1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(a) makes a representation to the public that is false or misleading in a material respect

In both advertisements, Enbridge displays an animated representation that grossly misrepresents the geographical attributes of the project route through the Douglas Channel. At duration point 0:39 of the Route Flyover Ad and duration point 1:05 of the Route Safety Ad, Enbridge directly omits numerous islands from the animated representation of the Douglas Channel along the proposed route. It is estimated that Enbridge omitted 1,000km² of islands from their advertisements used in the promotion of their proposed project route of and its safety.

Both ads omit relevant information and rely on a deceptive illustration – the presence of multiple islands which is a relevant consideration to the purported claim of the safety of the tanker route –

¹ Accessed on August 15, 2012 on YouTube at Enbridge Northern Gateway Pipelines’ channel on <http://www.youtube.com/watch?v=nuBRri6N4cM&feature=plcp>. The video was uploaded on December 8, 2011.

² On the afternoon of Wednesday, August 15, 2012, Enbridge altered the Route Safety Ad and removed the map imagery that is the subject of the complaint. The new version is available here <http://www.northerngateway.ca/project-details/route-safety/>, accessed August 16, 2012.

and the result is significant and clearly deceptive, inaccurate and misleading. As such, both ads are in contravention of subsection 52(1) and/or subsection 74.01(1)(a) of the *Competition Act*.

On the afternoon of Wednesday, August 15, 2012, in response to public outcry prompted by my publishing the deceptive images on my Facebook page, Enbridge altered both of the advertisements above. It made the disclaimer more prominent on the Route Flyover Ad and it eliminated the offending image from the Route Safety Ad. The original version of the Route Flyover Ad is at <http://www.youtube.com/watch?v=yiVfYb8lt5o> and the original version of the Route Safety Ad is at <http://www.youtube.com/watch?v=eTP7ua72vns>.

The Route Flyover Ad violates the *Competition Act* and is not saved by disclaimer

The prominent “take-away” from the message of the marine portion of the Route Flyover Ad is that Enbridge’s tankers will navigate through a wide bay of open water on their way from Kitimat to the sea, rather than through much more narrow channels with multiple islands posing obstacles with multiple tanker turns required. The Route Flyover Ad is intended to give the public an impression of what their tanker route would be like – even if an artistic animated impression – in order to inform people who may form an opinion on the merits of their project. This is a video that could be viewed by those who may be forming an opinion about the oil tanker shipment plan that Enbridge is promoting. The significant omission of islands from the video – which is material to what the impression of the tanker route that the ad is attempting to convey – is false and misleading in a material respect, contrary to subsection 52(1) and paragraph 74.01(1)(a) of the *Competition Act*.

It is noted that the Route Flyover Ad displays a disclaimer which states “The animation is for illustrative purposes only. It is meant to be broadly representational, not to scale.” The fact that the video is intended to be illustrative is beside the point, as what matters is whether or not the illustration is “false or misleading in a material respect”, as is the case here.

Given the significant omissions and inaccuracies within the animated representations, the advertisements fail to be “broadly representational.” The omission of the islands from the video achieves the opposite effect – the omission misrepresents prominent aspects of the message being conveyed by Enbridge (the geographic attributes of the route and route safety). In the context of the public debate around the safety of its tanker plans, of which Enbridge has been highly aware over the past number of years, deliberately leaving out a massive set of islands and choosing to depict the waterway as wide open cannot be considered “broadly representational.”

Similarly, removing large islands with a collective land mass of 1,000km² cannot be considered an issue of scale or of the image being “not to scale”. It is ironic, and illustrates how misleading the ads are, that the tanker displayed in the animation would probably be located, if the islands were included in the animation, on land.

In any case, such a blanket disclaimer about a map being for illustrative purposes cannot, in my view, save the Route Flyover Ad from being considered in contravention of subsections 52(1) and/or 74.01(1)(a) of the *Competition Act*, as the video presents false material misleads the viewer on a critical, material point that Enbridge is attempting to convey, both literally and by the general impression conveyed.

See attached *Appendix 1* for a screenshot of the false and misleading visual representation of the Douglas Channel in the Route Flyover Ad at duration point 0:39. *Appendix 2* illustrates the significance of the omissions in the Route Flyover Ad.

Enbridge altered the Route Flyover Ad on August 15, 2012, in response to public criticism. It made the disclaimer more prominent by adding it to the beginning of the video, and displaying it on the screen again when the marine portion of the route is shown. In the original the disclaimer appeared only at the very end of the video, on a blank screen without any map image, at approximately duration point 0:49. The video was used in this way, without disclaimer, for months and I believe it was reproduced in the media as well without the disclaimer. In any case, the placement of the disclaimer has no bearing on our complaint. Enbridge also changed the Route Flyover Ad by altering the title from “Route Animation” to “Pipeline Route Animation”, in an attempt to claim that the video is not meant to display the tanker route, though the webpage itself on which the video is hosted continues to have the title “Route Video”, as before (see images at Appendix 5). In the media, the company similarly stated “It's meant to illustrate the pipeline route, not the marine aspects of the operation.”³ Enbridge’s public relations response that the video was only meant to show the pipeline route is disingenuous, given that the video was, until yesterday, titled “Route Animation”, that it includes the marine tanker route including an illustration of an oil tanker in the waterway, and that the page hosting it continues to say “Route Video” as opposed to focusing on the pipeline route. Clearly the Route Flyover Ad is meant to convey an impression of the marine portion of the route as that is what it does, on its face, regardless of the hasty title change. The impression conveyed is inaccurate. I note in addition that nearly 2,000 people viewed the original ad on the YouTube page (see Appendix 5) and that more have viewed the ad on other pages and in other media.

The Route Safety Ad violates the *Competition Act*

The Route Safety Ad uses excerpts from the same video that comprises the Route Flyover Ad, including the marine tanker portion at issue. The Route Safety Ad explicitly conveys a message – including in its very title – that the proposed project route is safe for oil tanker traffic through the Douglas Channel. It uses discussion and other imagery as well as the video at issue. The unmistakable message of the Route Safety Ad is that there are few to no navigational hazards posed by islands in the Douglas Channel and thus few to no risks of oil tanker spills in the Douglas Channel.

The excerpt from the Route Flyover Ad which is used in the Route Safety Ad at duration point 1:05 suffers from the same issues identified above and I make the same complaint that it in contravenes subsection 52(1) and paragraph 74.01(1)(a) of the *Competition Act*. However, in the case of the Route Safety Ad, there is no disclaimer at all. It omits relevant information – the presence of multiple islands which is a relevant consideration to the purported safety of the tanker route – and the result is clearly misleading, both literally and in the general impression conveyed.

See attached *Appendix 3* for a screenshot of the false and misleading visual representation of the Douglas Channel in the Route Safety Ad at duration point 1:05. Note the title “Route safety” clearly labelled. Refer again to *Appendix 2* for an illustration of the significance of omissions in the Route Safety Ad.

Also see attached *Appendix 4* for additional visual comparisons of the omissions based on

³ Edmonton Journal, “Enbridge Stirs Controversy with depiction of West Coast Waterway as containing no islands”, accessed at <http://www.edmontonjournal.com/Enbridge+stirs+controversy+with+depiction+West+Coast+waterway/7094279/story.html> on August 16, 2012. Copy attached at Appendix 6.

available marine charts and maps. The marine charts and maps are provided to convey greater certainty as to the falsity and misleading aspects of the ads. It is acknowledged that Enbridge did not include altered marine charts in their ads.

Enbridge altered the Route Safety Ad on August 15, 2012, in response to public criticism. It deleted the map video excerpted from the Route Flyover Ad entirely, and replaced the images with that of the video's narrator speaking what had been the original voiceover for the video. The original Route Safety Ad is available on YouTube here:

<http://www.youtube.com/watch?v=eTP7ua72vns> (this is not an Enbridge site). While I do not claim that the continued availability of the original Route Safety Ad on a YouTube account that is not owned by Enbridge results in a *continuing* violation of the *Act* in respect of this Ad, I ask Advertising Standards Canada to nevertheless review the original Route Safety Ad and take action based on the fact that this was made available to the public for some time prior to its quick removal in response to controversy, and that the Ad was in violation of the *Act*.

CONCLUSION

In relation to Enbridge's proposed Northern Gateway Pipelines project, the issues of Tanker Routes and Tanker Route Safety have been raised as key concerns of the public. The gross misrepresentations within both advertisements are not only false and misleading, but when considered against the backdrop of the public debate over the precise question of the safety of Enbridge's tanker plans, there is an open question, in my opinion, as to whether Enbridge intended to deceive or mislead members of the public. Regardless of Enbridge's intent, the effect is clearly false and misleading.

I further submit that Enbridge's hasty alteration of the advertisements at issue here do not remedy my complaint.

It is acknowledged that Enbridge has in the past, and currently does, provide other accurate visual representations for regulatory matters and other public media uses. I submit that the existence or availability of other accurate visual representations does not exempt the ads in question from the relevant provisions of the *Competition Act* nor should it place an unrealistic burden or expectation on the public to seek out accurate representations.

REMEDY SOUGHT

I ask that the Competition Bureau investigate Enbridge and whether the advertisements at issue are false and misleading advertising and deceptive marketing practice, in violation of the *Competition Act*, and that if Enbridge is found to have broken the law, that the Bureau and Commissioner take such enforcement and other action as they determines necessary to bring Enbridge into compliance with the *Act*.

Sincerely,



Lori Waters

Appendix 1 – Route Flyover Ad Screenshot

The screenshot shows a web browser window displaying the Enbridge Northern Gateway Pipelines website. The address bar shows the URL: www.northerngateway.ca/project-details/route-video/. The page header includes the Enbridge logo and navigation links: "Join the Conversation", "News", "Contact us", and "About us". A search bar is also present.

The main navigation menu includes: "Economic Opportunity", "Environmental Responsibility", "Project Details" (highlighted), "Aboriginal Engagement", and "News & Media".

The page title is "Route video". On the left, a sidebar menu lists various project details:

- > Project at a glance
- > Timeline
- > Route map
- > Pipeline information and plan
- > Marine information and plan
- > Regulatory consultation and application
- > Technical Data Review
- > Aboriginal procurement, employment and training
- > Pipeline basics
- > Project FAQs

The central content area features a 3D flyover video thumbnail of the Kitimat area, with a "Shift" button overlaid on the bottom right. Below the thumbnail is a "Share this page" section with icons for Facebook, Twitter, and Email.

On the right side, there are two video thumbnails:

- "TANKER SAFETY VIDEO" with a play button icon.
- "ROUTE SAFETY" featuring a man in a suit, with a play button icon and the name "DRUM CAVERS, M. Eng., P. Eng., P. Geo." below it.

At the bottom of the page, there is a "Support Northern Gateway" logo and a link: "> Join the Alliance".

Appendix 2 – Significance of Omissions in Route Flyover Ad at duration point 0:39

Image screen captured from Route Flyover Ad at duration point 0:39:

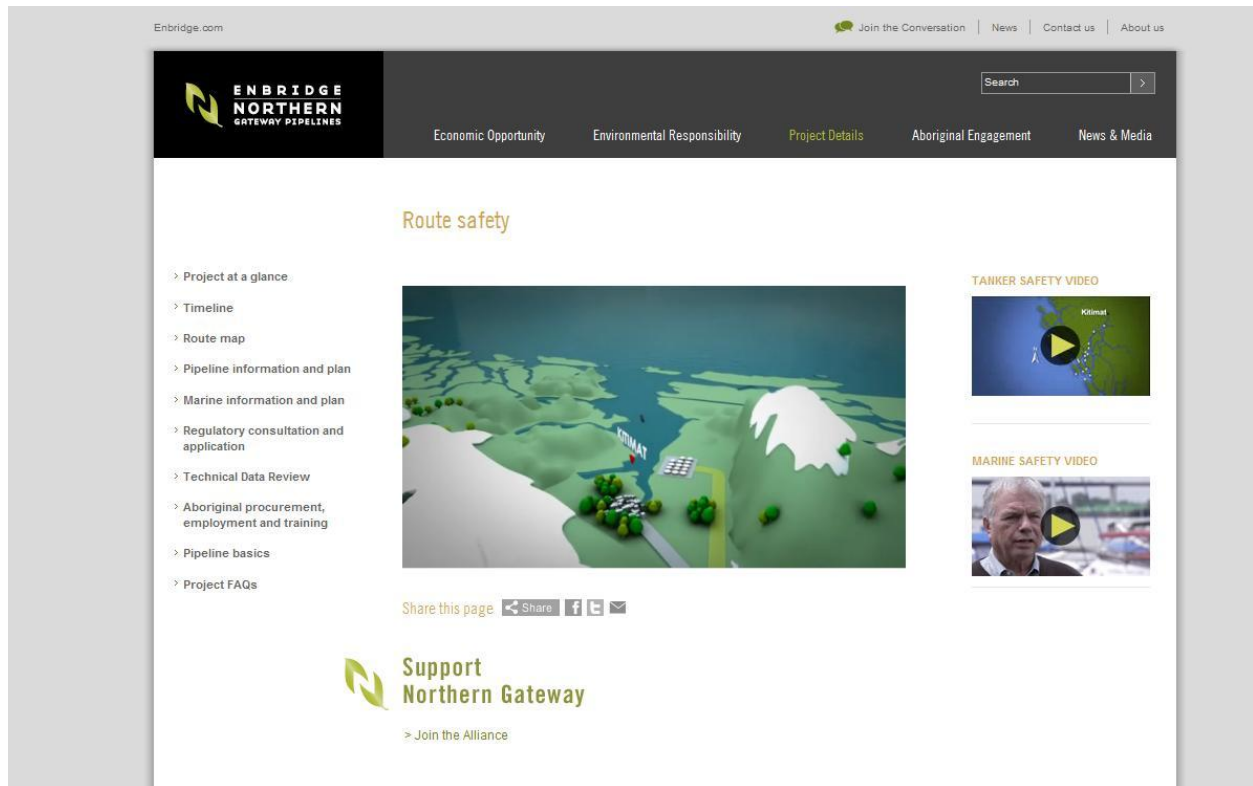


Image above adjusted to include representations of the islands that lie within the waterway (islands added by Lori Waters)



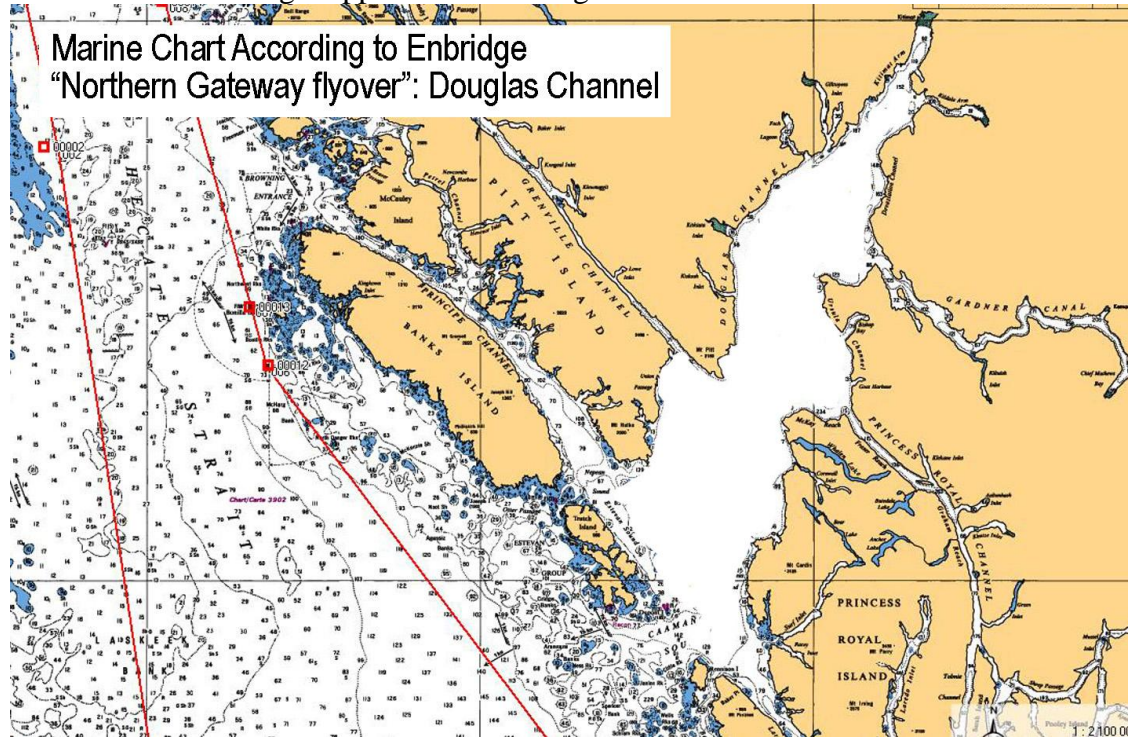
Appendix 3 – Screenshot of Route Safety Ad

Screen capture showing the image at issue in the video under the heading of “Route Safety”

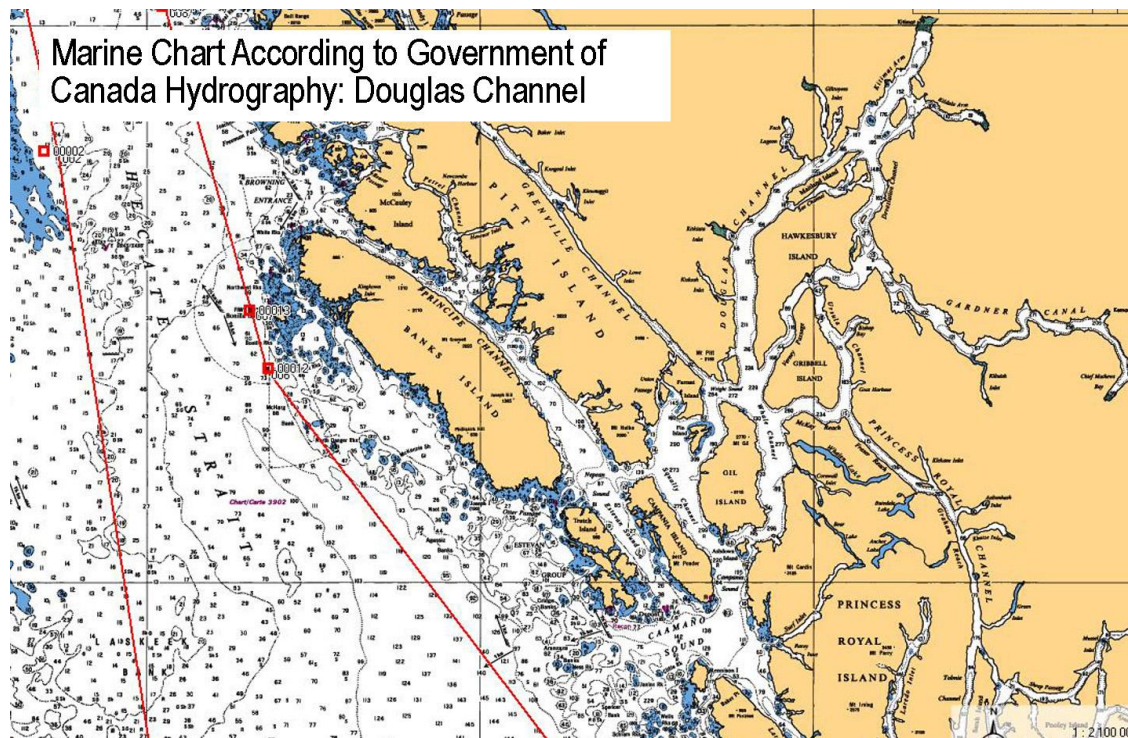


Appendix 4 – Marine Charts and Maps illustrating the significance of omissions

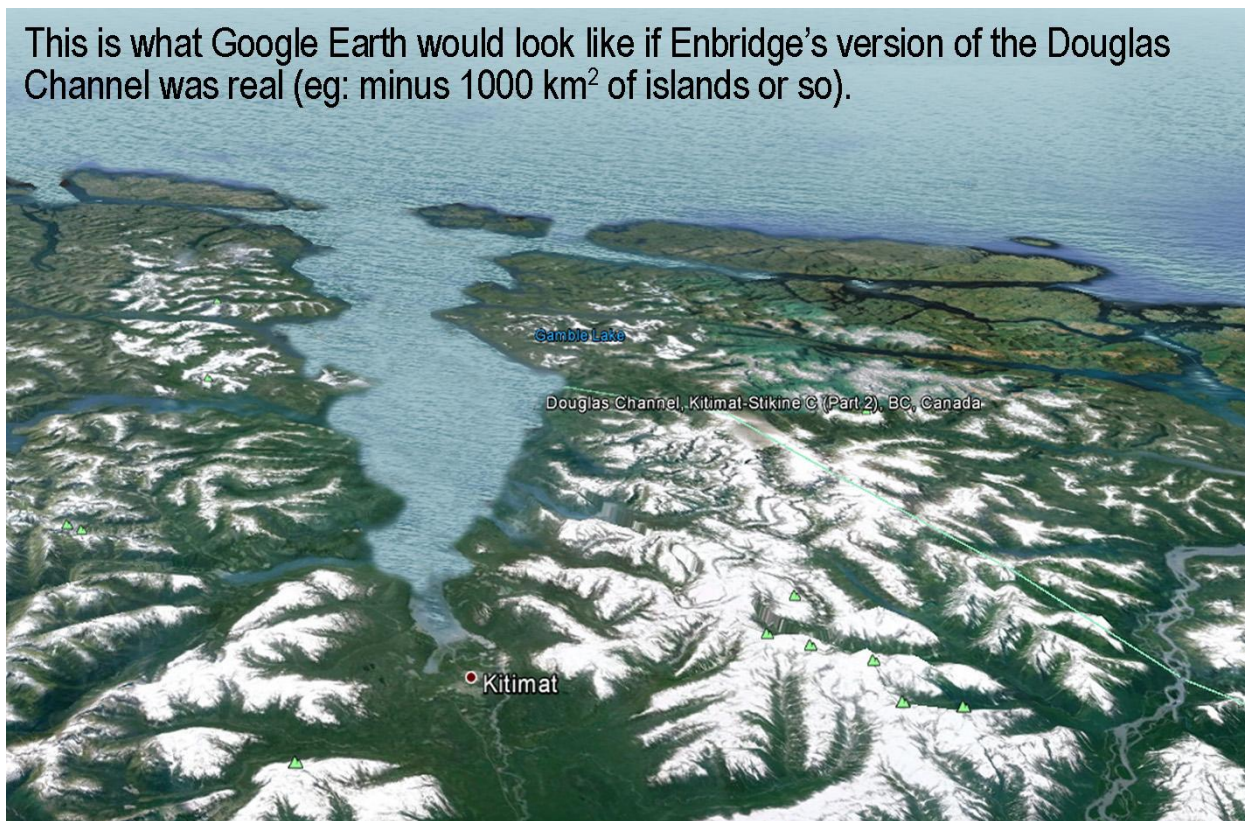
Marine Chart as it might appear with Enbridge's omitted islands



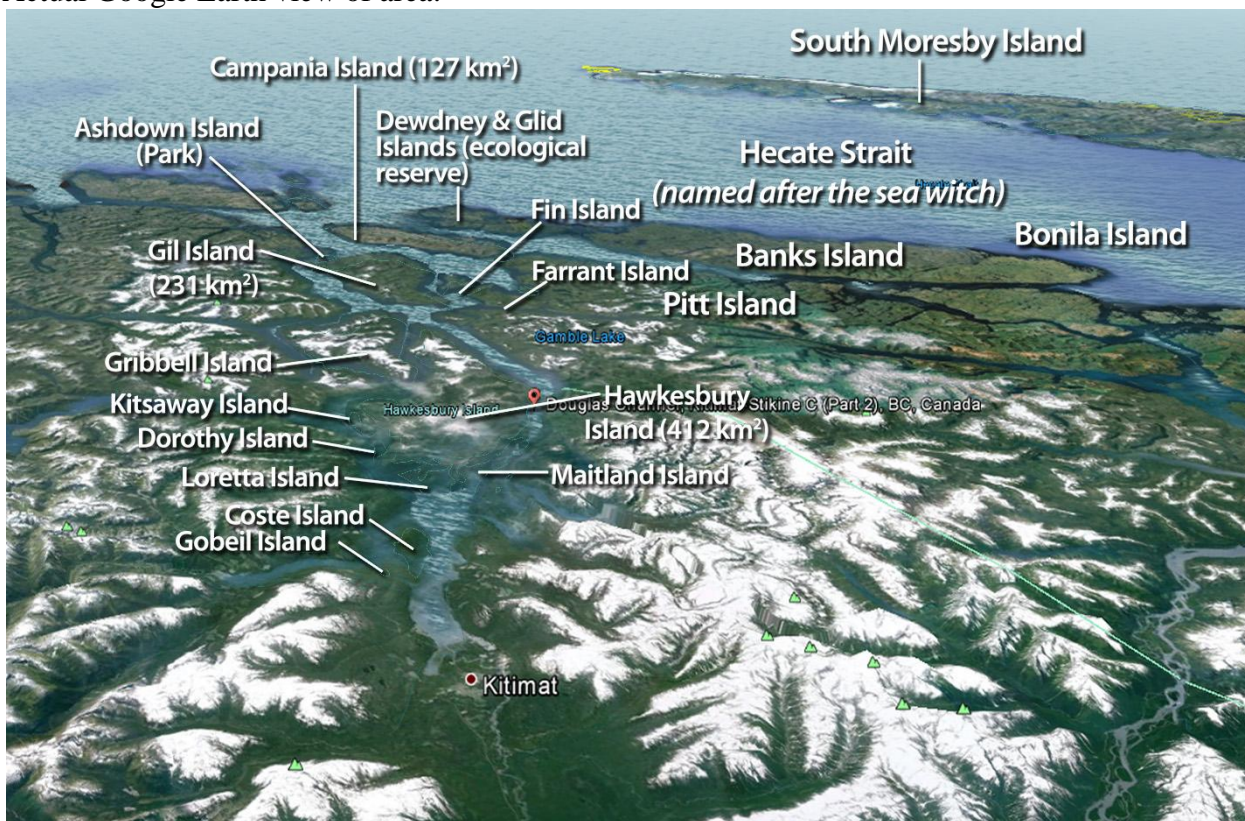
Actual marine chart



This is what Google Earth would look like if Enbridge's version of the Douglas Channel was real (eg: minus 1000 km² of islands or so).

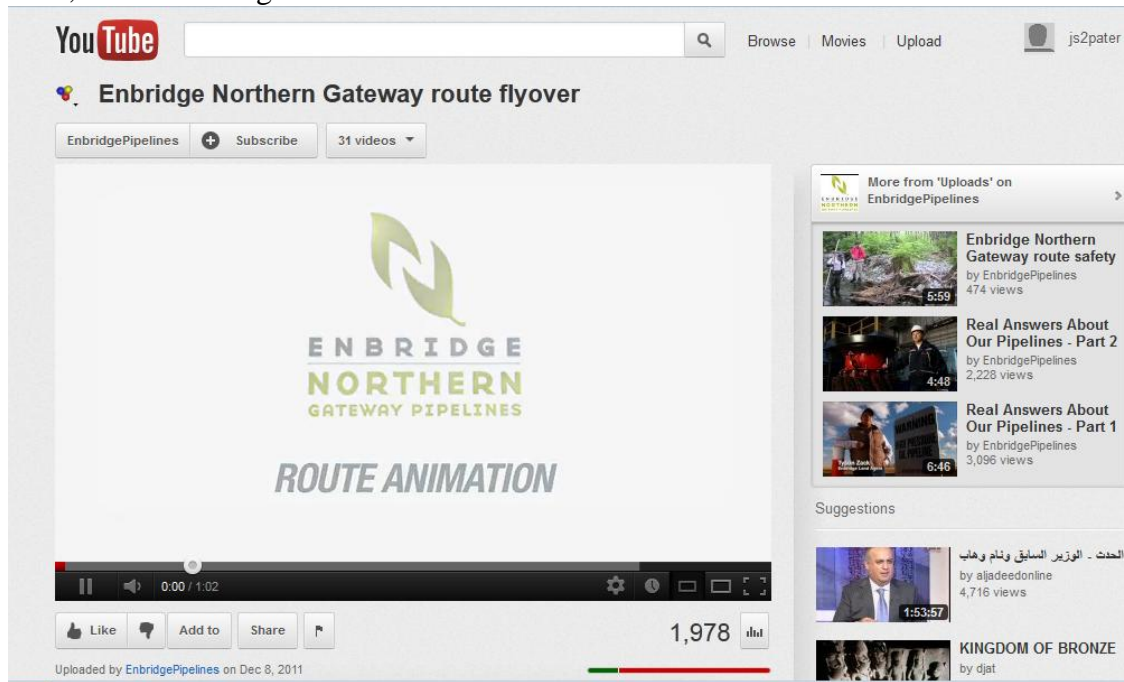


Actual Google Earth view of area:

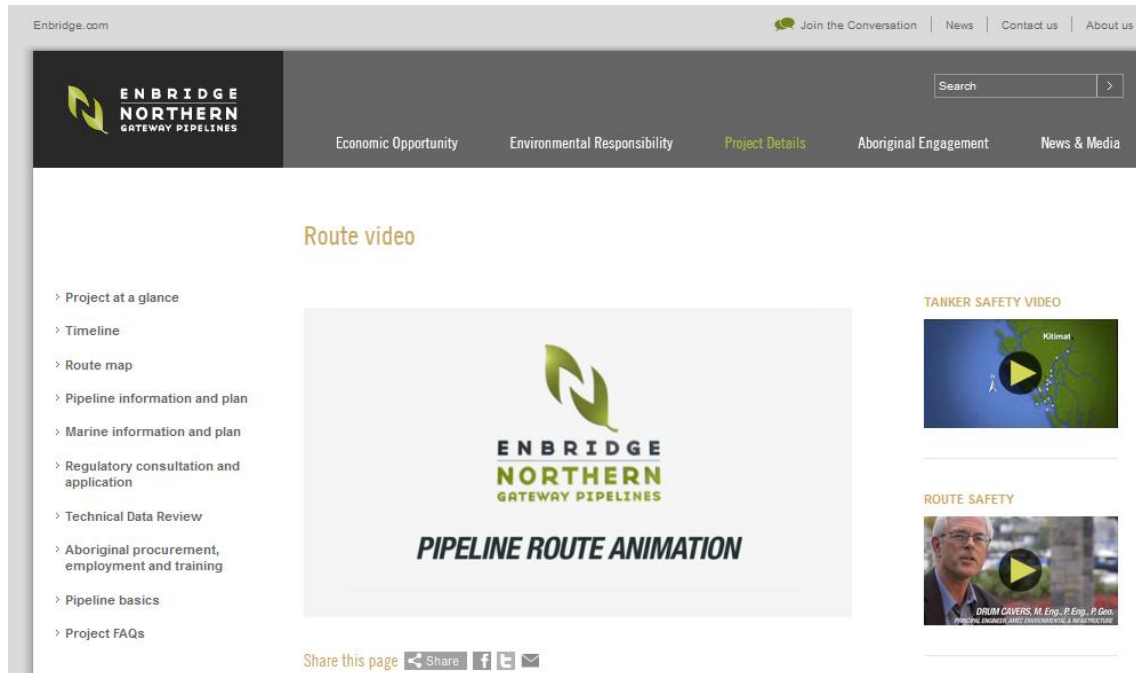


Appendix 5 – Change of title of Route Flyover Video, August 15, 2012

Route Flyover Ad title screen on Enbridge’s own YouTube channel, Accessed on August 15, 2012, in the morning



Altered Route Flyover Ad accessed on August 16, 2012



**Appendix 6 – Victoria Times
Colonist newspaper story**

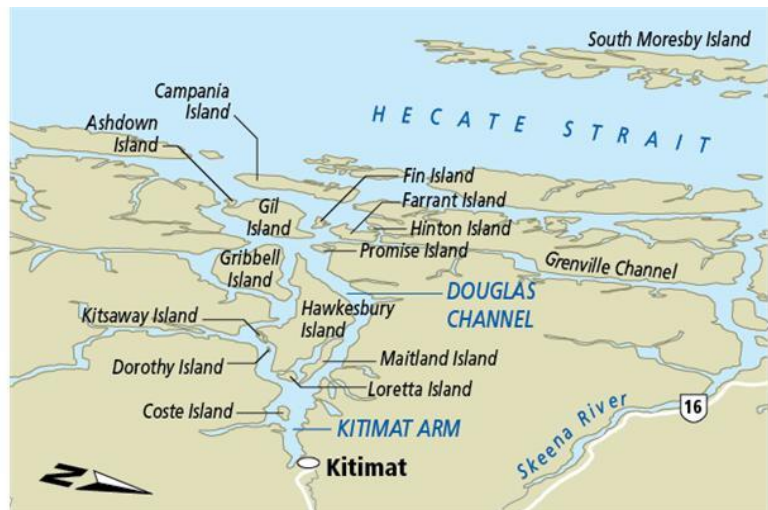
**ENBRIDGE STIRS UP
CONTROVERSY WITH
DEPICTION OF
WATERWAY WITHOUT
ISLANDS**

Critics say video an attempt to
mislead public

**By Judith Lavoie, Times
Colonist, August 15, 2012**



ENBRIDGE INC. SAYS ITS
VIDEO, WHICH DEPICTS
DOUGLAS CHANNEL AS AN
OPEN WATERWAY, IS MEANT
TO BE "BROADLY
REPRESENTATIONAL."



Photograph by: Rnbridge Inc.

About 1,000 square kilometres of islands have disappeared from Douglas Channel in an animated depiction of Enbridge Inc.'s proposed Northern Gateway pipeline and tanker route.

The project would send bitumen by pipeline from Alberta's oilsands to Kitimat, where it would be loaded onto tankers for export to Asia.

A video on the Enbridge website shows Douglas Channel as a wide open funnel leading from Kitimat to the Pacific, omitting the narrow channels, islands and rocky outcrops that make up the potential tanker access route.

The view of Douglas Channel sprang to public attention after Lori Waters, a Vancouver Island researcher and owner of a biomedical communications company, created overlays and maps showing the real Douglas Channel and posted the images on Facebook.

Reaction against Enbridge - which is fighting an image problem because of recent pipeline spills - was swift.

"I find the pictures shocking. It's reprehensible behaviour," said University of Victoria climate scientist Andrew Weaver.

"These images are disturbing enough to make me no longer trust anything coming from Enbridge. It's utterly shameful," he said.

However, Enbridge said the video is an obvious animation and contains a disclaimer that says it is "broadly representational."

"That video is meant to be for illustrative purposes only. It's not meant to be to scale. It's meant to illustrate the pipeline route, not the marine aspects of the operation," said Enbridge spokesman Todd Nogier.

"There's a disclaimer at the end because it's really clear this is meant to be illustrative," he said.

The video is meant to be pleasing to the eye, but viewers would not mistake it for a detailed map, Nogier said.

A tanker safety video showing Douglas Channel in detail and to scale, together with technical reports on every aspect of the marine route, are on the Enbridge website, he said.

"If they are trying to conclude that we are trying to mislead people, nothing could be further from the truth. There's lots of information there. It's all there and it's all for public viewing," Nogier said.

However, groups opposed to the proposed pipeline and tanker project believe the video is an attempt to mislead.

The Enbridge view of Douglas Channel would make anyone who knows the area chuckle, said Eric Swanson of the Dogwood Initiative.

"In reality, it's a twisting path through rocky islands and granite outcroppings, including 90 degree turns, but it's shown as a sparkly, open channel," he said.

"They are certainly painting a rosy picture of a very complicated and dangerous waterway."

The video fits with recent Enbridge advertising campaigns, Swanson said.

"It's more hyper-positive imagery because they know they have a problem because of the spills," he said.

Josh Paterson, a staff lawyer with West Coast Environmental Law, said the promotional video skirts the line on fair advertising.

"That image really misrepresents the reality, which is that that channel is jam-packed with islands," Paterson said.

"You are really not supposed to omit big pieces of information like that and

British Columbians should look at the images and decide how far they are willing to trust the company, regardless of what disclaimer they put on the video, Paterson said.

"A comparison of their images with the actual really raises questions about the trustworthiness of what they are telling people in B.C.," he said.

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Source:

<http://www.timescolonist.com/Enbridge+stirs+controversy+with+depiction+waterway+without+islands/7092701/story.html>