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March 31, 2025

Canada Energy Regulator
210 – 517 10th Avenue SW
Calgary, AB T2R 0A8
Canada

Subject: Onshore Pipeline Regulations and Filing Manual Update

To Whom It May Concern

Jacobs Consultancy Canada Inc. (Jacobs) is submitting feedback for the Phase 2 review of the Onshore Pipeline Regulations (OPR) and the Environmental and Socio-Economic Assessment (ESA) and Lands portion of the Filing Manuals. The OPR are the main regulations used by the Canada Energy Regulator (CER) to oversee pipeline operations in Canada and the Filing Manual provides information requirements for proposed project applications.

Phase 2 of the engagement took place from June to March 2025. The CER will use feedback received during this time to inform proposed changes to the OPR and Filing Manual. Jacobs participated in a number of the information sessions and online workshops, and have prepared a response for the areas we felt we could best contribute (Attachment 1), including.

- Topic B: OPR – Deactivation and End of Lifecycle
- Topic D: OPR- Environmental Protection
- Topic I: OPR: Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement
- Topic K: Filing Manuals – Environmental and Socio-economic Assessment
- Topic M: Filing Manuals – Rights and Interests of Indigenous Peoples

We understand the CER is seeking to strengthen measures to prevent and address impacts to Indigenous rights and interests, including heritage resources and sites of Indigenous significance. Jacobs has long-standing relationship with Indigenous communities throughout Canada and has worked with hundreds of Nations on projects and is committed to sharing learnings and approaches that appear to be most effective and efficient at achieving positive outcomes. The theme of engagement is woven throughout the planning and regulatory process and is a mainstay for many of the topics and responses.

During this period of economic and political uncertainty, the CER would be reminded to not give due consideration to regulatory efficiency and effectiveness of project reviews in the context of energy and global security and national sovereignty through its consultation with Indigenous Nations and to emphasize the importance of projects relative to these national priorities and public interest and necessity.

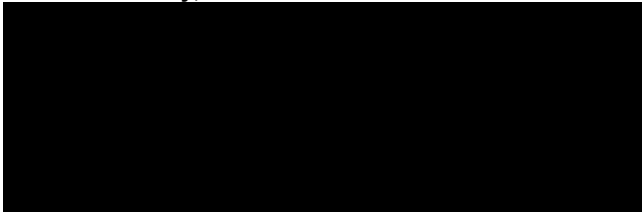
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We look forward to supporting the journey toward reconciliation with Indigenous Peoples and to seek ways to assess and manage efficient and effective reviews of proposed projects.

Yours sincerely,



Attachment 1
Proposed CER Filing Manual Updates:
Public Feedback Opportunity



Topic B OPR – Deactivation and End of Lifecycle

Subtopic 1: Definitions

The proposed definition of “Decommission” is as follows: “to permanently cease active flow of a pipeline or part of one where the pipeline, or part of one, is located in a shared right of way, with other pipelines in active flowing service.”

B1. Are there any comments on, or further suggestions regarding the new or amended definitions above?

- Consider developing a definition of “decommissioning” for other infrastructure (such as, pump station, compressor station, valve site) or revising the proposed definition to include non-pipeline assets. Would the infrastructure associated with the pipeline to be decommissioned (e.g., valve site, metering station) be included in the definition? For example, *“to permanently cease active flow of a pipeline, or part of one, and associated infrastructure, located in a shared right-of-way or facility site, with other pipelines in active flowing service.”* Aboveground infrastructure is often included in pipeline decommissioning applications, including the removal of this infrastructure within these existing facilities.

Subtopic 2: Decommissioning

B2. Do you have feedback on how section 45.1 could be improved to address the comments received; for example, what elements should be included in a decommissioning plan?

- It is recommended that decommissioning plans should include a description of the site and facilities to be decommissioned, method of decommissioning (e.g., in-place, removal), environmental protection during construction (i.e., physical decommissioning activities), post-construction monitoring requirements, activities required for ongoing monitoring of the right-of-way, and documentation and reporting plan/schedule. The decommissioning plan should consider including, maps and figures (e.g., location, site plan, as-built drawings) and should be scalable to the project and include site-specific environmental and socio-economic protection measures.
- Consider providing feedback regarding expectations for a decommissioning in-place project with minimal activities in a previously disturbed area and the level of involvement with Indigenous People and the impact to the rights of Indigenous Peoples (compared to a construction or abandonment project).
- Considering that decommissioning is often a step toward future abandonment of assets and land, engagement outcomes with Indigenous communities could be incorporated into the decommissioning plans with a description of how/if lands will be returned to the Crown and may be considered an increase in land available for use by Indigenous communities.

Subtopic 4: Notification for Deactivation

B5: Are there risks associated with requiring companies to file a notification for deactivation activities instead of filing an application, and if so, how could they be managed?

- It is recommended the notification process be set up and completed to ensure there are minimal to negligible environmental effects. Physical deactivation activities (e.g., those requiring ground

disturbance) are generally conducted within previously-disturbed areas or existing facility sites and rights-of-way that requires existing staff or a small workforce (reducing the potential for socio-economic effects); however, a checklist or flow chart would be helpful, if provided, to ensure there is consideration for environmental features (e.g., work in or near wetlands, wildlife habitat). If the proposed deactivation activities have been reviewed and are considered to have minimal or negligible effects, a notification is appropriate.

Subtopic 5: Surveillance and Monitoring

B7. Do you have feedback regarding the applicability of section 39 of the OPR (surveillance and monitoring) to include provisions around monitoring of abandoned pipelines?

- Consider expanding section 39 to include surveillance and monitoring for decommissioned and abandoned pipelines. Provisions may want to account for differences between decommissioning and abandonment since sharing the right-of-way (i.e., decommissioning) means the right-of-way is maintained, and is less likely to be land where vegetation growth/natural recovery is able to occur.

B8. Do you have feedback on how Indigenous Peoples can be involved in the monitoring of decommissioned and abandoned pipelines?

- Abandoned rights-of-way to be reclaimed in a method agreed upon with Indigenous Peoples and it should be clear whether the company/proponent intends on maintaining land rights/lease on the lands where the abandoned right(s)-of-way is located. Feedback from Indigenous communities have indicated this is not considered a positive effect (when the proponent maintains the land rights/lease) for an abandonment project.

Topic D OPR – Environmental Protection

Subtopic 4 Environmental Protection Plan required for Construction and Operation and Maintenance Activities

D9. Are there alternative means to an EP Plan, that would help ensure that environmental protection is being considered and communicated during construction, operations and maintenance activities?

- An “Environmental Protection Plan” can be generally viewed as the document containing the commitments made to the CER made by the proponent, and mitigation measures that need to be communicated to field staff for implementation. Similar to an ESA, the EP Plan can be scaled to the specific activities and scope. Work within an existing facility site or graveled area does not warrant a full EP Plan but rather a few pages of targeted measures with an associated figure, compared to a pipeline construction EP Plan that will require far more detail and information. The proposed mitigation measures do not have to be contained within an EP Plan and can be captured in other documents that are referenced or had been previously submitted to the CER (i.e., environmental protection).
- Many proponents have standardized EP Plans which outline their approved environmental mitigation measures for operations and maintenance activities that are on file with the CER. These EP Plans are routinely referenced and communicated for all operations and maintenance activities, and if the EP Plan doesn’t cover a particular activity or scenario, supplemental mitigation measures are developed and communicated as required.

- Engagement with Indigenous communities with interest in a particular area or asset prior to, or during the development of a project or site-specific EP Plan is important for identifying protection or enhancement measures. Indigenous communities often provide valuable input in EP Plans for restoring decommissioned or abandoned rights-of-way to increase the potential for preferred vegetation/land use as well as consideration for employment opportunities.

Topic I OPR – Rights of Indigenous Peoples, Socio-economic effects, and Engagement

Sub-topic 1: Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples

I1., I7, I12. What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?

- More clarity could be provided on expectations for the inclusion of mitigation measures specific to the GBA+ analysis, especially in cases when there is little to no responses to a project notification. Please identify what are the acceptable data sources. Are the GBA+ analyses reliant solely on Statistic Canada data?
- Overall should be flexibility in the review and consideration of Rights and Interests of Indigenous Peoples and guard against being too prescriptive in the Filing Manual. There are multiple ways which Nations and proponents can reach positive outcomes and desirable end results. Ultimately, the Nations are in the best position to decide whether there is a "significant" effect is in regard to the rights of Indigenous Peoples.

Topic K Filing Manuals – Environmental and Socio-economic Assessment

Subtopic 1: Restructuring the ESA Section

K1. Does the proposed split of the current ESA section improve clarity?

- The proposed options outlined by the CER note the *Filing Manual – Rights and Interests of Indigenous Peoples* (ROIP) topic paper contains details regarding proposed changes but there are no details surrounding the logistics of this change provided, such as a proposed outline or table of contents. For over two decades, ESAs submitted to the NEB (now CER) by proponents have incorporated traditional knowledge and traditional land and resource use (TLRU) studies into their assessments. Furthermore, the importance of collaboration and integration of western science and traditional knowledge requires the flexibility to weave in the findings and outcomes throughout an assessment. Alternatively, Indigenous communities that would like to file their own written evidence are welcome to in their own format. Most recently, proponents have also included sections within the ESA to capture Indigenous created information and documents in the Application for consideration in the assessment by the CER. In preparation of the ESAs, Indigenous communities also have the opportunity to review the sections on ROIP as well as develop their own (or review) the community profiles that go into the Application. There are opportunities to collaborate and incorporate traditional knowledge into the assessments

without splitting the current ESA section. Without more details, we suggest leaving the ESA structuring up to the applicant, using the guidance outlined in the Filing Manual.

- Restructuring the ESA to include specific requirements for the rights of Indigenous Peoples seems duplicative and unnecessary. Recent ESAs have included a Rights of Indigenous Peoples (ROIP) section within the ESA which allows the reader a quick reference back to applicable sections when needed (e.g., vegetation, wetlands, wildlife, water quality) while offering a focused chapter to include historical information regarding Indigenous communities whose rights have been, are or could be carried out in the project area and the potential effects of a project and associated activities on the ability to conduct these rights. Project-specific engagement seeks to include feedback from Indigenous communities into the ESA as early as possible including the identification of biophysical and socio-economic valued components (VCs), potential effects, mitigation and/or monitoring measures, and cumulative effects. Splitting the ROIP ESA section out from the rest of the ESA (as Discussion Questions M4 and M5 indicate), ignores the interrelation of the biophysical / biocultural VCs and the associated impacts that may occur on the rights of Indigenous People.
- The CER might consider combining the TLRU sections with the ROIP section to reduce repetitiveness between the information presented for both sections. ESA writers note that repeating VCs in the TLRU and ROIP sections does not add any value to the assessment, and combining the sections may allow for a more comprehensive assessment that includes historical and current information regarding resources and use, and rights associated with identified resources.

K2. What overarching topics are important to highlight as applying throughout the applicant's ESA and "Rights and Interests of Indigenous Peoples" sections?

- The overarching topics such as engagement results and Indigenous knowledge that are important to highlight throughout a project's ESA and the ROIP section should be location and project specific (i.e., scaled to the project). Engagement results and Indigenous knowledge, where available, have and will continue to support the collection of baseline information, identification of VCs and potential effects, mitigation measures and monitoring procedures.
- Climate resiliency could be added to each existing section with a description of how the project is considered resilient to specific elements, or provide a separate chapter on climate resiliency. The CER should include the filing requirements and expectations in the Filing Manual and the applicant can decide how the required information is relayed in an ESA.
- The scoping process should clarify which topics are relevant or not, and provide a rationale.
- Clearly demonstrate how Indigenous knowledge was incorporated into the ESA and if not, why not.

K3. What other restructuring of the existing ESA section might improve clarity, readability, and better highlight important issues?

- A summary chapter for the GBA+ analysis that considers the results of the ESA sections.
- Contribution to climate change and resilience could be a separate chapter.
- Consider splitting physical and meteorological environment. The meteorological environment setting information can inform the Effects of the Environment on the Project section, as well as any climate change discussions, based on the project area. Detailed information regarding unique physical features vs. the project being affected by meteorological conditions or extremes can be separated to allow for a more focused assessment (e.g., don't need to skip pages of climate data to see how the project may impact the physical environment).

Subtopic 2: Environmental and Socio-economic Assessment

Valued Component Identification and Selection for the ESA

K4. To what extent should Indigenous knowledge and engagement be explicitly addressed in the selection of VCs? How should applicants demonstrate that Indigenous knowledge and engagement informed the selection of VCs?

- All VCs mentioned by Indigenous communities during engagement should be considered for assessment. If there will be no interaction with a VC identified by an Indigenous community, an explanation should be provided. For example, if a concern about project effects is raised on wetlands but there are no wetlands within 30 m of project activities, no interaction is anticipated and, therefore, no further assessment would be conducted. The Project team will record the concern in the event of a reroute or footprint change; however, assessing an element that does not interact with the project does not allow for proper scoping of effects.
- Applicants can demonstrate that Indigenous knowledge and engagement informed the selection of VCs by including this as a topic in early engagement efforts so that all relevant information is included in the assessment. Furthermore, several indicators or indicator species raised by Indigenous communities can fall under one of the VCs already being considered.
- Early engagement with potentially affected Indigenous communities would have to be a requirement for all proponents to engage with them prior to filing the application. Requirements for early engagement should specify including Indigenous communities in the scoping of the assessment, such as VC selection.

K5. What factors should guide the choice of VCs in terms of their breadth?

- VCs are identified from a variety of sources including Indigenous communities, government authorities, landowners, stakeholders and the assessment team. The selection of appropriate VCs will focus the assessment on relevant aspects of the natural and social environment and identify those of importance to Indigenous communities, government authorities and stakeholders. Therefore, balancing the inclusion of consultation and engagement in the identification of VCs with the project and assessment teams will focus the analysis of project-specific interactions and potential effects. All information gathered during consultation and engagement will be considered in the inclusion of VCs.

K6. Can VCs be 'nested' to cover both specific and more general concerns (e.g., a general VC that sums the effects on a number of narrower VCs)? Are there any methodological considerations or approaches regarding the 'summing' of effects of individual VCs?

- If you choose to "nest" them, we'd recommend this be done in the TLRU or sections that incorporate GBA+. We would recommend keeping the biophysical VCs separate and not nesting these. Keeping VCs separate allows the EA author to focus on the Filing Manual requirements and gathering the appropriate detailed information. Proponents with small projects and or limited scope (e.g., work within an existing facility site) may consider doing this in the absence of the requirement for detailed information. It is generally understood and realized that there are multiple interactions between VCs (e.g., biocultural components including vegetation, wildlife, harvesting, cultural well-being and human health). By separating out these VCs, helps ensure that are no components missed, overlooked or marginalized.

- We recommend the continued use of key indicators for each VC to allow the discussion to be more specific.

K7. What other improvements or clarifications can be made to the discussion and selection of VCs?

- Detailed information regarding the physical and meteorological environment: should the meteorological environment information be made into a separate section (i.e., Effects of the Environment on the Project). ESA templates typically include a lot of background research and subsequent detailed information at the front of the chapter; however, potential effects tend to focus on those relevant to the physical environment, where applicable. Consider separating the physical environment and meteorological environment requirements or make them separate chapters. The meteorological environment information is better suited in the Effects of the Environment on the Project.

Socio-economic Valued Components

K8. Would having separate sections in the Filing Manual (e.g., one describing socio-economic VCs and another describing VCs focused on the rights and interests of Indigenous Peoples) improve clarity?

- ESAs already have separate sections for biophysical and socio-economic VCs. It is easier to keep these VCs under one cover for ease of referring to other sections, where applicable (e.g., human occupancy and land use). For large development applications (e.g., Trans Mountain Expansion Project), it is worthwhile to have separate sections or report submissions; however, most applications will not benefit from separating the information. Purposefully separating the biophysical and socio-economic VCs ignores the interconnectedness of these elements and how a proposed project may interact with each.

K9. How would such a split impact the assessment of biophysical VCs, socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples?

- VCs identified from a biophysical standpoint will remain whether Indigenous communities are involved in the Project or not (e.g., project notification and follow-up has not often resulted in a response from a community). Keeping the TLRU and ROIP sections within the ESA allows for a potential project to be assessed as a whole and not just each VC. VCs focused on the rights and interests of Indigenous Peoples will be detailed in a way to include an assessment of the project as a whole as well as how impacts to Indigenous Peoples have been identified (e.g., half of the employment opportunities are for Indigenous employees, the overall project assessment will not ignore those economic effects but the TLRU/ROIP section(s) provide an avenue for focusing on the rights and interest of Indigenous Peoples.
- An example of the benefit of including biophysical and socio-economic VCs under the same cover is the wetlands VC where all of the biophysical information is presented (e.g., class, ecological community type, conservation status, distribution, hydrological capabilities) including an explanation that Indigenous communities have also expressed a concern regarding wetland function. This helps the assessment team determine the importance of the VC. Meanwhile, disturbance to that wetland can be assessed in the ROIP or TLRU section(s) to allow a focused assessment on the use of the wetland by communities.

K10. What VCs should stay in the ESA section versus which should move to the “Rights and Interests of Indigenous Peoples” section?

- We recommend all VCs remain in the ESA. The context and assessment of the biophysical and socio-economic elements will help inform a project’s impact on the ROIP. Indigenous communities

should help identify any specific VC that should be identified in the Rights and Interests of Indigenous Peoples and given consideration in the assessment.

- One consideration may be combining the information requirements for TLRU and ROIP into one separate chapter with detailed guidance regarding the meaningful exercise of rights within the project area, including the traditional use of land and resources, would be helpful. Currently there is extensive overlap and redundancy between these sections, and there could be one section that addresses all relevant topics that may affect the ROIP.
- The assessment of ROIP should focus on the meaningful exercise of rights within the project area which should be identified in consultation with potentially-affected and interested communities. It should be up to the applicant to show how this was done and scaled appropriately to the nature, scale and scope of the project.

K11. What other improvements can be made to the guidance for socio-economic VCs?

- Further guidance on GBA+ requirements and a more specific methodological approach would be helpful. For example, should it be considered for all VCs? Should it be a summary chapter? Can it be scoped out if not applicable?
- More specific guidance on what kind of information should be provided for baseline conditions of the GBA+ analysis is recommended. Is it needed in all circumstances? For example, is there information beyond the socio-economic indicators that should be collected?
- More specific guidance on how baseline data collection can identify existing strengths, weaknesses and diversities in populations that the project may interact with is recommended. Also guidance on what to do if this information is not available (either public data or no responses from Project Notification) would be beneficial as well for proponents.
- A list of data sources for reference on diverse and vulnerable populations would provide guidance and consistency for proponents.

Mitigation and Enhancement Measures

K12. What considerations concerning enhancement measures should be included? Are there different considerations for enhancement measures for biophysical VCs versus socio-economic VCs?

- Yes, enhancement measures would be different for biophysical vs socioeconomic effects. Consideration should be given to reducing barriers to access project benefits, such as jobs and training. From a socio-economic perspective, cost or revenue generated is often considered a benefit that could be enhanced but the biophysical environment doesn't really care about that.
- More specific requirements and direction regarding wetland-specific enhancement measures or offsetting would be beneficial (for the environment and the applicant).
- Suggest that the Filing Manual outline activities or outcomes for the activities requiring offsetting and provide direct guidelines that should be adhered to regardless of the project. This will ensure the appropriate offsets are implemented and potentially reduce the number of information requests with regulators.
- Suggest that specific direction on required consultation around offsetting be provided on a project specific basis.

K13. What principles and other considerations concerning offsets should be included? Are there different considerations for offsets for biophysical VCs versus socio-economic VCs?

- More specific requirements and direction around wetland-specific offsetting would be beneficial in ensuring offsets are successful and in ensuring proponents are consistent in offset implementation for resources like wetlands. All projects that include wetland offsetting should adhere to direct guidelines that outline activities or outcomes of activities requiring offsetting to ensure appropriate offsets are implemented. This will facilitate a stronger understanding of regulatory expectations.
- Suggest that specific direction on required consultation around offsetting be provided on a project specific basis.
- A socio-economic offset could be something like donating to a local Indigenous organization if hiring and procurement did not reach intended targets.

K14. What is the best way to document, monitor, manage, and report on socio-economic protection and enhancement measures?

- This will depend on the nature and scale of the Project. If there is one or two socio-economic enhancement measures, it may be worth just adding to an existing EP Plan as a separate appendix. This can serve as a way of tracking environmental and socioeconomic commitments. For larger projects, where socio-economic enhancements are more complex or targeted, a separate Socio-economic Protection Plan (or something similarly titled) is a more appropriate way of tracking and managing socio-economic and protection measures.

K15. How can information relevant to environmental and socio-economic protection measures best be documented to ensure site-specific information and relevant commitments are maintained and implemented during operations?

- Information relevant to environmental protection is best integrated into a Post-Construction Environmental Monitoring (PCEM) program.
- Similar to the above, depending on the nature and scale of the project, including one or two socio-economic protection measures may be considered appropriate, instead of preparing an additional plan. Or maybe even as an appendix.
- For projects that fall on private land where an environmental issue is directly related to a socio-economic issue (e.g., poor vegetation establishment), it is important that these are tracked the same or in parallel. In some PCEM programs, areas were intentionally not reclaimed on privately owned lands, however the company and landowner had made arrangements for compensation instead.
- Similar to a PCEM program, socio-economic indicators should be reported on within a certain timeframe post-construction. The reporting should address construction-related topics such as the number of workers in the community, the type of accommodation that was used and use of local healthcare resources. Such a report (e.g., Socio-Economic Effects Monitoring Plan) should identify construction-related social or economic issues and concerns raised by Indigenous communities and stakeholders.

K16. What other improvements can be made to the discussion and guidance for mitigation and enhancement measures?

- Further guidance and the specifics for developing monitoring indicators for socio-economic management plans and commitment tracking would be helpful.

Cumulative Effects

K17. To what extent should environmental events and climate change be included in cumulative effects assessments?

- Environmental events and climate change factors should be included in the cumulative effects assessment to the extent that it is relevant to the project. For example, projects with multiple watercourse crossings or located in areas where wildfire occurrence is on the rise should include additional information in the assessment since the likelihood of the project being impacted by environmental events and climate change is higher as well as the project contributing to cumulative environmental effects (e.g., increase in air emissions). This could also be determined by the scope of the project and whether there are aboveground buildings and infrastructure.

K18. How is the cumulative effects assessment relevant to positive effects as well as adverse effects?

- The cumulative effects assessment should include the VCs where residual effects are considered. IAAC notes that proponents may also consider cumulative positive effects.
- Consideration should be given to whether or not positive effects need to be monitored. If they were monitored, this could provide data on the net benefits of such projects.

K19. What factors are important in choosing the appropriate baseline for cumulative effects assessment?

- The level of effort, time, and resources required to collect adequate baseline data for appropriately assessing cumulative impacts needs to be considered.
- The availability of relevant data is critical for the success of a CEA, and the methodology to be used to determine the CEA baseline conditions should be defined as early as possible.
- Consider including a historical context section to provide information on the impacts of colonization on Indigenous communities. While present-day conditions are used for the assessment of potential effects, those present-day conditions are the result of historical development. Please provide clear guidance on time scale needed for the assessment of baseline conditions.

K20. To what extent should the use of offsets and the applicant's confidence in achieving no net loss relieve an applicant from having to include a cumulative effects assessment in their ESA?

- Applicants should demonstrate how the mitigation hierarchy and offsetting has been considered in conjunction with avoidance, minimization and restoration. The use of offsets should be considered in the context of the cumulative effects assessment and discussion.

K21. What other improvements can be made to the discussion and guidance for cumulative effects?

- The CER may want to consider providing guidance on how, or whether regional offsets of cumulative effects should be made possible as part of a collaborative CEA mitigation process led by the CER or multiple proponents/developers?

K22. Would a framework similar to the significance tables used in the NEBC Recommendation Report be appropriate for inclusion in the Filing Manual?

- No. The CER should consider the intent of these tables. Is this to accompany the Interactions Table with the intent of explaining the significance of residual effects? Are these tables to be prepared and available, similar to the requirement for an ESA supporting a Section 214 Application? A lot of this

information is already included in application materials or an ESA. It is important to consider applicability and application type as to not create unnecessary effort or redundancy (e.g., small-scale projects with routine residual effects and mitigation measure that are well understood may have a low magnitude, short-term residual effect and these tables just result in additional work for the applicant).

- Are these tables also going to be extended to positive effects?

K23. What considerations should apply when making the significance determination for federal lands?

- With respect to Reserve lands, Nations should make their own determination of significance to the extent that there could be benefits that outweigh the burdens.

K24. What other improvements can be made to the discussion and guidance for significance?

- In the context of a proposed project that is likely to cause significant adverse effects, there are many other factors that need to be considered. These other factors could be mentioned in the context of the conclusions such as public interest, political sovereignty, global security or matters that the public are not privy to and the benefits vs burdens for the country.

Topic M Filing Manuals – Rights of Indigenous Peoples

Sub-topic 1: Restructuring the Filing Manual

M1. Does the proposed split into two sections (i.e., an amended ESA section and a new “Rights and Interested of Indigenous Peoples” section) improve clarity?

- See response to Question K1.

M2. What overarching topics are important to highlight as applying throughout the applicant’s ESA and “Rights of Indigenous Peoples” sections?

- See response to Question K2.

M3. What other restructuring of the “Rights and Interests of Indigenous Peoples” section might improve clarity, readability, and better highlight important issues?

- See response to Questions K3.

Subtopic 2: Rights and Interests of Indigenous Peoples

Valued Components Focused on the Rights and Interests of Indigenous Peoples

M4. Would having separate sections in the Filing Manual (e.g., one describing VCs focused on the rights and interests of Indigenous Peoples and another describing biophysical and socio-economic VCs) improve clarity?

- See response to K8.

M5. How would such a split impact the assessment of biophysical and socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples?

- See response to K9.

M6. What VCs should be included in the “Rights and Interests of Indigenous Peoples” section and which should stay in or also be included in the ESA section?

- See response to Question K10.
- Question M6 should be for Indigenous communities to respond to on a project-by-project basis. The proponent should be required to provide Indigenous communities to be involved in the selection of VCs.

M7. What is the best way to document, monitor, manage, and report on protection and enhancement measures for VCs focused on the rights and interests of Indigenous Peoples?

- For large projects, most if not all VCs and associated protection and enhancement measures that are typically included in an EP Plan will be relevant to the VCs focused on the ROIP. However, a separate management plan to track VC focused on the Rights and Interests of Indigenous Peoples may be appropriate if there is enough to document, monitor, manage and report on. Again, this can be determined based on the scale and nature of the project. As noted above, there may be instances where there are separate plans protection and enhancement measures regarding rights and interests of Indigenous Peoples are outlined.
- In instances where there are plans for Indigenous specific monitoring. (i.e., TLRU values or other items that are culturally important as identified by the Nations), a specific plan should be considered.

M8. How can information relevant to the rights and interests of Indigenous Peoples best be documented to ensure site-specific information and relevant commitments are maintained and implemented during construction and operations? What is your feedback on the CER’s objectives for improvement? Are these the right objectives, or are there others the CER should consider?

- This information should be included on Environmental Alignment Sheets to be used during construction. Separate sheets can be prepared to protect confidentiality of any specific features or locations.

Integrating the Applicant’s Assessment and Indigenous-led Assessments and Studies

M9. What are the opportunities and challenges of Indigenous-led assessments and studies for Indigenous Peoples (e.g., timing, funding, scoping, integration)?

- The main challenge is funding varies with different Indigenous communities so it is difficult to get assessments from all those that may want to participate and regulatory timelines do not often align. Linear infrastructure projects may have dozens of Indigenous communities while industrial sites may have just one or two Indigenous communities. to engage. Further to this, each Indigenous community is seeking different opportunities and outcomes than the others. Even though the Filing Manual provides guidance on the scope of the project, with Indigenous led assessments, they are not bound by the Filing Manual. Further to this, the outcomes and significance determinations could be different amongst the various Indigenous led assessments and the proponents application, and the whole process then becomes duplicative, lengthy and a burden for others with interests in the project.

M10. What are the opportunities and challenges of Indigenous-led assessments and studies for applicants (e.g., timing, funding, scoping, integration)?

- One of the challenges with Indigenous led assessments is they often take longer to complete than the project and regulatory process allows. Indigenous led assessments should be allowed to be submitted at any time during the regulatory review process and the within the 450 day review period. With the understanding that any significant findings have been shared with the proponent and delays in the process will occur.
- In times of economic war, Canadian sovereignty in question and a global energy security, the need for more assessment does align with regulatory efficiency and effectiveness. Best practices, mitigation measures, management plans, execution strategies and post construction environmental monitoring outcomes seldom conclude that more baseline and assessment was needed.

M11. How can Indigenous-led assessments and studies be integrated with the applicant's assessment and still support the objective of "one project, one assessment"?

- Indigenous led assessments can be integrated into community specific sections within the ESA when provided in a timely manner. In addition, these Indigenous led assessments can be filed with the CER as part of their written evidence. This information can then be considered in the final assessment and decision making.

M12. When the timing does not match, how can Indigenous-led assessments and studies be integrated with the applicant's assessment and still meet the CER's legislated time limits of 450 days for pipeline and power line certificate applications?

- A requirement for early engagement prior to filing with associated timelines and guidance is needed. With a continued focus on regulatory efficiency, global competitiveness, Canadian sovereignty and energy security.

Clarifying the CER's Guidance for Assessing Effects on the Rights of Indigenous Peoples

M14. What are the opportunities and challenges for applicants with the CER's existing guidance?

- Consider if it is appropriate for proponents to assess potential effects on the rights of Indigenous Peoples. Proponents can assess factors that contribute to effects on Aboriginal Rights, but ultimately the Nations should determine how their Rights are affected and the associated significance.

M15. What additional guidance, if any, should the Filing Manuals provide to applicants to identify the potential effects of the proposed project on the exercise and practice of the Rights of Indigenous Peoples?

- Processes for continued engagement with Nations if their assessment or feedback was not received in time for filing. The information can be captured in the EP Plans, Resource Specific Mitigation Tables and Environmental Alignment Sheets prior to construction. This would typically include participation in developing mitigation and Indigenous monitoring.

M17. Should applicants submit a draft determination of the severity of the project effects on the rights of Indigenous People? This would be similar to the CER's expectations that applicants submit draft determination of significance of VCs in the applicants' ESA, which helps inform the Commission's determination of significance in the Commission's ESA.

- While applicants can submit a draft determination of the severity of the project on ROIP, they repeatedly hear that this is a concern for Indigenous communities as they are the knowledge and rights holders. As Indigenous communities are in the best position to understand and determine how their rights may be impacted by a Project, the option should be provided to Indigenous groups at the start of the Project to conduct their own assessment.
- The CER should have clear guidelines for the various scenarios.
- Proponents should be required to provide a draft to potentially affected Indigenous groups for review and input.

M18. How should applicants integrate their assessment of the potential effects of a project on the rights of Indigenous Peoples with their VC-based assessment? For example, how should applicants demonstrate the overlap and interconnections between the potential effects of a project on the rights of Indigenous Peoples and VC-based assessments (i.e., the assessment of biophysical and socio-economic VCs, and VC focused on the rights and interested of Indigenous Peoples)?

- Results of biophysical and socio-economic VC assessments could be pulled into the rights and interests of Indigenous Peoples section; however, this section will also address any additional VCs regarding the rights.
- Results of the Rights and Interests of Indigenous Peoples assessment should also feed back into other VC sections as applicable. Such as potential affects to cultural keystone species that may not be protected species.

M19. What are the opportunities and challenges for Indigenous Peoples of being involved in the applicant's inspection, monitoring and follow-up plans and programs (e.g., timing, funding, scoping, integration)?

- Employment capacity of Indigenous communities may restrict what is possible in terms involvement.
- Location of the Indigenous community. Some Indigenous communities may be located closer to Project work and are thus readily available to participate compared to others. For example, Indigenous communities located on Vancouver Island may face challenges being involved in work on the mainland.

M20. What are the opportunities and challenges for applicants of involving Indigenous Peoples in their inspection, monitoring and follow-up plans and programs (e.g., timing, funding, scoping, integration)?

- Employment capacity of Indigenous communities may restrict what is possible in terms of involvement.
- Training Programs will need to be completed and funded ahead of construction monitoring support.
- Opportunity locations and Project sections will need to be monitored for proximity to territory to ensure opportunities and provided appropriately across the Project.

M21. How should applicants involve Indigenous Peoples in monitoring and managing the effects of the project on the rights and interested of Indigenous Peoples during construction and operation?

- In-field construction and post-construction monitoring opportunities.

- Regular engagement with Indigenous communities to provide progress updates and receive feedback on potential construction or operational issues, monitoring results, mitigation measures, or other topics as they arise through construction and operation that have the potential to effect Indigenous rights and interests.
- Communications protocols to be developed with Indigenous community could support this process.

M22. How does the concept of “sites of Indigenous significance” compare with heritage resources and traditional land and resource use? Where might there be overlap (including with existing legislative responsibilities by jurisdictions)?

- Perhaps this should be rephased as “sites of significance to Indigenous communities” in order to avoid confusion with regulated terminology associated with Archaeology and Heritage sites.

M23. What are the opportunities and challenges for Indigenous Peoples of integrating the concept of “sites of Indigenous significance” into the applicant’s assessment?

- Indigenous communities may want to keep the locations of such sites confidential. Implement protocols for protecting confidentiality while also protecting the sites themselves.

M24. What are the opportunities and challenges for applicants of integrating the concept of “sites of Indigenous significance” into their assessment?

- The provincial/territorial requirements ultimately determine what is done. However, in situations where there are interactions in federal lands – we understand there is no federal legislation for heritage resources.

Additional

The CER should consider how any updates align with other federal jurisdictions legislation, policy and processes (e.g., Impact Assessment Agency of Canada, Canadian Nuclear Safety Commission, Canada Transportation Agency), specifically regarding Indigenous rights. Any requirements regarding ‘Sites of Indigenous Significance’ would be an example. These do not exist in other jurisdictions under those definitions, and may in fact need updated legislation, rather than a filing manual update to address. (e.g., legislation update to align with federal plans to implement the *United Nations Declaration on the Rights of Indigenous Peoples Act* [About the Act \(justice.gc.ca\)](https://www.justice.gc.ca)).

All suggested changes should be framed and considered in the context of regulatory efficiency and effectiveness without compromising quality before they are adopted. Additions to be considered should not extend the timelines already in place.