

Free Trade Agreements Exacerbate Threat of East-West Corridor Proposal *While Cianbro remains elusive and international threats build, communities work to take back their fundamental rights.*

by **Chris Buchanan**

Are you familiar with the Trans-Pacific Partnership free trade agreement (TPP)? What about the Transatlantic Trade and Investment Partnership (TTIP) between the United States and the European Union? Both are so-called free trade agreements currently being pushed forward by President Barack Obama that would dramatically increase global influence of transnational corporations by lowering “barriers” to trade. These barriers are no longer just tariffs, but include a wide range of rules and regulations governing the economy.

The TPP is being negotiated almost entirely in secret between the United States and Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Japan, Mexico, Canada and Vietnam¹. That is, secret from you and me, our local governments, and even from the US Congress until very recently when members were allowed to read certain sections but not discuss them, but not from the hundreds of powerful corporations that are sitting at the negotiating table.

Dubbed “NAFTA on steroids,” after the North American Free Trade Agreement, the TPP would promote “regulatory coherence,” lowering labor standards to the least common denominator such as those in Vietnam and weakening environmental standards that would expose Maine’s natural resources to environmentally destructive low cost extraction and quick consumption in the global marketplace.

Of great significance are the rights that the TPP would give to transnational corporations based in participating countries. Under the “investor to state” rule, corporations could use a quasi-secret “trade tribunal” to challenge a member country if its national or local laws or regulations violate TPP provisions. They could then demand compensation, even for *future* “lost” profits, if the law or regulation is not revoked. This may include environmental regulations, buy-local laws, or food-labeling laws, to name a few. While this rule already exists under NAFTA and other bilateral trade agreements with the US,² the TPP would extend these corporate rights to many more countries while also covering additional areas of the economy. Therefore in many ways, the TPP would elevate the rights of corporations even more above domestic laws. The TPP also has a “docking” provision to encourage more countries to join once the TPP is in place.

Why would the United States choose to undermine its environment and jobs? Great question. Probably because corporations enjoy a strangle-hold on the United States government. Fortunately some resistance is building in Congress to the TPP.

But what do existing and pending free trade agreements have to do with the East-West Corridor proposal? A great deal. In sum, the East-West Corridor is the enabling infrastructure for increasing free trade in the Northeast United States and for all of Canada.

¹ On November 14, 2013 the draft text for the entire TPP Intellectual Property Rights Chapter was leaked.

² Canada is currently being sued by Lone Pine Resources Inc. under NAFTA’s investor provision because Quebec’s moratorium on natural gas fracking is preventing the corporation from making money. For more information visit: http://www.huffingtonpost.ca/2013/10/03/quebec-fracking-ban-lawsuit_n_4038173.html

Background. For nearly two years, people who live in Maine have been facing the threat of a “private” East-West Transportation, Communications, and Utility Corridor-- a vision of significant infrastructure development to connect the Canadian provinces of Quebec and New Brunswick with highly secure travel, transmission, and piping of resources. The proposal has been spearheaded by the Cianbro Corporation, and behind the scenes, regional-free trade promoters like the Atlantica Group. The unnamed elephant in the room seems to be J.D. Irving Inc., with the largest oil refinery on the East Coast in St. Johns, New Brunswick. Irving Woodlands is the largest private landowner in Maine³ with over 1.25 million acres, \$23.9 million in estimated annual sales, and about 180 employees.⁴ Irving is currently lobbying for loosening Maine’s mining rules to pursue a gold mine on Bald Mountain in Aroostook County, and has partnered with TransCanada to create a tar sands export terminal on the Bay Fundy.

As a privately owned and operated consolidated utility corridor up to 2000 feet in width from Calais to Coburn Gore⁵, the corridor would profit its investors most by maximizing uses. Therefore, we could expect not only a noisy toll highway with different regulations than public roads⁶, but also a tar sands pipeline, natural gas pipeline, crude oil pipeline, communication cables, DC electric cables, bulk water lines, and more. Despite the destructive footprint of this fenced, half-mile swath, we would additionally be inviting significant threats to currently pristine aquifers, sensitive ecosystems, wildlife movement, recreation opportunities, traditional land use, local economies, local control, and the magical, mystical character of Maine itself. These features make Maine unique, and a kind of outpost for less development compared to the rest of the Eastern United States, especially along the proposed Corridor route.

Even worse, unbeknownst to most taxpayers, we’re expected to be on the hook. To be profitable for one or several of 22 potential international investors that fund this kind of mega-infrastructure project, Cianbro projects that the development would require up to 50% public subsidy, and at least some of the aforementioned “utilities.”⁷

Interestingly enough, in 2010 Cianbro’s lobbyist worked with the Maine Department of Transportation to draft and support Maine’s first Public-Private-Partnership (PPP) law. That law not only allowed for 50% public subsidy of significant infrastructure projects, but also made all PPP information confidential. Additionally, it created a legal pathway for Cianbro to develop a “private” toll highway.⁸ Last year, members of Stop the East-West Corridor fought for the confidentiality provision to be lifted, with success. However, the fact remains that, under Maine law, the only legal avenue for Cianbro to develop a private toll highway is as a PPP, putting the taxpayers unknowingly on the hook for a largely undefined international zone, controlled by international investors.

³ October 12, 2011 BDN Article. Irving was also ranked 5th largest landowner nationwide.

⁴ October 2, 1008 MaineBiz Article. *The Irving Influence | A look at the powerful Canadian family that recently expressed interest in the state’s largest newspaper chain.*

⁵ According to Cianbro’s 2008 Conceptual Feasibility Study, still the only written document available about this proposal.

⁶ Anticipated weight limit is 138,000 lbs according to 2008 Conceptual Feasibility Study, compared with Maine’s new 100,000 lb limit. Tandem tractor trailers would also be allowed.

⁷ Cianbro’s 2008 Conceptual Feasibility Study

⁸ For comparison, the Maine Turnpike Authority, although a private organization, was created by the Maine Legislature and remains under control of the Legislature and MDOT.

The Great Wall of Cianbro...or maybe China. Effectively, we're looking at a privately owned, controlled, and secured Super-Corridor, permanently dividing land that has been accessible to people and animals for time immemorial, from foreign border to foreign border, designed to benefit transnational corporations involved in various resource extraction processes that are major players in the global economy. By nature, it is a Free Trade Corridor, envisioned to maximize movement of globally traded products to and from Canadian ports.⁹ Dreams by most Maine entrepreneurs may be dashed when they learn that the Corridor may cost \$100 to \$200 for one-way truck passage, \$25 for a passenger vehicle, or whatever Corridor owners desire. Additionally, only six interchanges are proposed¹⁰ along this route, which is all very rural except for Old Town.

Can your business compete in the global market place against Vietnamese labor costs, Chinese energy costs, New Zealand milk, or even industrial agribusinesses in the United States heartland? Unless you're providing a niche product or a wealthy transnational corporation yourself, my guess is probably not. And it's not your fault, it's the nature of the global trade rules being written in trade agreements like NAFTA and the TPP, and of federal and state regulations written and upheld to allow large corporations to operate profitably without arousing too much public opposition.

What can we do? Now that you may be thoroughly alarmed and depressed, one must ask, is there anything we can do about this? How can these kinds of things happen, affecting all of us, without some kind of public protection?

Although the situation is critical, it is not too late to get involved. Simply educating yourself further about these issues is one place to begin, and then start informing others about what you learn in all kinds of ways. Then if you want to take action, start exploring **TPP Free Zones**, a strategy initiated by the Alliance for Democracy,¹¹ which can be either a resolution or a law passed at the local level setting out the problems with the TPP and why your town opposes it and will consider non-compliance if it is passed. In October, Dane County Wisconsin passed a resolution declaring itself a TPP Free Zone and a similar one is coming before the Berkeley, California City Council.

Rights-Based-Ordinances, otherwise known as Community Bill of Rights Ordinances, are another powerful tool that have been used around the country since 1998 to prevent corporations from causing specific harms to the people and ecological systems of a community. Simply, these are local civil rights laws that elevate the rights of people and nature in your community above the rights of the corporation(s) that would harm your town, city, or county in a specific way: for example, building a private or public-private transportation and distribution corridor, extracting water for export¹², or hydrofracking.

The Community Environmental Legal Defense Fund (CELDF),¹³ a public interest law firm, works with communities across the country that want to protect themselves from specific corporate harms. These laws challenge "settled law" derived from US Supreme Court rulings giving corporations rights under the US Constitution. Just as with women being denied the right to vote, settled law can

⁹ There is no mention of Eastport in the 2008 Conceptual Feasibility Study, only Halifax, Nova Scotia.

¹⁰ Six is the minimum number of interchanges required to meet PPP needs.

¹¹ For more on this strategy, visit tppfreezones.org

¹² Such as Shapleigh and Newfield, Maine where Nestle pulled out its test wells after RBOs were passed by residents.

¹³ www.celdf.org

be changed when it is challenged by enough people. The ordinances also acknowledge and protect the right of ecosystems to thrive by protecting them against corporate harm.

In the case of the East-West Corridor, with guidance from CELDF, the Town of Sangerville and the Town of Parkman have both passed rights-based ordinances prohibiting the development of a private or public-private transportation and distribution corridor, and legally asserting the fundamental rights listed in the Maine State Constitution. More towns are working towards this end to protect themselves. There is a vibrant and active community rights group of local people supporting each other through this effort.

Whether it's a corporation from Canada or Japan suing the United States claiming that the town of Parkman's rights-based ordinance takes away their right to profit from the Corridor under NAFTA or the TPP, or Cianbro suing Sangerville directly in US Courts to assert its right to build an East-West Corridor, the end result of a legal challenge to an RBO would be very illuminating. In the TPP/NAFTA scenario, the case would go to an international tribunal and most likely be deemed contrary to the free trade agreement. In that case, the feds would either pressure the state to pull Parkman into line or pay the company for their lost profit. In the Cianbro scenario, the RBO would be tried as a civil rights case and the question would be, "Does the community have these fundamental rights, or not?" In either case, if the answer is "no, they don't have these rights," there could be a lot of angry people out there who would have a deeper understanding of the need to build rights for people and nature into our domestic and international laws.

As more towns in Maine enact rights-based ordinances, there will be strength in numbers to take on any challenges by corporations like Cianbro. And if towns in Maine stand up to the TPP by declaring themselves TPP free zones, pressure will build on Congress to reject the TPP. Just imagine, if towns actually became empowered to make choices about their futures? This would be a tremendous step towards real democracy in Maine, the United States, or even beyond. ###

Chris Buchanan is the Statewide Coordinator of Stop the East-West Corridor, and Coordinator for Defending Water for Life in Maine. Stop the East-West Corridor (STEW) is a coalition of Maine people uncovering facts, requesting transparency, and raising awareness about the East-West Corridor proposal. Defending Water for Life is dedicated to protecting water for people and nature by supporting people who want to keep corporate water mining out of their communities. Chris is funded by grants from private foundations, and currently devotes most time to educating people about the Corridor and supporting STEW. For more information visit stopthecorridor.org, defendingwater.net/maine, or contact Chris directly: 495-3648